



Council operates six Little Coast Kids childcare centres across the Shire. We provide an excellent traineeship program that is highly regarded in the industry.

Business Paper

ORDINARY MEETING
10 March 2010



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MEETING NOTICE

The **ORDINARY MEETING**
of **Wyong Shire Council**
will be held in the **Council Chamber,**
Wyong Civic Centre, Hely Street, Wyong on
WEDNESDAY 10 MARCH 2010 at **5.00 pm,**
for the transaction of the business listed below:

OPENING PRAYER

ACKNOWLEDGEMENT OF COUNTRY

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11 QUESTIONS WITHOUT NOTICE ASKED

At the conclusion of the meeting and at the discretion of the Mayor, Council may meet with staff in an informal, non-decision making mode for a period of no more than 30 minutes.

Kerry Yates
GENERAL MANAGER

1.1 Disclosure of Interest

TRIM REFERENCE: F2010/00009 - D02162535

AUTHOR: SW

The provisions of Chapter 14 of the *Local Government Act, 1993* regulate the way in which Councillors and nominated staff of Council conduct themselves to ensure that there is no conflict between their private interests and their public trust.

The Act prescribes that where a member of Council (or a Committee of Council) has a direct or indirect financial (pecuniary) interest in a matter to be considered at a meeting of the Council (or Committee), that interest must be disclosed as soon as practicable after the start of the meeting and the reasons for declaring such interest.

As members are aware, the provisions of the Local Government Act restrict any member who has declared a pecuniary interest in any matter from participating in the discussions, voting on that matter, and require that member to vacate the Chamber.

Council's Code of Conduct provides that if members have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed. The Code also provides for a number of ways in which a member may manage non pecuniary conflicts of interest.

RECOMMENDATION

That Councillors now disclose any conflicts of interest in matters under consideration by Council at this meeting.

1.2 Inspections

TRIM REFERENCE: F2010/00009 - D02162540

AUTHOR: SW

SUMMARY

The following is a list of Inspections conducted on 3 March 2010.

<i>Date of Inspection</i>	<i>Location</i>	<i>Requested By</i>
3 March 2010	Mardi Dam	Director Shire Services
3 March 2010	Bluetongue Brewery, Warnervale	General Manager
3 March 2010	DA 1153/2009A – Dwelling (amended application) 2 Marina Street, Budgewoi	Director Shire Planning
3 March 2010	DA 204/2007 – Use of an existing industrial building for timber product, manufacturing/storage, office and amenities Lot 11, Ruttleys Road, Mannering Park	Director Shire Planning

RECOMMENDATION

That Council receive the report on Inspections.

1.3 Address By Invited Speakers

TRIM REFERENCE: F2010/00009 - D02162670

AUTHOR: SW

SUMMARY

There have been no requests to address the Ordinary Meeting at the time of printing the Business Paper.

RECOMMENDATION

- 1 That Council receive the report on Invited Speakers.**
- 2 That Council agree meeting practice be varied to allow reports from Directors and/or the General Manager to be dealt with following an Invited Speaker's address.**

10 March 2010
To the Ordinary Meeting

Procedural Item
Corporate Services Department

1.4 Confirmation of Minutes of Previous Meeting

TRIM REFERENCE: F2010/00009 - D02162682

AUTHOR: SW

SUMMARY

Confirmation of minutes of the previous Ordinary Meeting of Council held on 24 February 2010.

RECOMMENDATION

That Council confirm the minutes of the previous Ordinary Meeting of Council held on 24 February 2010.

ATTACHMENTS

1 Minutes - Ordinary Meeting held on 24 February 2010 D02165492

WYONG SHIRE COUNCIL**MINUTES OF THE
ORDINARY MEETING OF COUNCIL
HELD IN THE COUNCIL CHAMBER
WYONG CIVIC CENTRE, HELY STREET, WYONG
ON 24 FEBRUARY 2010
COMMENCING AT 5:10:00 PM**

PRESENT

Councillors R L Graham (Chairperson), G P Best, D J Eaton, L A Matthews, E M McBride, J J McNamara, W R Symington, D P Vincent and L D Webster.

IN ATTENDANCE

General Manager, Director Shire Planning, Director Shire Services, Director Corporate Services, Acting Manager Future Planning and Acting Manager Development Assessment.

Manager Contracts and Special Projects, Manager Governance and Administration, Sustainability Manager and three administration staff.

The Mayor reported that:

- * Council has a university scholarship program focusing on the skills shortage areas. The scholarship program offers support for three local first year students including \$2,500 and the opportunity to undertake paid casual employment with council during their university breaks complementary to their studies. The 2010 university scholarships were presented to:

- Miss Stephanie Lowe – Bachelor of Communications/PR
- Mr Russell Martin – Bachelor of Engineering
- Mr Zachariah Arneil – Bachelor of Engineering/Bachelor of Surveying

- * Councillors attended the funeral today of Mr Ralph Bryant who passed away last Thursday at the age of 80. Ralph was a respected and renowned educator, an active member of the Toukley Rotary and was awarded the OAM for his services to the community in 2007.

Council observed a one minute silence in remembrance of Ralph Bryant.

- * He had the honour of attending the Vocational Excellence Awards of the Northlakes Toukley Rotary Club held on Wednesday 17 March 2010 at Halekulani Bowling Club. One of the recipients was Councillor McBride for her commitment to the mental health system.

The Mayor, Councillor Graham, declared the meeting open at 05.10 pm and advised in accordance with the Code Of Meeting Practice that the meeting is being recorded.

Mr Bob Allen read an acknowledgment of country statement and delivered the opening prayer.

APOLOGY

The Mayor advised that Council, at its meeting on 27 January 2010, granted leave of absence to Councillor Wynn for the previous meeting held on 10 February 2010 and this meeting as she is currently on annual leave.

1.1 Disclosure of Interest

1.2 Proposed Inspections

Councillor Eaton declared a pecuniary interest in the matter for the reason that his business property is listed therein, left the chamber at 5.16 pm, took no part in discussion, did not vote and returned to the chamber at 5.17 pm.

2.1 DA 1301/2009 Proposed Farmer's Market and Bicycle Hire Business at The Entrance

Councillor Webster, declared a non-pecuniary insignificant conflict of interest in the matter for the reason that she is a Director of The Entrance Town Centre Management and chose to remain in the chamber.

Councillor Webster stated:

"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because this will have no effect on my decision."

9.1 Notice of Motion – GOATS Family Festival

Councillor Vincent, declared a non-pecuniary insignificant conflict of interest in the matter for the reason that he is a volunteer on the organising Committee and chose to remain in the chamber.

Councillor Vincent stated:

"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because I am not a Director of formal Committee Member of the organisation."

10.1 Notice of Rescission – Proposed Lease of the former Wyong Tennis Club, Lot 4 DP 614523, 6 Ithome Street, Wyong

Councillor Best, declared a non-pecuniary insignificant conflict of interest in the matter for the reason that as General Manager of CCGT, he works with training groups that may be involved in the Samaritans Centre proposed at Wyong and chose to remain in the chamber.

Councillor Best stated:

"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because the above will not affect my view on voting".

10.1 Notice of Rescission – Proposed Lease of the former Wyong Tennis Club, Lot 4 DP 614523, 6 Ithome Street, Wyong

Councillor Eaton, declared a non-pecuniary insignificant conflict of interest in the matter for the reason that he is Chair of CCGT, which operates a group training business locally as does Nova Skills referred to in correspondence associated with this matter and chose to remain in the chamber.

Councillor Eaton stated:

"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because conflict is perceived, no actual conflict as use of building has no conflict with CCGT activities".

RESOLVED unanimously on the motion of Councillor EATON and seconded by Councillor WEBSTER:

That Council receive the report on Disclosure of Interest and note advice of disclosures.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

1.2 Proposed Inspections

Councillor Eaton declared a pecuniary interest in the matter for the reason that his business property is listed therein, left the chamber at 5.16 pm, took no part in discussion, did not vote and returned to the chamber at 5.17 pm.

RESOLVED unanimously on the motion of Councillor BEST and seconded by Councillor WEBSTER:

That Council receive the report on Proposed Inspections.

FOR: COUNCILLORS BEST, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

1.3 Address by Invited Speakers

RESOLVED unanimously on the motion of Councillor MCNAMARA and seconded by Councillor MATTHEWS:

1 That Council receive the amended report on Invited Speakers.

2 That Council agree meeting practice be varied to allow reports from Director's and/or the General Manager to be dealt with following an Invited Speaker's address.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

1.4 Confirmation of Minutes of Previous Meeting

RESOLVED unanimously on the motion of Councillor MCBRIDE and seconded by Councillor SYMINGTON:

That Council confirm the minutes of the previous Ordinary Meeting of Council held on 10 February 2010.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

Business Arising

There was no business arising.

2.1 DA 1301/2009 Proposed Farmer's Market and Bicycle Hire Business at The Entrance

Councillor Webster, declared a non-pecuniary insignificant conflict of interest in the matter for the reason that she is a Director of The Entrance Town Centre Management and chose to remain in the chamber.

Councillor Webster stated:

"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because this will have no effect on my decision."

COUNCILLOR VINCENT LEFT THE MEETING AT 05:25 PM AND RETURNED TO THE MEETING AT 05:29 PM DURING CONSIDERATION OF THIS ITEM.

RESOLVED on the motion of Councillor WEBSTER and seconded by Councillor EATON:

1 That Council refer the application to the General Manager for determination having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues with an indication that based on the information available to it, Council favours approval of the application subject to appropriate conditions.

2 That Council advise those who made written submissions of its decision.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, VINCENT AND WEBSTER

AGAINST: COUNCILLOR SYMINGTON

2.2 2009-10 Management Plan - December 2009 Quarter Review

COUNCILLOR MATTHEWS LEFT THE MEETING AT 05:52 PM AND RETURNED TO THE MEETING AT 05:55 PM DURING CONSIDERATION OF THIS ITEM.

COUNCILLOR MATTHEWS LEFT THE MEETING AT 06:24 PM AND RETURNED TO THE MEETING AT 06:25 PM DURING CONSIDERATION OF THIS ITEM.

*It was **MOVED** by Councillor **EATON** and seconded by Councillor **BEST**:*

- 1 *That Council receive the report 2009-10 Management Plan – December 2009 Quarter Review.*
- 2 *That Council note the advice from Council's Responsible Accounting Officer that in accordance with the Local Government (General) Regulation 2005 (Part 9 Division 3; Clause 203) that Council's financial position is satisfactory.*
- 3 *That Council staff urgently research alternate locations for the Warnervale GP Super Clinic.*
- 4 *That Council write to the Minister for Planning and Mr David Harris MP Parliamentary Secretary for the Central Coast expressing Councils' concern at the continuing delay in the release of the Central Coast Regional Conservation Plan (CCRCP) and the North Wyong Shire Structure Plan which in turn impinges Councils ability to progress the Shire Wide LEP and conduct future planning for our shire.*

The MOTION was put to the vote and declared LOST.

FOR: COUNCILLORS BEST, EATON, MCNAMARA AND SYMINGTON

AGAINST: COUNCILLORS GRAHAM, MATTHEWS, MCBRIDE, VINCENT AND WEBSTER

RESOLVED unanimously on the motion of Councillor GRAHAM and seconded by Councillor MCBRIDE:

- 1 ***That Council receive the report 2009-10 Management Plan – December 2009 Quarter Review.***
- 2 ***That Council note the advice from Council's Responsible Accounting Officer that in accordance with the Local Government (General) Regulation 2005 (Part 9 Division 3; Clause 203) that Council's financial position is satisfactory.***
- 3 ***That Council write to the Minister for Planning and Mr David Harris MP Parliamentary Secretary for the Central Coast expressing Councils' concern at the continuing delay in the release of the Central Coast Regional Conservation Plan (CCRCP) and the North Wyong Shire Structure Plan which in turn impinges Councils ability to progress the Shire Wide LEP and conduct future planning for our shire.***

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

2.3 Tuggerawong Retirement Village

RESOLVED unanimously on the motion of Councillor MATTHEWS and seconded by Councillor MCBRIDE:

- 1 That Council extend the time for repayment of loan and accruing interest from the Tuggerawong Retirement Village for a further period of 12 months on the condition that any re-tenanting fees received on units will be fully utilised on repayments.**
- 2 That Council require the loan to continue to accrue interest on the outstanding balance until the loan is extinguished.**
- 3 That Council set monthly interest rates on any outstanding balance at an equivalent to rates on Council's lost investment opportunity or, at a minimum, equivalent to the 90 day bank bill swap reference rate.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

3.1 Granting of Easements for Electricity Purposes over Council Land at Berkeley Vale

RESOLVED unanimously on the motion of Councillor EATON and seconded by Councillor MCBRIDE:

- 1 That Council grant easements for access over Council land:
Specifically:-**
 - a Lot 60 DP 818089 1W Enterprise Drive Berkeley Vale**
 - b Lot 110 DP 218003 Albatross Road Berkeley Vale**
 - c Lot 20 DP 262327 Greenwood Avenue Berkeley Vale**
- 2 That Council authorise the Common Seal of Wyong Shire Council to be affixed to related documents as required.**
- 3 That Council authorise the Mayor and the General Manager to execute all documents relating to the grant of easements between Wyong Shire Council and EnergyAustralia.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

3.2 Classification of Land Lot 1 DP 1113258 Mataram Road, Woongarra

RESOLVED unanimously on the motion of Councillor MCNAMARA and seconded by Councillor EATON:

- 1 That Council propose classification of Lot 1 DP 1113258, Mataram Road, Woongarra, as Operational Land.**
- 2 That Council advertise the proposal in accordance with Section 34 of the Local Government Act 1993.**
- 3 That, Council adopt the classification, if no adverse submissions are received.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

3.3 Proposed Easement for Electricity Purposes over Lot 41 DP 1122514 Old Maitland Road, Mardi

RESOLVED unanimously on the motion of Councillor EATON and seconded by Councillor MCBRIDE:

- 1 That Council grant an easement for electricity purposes over Lot 41 DP 1122514 Old Maitland Road, Mardi to Energy Australia to accommodate the relocation and installation of high voltage power supply to the Wyong River Pump Station.**
- 2 That Council sign the Energy Australia Agreement to Grant an easement which will allow access to the site for the purpose of relocating and installing the power supply referred to in Item 1 pending the completion of the grant of the easement.**
- 3 That Council authorise the Common Seal of Wyong Shire Council to be affixed to related documents as required.**
- 4 That Council authorise the Mayor and the General Manager to execute all documents relating to the grant of easement between Wyong Shire Council and Energy Australia.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

3.4 Acquisition of Freehold for the Mardi to Mangrove Link Project

RESOLVED unanimously on the motion of Councillor EATON and seconded by Councillor WEBSTER:

- 1 That Council acquires by agreement with the landholder the freehold title over part of Lot 9 DP 755271, within the Wyong Shire Council area, in the approximate location shown on the plan in Attachment 1.**
- 2 That Council authorises the General Manager to pay compensation in accordance with the Land Acquisition (Just Terms Compensation) Act, 1991 and the compensation elements approved by the General Manager as necessary for the acquisition of the freehold title.**
- 3 That Council authorises the affixing of the Common Seal of the Wyong Shire Council to all documents relating to the acquisition of the freehold title.**
- 4 That Council authorises the Mayor and the General Manager to execute all documents relevant to the acquisition of the freehold title.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

4.1 Contract Variations and Finalisation - December 2009 and January 2010

RESOLVED unanimously on the motion of Councillor BEST and seconded by Councillor MCBRIDE:

- 1 That Council note the variations to contracts in Attachment 1 of the Contract Variations and Finalisation – December 2009 and January 2010 report.**
- 2 That Council approve increases to the budgets of the following contracts to provide for further, potential variations:**

2a	Concept and Detail Design – Water Truck Main for Warnervale Town Centre and WEZ	CPA/130591	30,000.00
2b	Construction of Six Netball Courts – Baker Park	CPA/162813	17,000.00
- 3 That Council note the contracts that reached a finalised status in Attachment 2 of the Contract Variations and Finalisation – December 2009 and January 2010 report.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

5.1 Proposed Councillors' Community Improvement Grants

RESOLVED unanimously on the motion of Councillor MCBRIDE and seconded by Councillor MATTHEWS:

That Council allocate an amount of \$4,427.00 from the 2009-10 Councillors' Community Improvement Grants as outlined in the report.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

6.1 Minutes - Wyong Shire Governance Committee - 10 February 2010

RESOLVED unanimously on the motion of Councillor SYMINGTON and seconded by Councillor MATTHEWS:

- 1 That Council receive the minutes of the Wyong Shire Governance Committee Meeting held on 10 February 2010 and adopt the recommendations contained therein.**
- 2 That Council seek the Committee's assistance in providing more detailed minutes including a brief summary to assist Council in reviewing the good work that the committee is achieving.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

6.2 Minutes - Gosford-Wyong Councils' Water Authority Board Meeting - 17 February 2010

RESOLVED unanimously on the motion of Councillor SYMINGTON and seconded by Councillor GRAHAM:

- 1 That Council receive the minutes of the Gosford-Wyong Councils' Water Authority Board Meeting held on 17 February 2010 and adopt the recommendations contained therein.**
- 2 That Council include a review of restrictions as an agenda item at the Joint Meetings of Council given the increased capacity of the system.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

7.1 Information Reports

RESOLVED unanimously on the motion of Councillor GRAHAM and seconded by Councillor MCNAMARA:

That with the exception of report numbers 7.2 and 7.7 Council receive the information reports and adopt the recommendations.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

7.2 Results of Water Quality Testing for Beaches and Lake Locations

COUNCILLOR MATTHEWS LEFT THE MEETING AT 06:56 PM AND RETURNED TO THE MEETING AT 06:58 PM DURING CONSIDERATION OF THIS ITEM.

RESOLVED unanimously on the motion of Councillor BEST and seconded by Councillor GRAHAM:

- 1 That Council receive the report on Results of Water Quality Testing for Beaches and Lake Locations.**
- 2 That Council urgently seek advice from the Tuggerah Lakes Estuary Coastal and Floodplain Management Committee with regards to the issue of 50% of test sites are now un-swimmable in the Tuggerah Lakes system.**
- 3 That Council also seek advice regarding the three locations on the Lake Macquarie area of Wyong Shire.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

7.3 Concept Planning for the Central Coast Highway through Long Jetty and The Entrance

RESOLVED unanimously on the motion of Councillor GRAHAM and seconded by Councillor MCNAMARA:

That Council receive the report on Concept Planning for the Central Coast Highway through Long Jetty and The Entrance.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

7.4 Mardi to Mangrove Link Project Status

RESOLVED unanimously on the motion of Councillor GRAHAM and seconded by Councillor MCNAMARA:

That Council receive the report on Mardi to Mangrove Link Project Status.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

7.5 General Works in Progress

RESOLVED unanimously on the motion of Councillor GRAHAM and seconded by Councillor MCNAMARA:

That Council receive the report on General Works in Progress.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

7.6 Activities of the Development Assessment Unit

RESOLVED unanimously on the motion of Councillor GRAHAM and seconded by Councillor MCNAMARA:

That Council receive the report on Activities of the Development Assessment Unit.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

7.7 Water and Sewerage - Works in Progress

RESOLVED unanimously on the motion of Councillor SYMINGTON and seconded by Councillor BEST:

That Council receive the report on Water and Sewerage - Works in Progress.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

7.8 Outstanding Questions Without Notice and Notices of Motion

RESOLVED unanimously on the motion of Councillor GRAHAM and seconded by Councillor MCNAMARA:

That Council receive the report on Outstanding Questions Without Notice and Notices of Motion.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

9.1 Notice of Motion - GOATS Family Festival

Councillor Vincent, declared a non-pecuniary insignificant conflict of interest in the matter for the reason that he is a volunteer on the organising Committee and chose to remain in the chamber.

Councillor Vincent stated:

“I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because I am not a Director of formal Committee Member of the organisation”

COUNCILLOR MCNAMARA LEFT THE MEETING AT 07:14 PM AND RETURNED TO THE MEETING AT 07:15 PM DURING CONSIDERATION OF THIS ITEM.

COUNCILLOR BEST LEFT THE MEETING AT 07:18 PM AND RETURNED TO THE MEETING AT 07:20 PM DURING CONSIDERATION OF THIS ITEM.

It was MOVED by Councillor MATTHEWS and seconded by Councillor VINCENT:

That Council allocate \$25,000 from the 2009/2010 Community Benefit Grants Program for the GOATS Family Festival to be held 3 and 4 April 2010.

An AMENDMENT was MOVED by Councillor EATON and seconded by MCNAMARA:

- 1 *That Council advise GOATS Council supports funding of its event.*
- 2 *That the matter be referred to an extraordinary Grants Panel Meeting to be held on 3 March 2010 at a time to be advised.*
- 3 *That the General Manager be delegated authority to enact the decision of the Grants Panel.*

The AMENDMENT was put to the vote and declared LOST.

FOR: COUNCILLORS BEST, EATON, MCNAMARA AND WEBSTER

AGAINST: COUNCILLORS GRAHAM, MATTHEWS, MCBRIDE, SYMINGTON AND VINCENT

RESOLVED on the motion of Councillor MATTHEWS and seconded by Councillor VINCENT:

That Council allocate \$25,000 from the 2009/2010 Community Benefit Grants Program for the GOATS Family Festival to be held 3 and 4 April 2010.

FOR: COUNCILLORS BEST, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: COUNCILLOR EATON

9.2 Notice of Motion - Economically and Environmentally Sustainable Living - Demonstration House

COUNCILLOR VINCENT LEFT THE MEETING AT 07:36 PM AND RETURNED TO THE MEETING AT 07:39 PM DURING CONSIDERATION OF THIS ITEM.

COUNCILLOR MCBRIDE LEFT THE MEETING AT 07:46 PM AND RETURNED TO THE MEETING AT 07:49 PM DURING CONSIDERATION OF THIS ITEM.

MR PHIL HEATON, COMMUNITY REPRESENTATIVE, ADDRESSED THE MEETING AT 07.35 PM, ANSWERED QUESTIONS AND RETIRED AT 07.46 PM.

RESOLVED unanimously on the motion of Councillor BEST and seconded by Councillor MCNAMARA:

That staff provide an integrated report on the extent of possibilities and overall feasibility of developing a Sustainable Living Demonstration House located in one of the developing areas of the Shire. The Demonstration house would include smart, sustainable technologies and be as close to self sustaining as possible. The House would be used to educate the community on Sustainable Living and to promote the use of innovative and cost effective sustainable features to the local development industry. Further Council recognises any such initiative must also be in clear partnership with the broader community and its peak community organisations while leveraging off existing highly successful sustainability programs such as Council's Sustainability Street.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

9.3 Notice of Motion - Proposed liquor outlet Norah Head and Toukley

COUNCILLOR MATTHEWS LEFT THE MEETING AT 08:13 PM AND RETURNED TO THE MEETING AT 08:14 PM DURING CONSIDERATION OF THIS ITEM.

MR GARY DEAN, SECRETARY, REPRESENTING NORAH HEAD RATEPAYERS RESIDENTS AND COASTCARE ASSOCIATION INC, ADDRESSED THE MEETING AT 08.01 PM, ANSWERED QUESTIONS AND RETIRED AT 08.09 PM.

RESOLVED unanimously on the motion of Councillor BEST and seconded by Councillor VINCENT:

- 1 ***That Council support the residents and ratepayers in Norah Head and Toukley in their campaign opposing further liquor outlets in these areas, where such proposals are not subject to Council scrutiny.***
- 2 ***That Council note any such application (ie any change of use of a retail premises to another retail premises within a General Business zone) will be determined exclusively through the State Government's authority Casino, Liquor and Gaming Control Authority (CLGCA).***
- 3 ***That having regard to 2 above, Council recognise its role as an advocate / peak body on behalf of the local community.***
- 4 ***That Council develop a submission in preparation to the pending formal request by the CLGCA for public comment.***
- 5 ***That Council approach the Minister for Planning, the Hon Tony Kelly, the Minister for the Central Coast, the Hon Ian Macdonald and Local Members of State Parliament and the Parliamentary Secretary for the Central Coast to consider amending the SEPP - Exempt and Complying Development 2008 in order that any change of use of retail premises to a liquor retail premises requires the consent of Council.***

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

9.4 Notice of Motion - "Cabbage Tree Bay" Coastline Management and Climate Change Discussion Paper

COUNCILLOR WEBSTER LEFT THE MEETING AT 08:33 PM AND RETURNED TO THE MEETING AT 08:34 PM DURING CONSIDERATION OF THIS ITEM.

RESOLVED unanimously on the motion of Councillor BEST and seconded by Councillor MCNAMARA:

- 1 ***That further to the continuing deterioration of the Cabbage Tree Bay foreshore area in particular as a result of the weather events of the week of the 8 February 2010. Staff urgently report on the status of works and funding attached to the proposed bay restoration works.***
- 2 ***That staff also provide an analysis and likely benefits/disbenefits that may affect Cabbage Tree Bay, Council's Coastline Management and the proposed climate change initiative arising from the recent findings in the NSW Land and Environment Court regarding the Byron Bay Councils versus Bellongil resident's action.***

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

9.5 Notice of Motion - Sea Level Rise Notification

COUNCILLOR BEST LEFT THE MEETING AT 08:40 PM AND RETURNED TO THE MEETING AT 08:42 PM DURING CONSIDERATION OF THIS ITEM.

It was MOVED by Councillor EATON and seconded by Councillor GRAHAM:

- 1 *That Council write to all property owners affected by the State Governments sea level rise policies (ie 40 cm by 2050 and 90 cm by 2100).*
- 2 *That the text of the letter be endorsed by Council.*

An AMENDMENT was moved by Councillor SYMINGTON and seconded by Councillor MATTHEWS:

That Council defer this matter until a draft climate change policy is in place which has been discussed with the community.

The AMENDMENT was put to the vote and declared LOST.

FOR: COUNCILLORS MATTHEWS, MCBRIDE, SYMINGTON AND VINCENT

AGAINST: COUNCILLORS BEST, EATON, GRAHAM, MCNAMARA AND WEBSTER

RESOLVED on the motion of Councillor EATON and seconded by Councillor GRAHAM:

- 1 That Council write to all property owners affected by the State Governments sea level rise policies (ie 40 cm by 2050 and 90 cm by 2100).**
- 2 That the text of the letter be endorsed by Council.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, MCNAMARA AND WEBSTER

AGAINST: COUNCILLORS MATTHEWS, MCBRIDE, SYMINGTON AND VINCENT

9.6 Notice of Motion - Wyong Freeway Connection

RESOLVED unanimously on the motion of Councillor EATON and seconded by Councillor MCNAMARA:

That staff report on the feasibility of converting the new emergency access from the Hue Hue Road, Alison to the Freeway to permanent left in left out access.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

10.1 Notice of Rescission - Proposed Lease of the former Wyong Tennis Club, Lot 4 DP 614523, 6 Ithome Street, Wyong

Councillor Best, declared a non-pecuniary insignificant conflict of interest in the matter for the reason that as General Manager of CCGT, he works with training groups that may be involved in the Samaritans Centre proposed at Wyong and chose to remain in the chamber.

Councillor Best stated:

“I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because the above will not affect my view on voting”.

Councillor Eaton, declared a non-pecuniary insignificant conflict of interest in the matter for the reason that he is Chair of CCGT, which operates a group training business locally as does Nova Skills referred to in correspondence associated with this matter and chose to remain in the chamber.

Councillor Eaton stated:

“I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because conflict is perceived, no actual conflict as use of building has no conflict with CCGT activities”.

COUNCILLOR VINCENT LEFT THE MEETING AT 09:28 PM AND RETURNED TO THE MEETING AT 09:30 PM DURING CONSIDERATION OF THIS ITEM.

RESOLVED unanimously on the motion of Councillor MCBRIDE and seconded by Councillor MATTHEWS:

That the following resolution carried at the Ordinary Meeting of Council held on 27 January 2010 be rescinded:

- 1 That Council decline the application from the Samaritans Foundation, noting that it did not comply with the terms of the Expressions Of Interest.**
- 2 That Council demolish the building and replace it with a temporary gravel carpark.**
- 3 That Council direct staff to assist the Samaritans Foundation in locating suitable alternative accommodation.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT AND WEBSTER

AGAINST: NIL

It was MOVED by Councillor MCBRIDE and seconded by Councillor MATTHEWS:

- 1 That subject to staff jointly determining with the Samaritans Foundation that it is viable to establish and operate the former Wyong Tennis Club in accordance with the lease, Council:*
 - a approve a lease of Lot 4 DP 614523, 6 Ithome Street Wyong, to Samaritans Foundation for a period of 5 years for an annual rent of \$5,000 and;*
 - b authorise the Common Seal of Wyong Shire Council to be affixed to the Lease between Wyong Shire Council and the Samaritans Foundation;*
 - c authorise the Mayor and the General Manager to execute all documents relating to the Lease.*
- 2 That Council authorise staff to expend between \$10k - \$20k to bring the exterior and existing electrical components into compliance with the relevant regulation.*

An AMENDMENT was moved by Councillor EATON and seconded by Councillor BEST:

That this matter be further investigated in the following areas and reported back to Council as soon as possible;

- Cost of external rectification and electrical components*
- Hygienist report into the asbestos contamination*
- Legal advice as to Council's exposure*
- Confirmation of the zoning compliance*

The AMENDMENT was put to the vote and declared LOST.

FOR: COUNCILLORS BEST, EATON AND MCNAMARA

AGAINST: COUNCILLORS GRAHAM, MATTHEWS, MCBRIDE, SYMINGTON, VINCENT AND WEBSTER

RESOLVED on the motion of Councillor MCBRIDE and seconded by Councillor MATTHEWS:

- 1 That subject to staff jointly determining with the Samaritans Foundation that it is viable to establish and operate the former Wyong Tennis Club in accordance with the lease, Council:**
 - a approve a lease of Lot 4 DP 614523, 6 Ithome Street Wyong, to Samaritans Foundation for a period of 5 years for an annual rent of \$5,000 and;**
 - b authorise the Common Seal of Wyong Shire Council to be affixed to the Lease between Wyong Shire Council and the Samaritans Foundation;**
 - c authorise the Mayor and the General Manager to execute all documents relating to the Lease.**

- 2 That Council authorise staff to expend between \$10k - \$20k to bring the exterior and existing electrical components into compliance with the relevant regulation.**

FOR: COUNCILLORS GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON,
VINCENT AND WEBSTER

AGAINST: COUNCILLORS BEST AND EATON

QUESTIONS WITHOUT NOTICE

Q66/10 Sea Level Rise Paper from Intergovernmental Panel on Climate Change (IPCC)

Councillor John McNamara
F2009/00067

“Could staff please ask the CSIRO representative for Climate Change to forward the requested Sea Level Rise Paper from IPCC as soon as possible?”

Q67/10 Residential Parking Margaret Street, Wyong

Councillor Doug Vincent
F2004/06687

“Could staff please advise on the feasibility of providing resident only street parking in front of residential housing in Margaret Street, Wyong near the Council Chambers?”

THE MEETING closed at 9.59 pm.

2.1 Trial Year Round Lifeguard Services

TRIM REFERENCE: F2004/06027 - D02145627

AUTHOR: LS

SUMMARY

At its meeting of 25 November 2009, Council resolved to support, in principle, the concept of a year-round lifeguard service. This report considers options, and provides information on operational and budgetary issues that would result from the implementation of such a service.

RECOMMENDATION

- 1 ***That following this seasons successful trial of extended discretionary work hours and water and beach safety awareness program (at a cost of \$17,000/yr) as detailed in Councils resolution of 12 August 2009, Council continue to permanently fund this program***
- 2 ***That Council trial an extended Lifeguard coverage at Soldiers and Shelly Beach for three months (July, August and September 2010 including weekends), as detailed in Table 3.***
- 3 ***That at its completion, staff report to Council on the outcomes and effectiveness of the trial in a timeframe that will allow Council to consider continuation of the service in 2011-12.***
- 4 ***That the funds to implement these additional services be included in the draft 2010-11 Management Plan.***

BACKGROUND

At its Ordinary Meeting of 12 August 2009, Council considered the report "Program to Reduce Drowning Deaths in the Wyong Shire". One of the options included in this report was consideration of a year-round lifeguard service. Council adopted the recommended interim improvements of risk management including discretionary extension of daily hours and commencement of a beach safety awareness program. Commencement of a trial year-round lifeguard service was not endorsed by Council at that time.

At the Ordinary Meeting of 25 November 2009, Council resolved:

- “1 *That having regard to similar such initiatives in other developing regional areas and the broad range of local emerging issues such as population growth, climate change, employment trends, ie part time and shift working and the need for greater coastal environs education, Council in principle support the concept of a trial year-round life guard deployment at two selected Shire beaches, subject to a final report of operational and budgetary issues.*
- 2 *That this matter be reported on and / or briefed in a timeline that is consistent with achieving inclusion in the draft 2010 budgetary process.”*

2.1 Trial Year Round Lifeguard Services (contd)

FOR:	COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, SYMINGTON, VINCENT, WEBSTER AND WYNN
AGAINST:	NIL

This report presents a suite of different options for a year-round trial lifeguard service and respective costings for Council to consider as part of the 2010-11 Management Plan.

It is recognised that Council's November resolution is based on a number of emerging issues. Each of these issues and their relevance to a trial year-round lifeguard service is explored further as follows:

Population Growth

The Wyong Shire Social Atlas recognises that the Central Coast is one of the fastest growing area in Australia in terms of population and from 1991–2001 grew at a rate nearly 2.5 times faster than the rest of NSW. It also recognises that the Wyong Shire has been growing significantly faster than the Gosford City Council area.

Although the Social Atlas recognises that there was a slowing in population growth in the latter half of the 1990's, it also recognises that population growth on the Central Coast is inevitable with a predicted 30% population increase in 2026 in comparison to 2001 measured populations. Most of the growth is predicted to occur in the Wyong Shire.

With this in mind, it is likely there will be increased utilisation of Wyong Shire beaches.

Climate Change

The NSW Department of Environment Climate Change and Water (DECCW) estimate coastal area temperatures of NSW to rise by 0.7–0.9 degrees by 2030 in comparison to 2007 levels. They advise that probable effects will include hotter, drier conditions and that storms combining with sea level rise in the coastal zone worsening erosion.

Warmer conditions may have the effect of extending the public use of beach areas further outside the current patrolled season. Climate change is also projected to result in larger ocean swells in the winter period.

Employment Trends

The Wyong Shire Social Atlas indicates that one of the main features of the Central Coast's labour force is that there is a high ratio of part time to full-time employment. Although future trends are not indicated in the atlas, the high proportion of part time work would suggest that there may be greater opportunity for people on the Central Coast to access the Shires beaches.

In addition, the social atlas recognises that the other main features of the Central Coast's labour force are a high proportion of the population aged 15 years and over not in the labour force and generally high unemployment rates (more marked in the case of Wyong Shire than Gosford City). With this in mind there are further opportunities for people to frequent beaches outside of holiday periods because of their unemployment.

Greater Coastal Environs Education

Extension of patrol coverage on the Shires beaches beyond October to April would provide a greater lifeguard presence on our beaches to better educate beach users about beach safety and caring for the coastal environment throughout the year. Present deployment of permanent lifeguards into open space maintenance crews may limit their opportunity to take advantage of their skills in these types of roles from October to April.

It has also been proposed that the lifeguards could be utilised in the off season to audit private swimming pools. When this initiative proceeds, in conjunction with an increase in coverage of the lifeguards on the beaches, additional casual lifeguards would need to be employed throughout the period to ensure that both tasks can be executed to Council's satisfaction.

THE PROPOSAL

Following Council's resolution in August 2009, patrol hours during the swimming season were extended on an as needs basis, based on beach user numbers or surf conditions. Council lifeguards have, so far this season, started patrols early on three occasions. On eleven occasions, lifeguards have extended their patrol into the late afternoon by up to two hours. However the requirement for extended hours has been less than expected due to wet weather throughout the peak Christmas period. The approximate cost of this program over the 2009/10 Christmas period is estimated at \$8000, expenditure to date of \$17,000 annual budget.

The provision of additional lifeguard services has been well received by beach users with positive feedback from both local residents and visitors to the area. Council lifeguards have indicated that the facilitation of extended patrol hours and an educational program has assisted in the provision of safety for beach users in Wyong Shire this swimming season. Given the apparent success of the program, it is recommended that the funding continue.

Acknowledging Council's support of an extension of the lifeguard patrol season as a trial, it is also recommended that such a trial be undertaken at Soldiers Beach and Shelly Beach. These beaches are the two most popular beaches in the Wyong Shire and are located in geographically different parts of the Shire. As a trial, it is recommended that a seven day a week lifeguard service be initiated at each of these two beaches from July 2010 through to September 2010. At the end of this period it is proposed that the trial be reviewed and reconsidered by Council to determine whether an extended service be commenced on a permanent basis.

There are currently five permanent lifeguards employed by Council as well as seven temporary full-time lifeguards and a number of casuals. Each of the proposals considered in the options section of this report would primarily be staffed by the existing allocation of full-time lifeguards. Casual lifeguards would be utilised as required throughout the period if full-time lifeguards are absent on leave. If weekday services are provided throughout the winter season, the use of full-time lifeguards as general open space maintenance staff over this period would be discontinued.

OPTIONS

Coverage of designated patrolled beaches in the Wyong Shire is currently undertaken by Council Lifeguards and volunteer lifesavers from the beginning of October to the end of April each year.

The range of lifeguard services provided within NSW Council patrolled beaches generally range from the lower resource levels of service for a number of regional NSW Councils to the more resource intensive extended services provided at the high profile Sydney metropolitan beaches which attract high volumes of residents and tourists. Wyong Council and the other local regional Councils generally offer a level of service that falls approximately in the middle of the range of categories.

Most local government areas (LGAs) have no coverage of patrolled beaches between April and October. LGAs such as Wollongong and Waverley are some exceptions to this with limited coverage on selected beaches throughout the period. A comparative table of NSW Coastal Council's showing Council Areas that provide some level of winter lifeguard coverage on their coastline is included as an Attachment to this report.

If, as Council has identified in its resolution, two selected beaches are nominated for a trial year-round lifeguard service, it is recommended that the locations selected are Shelly Beach and Soldiers Beach. These two beaches are the Wyong Shire's most popular beaches, and given that they are not close in proximity, serve both the northern and southern areas of the Shire. All costs have been determined based on coverage of each of Soldiers and Shelly beaches from 9am to 4pm for the designated days. These options are presented in Table 1:

Table 1: Full additional seasonal costs for provision of lifeguard services to Soldiers and Shelly Beaches between April and October. Allowance has been made for two Council Lifeguards at each site on each designated day. No support from Surf Life Saving volunteers on weekends has been costed into the options presented in this table.

Description of Service	July School Holidays	June Long Weekend	All Other Weekends	All Other Weekdays	Estimated Costs
July School Holidays Only	✓				\$40,000
June Long Weekend		✓			\$10,000
All Weekends during winter period + June public holiday		✓	✓		\$130,000
All weekends, school and public holidays	✓	✓	✓		\$170,000
All days May to September (inclusive)	✓	✓	✓	✓	\$320,000

2.1 Trial Year Round Lifeguard Services (contd)

Table 1 represents full seasonal costs for the variety of service options, including all overheads and equipment costs.

In the implementation of a trial there are a number of other variables which could be considered which will affect the cost of the trial in various ways, all of these other variables are considered in tables in the attachments to this report.

Acknowledging Councils support for an extension of the lifeguard service within the existing patrolled beaches, the recommendation to Council is that a 7 day per week trial be undertaken at Shelly Beach and Soldiers Beach in July, August and September 2010. The expected cost of such a trial in 2010-11 would be \$170,000.

During the trial data would be collected from lifeguards on beach utilisation, rescues, assists and weather conditions and compared to data collected during summer months. At the conclusion of the trial the data would be collated and a report prepared for Council for consideration of the continuation of the service.

The detail and costing of the unfunded priorities are detailed in the report provided to Council in August 2009, Attachment 2.

Review of this Season's Trial of Expanded Services

As previously identified, the trial that Council resolved to implement in August 2009 encompassing extended daily coverage of beaches over the summer as required and a beach safety campaign has been completed.

An education program was launched to educate the public; particularly visitors to the area, on beach safety. This program consisted of three key components: a promotional campaign, pamphlet distribution and seminars on various aspects of beach safety.

Titled "Drink and Sink", the promotional campaign was aimed at educating males from the ages of 18-35 years of the dangers of consuming alcohol and then entering the water. In December, 10,000 drink coasters were delivered to 17 pubs and clubs in the Wyong Shire. Radio was also utilised, with Sea FM and 2GO conveying this key safety message.

Beach safety pamphlets were designed by Council staff and handed out to the general public. Over 4,000 pamphlets were provided to the tourist parks, Council libraries, patrolled beaches and The Entrance Town Centre. A member of Council's lifeguard staff also visited several of the Shire's unpatrolled beaches (in particular in the Budgewoi area), distributing pamphlets to beach users and discussing general rules of beach safety and the key messages of the "Drink and Sink" program.

Beach safety seminars were also conducted at the Shire's four Council-operated tourist parks at Budgewoi, Canton Beach, Norah Head and Toowoan Bay. Topics included general beach safety, lifeguard equipment, first aid and CPR. Over 300 people attended the seminars during a five week period.

STRATEGIC LINKS Management Plan

<i>Principal Activity</i>	<i>Key Issue(s) and Objective (s)</i>	<i>Financial Line Item No and Description</i>
A More Sustainable Community	Community Safety - A community which enables all residents to feel safe.	1.07.07 Ocean Beach Management
Organisation	Workforce - A motivated, skilled, adaptable workforce - working together to provide quality services.	1.07.07 Ocean Beach Management

The options considered in this report are in line with the objectives of the Shire Strategic Vision. The options support the first objective "Communities will be vibrant, caring and connected with a sense of belonging and pride in their local neighbourhood" by providing increased opportunities for participation in sports and recreation safely throughout the winter period.

Contribution of Proposal to the Principal Activity

A decision by Council to increase lifeguard coverage to the Shire's patrolled beaches will result in an increased perception of community safety.

As detailed in the earlier Council report the prevention of drownings in the Wyong Shire relies also on education and beach safety. Having the lifeguards operating on the beaches over a longer season may improve the opportunity to impart this knowledge to the public.

Link to Key Focus Areas

Whilst this service is aligned with the Principal Activities, none of the options considered in tables 2 through 5 link to the key focus areas of the Management Plan.

Financial Implications

The consideration of a trial year-round lifeguard service will create financial implications if Council chooses to adopt one of the options presented in this report or in the attachments. Council is currently reviewing its service delivery profile as part of the development of the Delivery Program and, at this stage, no uncommitted funds for 2010-11 and beyond are identified.

Without the support of SLSCC volunteers the costs of supplying this service is significant.

Currently the lifeguards are redeployed in the off season to undertake the following duties: tree maintenance, garden bed maintenance, street tree planting, cycleway maintenance, support of school sports (winter surfing) and facilities maintenance. The Open Space and Recreation budgets that have historically funded lifeguard wages during the off season could instead be used to source other part-time employees or hired labour staff to backfill these duties.

If Council elects to adopt the recommendation in this report there will be a \$170,000 financial impact on Council for the provision of the trial winter lifeguard service in 2010-11.

In addition it is recommended that an ongoing allocation of an additional \$17,000 per annum is made to maintain the extended discretionary work hours and beach safety campaign trialled over the 2009/10 summer lifeguard season.

Principles of Sustainability

Increased perception of safety levels on the Shires beaches may promote increased swimming use.

Environmentally, none of the options will have a great positive or negative impact.

Economically, if any of the options considered are adopted they will provide for greater utilisation of existing plant, equipment and beach infrastructure. The ability to offer patrolled beaches in the Wyong Shire throughout the winter period may also be seen to have limited tourism benefits. The proposal will not provide any revenue raising opportunities. Overall the expansion of services throughout the year is a significant resource cost for a limited number of public swimmers.

Socially, the proposal may provide advantages to the local community and visitors to the area. The provision of year round safer access to swimming beaches will provide greater opportunity for people to engage with the surrounding environment and with each other.

CONSULTATION

Collaboration with Surf Life Saving Central Coast Volunteers:

Surf Life Saving Central Coast has been approached to determine its interest in providing partnership coverage, with Council Lifeguards on weekends and public holidays during the periods encompassed by the various service options in the report and in the attachments. The proposal would involve reducing Council's resourcing to one lifeguard per beach on Saturdays, Sundays and Public holidays with two surf lifesavers assisting them. This would reduce operational costs significantly as well as providing an opportunity for lifeguards and Surf Life Saving volunteers to share knowledge and establish better relationships.

They have advised that they are not able to support the trial through provision of resources at this stage as they do not believe there is sufficient data to justify extension of the service. They did advise that they would be more willing to consider extensions to the service if they just encompassed the June long weekend or the July school holidays.

Council Lifeguards

Council Lifeguards are supportive of increasing the patrol season on the Shire's beaches to improve beach safety. The majority of Councils permanent lifeguards believe that an appropriate year round lifeguard service would include extending the patrol season at Soldiers Beach and Shelly Beach. An option discussed was an extension to the current October to April patrol season to a season that runs from September to May.

This is based on their observation that a number of people start to use beaches from September onwards and that in May ocean waters are still warm enough to encourage swimming.

The alternative of a year round lifeguard service at Toowoong Bay beach was considered to hold merit as it is generally more attractive to swimmers and that a number of swimmers use this beach throughout Winter. The expected costs of these programs are indicated in the Attachment. This option is not recommended on the basis that whilst Toowoong Bay beach has high patronage the beach itself is not inherently a high risk location. Soldiers and Shelly Beach also experience high patronage and, as identified in the Strategic and Operational Beach Management Plan, have the highest number of rescues and preventative actions by the lifeguards. This is an indication of the conditions experienced at these beaches.

The costs of these various options are also considered in the attachments to this report.

GOVERNANCE

Neither the recommendation or any of the tabled options will required any of Council's policies to be changed.

CONCLUSION

Acknowledging Councils support for an extension of the lifeguard service within the existing patrolled beaches, the recommendation to Council is that a 7 day per week trial be undertaken at Shelly Beach and Soldiers Beach in July, August and September 2010. The expected cost of such a trial in 2010-11 would be \$170,000.

Following this season's successful trial, it is recommended that Council permanently fund the extended discretionary work hours and water and beach safety awareness detailed in Councils resolution of 12 August 2009.

Council is currently reviewing its service delivery profile as part of the Delivery Program and, at this stage, no uncommitted funds for 2010-11 and beyond have been identified.

ATTACHMENTS

- | | | | |
|---|--|-----------|-----------|
| 1 | Summary of NSW Coastal Council's providing winter lifeguard services | | D02168872 |
| 2 | Report to Council meeting dated 12 August 2009 - Item 3.3 Program to Reduce Drowning Deaths in Wyong Shire | Enclosure | d01918038 |
| 3 | Options and Costs for Extending Year Round Lifeguard Services | Enclosure | D02174000 |

Attachment 1: Summary of NSW Coastal Council's showing Council Areas that provide some level of winter (end of April to beginning of October) lifeguard coverage on their coastline.

Local Government Area	Provision of Professional Lifeguard Coverage to some beaches at any time between April and October
Ballina	No
Bega	No
Bellingen	No
Byron	No
Clarence Valley	No
Coffs Harbour	No
Eurobodalla	No
Gosford	No
Great Lakes	No
Hastings	No
Kempsey	No
Kiama	No
Lake Macquarie	No
Manly	Yes
Nambucca	No
Newcastle	Yes
Pittwater	No
Port Stephens	No
Randwick	Yes
Richmond Valley	No
Shellharbour	Yes
Shoalhaven	No
Sutherland	Yes
Taree	No
Tweed Shire	No
Warringah	No
Waverley	Yes
Wollongong	Yes
Woollahra	No
Wyong	No

2.2 F3 Highway Signs: Proposal to Revise Occupation Agreement with Sports and Outdoor Media

TRIM REFERENCE: F2010/00264 - D02168053

AUTHOR: SB

SUMMARY

Wyong Shire Council (WSC) has by formal agreement, sub-licenced back to the owner, its right to use space on each of two F3 Freeway Pylon Signs. The owner, Sport and Outdoor Media Pty Ltd has proposed a change to the Agreement in respect of the rental payable to WSC.

Council and the Executive expressed concern the Agreement was less than satisfactory and if WSC was a party to any other similar agreements. Both matters are considered in this report.

RECOMMENDATION

- 1 That Council approve the establishment of a new Licencing Agreement between Wyong Shire Council (WSC) and Sports & Outdoor Media Pty Ltd (SOM) covering the hire of advertising sign space.**
- 2 That Council approve the early termination of the existing Occupation Agreement between WSC and SOM established in April 2007.**
- 3 That Council approve a new Term of Agreement of five years, renewable.**
- 4 That Council approve a rental of \$36,000 per annum, per site, for the first two years increasing to \$38,000 for the third year, \$40,000 for the fourth year and \$42,000 for the fifth year.**
- 5 That Council authorise the Common Seal of Wyong Shire Council to be affixed to the formal documents as required between Wyong Shire Council and Sports and Outdoor Media.**
- 6 That Council authorise the Mayor and the General Manager to execute all documents relating to the Agreement between Wyong Shire Council and Sports and Outdoor Media.**

INTRODUCTION

This issue in essence is a simple “go or no-go” decision that became complicated because of manner and terminologies of the documents that formalised the trading arrangement between WSC and SOM.

Key to the issues, has been the use of the terms “sub-let”, “sub-licence”, and the related labels of “Deed”, “Lease” “Licence” and “Agreement”.

At various times these terms have been used interchangeably by all the parties involved since 2006.

In this paper the term “sub-licence” (unless referring to the past use of sub-let) is used based on HWL’s final clarification advice as to the formal status of SOM’s arrangement with WSC.

BACKGROUND

On 23 September 2009 Council considered this report and resolved unanimously on the motion of Councillor Matthews and seconded by Councillor Webster:

- “1 That Council defer this matter for further information on the financial resources of Sports and Outdoor Media and legal advice as to Councils remedies.
- 2 That Council refer this matter to the Governance Committee for investigation and recommendation.

FOR: COUNCILLORS BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, WEBSTER AND WYNN

AGAINST: NIL”

Following the Council resolution, the WSC Governance Committee considered the matter at its meeting held on 4 November 2009 and resolved:

- “1 That the Committee receive the report Lease of F3 pylon signs over part Lot 100 DP 718558 Freeway Collies Lane, Mardi and part Lot 5 DP 738176 Freeway Pacific Highway, Palmdale.
- 2 That the Committee recommend the General Manager review the legal advice provided, review the process that established the agreement and investigate if any other similar agreements exist.”

Updated legal advice has been received from HWL concerning the Council’s right to sub-licence and is attached (see attached).

The General Manager reviewed the original paper put to Council and determined there is no conflict between the initial draft (informal) legal opinion and the facts contained in the original report to Council on 23 September 2009.

HISTORY - THE SIGNS**1997**

During 1997 Council was considering its options in terms of erecting of hiring signage along the freeway, for the benefit the Shire by drawing attention to the attractiveness of visiting and living in Wyong part of the Central Coast.

Coincidentally, in 1997 Sports and Outdoor Media (SOM) approached Council with a proposal to allow Council the use of one of the panels on each of the signs it was proposing to construct on the F3 Freeway at Mardi and Ourimbah.

The convergence of these two intentions resulted in an agreement of mutual purpose being reached and formalised by way of a Deed. This Agreement required SOM to obtain a development consent and especially protected WSC's and Council's obligations as a Consent Authority.

SOM had offered Wyong Shire Council (WSC) the use (for the community) of the north-facing panel of the sign at Mardi ("Mardi Sign") and the south-facing panel of the sign at Palmdale ("Palmdale Sign") in the Deed dated 20 February 1998.

As required, a development consent that reflected the proposed WSC use of the signs was subsequently lodged, assessed and approved with a condition confirming the community's rights.

SOM had acquired legal rights of occupancy over the land (part Lot 100 DP 718558 Freeway Colliers Lane, Mardi and part Lot 5 DP 738176 Freeway Pacific Highway, Palmdale) from the private owners including the right to maintain and use the advertising structures and signs presently on the land.

2006

Eight years later in 2006, SOM approached WSC with a second proposal that would see WSC hiring its rights to the sign space back to SOM for an agreed annual fee. Council, on 28 June 2006, resolved on the motion of Councillor Eaton to accept SOM's proposal. Later in December 2006 Council resolved to approve a modification to the DA.

A Modification to the DA was determined and issued in March 2007

The original Deed was terminated by the introduction of a new "Occupancy Agreement" that was agreed and signed in April 2007. In the Occupational Agreement, SOM was to pay WSC an annual fee being the greater of \$50,000 ex GST for each sign or 50% of the net advertising revenue derived by SOM from use of the then current Council space.

The new current Occupancy Agreement is for a period of five years (terminates 2012) and replaced the original 1998 Agreement.

2009

In response to Council's pursuit of the rent arrears early 2009, SOM advised that due to the economic downturn the advertising business has been hit hard and the expected returns, when the agreement was struck with Council, are not being achieved.

2.2 F3 Highway Signs: Proposal to Revise Occupation Agreement with Sports and Outdoor Media (contd)

SOM do not expect that the advertising downturn will last forever and is still keen to continue with the current arrangement provided that a reduced rent for each sign be negotiated so the arrangement remains sustainable for SOM.

Eventually, after verifying SOM's claims, approval for the proposed scheme was requested from Council (23 Sept. 2009) who challenged the merit of the proposal and deferred it for consideration by the Governance Committee at its 4 November 2009 meeting.

Cr Eaton, in particular, had raised concerns (based on website research) that SOM was part of a large company that could easily afford to honour its commitments. In fact the ownership of the Company is still substantially vested in the original owner.

An informal (email), initial legal opinion on Council's rights under the agreement was received the night before Governance Committee business papers were despatched. At the meeting, Cr Eaton expressed a new concern that the "informal" legal opinion was contradictory (not qualified specifically) to the business paper previously presented to Council and that clarification was needed.

The Committee declined to debate the issue but recommended to the General Manager that he review the business paper put to Council on 23 September 2009 on the F3 Highway Signs for the accuracy of the content presented.

The Governance Committee, after considering the original business paper to Council on 4 November 2009 and noted that the issue about management processes "not catching" such agreements, was a concern worth investigating and recommended the General Manager act as follows:-

"That the Committee recommends the General Manager

- review the legal advice provided,*
- review the process that established the agreement and*
- investigate if any other similar agreements exist."*

CURRENT STATUS

Work undertaken:

1. The General Manager and Director Corporate Services reviewed the initial, informal opinion and the initial 23 September business paper for its accuracy and alignment.
2. The General Manager and the Director Corporate Services reviewed the revised legal opinion (Attachment 1) requested in an attempt to ensure clarity of WSC's rights.
3. In particular the second opinion (p5 v p6) contained an apparent contradiction which appeared that HWL advised WSC that on one count it could not sub-let but on a second count it could sub-licence.
4. Further clarification (Opinion #3 Attachment 2) was sought from WSC's law firm in respect of a number of matters related to the formal (second) opinion (Attachment 1)
5. An internal review of revenue agreements and the F3 highway signs agreement establishment was conducted by the Contracts Systems Co-ordinator.

Outcomes

- 1 The initial, informal opinion from Brian Oliver of HWL (27 Oct 2009) responds with a view that Council is entitled to sub-licence the sign space subject to the terms governing Council rights and SOM's responsibilities if they (SOM) cease to use the space.
- 2 The informal opinion notes that that Council rights of sub-licence is effectively "given up" by the existence of clause 3.2 which gives SOM the rights to the space and rights of renewal.
- 3 Only the activation of clause 5.7 (and non-payment of monies due) or the expiry of the Agreement could create the opportunity for Council to sub-licence. The possibility of sub-licence is further qualified by a concern that access to the sign could disrupt Council's ability to sub-licence.
- 4 The informal opinion did not comment on Council rights in respect of issues not mentioned in the Agreement – e.g. Does Council have any rights where specific conditions are not included? The later, and third, opinion clarified this point as Council retains right unless any specific right is withdrawn by way of the Agreement (See Opinion #3, Attachment 2).
- 5 The business paper presented to Council included one statement in the "Summary" section :-

"Under the terms of the Occupancy Agreement, it is quite unclear that WSC can take an option to sub-let the space to a third party and moreover, it is reasonable to conclude from the wording that WSC may not sub-let to any other party except SOM."
- 6 This advice was tendered on the basis that the practical issues of gaining rights held by SOM for physical access to the signs, the ability work on the signs (e.g. changing adverts) and the unwillingness of the owner to allow an third party advertiser, would clearly make it extremely difficult to sub-let the space.
- 7 It is observed that the terms "sub-let" and "sub-licence" have been used interchangeably in the business paper and by HWL in correspondence between the HWL and WSC - which leads to an apparent contradiction in the second opinion which says Council cannot sub-let, but can sub-licence. Opinion #3 from HWL clarifies that apparent contradiction by advising that sub-letting would apply if the arrangement were a lease.
- 8 Nevertheless, the practical issues, despite the unclear wording of the Agreement, support the conclusion that sub-licencing is an option that will be difficult at best and that the reasonable conclusion offered to Council is not inconsistent with the informal advice later received from HWL, or the formal advices now attached to this paper.
- 9 The second legal opinion (Opinion #2) dated 18 Nov. 2009, re-iterates the conditional view that WSC can sub-licence subject to the practical difficulties of access. It also identifies a possible alternate means of Council on-selling the space which obviates

2.2 F3 Highway Signs: Proposal to Revise Occupation Agreement with Sports and Outdoor Media (contd)

any need to sub- licence (NB This would translate to WSC needing to acquire appropriate expertise in selling the space and formulating an effective agreement).

- 10 However, the Opinion #2 summary goes on to observe that “Council’s rights can only arise under voluntary agreement“. Effective maintenance of these rights is dependent on SOM continuing to hold rights (from the land-owner) to use and maintain the signs.

It further comments “There is no power to acquire commercial rights by imposition of a condition of development consent”.

It remains reasonable to conclude that the concept of WSC sub-licencing the space is not a practical proposition.

Revenue Based Contracts - General

The process that led to the establishment of the existing Occupancy Agreement followed the established methodology known as WSC’s “Contracts Development Procedure”. This procedure is designed to support the organisations’ primary needs for expenditure-based contracts, including management of contracts in the post-award phase.

This procedure and the associated IT system modules do not cater for “revenue based contracts”.

The well-intended attempt to use existing procedures to take-up this revenue contract was ill-founded because the procedures were designed to manage expenditure not revenue. That led to the identification of the arrangement being obscure in terms of budget reporting (i.e. it was ‘rolled-up with other sundry revenue), and the need for invoicing was over-looked or simply not known to exist.

To eliminate this possibility in future transactions an appropriate policy have been put in place. An interim measure has been taken to tighten the controls on establishing agreements and ensuring the correct charge-outs. Permanent policy changes will follow.

An internal investigation into the existence of similar, unidentified revenue arrangements was carried out by the Contracts Systems Co-ordinator principally by interviewing staff and reviewing existing records within the Contracts Register, Property Lease Register and the Agreements Register.

The process of the investigation was reviewed by the Senior Internal Auditor who made additional comments on the issue itself and on the investigation process.

The internal audit review’s comments in respect of the investigation stemmed from a concern that it appeared to be narrow in so much as it focused on the possible existence of other unknown agreement as per the Governance Committees recommendation.

Importantly, however, the Senior Internal Auditor did identify and confirm management’s concerns from the start, that wider issues existed which required corrective actions.

The findings of the investigation revealed:-

- There are no similar arrangements to that of the SOM F3 signs Occupation Agreement.

- Five contract agreements on the contract register that have a revenue component. None were found deficient in terms of invoicing arrangements.
- Two agreements that require robust systems for ensuring revenue is charged – these are the F3 signs agreement and the Claude Group agreement for bus shelter advertising.
- An Agreements Register that was established in 2007 because of the WYCRA issues. It is possible that it was not complete at the time of establishment but of greater concern is that it has no mechanism to ensure any new agreement is added, despite regular review of its content.

A number of recommendations from the Contracts Systems Co-ordinator are being considered for implementation however the investigations and the investigation review have also raised other management issues that have prompted a need for further research into WSC's revenue generation processes, invoice creation and price establishment.

THE PROPOSAL

SOM has offered to continue the arrangement at a reduced rent of \$36,000 per annum per site and as an inducement, has offered to extend its commitment by way of committing to a new Licencing Agreement for a term of five years, commencing immediately.

The new Agreement would extend the current arrangement by two years, and would include provision for rent increases per site to \$38,000 in the third year, \$40,000 in the fourth year and \$42,000 in the fifth year.

SOM has provided an independent audit opinion from MBH Associates, Chartered Accountants on the profit and loss statement provided by SOM for the operation of the signs. This shows that for the past 12 month period total advertising revenue from the two signs was \$112,000, less rent payable to Council of \$100,000 and overheads, sales, maintenance, power costs, property owner rental, \$20,000 leading to a net loss of \$8,000.00 per annum.

Should Council agree to a reduction, the revenue forgone by WSC in relation to the current arrangement, which runs for another three years, is \$80,000, however an additional \$164,000 will be earned over the additional two years proposed by SOM, a net gain to Council of \$84,000.

The current Agreement allows SOM to exit the "occupancy" arrangement without penalty or effective notice (subject to Council issuing a demand for payment) leaving Council vulnerable to the loss of future income and potentially needing to pursue civil action to recover unpaid monies up to the time SOM discontinued use of the signs.

Unless Council serves a demand notice of unpaid rental, the original rental remains in place and will continue to be invoiced albeit with a lessening likelihood of payment and an increasing need to pursue civil recovery. A Notice of Demand will effectively terminate the hireage arrangement because SOM have advised they would not continue their use of Council's space on the signs at the high rental.

If SOM were to take that pathway, they have acknowledged to the Governance Committee and to staff separately, that they would honour their commitments as detailed in the Occupation Agreement in terms of replacing the sign skins etc.

2.2 F3 Highway Signs: Proposal to Revise Occupation Agreement with Sports and Outdoor Media (contd)

Current Rent Position

	Excl. GST
Invoicing from start of Agreement to current date (28.02.10)	\$274,999.61
Paid to date	\$240,666.73
Cash Amount Outstanding	\$34,332.88

The unpaid outstanding amount has been withheld by SOM on the basis it can be resolved by a change in the Agreement between the parties as proposed by SOM in April 2009.

A new Agreement would set out to correct the circumstance that allows exit without terms and conditions that mitigate WSC's losses.

If no Agreement is made, WSC will continue to invoice however SOM are unlikely to pay (they may) in which event WSC would proceed under the terms of Clause 5.7. Monies owing after that time would be pursued by civil recovery processes and action as required.

OPTIONS

WSC has three realistic possibilities or choices:

- 1 Continue the existing agreement, accept that SOM no longer wish to use the signs and give formal demand for outstanding monies to be paid. If the fees, as invoiced, are not paid, they remain due (and pursuable) and WSC would enforce clause 5.7. SOM will be then obliged to fit new advertising skins as per the Occupation Agreement. WSC is then left with community or other signage (see option #3) all in accordance with the Development Consent.
- 2 Accept the proposal from SOM detailed above which scales the rent down but extends the term so that in the long run, WSC earns more revenue than the existing agreement envisaged.
- 3 On-sell the space to a third party. WSC would have to offer the sign space in the market, seek out a buyer and make a third party arrangement to ensure the space was usable to the buyers needs and Council's risk.

WSC would give formal demand for SOM pay outstanding monies as invoiced which, if not paid, remain due. SOM would be obliged to fit new advertising skins as per the Occupation Agreement – to WSC's requirements.

Option 1

Continue the existing agreement which will likely give rise to the following outcomes :-

- WSC would regain the use of the sign space for community interests. Opportunity exists for maintaining the supply of external revenue by commercial recovery through WSC's Holiday Parks operations.
- SOM will not make any further payments to WSC and return the use of the panels to under the terms of the agreement - if WSC exercises its rights of demand for payment in accordance with Clause 5.7 of the Agreement.
- WSC will incur an estimated loss ex SOM of approximately \$80,000 by the time the relinquishment occurs and be left to enter civil action for recovery.

2.2

F3 Highway Signs: Proposal to Revise Occupation Agreement with Sports and Outdoor Media (contd)

- WSC will incur an estimated further loss of income for the remaining term of the agreement, approximately \$208,000 unless a substitute revenue is found.
- WSC unlikely to successfully recover loss as the terms of the agreement do not provide for it.

Option 2

Agree to the SOM proposal for a term of five years at a reduced commencing rent combined for the two signs of \$72,000 per annum but for an additional two years on the current arrangement on the condition that rent will increase to \$76,000 in the third year, \$80,000 in the fourth year and \$84,000 in the fifth year.

Likely Outcomes:

- Recovery of the loss of rent incurred to date (\$80,000)
- Net loss of potential revenue from original agreement of \$88,000
- Additional revenue over the extended period of the new agreement \$164,000 (net gain \$84,000)
- New Occupational Agreement negotiated to improve WSC position

Risks:

- SOM continue to encounter difficult market conditions leading to yet another proposal to reduce the rent or SOM cancelling their use of the space.
- SOM determine the return from the signs to be inadequate and that they chooses to relocate the sign structures elsewhere. The community loses a significant opportunity.

Option 3

WSC seeks a third party to sub-licence the sign space that WSC (by way of the Development Consent), has the rights to use. This option will mean that WSC would have to find a suitable advertiser and manage the relationship so that the terms of the Occupational Arrangement were not breached.

Any arrangement that Council may make with a third party would be subject to a (the) voluntary agreement with SOM to maintain Council's rights. The legal advice received from HWL suggests this pathway is not secure for WSC in that it is dependent on SOM maintaining its lease with the private land owner on whose property the signs are erected and as such is "voluntary".

Likely Outcomes:

- WSC does not have the in-house skills to promote, sell and manage the sign space.
- WSC will need to create the capacity to sell and maintain sales agreements for the sign space – including overseeing all arrangements for the signage artwork to ensure compliance with the Occupational Agreement.
- SOM will not make any further payments to Council and return the use of the panels to WSC under the terms of the agreement.

- WSC will incur an estimated loss of approximately \$80,000 by the time the relinquishment occurs and be left to enter civil action for recovery.
- WSC will incur an estimated further loss of income for the remaining term of the agreement, approximately \$208,000.
- WSC unlikely to successfully recover loss as the terms of the agreement do not provide for it.
- WSC would need to create the capacity to sell the space and negotiate satisfactory third party arrangements.
- Continuance of any third party sub-licencing arrangement is subject to a “voluntary” arrangement beyond WSC’s ability to ensure it can kept to its commitments.

SUMMARY

The downturn in the economy has severely impacted SOM's ability to make the commercial proposition viable and the formal review of the SOM finances confirms that position.

Under the terms of the Occupation Agreement, WSC could choose to enter into an agreement with a third party to gain revenue for the use of the panels. Any such arrangement would rely on SOM’s voluntary continued maintenance of the signs and the associated legal access.

SOM has an option to quit the “hire-back” arrangement – an option that is unsatisfactory for WSC in revenue terms. WSC, conversely, has an opportunity to restore the use of the signs to community purposes.

There is an opportunity to place the Occupational Agreement arrangement on better terms.

GOVERNANCE

The Development Consent (March 2007) was granted in modified form in accordance with Clause 122 of the Environmental Planning and assessment Regulations 2000.

FINANCE

Commencing rent for the two signs of \$72,000 per annum and additional two years on the current arrangement leading to net gain over the extended period of the new agreement of \$84,000.

CONCLUSION

The original financial returns to WSC from the signage arrangement, in hindsight, were possibly optimistic and unsustainable. Income from the Occupational Agreement is at risk of (a) not being paid with civil action required and/or (b) being discontinued from the current source (SOM).

An on-going income, albeit at a lower level, is proposed under a renovated agreement with SOM if Council wishes to continue the SOM arrangement and avoid the risks identified in seeking replacement external revenue.

2.2 F3 Highway Signs: Proposal to Revise Occupation Agreement with Sports and Outdoor Media (contd)

Council has an option can recover use of the sign space for its own purposes.

The F3 signs agreement is a one-off situation that has quite rightly warranted investigation. The investigation has identified systemic failures in WSC's business management approach, agreement records and revenue charge-out processes which require management action.

The business paper concerning the Occupation Agreement (with Sports and Outdoor Media Pty Ltd) review presented to Council have been appropriate in all respects.

ATTACHMENTS

- | | | |
|----------|---|---------------------|
| 1 | Advice from HWL Ebsworth dated 18 November 2009 | D02085564 |
| 2 | Advice from HWL Ebsworth dated 24 February 2010 | D02168451 |
| 3 | Report to Council's meeting of 23 September 2009 Item 4.2 -
Lease of F3 pylon signs over part Lot 100 DP 718558 Freeway
Collies Lane, Mardi and part Lot 5 DP 738176 Freeway Pacific
Highway, Palmdale | Enclosure D02014116 |

HWL
EBSWORTH

LAWYERS

Our Ref: JAC:80803

18 November 2009

Attention: David Jack
Director Corporate Services
Wyong Council
PO Box 20
WYONG NSW 2259

By Email
No. of Pages 7 (including this page)
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Dear Sir

Re Occupation Agreement Signs – Mardi and Palmdale

We refer to your request for advice regarding Council access rights in relation to certain signage, and how the existing agreement between Council and Sports and Outdoor Media Pty Limited (SOM) contemplates the possibilities of either party being able to sub-let.

History

On the 16 March 1998, Council issued development consents for signs which contained conditions requiring the provision of one side of each sign to be used by Council. The condition stated:

- "8. *The north facing panel of the sign is to be for Council promotional usage and the initial graphics to be approved by Council prior to installation and at no cost to Council.*"

A deed was entered into in 1998 providing for the use of the signs.

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In 2006, Council resolved unanimously to accept an offer by SOM and " ... for Council to relinquish its advertising rights for five years on the two advertising signs on the F3 Freeway, for a financial return being the greater amount of \$100,000.00 per annum (indexed and inclusive of GST) or 50% of the advertising revenue earned from the two signboard allocated to Council. "Authority" was delegated to the GM to negotiate detailed terms and conditions and the money received to be allocated towards Shire entry treatments and the Performing Arts Centre.

As Council's lawyers, we were provided by Council for comment a copy of a new draft "Occupancy Agreement" which was to replace the original deed. It appeared to be based upon the condition of development consent and the 'rights arising thereunder'. For example, the proposed new agreement contained in the Recitals:

"D. To achieve this, it is firstly necessary for the development consents to be modified so that the condition that the north facing panels of the sign be available for Council promotional use is deleted and replaced with references to this Agreement.

E. An application has been made for the modification of the developments consents. This Agreement is conditional upon the modification being made as referred to in paragraph D."

And Operative Part:

"1. Condition Precedent

It is a condition precedent to this Agreement that the application to modify development consents (DAs 784 and 785 of 1997) be granted by the deletion of the conditions that the north facing panels of the signs be available for Council promotional use and the insertion of conditions which refer to this Agreement."

At this time we expressed a concern that Council, in exercising its discretion as a consent authority, had considerably different responsibilities than Council as the repository of private commercial rights. The draft provided to us confused these two different identities, and resolved issues that might have rendered any consents ultimately invalid and the proposed agreement unenforceable. As a matter of probity, the two issues needed to be dealt with separately; that is, any amendment to the

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18 November 2009

development consent and documentation of Council's legal rights of occupation could not be interdependent.

In other words, Council could not either use its powers or exercise its responsibilities as a consent authority by taking into consideration its private commercial interests nor base such potential interests on the exercise of its *Environmental Planning & Assessment Act* powers.

Accordingly, significant amendments to the proposed deed were recommended and the question of the commercial rights of Council to use two sides of the sign were dealt with in an agreement with SOM completely independent of the previous development consent or any potential amendments under s.96.

We understand SOM is now seeking to renegotiate the agreement and we have also been asked to advise on the ability to "sublet the sign".

Current Agreement

As Council's commercial rights to occupy the sign could not arise from the ongoing condition of development consent, the new agreement was at the discretion of the parties.

Our original instructions from Council, at the time of drafting the present agreement, were that SOM had the necessary legal rights of occupancy over the land upon which the signs were erected, to use and maintain them. Council could not obtain these private property rights. Accordingly, Recital B sets this out and clause 2.2 provides that SOM warrants to Council the existence of their legal rights over the property and in consequence to give Council the licence.

Under clause 3.2 SOM gives Council a licence to use two panels of the two doubled sided signs.

Under clause 5.7 if SOM defaults on payment, then, after one month's written notice, the following consequences arise:

- SOM's obligations to maintain the sign and pay outgoings remain;
- SOM's rights to use the two panels are removed;
- Council's licence (3.1) effectively reactivates;

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18 November 2009

- SOM is required to supply to sign skins to Council under clause 5.7.

Thus, under the agreement Council can, when and if SOM is in default or at the end of the five year agreement (cl 5.5 and cl 5.6):

- Use the signs itself for community purposes or otherwise for any other purpose, subject to the advertiser's code of ethics;
- Enter into agreement with another advertiser who can have their advertising content placed on the supplied skins or supply others and have them erected, maintained and rotated by SOM.
- Assign its licence rights.

The licence rights Council have are set out under clause 3.1 ie "*... to use the north facing panel of the Mardi sign and the south facing panel of the Palmdale sign from the date of this agreement for the period SOM has a right to maintain and use the signs on the land.*"

Around the same time, SOM applied under section 96 of the *Environmental Planning and Assessment Act 1979* to modify its consents. We discussed the matter with the relevant Council officer and the following amendment was finally granted:

"7. *The north facing panel of the sign is to be for Council promotional usage and the initial graphics to be approved by Council prior to installation and at no cost to Council. Notwithstanding, the northern face of the sign may be used for other advertising purposes for a maximum period of five (5) years with the prior approval of Council.*" (our emphasis)

This preserved the original condition and community purpose of the sign and preserved the longevity of the condition while allowing the amended use for a five year period. It did not incorporate any consideration of the agreement into the condition's terms.

Specific questions asked

In regard to the specific matters raised by Council, we comment:

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- there was not an original lease in place (rather a deed) so there was/is no ability to "*sublet the sign*". Rather the current agreement specifies it is a licence which is effectively what Council always had, though was not specified in the original deed which merely stated " ... *Council may use the face*".
- as Council points out, Council has no access rights per se as the lease over private land is held by SOM. Council's rights arise by reason of the agreement with SOM and therefore effectively rely upon SOM's rights to use and maintain the signs. SOM warranted the existence of these rights under the licence agreement.
- if the agreement was to create a lease over the land, the owners of the land would have to have had entered into agreements with Council to create private property rights over their land. The terms of their particular agreements with SOM would also have to be reviewed to understand the relative rights between SOM and the owners.
- the fact that the condition of development consent provided for Council's use of the signs is irrelevant to the rights that Council acquired under the original deed or the current licence agreement. In fact in our view, as previously expressed, a condition of development consent which, if unilaterally imposed by Council upon an applicant to require Council to be given (effectively) commercial rights, would be ultra vires and thus invalidate the consent (though there is an issue of severability here). We do note however, that in the particular circumstances of this case, as the Council use appeared to be the actual application of SOM – that is, they asked for the two sides for Council use and it being for a community (and therefore arguably planning) purpose these facts if established would at least allow for the validity of the condition to be argued to be supportable as a matter of planning law. We have not further investigated this issue.
- we agree with Council's questioning of the agreement's heading as an "occupation agreement". This was the description of the document provided to us for review. The agreement does allow the occupation of some panels of the signs however the appropriate description would be a licence agreement. We do not believe however there are any legal ramifications arising from the description.

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Summary

To summarise, Council has a licence agreement. There is no prohibition on a sub-licence being granted. However this would only give the person the same rights that Council has under clause 3.1. Notwithstanding the agreement provides for the practical difficulties of the entry onto the land and the erection of signs by use of clause 5.7 (and 5.5 and 5.6). As an alternative to a sub-licence, Council could, in enter into a new agreement with a third party to allow the content of the advertising to be, subject to compliance with the "advertiser code of ethics as described by the Australian Association of National Advertisers" chosen by this party with whom Council entered into agreement. In this way, neither Council nor the person entering the agreement would have to worry about rights of access etc as the activation of erecting and changing the sign skins would be undertaken by SOM.

It is clear however, and it always has been clear under the agreement or deed that Council's rights can only arise under a voluntary agreement, and the effective maintenance of these is dependent upon SOM continuing to hold the necessary rights in relation to use and maintenance of the signs with the owners of the land. It was this which stimulated the current agreement's requirement that SOM warrants the existence of such rights. There is no power to acquire commercial rights by imposition of a condition of development consent.

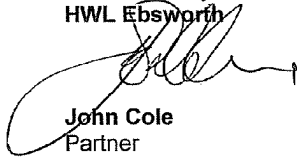
Any amendment to the terms of the consent having regard to the content of the advertising panels is a completely separate matter from the commercial rights herein being considered. Council has separate responsibilities and these commercial matters cannot be confused or inter-related with its powers or responsibilities as a consent authority. This was made clear to Council when reviewing the draft agreement provided to ourselves prior to the current one being produced and the commercial and planning matters in 2006 were dealt with on that basis.

Hoping the above clarifies the situation. Should you have any further enquiries please do not hesitate to contact John Cole or Jeff Reilly of our office.

Wyong Shire Council

18 November 2009

Yours faithfully
HWL Ebsworth



John Cole
Partner

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Our Ref: JAC:JMR:80803

24 February 2010

The General Manager
Wyong Shire Council
DX 7306
WYONG NSW

Attention: Mr David Jack

Email:	djjack@wyong.nsw.gov.au
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Dear Sir

**F3 Highway Signs Occupational Agreement
Response to further questions**

We refer to your request for further advice regarding Council's agreement with Sports and Outdoor Media Pty Limited (SOM).

We set out below the questions asked of us by email dated 19 February 2010, and our advice.

1. *Brian asserts the Occupational Agreement "does not provide that the licence is personal to Council or that Council can't assign or sub-let."*

If Council has a deal for SOM to rent (clause 3.2) for 5 yrs and renewable at SOM's preference, Council is not in a position to sub-let at any time unless clause 5.7 the Agreement is enacted. Clearly the concept of sub-letting by Council is not contemplated by this content or by the absence of the thought in Clause 6.

2. *Three questions arise:-*

Q1. *Can you clarify what the basis of the argument is that might allow Council to sub-let if SOM pull out of the deal?*

The argument is simply that the absence of reference in the agreement to a

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24 February 2010

restriction on Council's ability to assign or sublet its interest means that that right is retained. However, as you note, that general right Council has "given up" by virtue of clause 3.2, unless clause 5.7 comes into play.

- Q2. *If that basis is the property law principles that say a lessee has all the rights of an owner unless those rights are specifically withdrawn, can you clarify why you consider this principle law applies to a licence Council holds over "the use of the space"? i.e. Is the use of the space definable as "property"?*

The principle is a general principle. By rough analogy, if there was a contract to buy widgets, they could then be sold or disposed of in any manner, unless the contract with the seller specified otherwise. A licence does not create a property law right, unlike a lease; rather, it is a personal contractual right that pertains to property.

- Q3. *Finally and an extension of Q2 – if the agreement is silent on a particular matter – e.g. assignment or "sub-licencing" – then is the agreement restrictive to what is contained and anything not contained is automatically not permitted, or if that is not the case, why not?*

Generally, that is the case - if a matter is not dealt with within an agreement, then a party has the rights that they would ordinarily have had. For example, say, an employment contract was silent in relation to what a person could do upon cessation of the contract, then there would be nothing preventing the former employee from establishing the same business next door straight after finishing up. Accordingly, many employment contracts typically impose a zone of "non-competition" around the existing business, and a period of inactivity on the departing employee.

Specifically a normal adjunct to a licence would be the ability to assign it, unless this is specifically restricted.

3. *Clause 4 para 2 – We are confused by Brian's words. My presumption is that he is saying that a "demand" by Council can be interpreted as a demand for payment (in which case payment of the arrears or for SOM to resume payment?) as opposed to an interpretation that it is a demand to cease the hire arrangement*

The reference to demand, in the context of the clause, is a demand for payment.

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Reference the Second Opinion from HWL dated 18.11.09

4. Page 2; Para 1, Line 3 – (indexed and inclusive if GST) is incorrect. The rental fee is not indexed and it is exclusive of GST.

The reference in the advice is a reference to the Council resolution. We've checked our copy of the resolution, and the reference is "inclusive" of GST.

5. Page 3; Para 4 - Please explain what is meant by "... a new agreement being at the discretion of the parties..."

As noted earlier in our previous advice, there is a considerable difference between Council as a commercial entity, and Council as an assessment authority. A condition of consent that was imposed unilaterally by Council, only to facilitate its commercial position, would be likely found invalid. Hence, if the matter was to be dealt with going forward, it had to be by voluntary agreement (or, in other words, at the parties' discretion) rather than by imposition of conditions.

6. Page 3; Para 7 - the term "written notice" is used which is of relevance given Brian's earlier view which differentiate between "demand" and "notice". The consequences identified here also don't suggest the monies must/should be paid.

I have presumed that the agreement as a contract allows us to pursue civil action of recovery.

The terms are used here interchangeably.

Council's remedy for breach of contract would seek monies which had been due to be paid and were outstanding at the time of the breach. If Council does not elect to exercise its rights to regain use of the sign under clause 5, damages would continue. If Council chose to seek to allow someone else to effectively advertise on the signs, the damages would be argued to be the difference between the old and new fees if they were less. In other words Council would have mitigated its loss. If Council moved to use the signs for its own community purposes then arguably it would suffer no further damage.

7. Page 4; Para 1 - "...SOM is in default or at the end of the five year agreement." The advice says we can extend the agreement, enter another agreement with a third party or assign our rights.

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8. Q4 - *Can we only do that if SOM don't wish to renew or continue (outside of default)?*

Yes. Clause 3.4 provides for the parties to negotiate a continuation of the previous situation (payment to Council in lieu of signage). Whilst there is some argument here (the right granted to SOM is not a right to continue the arrangement, but a right to have Council negotiate in good faith) a fair reading would be that they are entitled to request the situation to continue, and Council is to negotiate that in good faith, with one likely outcome that it would be renewed. However, the matter is certainly not beyond argument, and the agreement clearly contemplates a cessation of the current arrangement, and Council returning to its rights under clause 3.1 at the cessation of the 5 years (assuming no default beforehand). This was intended having regard to the original question of the conditions legality.

9. Q5 - *The modified Development Consent says the signs maybe used for other advertising for a maximum of five years. That appears to be absolute. Is the Agreement in conflict with the consent by allowing renewal? Or is the condition renewable?*

The condition is intentionally absolute. The maintenance of the long term community purpose use for the signs underpins the condition's arguable validity.

The condition (condition 7) seeks to pick up the arrangement under the agreement and vice versa. The condition would need to be amended if SOM wished to continue paying Council for occupation of the signage and Council wanted to pursue such an arrangement rather than the original use for community purposes. In reviewing any such s96 application for amendment to the condition, Council would have to wear its "hat" as a consent authority and not be influenced by its commercial interests.

10. Q6 - *Can Council assign rights accorded to it by the Consent? i.e. Can council assign its rights "to use the space"?*

Not by reference to the condition alone. The condition only permits use for "Council promotional usage" outside of the 5 year period. There is a ground for conflict between the terms of the condition, which are restrictive, and the terms of the Agreement, once the 5 year period has passed.

11. *Page 5; Para 1; Bullet 1; Line 1 - "...so there was/is no ability to sub-let the signs. Rather"*
The first two lines in the page 6 Summary appear to be in direct conflict with this assertion.

12. Q7 - *can you clarify please?*

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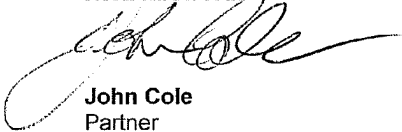
The reference to "sub-let" (pertaining to a lease) is distinct from "sub-licence" (pertaining to a licence). There was no ability to "sub-let", since there was/is "no lease". We note however that the terms have been used interchangeably elsewhere in original advice provided by us.

Q8 - Page 6; We note that Council's rights only arise under "voluntary agreement" - which exactly what? Are our right unenforceable?

"Voluntary", in the sense of "voluntarily entered into", as compared with an obligation arising by way of, for example, a condition of consent.

Should you have any further queries, please contact John Cole of this office.

Yours faithfully
HWL Ebsworth



John Cole
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3.1 DA/204/2007 - Proposed Development - Use of an existing building for timber product manufacturing/storage, office and amenities

TRIM REFERENCE: DA/204/2007 - D02154635

AUTHOR: RM

SUMMARY

An application has been received for the use of an existing industrial building for timber product manufacturing/storage, office and amenities at Ruttleys Road, Mannering Park. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment Act (EP&A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report. The proposed development is recommended for approval.

Applicant	Eaton and Sons Pty Ltd
Owner	Eaton and Sons Pty Ltd
Application No	DA/204/2007
Description of Land	Lot 11 DP 1091396 Ruttleys Road Mannering Park
Proposed Development	Use of an existing industrial building for timber product manufacturing/storage, office and amenities.
Site Area	5.266 Ha
Zoning	5(a) Special Uses - Power Station
Existing Use	Coal Mine Bulk Store building
Employment Generation	Relocation of staff from an existing operation (15)

RECOMMENDATION

That Council refer the application to the General Manager for determination having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues with an indication that based on the information available to it, that consent be granted subject to appropriate conditions.

PRECIS

- The application has been lodged pursuant to a Court Order that required the lodgement of a development application seeking Council consent for the use of the site.
- The subject site is zoned 5(a) (Special Uses Zone) - Power Station under the WLEP 1991. There are no land uses prohibited in the 5(a) (Special Uses Zone). However, the occupation of the site for a commercially based industrial purpose is incompatible with the objectives of the zone, although the application may still be considered given it relates to an item of Environmental Heritage.

- The industrial building located on the site has been listed as a Heritage Item during the assessment process of this application. This provides an opportunity to use the conservation incentives under Clause 36 of the WLEP 1991 to permit the proposed land use, despite the zoning requirements.
- The site access and internal parking is considered to be inadequate and will require upgrading to appropriately accommodate the land use.
- The site is currently being occupied without the consent of Council.
- The site is appropriately located for industrial use and subject to compliance with conditions of consent is recommended for approval.

INTRODUCTION

The subject site previously formed part of a coal mining and power station site. The site contains an existing industrial building surrounded by vehicle parking area and scattered vegetation. There is a relatively dense landscape buffer separating the site from Ruttleys Road. The site was purchased by the current owner in 2004 and has since been used for industrial use, being the assembly and dispatch of building materials.

The application was lodged pursuant to a Court Order which required the lodgement of a development application to seek Council consent for the use of the site and more notably requiring the upgrade of the site access. The applicant has previously contended that lodging a development application was unnecessary as the use of the site was a continuation of an existing use and therefore did not require development consent. This opinion is not shared by Council where it is considered that the occupation of the site for industrial purposes requires development consent. The apparent expansion of the current operation, and the change in use from the previous use of the site together with the inadequacy of information provided with regard to the original approval of the land use require that development consent is required to be sought for the proposed use. The assessment of the development application raises the issue of permissibility, as the objectives of the 5(a) (Special Use Zone) are restrictive by only permitting community and public uses and not private commercial enterprises.

The existing building located on the site has been classified as being of heritage value by the NSW Heritage Council through the Gazettal of WLEP 1991 (Amendment No. 175). The application may therefore utilise the conservation incentives of Clause 36 of WLEP 1991 which permits suitable use of the land despite the zoning requirements.

Given the conservation incentives of WLEP 1991, Council is required to consider the use of the industrial building for timber product manufacturing/storage, office buildings, amenities and external storage areas. Upgrading of the site access and internal roads will be required to accommodate the use. The applicant has indicated that retail sales from the site are not being sought, as the site use is generally for the fabrication of products such as building frames. It is considered that the site is suitably located for the industrial use proposed subject to appropriate upgrading of the site access and internal infrastructure.

VARIATIONS TO POLICIES

Nil

HISTORY

The site has been used for the purpose of mining and power station since the 1950's. The land was zoned 5(a) Special Uses – Power Station under Interim Development Order No.58, dated 18 February 1977. The industrial building was erected between 1982 and 1983 and appears to have been used for storage of mining equipment, though there is evidence that there were some industrial processes conducted at the site during this time. There is no evidence that Council consent was gained by the Electricity Commission for the construction of the building although a certificate of compliance under Section 15B of the Mines Subsidence Act was issued for the building by the Mines Subsidence Board (MSB).

The subject lot was created by a subdivision in 1989, which separated the shed and curtilage from the parent lot which is currently in the ownership of Delta Electricity. The Centennial Coal Company purchased Powercoal (formerly Elcom Collieries) in 2002 and occupied the site prior to purchase by Eaton and Sons in 2004. Centennial Coal used the building for storage of mining equipment.

Council records indicate that formal discussion with regard to legal occupation of the site commenced in June 2005. The most significant correspondence and action since this time are summarised below:

23 August 2006 – At the Ordinary Meeting of Council, a Question Without Notice (QWN) was raised requesting staff to report on *“the activities being carried out on Lot 11 DP 1091396 Ruttleys Road, Mannering Park, and actions being taken in regard to these activities?”*

27 September 2006 – Staff provided a response to the QWN and advised that an unauthorised operation has been or is continuing on site and if it appears to be expanding. Council had commenced Class 4 action in the Land and Environment Court (LEC) requesting the unauthorised use of the site to cease.

15 December 2006 – The LEC issued an Order requiring the respondent (Eaton and Sons) to undertake action including the lodgement of a development application with an appropriate Statement of Environmental Effects (SEE) together with additional information regarding traffic, access, waste management, disabled facilities and heritage.

24 January 2007 – A rezoning application for the recognition of the bulk store as a heritage item lodged with Council.

22 February 2007 – Development application lodged.

8 August 2007 – Council resolved to prepare a Draft Local Environmental Plan to list the bulk store as Heritage Item of Local Significance

The assessment process has been protracted due to legal argument concerning whether or not an application was necessary and whether the site benefitted from existing or continuing use rights. During the assessment process for this application the applicant lodged a rezoning application (RZ/1/2007) for the recognition of the heritage value of the Bulk Store Building located on the site.

Subsequently WLEP 1991 (Amendment No. 175) was gazetted on 20 March 2009 in the New South Wales Government Gazette 2009 No 101. The industrial (Bulk Store Building) has been listed as a Heritage Item of Local Significance under Schedule 1 of WLEP 1991, effective 20 March 2009.

RELEVANT STATE/COUNCIL POLICIES AND PLANS

The Council has assessed the proposal against the relevant provisions of the following environmental planning instruments, plans and policies:

- Wyong Local Environmental Plan 1991 (Wyong LEP 1991)
- Development Control Plan 2005 Chapter 61 – Car Parking (DCP 2005, Chapter 61)
- Development Control Plan 2005 Chapter 76 – Conservation of the Built Environment (DCP 2005, Chapter 76)
- Mannering Park Section 94 Plan

ECOLOGICALLY SUSTAINABLE PRINCIPLES

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be consistent with the principles.

The proposed development is considered to incorporate satisfactory stormwater, drainage and erosion control and the retention of vegetation where possible and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act 1979 (EP& A Act) and other statutory requirements, Council's policies and Section 149 Certificate details, the assessment has identified the following key issues, which are elaborated upon for Council's information. Any tables relating to plans or policies are provided as an attachment.

THE PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/ POLICIES (s79C(1)(a)(i-iv):

Appropriateness of proposed land use

As stated above, there are no land uses prohibited within the 5(a) Special Uses zone. However Clause 10 of the WLEP 1991 states the following:

- (3) *Except as otherwise provided by this plan, the Council must not grant consent to the carrying out of development on land to which this plan applies unless, in the opinion of the Council, the proposed development is compatible with the objectives of the zone within which the development is proposed to be carried out.*

With regard to the objectives of the 5(a) zone the WLEP (1991) states the following:

- (a) to cater for the provision of community and public facilities and services, and*
- (b) to provide for any other development of land within this zone, with the consent of the Council, provided that:*
 - (i) the other development is ancillary to or related to the current or future use of the land for the purpose of a community or public facility or service, and*
 - (ii) the other development does not adversely affect the current or future usefulness of the land for the purpose of those facilities or services.*

The occupation of the site for a commercially based industrial purpose is not compatible with the objectives of the zone. However, the provisions of Clause 36 of the WLEP allows for consideration of the proposed development.

Conservation Incentives

The provisions of Clause 36 and DCP 2005, Chapter 76 allow Council to approve a development proposal that would otherwise be prohibited, if the Council is satisfied that the proposed development meets the following criteria:

- (a) the proposed use would not adversely affect the heritage significance of the item and would have little or no adverse effect on the amenity of the area, and*
- (b) the conservation of the building depends on the granting of the consent.*

As per the requirements of DCP 2005, Chapter 76 the applicant has submitted a statement outlining how the use of the site for the timber product manufacturing is suitable in this instance.

The Conservation Management Plan adopted by Council for the building in the rezoning approval, required that cyclic maintenance of the building will need to be undertaken. The applicant has indicated that income gained from the occupation of the building will provide a suitable income stream to allow this to occur. The applicant has also identified that the occupation and use of the site will increase surveillance of the area reducing the likelihood of vandalism.

It is considered that the rationale presented by the applicant is appropriate to permit the approval of the application. The locality is clearly an industrial area significantly isolated from any sensitive land uses and the use of the site as proposed will have no impact on the amenity of the area.

BUILDING CODE OF AUSTRALIA CONSIDERATIONS

Main Building

The building has been the subject of a detailed independent assessment for Code compliance. In summary the building fails to meet the following requirements:

Fire Compartmentation

The volume of the building exceeds the maximum permissible volume permitted by the Code for this type of building use.

Egress

The required egress travel distance provisions are exceeded with the door designs and door furniture being non-compliant.

Automatic Sprinkler System

The building may be subject to requiring a sprinkler system, however, this will be subject to the extent and height of combustible materials stored in the building.

Hydrant System

A hydrant system exists however, it is unlikely that it meets the requirements of AS2419.1 provisions.

Emergency Lighting and Exit Signs

These are not provided which is a mandatory provision for this type of building.

In view of the level of non-compliance that exists, a Construction Certificate will be required to be submitted which addresses those issues and the means by which they can be met.

Office Building

The office building has been erected without the prior approval of Council. Approval for this building can only be obtained through the determination of a Section 149D Building Certificate. It is to be noted that egress does not meet Building Code of Australia (BCA) compliance provisions and a performance based submission to meet Code requirements is required with the Building Certificate application. The application also needs to address all structural aspects of the building, disabled access and sanitary provisions, compliance egress door latching devices, handrail construction and fire protection of the storage area beneath the stairs. A condition of the consent is recommended to require the submission of the Section 149D building certificate, inclusive of a BCA compliance report.

THE LIKELY IMPACTS OF THE DEVELOPMENT (s79C(1)(b)):*The relationship to the regional and local **context and setting**.*

The subject site is surrounded by industrial land uses. The proposed development is considered to be consistent with the existing character of the area.

*The **access, transport and traffic management measures**.*

Pursuant to the Court Order, a traffic report was submitted with the development application. The Court Order required that the traffic report provide recommendations with regard to the current and proposed access.

Access Site Distance

Under the Court Order, the traffic report was to provide the exact location of the access way. Instead the report provides four alternatives for consideration.

The Traffic Report suggested the following options:

Option 1 - To Maintain The Access In The Existing Position

This will require significant upgrading of the intersection as the sight distances available are inadequate for a standard access.

Option 2 - To Reduce The Speed Limit In Ruttleys Road

This cannot be considered as part of this application in respect to the access to this development unless written approval is provided from the RTA. In any case a reduction in speed limit by approximately 10km/hr would only marginally reduce the length of the various intersection treatment components required and the existing access sight distance would still be inadequate.

Option 3 - To Restrict Right Turns Out

This would not appear to be feasible if this meant that vehicles would be encouraged to use the existing property accesses immediately to the north to turn around in Ruttleys Road to enable travel to the Pacific Highway to the south.

Option 4 - To Move The Access 50 Metres To The South

This is a feasible option however, a minimum of 215m of sight distance must be provided.

The type of intersection treatment to be provided is to be detailed in the conditions of consent.

Council's Assessment of the Traffic Report

Given the findings of the Traffic Report, it is evident that to provide suitable access to the site, either the access location will need to be relocated or the existing access will need to be expanded and significantly upgraded.

Subsequently, Council staff formulated four further options that could provide for a satisfactory access being:

- 1 Widening of the road on the eastern side at the location of the existing driveway to include a right hand turning lane;
- 2 Widening of the road on the western side at the location of the existing driveway to include a right hand turning lane;

3.1 DA/204/2007 - Proposed Development - Use of an existing building for timber product manufacturing/storage, office and amenities (contd)

- 3 Construction of a new driveway approximately 135 metres south of the existing driveway in a previously cleared area; or
4. Construction of a driveway approximately 95 metres south of the existing driveway, in the area between the high voltage power poles on the eastern side of the road.

Option 1

- Does not improve sight distance.
- High voltage power poles located on eastern side of road opposite existing driveway may require re-location at considerable cost.
- Widening of road on eastern side over a distance of 120 metres (includes 60 metres taper) would require the removal of many trees. Works may also impinge on root zone of several large trees. It would also increase edge effects on the adjoining Ruttleys Road Reserve. This reserve supports habitat for locally significant and threatened orchids and *Angophora inopina*.

This option is not favoured.

Option 2

- Does not improve sight distance.
- The vegetation to the north of the driveway is dominated by Tick Bush (native) but is infested with Radiata Pine (exotic). Several large trees (Brown Stringy Bark, Red Bloodwood and Smooth-barked Apple) in good health occur to the south of the driveway. These trees have greater ecological value than the vegetation to the north.
- Widening the road to the north of the driveway to create a right hand turning lane would have minimal environmental impact and is a preferred option from an ecological perspective.

This option is not favoured

Option 3

- Improves sight lines.
- Area previously cleared, minor regrowth.
- Construction of driveway 10 metres in width is likely to only require removal of one Scribbly Gum (*Eucalyptus haemastoma*). This tree did not have any visible hollows.
- Increasing width of existing clearing to 10 metres is unlikely to create a barrier to fauna movements, such as the Squirrel Glider with further minor clearing at the throat of the intersection.

This is the most preferred option from an ecological perspective. Council's Engineers suggested traffic safety could be improved by increasing the length of the guard rail and erecting signage, or moving the pole.

Option 4

- Improves sight lines.
- Area heavily vegetated, with high diversity in canopy, mid and understorey layers. Very little weed infestation.
- Area bordered by two very large trees (Red Bloodwood and Scribbly Gum, see Figure 1) that are in good health and would need to be retained and protected.
- This option is likely to require the removal of at least 13 trees, as well as diverse mid and understoreys. The trees likely to be removed include four Scribbly Gums, two Brown Stringybarks and seven Red Bloodwoods. SEPP 44 and DCP 14 list Scribbly Gums and Red Bloodwoods as important foraging species for Squirrel Gliders and Koalas.
- The root zone of the larger trees on either side of the driveway may also be compacted, potentially affecting the health of these trees.
- If this option is chosen a Flora and Fauna Assessment must accompany the Development Application. Due to the extent of clearing and potential threatened species habitat present, targeted flora and fauna surveys would be required to determine if clearing would have a significant impact on any threatened species.
- An offset would be required for this option. The offset would need to be of equal or greater area than that removed and a restoration plan must be prepared. The plan must aim to increase floristic diversity and restore habitat connectivity and be implemented by a suitably qualified professional. Suitable areas to create the offset could include, for example, the existing driveway and cleared area. There would be a considerable cost associated with this option.

This is the least preferred option from an ecological perspective.

These options were discussed with the applicant with options 3 and 4 being favoured. It is considered that Option 3 provides the most cost effective and ecologically sound way of providing adequate access to the site. Conditions of consent require the completion of the new access and the internal access driveway, prior to an Occupation Certificate being issued for the adaptive re-use of the building. The closure of the existing access is also a condition of consent.

On-Site Servicing and Carparking

There is sufficient area available on the site for car parking and vehicle manoeuvring. Conditions of consent require a sealed driveway from the site access to the industrial building.

The impact on utilities supply.

Water is available to the site from Ruttleys Road. However, sewer is not available. The applicant has agreed to lodge an application to upgrade the existing on site sewer management system. The approval of the on-site sewer management system is a condition of consent.

The effect on heritage significance.

There are no alterations proposed to the building. Any required works in the vicinity of the building, such as construction of the access, will not detract from the heritage significance of the building.

Any effect on the conservation of soils or acid sulphate soils.

There is potential for issues relating to soil disturbance due to the increase in vehicle movements and outdoor storage. The site drains to Vales Point Ash Dam limiting the impact of any increase in erosion that may occur on site. An upgrade of the internal access is addressed in the conditions of consent.

Any effect on quality of air and microclimate conditions.

The site is located within an area containing heavy industry where air quality is potentially affected by current approved land uses. It is unlikely that the approval of this land use will have a discernable impact on the current conditions.

Any effect on the flora and fauna.

There will be some minor vegetation removal required to allow the relocation of the existing access. No other vegetation removal will be required to permit the proposed use to be undertaken. A condition of consent will require the rehabilitation of the existing access. As such, there will be a positive environmental outcome, as the rehabilitation of the existing access will far outweigh the vegetation removal required from the degraded area in and around the new access location.

Any risks from natural hazards (flooding, tidal inundation, bushfire, subsidence, slip etc).

The site is bushfire prone land. The Court Order required the applicant to maintain the land as an inner protection area as defined under *Planning for Bushfire Protection 2001*. Conacher Travers-Environmental Consultants have prepared a Bushfire Report on behalf of the applicant. The report recommends that the site be maintained as an inner protection area with the exception of natural vegetation to the eastern boundary (buffer between Ruttleys Road and the building). Adherence to the recommendations of this report form a condition of consent.

Any social impact in the locality.

The proposed development will increase the likelihood of a recognised heritage item being maintained into the future.

THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT (s79C(1)(c)):

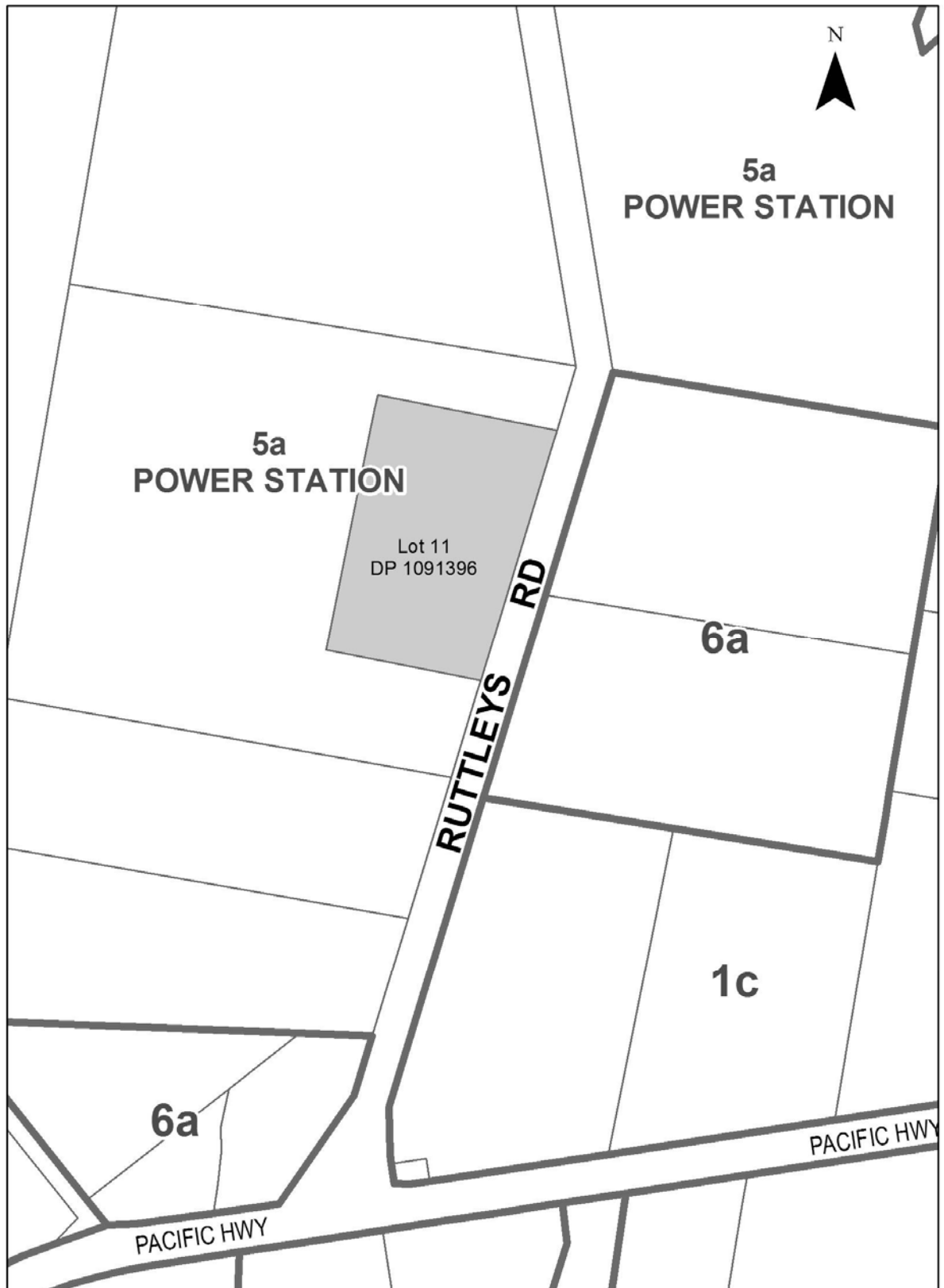
The site is well located for this form of development, being isolated from residential and environmentally sensitive land. The upgrading of the access will ensure the suitability of the site.

ANY SUBMISSION MADE IN ACCORDANCE WITH THIS ACT OR REGULATIONS (s79C(1)(d)):

Any submission from the public.

In accordance with the requirements of Clause 33 of WLEP 1991 the adaptive re-use of a heritage item requires public notification. The application was placed on public exhibition in accordance with the requirements of Clause 33 with no submissions being received.

Locality Plan



CONCLUSION

The development application allows Council to formalise the use of the land for a purpose that is considered appropriate given the site history and location. Despite the restrictive objectives of the 5(a) special Uses Zone, the proposed development is considered satisfactory having regard for the provisions of Clause 36 of WLEP and DCP 2005 Chapter 76 – Conservation of the Built Environment. The maintenance of the heritage building located on the site provides a positive community benefit. Following the necessary upgrade of the access and parking areas the site will be of an appropriate standard for occupation.

ATTACHMENTS

- 1 Site Plan Enclosure D02163343

4.1 Renewal of lease to the Lions Club of Toukley Inc for Part of Lot 314 DP 21154 Hedor Street Complex 4- 16 Ray Street, Toukley

TRIM REFERENCE: F2004/08837 - D02125695

AUTHOR: SL

SUMMARY

The Lions Club of Toukley Inc has requested a renewal of the lease for Part Lot 314 Deposited Plan 21154 at Ray Street, Toukley.

RECOMMENDATION

- 1 That Council renew the lease of Part Lot 314 DP 21154 Hedor Street Complex 4-16 Ray Street, Toukley for a period of 10 years at a nominal rental.**
- 2 That Council authorise the Common Seal of Wyong Shire Council to be affixed to the Lease between Wyong Shire Council and the Lions Club of Toukley Inc.**
- 3 That Council authorise the Mayor and the General Manager to execute all documents relating to the Lease.**

BACKGROUND

Council owns Lot 314, DP 21154, 4-16 Hedor Street, Toukley (the premises) which is the site of the Lions Club of Toukley Inc.

Council leases the premises to the Lions Club of Toukley Inc (the Club) for community use. The current lease commenced on 1 June 1990 and expires on 31 May 2010. Rent is nominal. The Club is responsible for maintenance and repairs, building and public liability insurance. The Club is community based and included in Council's Plan of Management No. 7 for Community Use. Lease of the Club is permitted under the plan of management.

The Toukley Lions Club building was built in 1991. The site previously housed a Bush Fire Brigade storage building which was demolished in 1992.

The building has been used by the Lions to accommodate its community and charitable works including recycling. A room in the Lions building is available for general community use.

The Club is located in close proximity to the Toukley Neighbourhood Centre, Karinya Child Care Centre and Toukley Indoor Pool thus contributing to a community "hub" of facilities.

The Club also uses the area to receive, process and sell unwanted magazines and newspapers (approximately 150 tonnes per year) and also 3.5 tonnes of aluminium cans for recycling. The Club has just established internet tutoring for seniors as a government initiative; the first in Australia.

The Club is also used by Lioness Club of Toukley, zone meetings for all seven Clubs in the district, Merrymakers for the disabled, Diabetes support group, Red Cross and Eye Glass Collection for distribution to people in undeveloped countries.

THE PROPOSAL

The Club has requested that the lease be renewed, upon the expiration of the current lease, at nominal rental for a term of 10 years.

The land is zoned 6(a) Open Space & Recreation and is classified as Community Land under Plan of Management No. 7. The total area is 22,520 m² with the leased area being 680 m².

There is no impediment to Council granting a lease for a period of 10 years and Council would also advertise by public notice as required under the Local Government Act 1993, Section 47.

Council has no alternate plans for the use of the land in the short term.

OPTIONS

Council has the option to:

- 1 Accept the lease and If Council approves the lease, the Lions Club of Toukley will continue its community work for the next 10 years, Council has no plans for alternate use of the land at this time granting the lease will ensure Council tenure of the building.
- 2 Agree to a lesser or some other length of lease term.
- 3 Not seek a lease renewal, should Council refuse the granting of the lease the tenancy will expire on 31 May 2010.

STRATEGIC LINKS

Management Plan

Contribution of Proposal to the Principal Activity

On the basis that the lease of the facility is proposed by a non for profit community, the proposal is likely to contribute to a more sustainable community, and enhance the quality of life of the shire residents.

Financial Implications

There is no additional cost to Council of granting the lease at nominal rent. The Club will be responsible for the maintenance and insurance in association with the lease of the land.

Principles of Sustainability

The proposal will have a positive effect on the development of a healthy, equitable, active and involved community.

CONSULTATION

The Club has requested renewal for a term of 10 years generally in the same terms as the current lease.

GOVERNANCE

The premises are classified as Community Land and may be leased under the Local Government Act 1993 which provides that Council may lease Community Land authorised in a Plan of Management for a period not exceeding 21 years.

CONCLUSION

Renewing the lease to the Club for the premises will provide security of tenure and ensure that the Club is appropriately utilised. Successful operation of the facility is of community benefit and in line with Council's strategies for supporting community activities.

ATTACHMENTS

- 1 Map of Leased Area D02125699



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sjloder

7/01/2010

MAP EXTRACT

Scale 1:1674

Note: Data is not survey accurate.
 Scale is representation only.

Base Cadastre is part of the Digital Cadastral Database supplied by Department of Lands, Bathurst. Any persons whose legal rights may be affected, or intends to act on any cadastral information shown on this plan should verify such information by consulting Department of Lands, Bathurst before so acting.
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5.1 Contract CPA/168046 Manufacture, Supply and Delivery of Corporate Uniform

TRIM REFERENCE: CPA/168046 - D02149934

AUTHOR: JM

SUMMARY

Report on the evaluation of tenders received for Contract CPA/168046 Manufacture, Supply and Delivery of Council's Corporate Wardrobe for a three year period with two Principal actionable extensions of 12 months each based on satisfactory performance. The Uniform Tender included a weighting for Australian content.

RECOMMENDATION

- 1 ***That Council accept the schedule of rates tender from Good Gear Pty Ltd for a period of 3 years.***
- 2 ***That Council note that the three-year total value of the contract is projected to be \$553,000 (ex GST) based on expected uniform usage.***

BACKGROUND

WSC's Uniform and Dress Code Policy requires indoor staff (approx 100) who have significant face to face contact with the public, to wear a uniform. The Policy also encourages other staff to acquire a WSC uniform on a subsidised basis. In 2008, 215 staff members purchased a uniform using the subsidy.

Council's current corporate uniform supplier is Yakka Pty Ltd. The Yakka agreement was tendered by Local Government Procurement (LGP), an organisation prescribed under the NSW Local Government Act to call tenders on behalf of NSW Councils. LGP's current Corporate Wardrobe contract ran for an initial two year period, expiring on the 30 June 2009, but has since been extended to 30 June 2010. LGP will likely extend the agreement, terminating the contract on 30 June 2011. The use of LGP contracts is optional for NSW Councils.

At its meeting of 22 July 2009:

Council RESOLVED unanimously on the motion of Councillor McBRIDE and seconded by Councillor MATTHEWS:

- "1 That Council call for tenders for Corporate Uniforms with a heavy weighting for Australian content.*
- 2 That Council write to the companies contacted in producing the report to advise them of the decision.*
- 3 That Councillors be involved in the uniform selection process.*

5.1 Contract CPA/168046 Manufacture, Supply and Delivery of Corporate Uniform (contd)

FOR: COUNCILLORS EATON, GRAHAM, McBRIDE, McNAMARA, MATTHEWS, SYMINGTON, VINCENT, WEBSTER AND WYNN.

AGAINST: NIL."

In accordance with Council's resolution, tenders were called for both Council's corporate wardrobe requirements (Administrative staff) and Council's work wear range (Operational staff). Contract recommendations for Council's Operational staff uniform requirements will be accepted under delegated authority as no individual contract exceeded the tendering threshold value of \$150,000.

Tender Process

After consultation with Council's Indoor and Operational staff Uniform panels and senior management a uniform specification was developed. In addition, Councillors were individually contacted and surveyed to determine their requirements. After defining user requirements, tenders were invited by way of public invitation.

Advertisements were placed in the Sydney Morning Herald on 13 October 2009 and the Central Coast Express Advocate on 14 October 2009. Tenders were also advertised on Council's e-Tender website. The advertised closing date was 5 November 2009. In accordance with Council's resolution of July 2009 an additional letter was drafted and sent to the following companies advising them of Council's intention to call tenders for an Australian produced uniform.

- Image Design Work wear
- Focus Uniforms
- Rundle Tailoring
- LJ Apparel
- Ausmark
- Neat and Trim

The invitation documents called for schedule of rate tenders, based on a detailed specification of garments and likely volumes to be purchased. The specification indicated Council's preference to source an Australian produced indoor and outdoor uniform with Australian Content weighted at 20% for the purposes of tender evaluation.

Outside of Price, Australian Content was the equal second highest ranked criteria used for the tender assessment. In addition, had Council assessed the tender under the recently endorsed Local Preference policy, the local content would have been weighted at 10% which would have been further reduced under a financial cap.

The weighting of Australian content was significantly greater than which would now apply under the new Policy and addresses Council's resolution of July 2009.

Tenders were invited on a whole-of-range basis to ensure that WSC would be able to assess the full Australian content of each offer in addition to the best price advantage.

Tenders closed on 5 November 2009.

EVALUATION OF TENDERS

Tenders were evaluated by a panel of three staff members (two of which are from a unit other than the one managing the procurement process) using the following threshold and weighted criteria:

Threshold criteria:

1. The tenderer's compliance with tender documents and specification
2. The tenderer's ability to provide an acceptable range of corporate uniform garments.

Weighted criteria:

1. Demonstrated experience
2. The tendered price and price structure as well as any other potential costs to Council that may be identified.
3. Delivery performance
4. Customer service
5. Percentage of Australian content
6. Quality
7. Uniform characteristics

The evaluation criteria and their weightings were documented in the Contract Development Plan which is available on file.

To assess tenders against the evaluation criteria, the Tender Panel used information obtained from the tender documents and related correspondence, referees, external advisors and presentations made by the shortlisted tenderers.

The evaluation was conducted according to the following process.

- Assessment of receipt of tenders
- Assessment of conformance of tenders
- Short listing of tenders
- Formal presentation by the three highest ranked tenderers from the short listing stage to determine uniform characteristics and quality elements of uniforms offered
- Detailed weighted evaluation of shortlisted tenders
- Due diligence checks on preferred tenderers.

Assessment of Receipt

The following tenders were received and are listed in alphabetical order.

Notes:

1. All tenders submitted on time.
2. Tendered lump sums were adjusted where tenderers did not provide pricing on the full range of garments.
3. Of the nine tenders received , seven did not offer the full range.
4. For comparative purposes, adjustments were made by applying the price of the most expensive line item tendered plus a 10% penalty in order to cover the duplicated administrative costs to Council in sourcing uniforms from multiple suppliers.

5.1 Contract CPA/168046 Manufacture, Supply and Delivery of Corporate Uniform (contd)

N.B

Column 2 - Received Tendered Amount -based on tendered rates and estimated annual usage (Ex. GST)

Column 3 - *Tendered Amount- adjusted based on likely annual cost to Council to supply full uniform range (Ex GST)

Column 4 - Average % of Australian Content submitted in offer

Column 5 – Qualification for new Local Preference Policy

	1	2	3	4	5
No	Tender	Received Tendered Amount	*Tendered Amount - adjusted	Australian Content	Local Preference policy
1	Advanced Design Pty Ltd (Option 1)	\$242,088.00 Based on pricing 43 of 49 items	\$256,674.00 (Adjusted) to cover all 49 items	85%	Yes
2	Advanced Design Pty Ltd (Option 2)	\$184,876.00 Based on pricing 43 of 49 items	\$199,462.00 (Adjusted to cover all 49 items)	68%	Yes
3	Good Gear Pty Ltd	\$184,634.70	\$184,634.70	66%	Yes
4	PMA Safety Solutions Pty Ltd	\$181,481.07 Based on pricing 46 of 49 items	\$183,894.47 (Adjusted to cover all 49 items)	0%	No
5	Rundles Tailoring Pty Ltd (Option 1)	\$264,289.00 Based on pricing 48 of 49 items	\$265,829.00 (Adjusted to cover all 49 items)	80%	No
6	Rundles Tailoring Pty Ltd (Option 2)	\$219,038.00 Based on pricing 48 of 49 items	\$220,578.00 (Adjusted to cover all 49 items)	39%	No
7	Shawl Group Pty Ltd	\$166,925.30 Based on pricing 46 of 49 items	\$173,159.00 (Adjusted to cover all 49 items)	60%	No
8	Totally Corporate Pty Ltd	\$153,235.00 Based on pricing 40 of 49 items	\$183,214.50 (Adjusted to cover all 49 items)	60%	No
9	Yakka Pty Ltd	\$179,616.00	\$179,616.00	72%	No

Council also resolved in July 2009 to individually notify a list of companies. Of those companies notified only one submitted a tender.

To achieve greater Australian content across the range, tenders could have been requested for individual uniform items, however the logistics of sourcing a large number of items from multiple suppliers would reduce economies of scale and create a significant resource impost to Council.

Significantly, the integrity and conformity of the uniform would be compromised by variances in garments between multiple brands.

For evaluation purposes price penalties have been applied to the suppliers who could not offer the full range of garments Council requested, to off-set the additional administration burden of sourcing the uniform from multiple suppliers. The adjustments are shown in the first table contained in this report.

All tenders were progressed to an initial assessment of conformance.

Initial Assessment of Conformance

Suppliers were asked to price thirty-seven (37) garments within the women's range and twelve (12) garments in the men's range. Where suppliers could not supply the exact item specified an alternative item was requested.

In some instances, suppliers could not supply the garment or any alternative. In such cases, tendered amounts were adjusted using indicative costs obtained from other tenders for those garments. Adjustments applied enabled the comparison of tendered amounts that reflected the likely costs to Council in sourcing the full garment range.

The panel was mindful that choosing multiple suppliers could cause significant difficulties, the offers received were of sufficient coverage to be considered.

Styles, fabric options and size range differed across the suppliers and whilst seven suppliers did not offer the full range, the tender panel considered it valuable to progress all tenders to the short-listing evaluation stage.

Short-listing

The evaluation of criteria no. 6 (Quality) and criteria no. 7 (Uniform Characteristics), required viewing and inspection of each tenderer's proposed garment range. For short listing purposed these items were not critical and not used. Short listing occurred in respect of the following 5 criteria:

1. Demonstrated experience
2. Delivery performance
3. Customer service
4. Price
5. Percentage of Australian content

The following order of ranking was established after short listing evaluation.

Note:

Column 3 - Tendered Amount- (as adjusted) Indicative based on tendered rates and estimated annual usage (Ex. GST)

1	2	3	4
No.	Tender	Tendered Amount (as adjusted) (Ex. GST)	Short listing Weighted Evaluation Score
9	Yakka Pty Ltd	\$179,616.00	62
3	Good Gear Pty Ltd	\$184,634.70	61
7	Shawl Group Pty Ltd	\$173,159.20	61
8	Totally Corporate Pty Ltd	\$183,214.50	59
2	Advanced Design Pty Ltd (Offer 2 high percentage of imported garments)	\$199,462.00	57
1	Advanced Design Pty Ltd (Offer 1 high percentage of Australian made garments)	\$256,674.00	48
6	Rundles Tailoring Pty Ltd (Offer 2 high percentage of imported garments)	\$220,438.00	43
5	Rundles Tailoring Pty Ltd (Offer 1 high percentage of Australian made garments)	\$265,829.00	41
4	PMA Safety Solutions	\$183,894.47	41

Australian Content

To assess the level of Australian content contained in tenders, a methodology developed and used by the NSW Dept. of Commerce for this purpose was adopted. The weighting factor of 20% applied to the assessment of tenders was consistent with the Dept. of Commerce's NSW State based local preference scheme. For example a 20% loading was applied against the imported component of each tendered garment item.

The two suppliers who offered garments with the highest percentage of Australian content were Advanced Design Pty Ltd (Offer 1) and Rundles Tailoring Pty Ltd (Offer 1) however, pricing for both offers were 47% and 53% respectively more expensive than the lowest offer received. The weighting factor applied for Australian content was not sufficient to off-set this significant price disadvantage, consequently these two tenders were not progressed any further in the tender assessment.

Tender no. 9 from Yakka Pty Ltd, tender no. 7 from Shawl Group Pty Ltd and tender no.3 from Good Gear Pty Ltd being the highest scoring shortlisted tenderers, were progressed to the garment inspection and full weighted evaluation stages. In the event short listed suppliers garment ranges proved unsatisfactory, further highest ranked tenders would be shortlisted for inspection.

Assessment of Garments

Shortlisted suppliers were invited by Council to present their range to Council's Indoor Uniform Panel. Garments were assessed, critiqued and compared to determine scoring for both uniform quality and uniform characteristic elements.

5.1 Contract CPA/168046 Manufacture, Supply and Delivery of Corporate Uniform (contd)

Quality elements were assessed and scored in regards to differences with the following criteria:

- Buttons (quality attachment to shirt, pants, jackets)
- Zipper options
- Fabric quality
- Fit for purpose (lifting and carrying features)
- Stitching quality.

Uniform Characteristics were scored via assessing differences in regards to the following elements:

- Movement options within garments provided
- Length of shirt and shell top offered
- Range limitations i.e. number of garments and size options available
- Matching of garments with different fabric types i.e. compatibility
- Overall appeal and style of garments.

Weighted Evaluation

On completion of the physical assessment of garments the weighted evaluation scoring was undertaken on criteria 6 and 7 (Quality & Uniform Characteristics) with the following outcome. Tenders are listed in descending order of weighted evaluation.

Notes

Column 3 - Tendered Amount- (as adjusted) Indicative based on tendered rates and estimated annual usage (Ex. GST)

No	Tender	Tendered Amount (Ex. GST)	Weighted Evaluation Score
3	Good Gear Pty Ltd	\$184,634.70	82
9	Yakka Pty Ltd	\$179,616.00	79
7	Shawl Group Pty Ltd	\$173,159.20	74

Good Gear Pty Ltd offered a suiting range branded "Superior Fit". The indoor Uniform Panel considered their garments more aesthetically appealing and stylish than those offered by other short listed tenderers.

WSC's Administration Staff Uniform panel were unanimous in ranking the Quality and Uniform Characteristics criteria in favour of the Good Gear Pty Ltd range.

Due Diligence

Reference checks were obtained from Robson Civil Projects Pty Ltd and Gosford City Council on tender No. 3 Good Gear Pty Ltd. Information was asked to be provided on the delivery performance, quality of garments supplied, customer service and problem fixing response times. Both representatives from Robson Civil Projects Pty Ltd and Gosford City Council indicated that Good Gear Pty Ltd had provided satisfactory service.

5.1 Contract CPA/168046 Manufacture, Supply and Delivery of Corporate Uniform (contd)

Further reference checks were conducted on MECU Credit Union in Melbourne who two years ago had recently transitioned 120 corporate staff to the Superior Fit range offered to Council. MECU Credit Union indicated that staff were very pleased with the quality of garments provided and the Superior Fit range was considered better quality than previous supplied uniforms.

Good Gear Pty Ltd has been trading as registered company for over 15 years with a head office at Gosford.

Process Review

This evaluation process and recommendations have been endorsed by the Contract Systems Co-ordinator.

Contract Risks

Contract risks include Generic Risks (generally found in most contracting situations) and Specific Risks leading to contract variations that have particular application to an individual contract. These major risks are summarised below for this contract.

Generic Risks

These are risks that Council manages through its contract administration procedures and processes. Major generic risks and mitigation measures for this contract include:

- Contractor experiences supply chain problems or goes into liquidation, leading to non supply of uniforms. Mitigated through referee checks before contract award and timely processing of progress payments. The risk of non-supply of uniforms as there are other available suppliers.
- Lead time exceeds target, leading to delays in supply. Mitigated through close supply supervision and prompt directions where required.
- Contract dispute over rights and obligations of the parties. Mitigated through use of appropriate General Conditions of Contract, which include dispute resolution mechanisms.

Specific Risks Leading to Contract Variations

The following are the major risks that Council bears in relation to this contract:

- The quality of garments provided under the contract is sub standard. Mitigated by pre selection of range by Council's Indoor Uniform Panel and faulty garment rectification process under a warranty clause.
- Garment range for Women's Shell Tops requires a minimum of 50 units of each garment to be made, subjecting Council to a buy back arrangement. On conclusion of the agreement, liability for stock becomes Council's, estimated at \$6,300. This risk is acceptable for this type of contract as the type of garments Council requires is

5.1 Contract CPA/168046 Manufacture, Supply and Delivery of Corporate Uniform (contd)

customised, a similar arrangement is in place with Council's current supplier Yakka Pty Ltd.

- The price of materials may increase significantly which will impact the contractor's price to Council for the finished work. The contract allows for the rise and fall based on CPI provisions passed on to Council during the initial three year period of the contract. Should contract extensions be invoked and CPI provisions are not considered adequate to maintain contract pricing, negotiations will occur based on substantiated cost movements in the cost base for garment manufacture. If acceptable, contract extensions will be invoked, if not, new tenders will be called.

BUDGET

Because the Contract is of the nature of a standing offer arrangement, purchases will be funded from responsibility centres as transactions occur. The estimated value of the contract is an estimate based on previous year's usage. Although the estimated value of the contract is \$553,902.10 over three years (\$184,634.70 per annum), the actual value will depend on the quantities ordered as requirements arise over the life of the contract. The total amount ordered under this arrangement could therefore, vary significantly if demand patterns alter for individual garments.

TIME-FRAME

The contract period is for three years, with two by one year optional extensions based on satisfactory performance.

Council's annual uniform fit-out usually occurs in February of each year however, due to this tender process it is likely the annual fit-out will occur mid 2010.

IMPLEMENTATION COSTS

Council has a stock liability of \$10,500 to the existing supplier which will be recouped through the sale of garments to staff in future orders. The uniform panel has determined that the colour, style and quality of the existing and proposed suppliers is complimentary and that the two ranges could be worn concurrently during the transition period without detracting from Council's Corporate image. The similarities would also lessen the need to provide an incentive subsidy to those staff who pay for the uniform as was the case in the previous changeover.

APPROVALS

Although the colour of suiting material offered by Good Gear Pty Ltd is identical to Council's current supplier (navy), shirting options in both men's and women's ranges are slightly different in terms of colour shading and style. Final selection of shirting garments offered to staff will require selection by Council's Indoor Uniform Panel and sign off by the General Manager.

Similarly, Councillors' uniform requirements will require sampling and consultation with Councillors.

LOCAL CONTENT

Good Gear Pty Ltd is based at Gosford and operates the WorkWear Express store. All embroidery, order correlation, packaging and distribution will occur out of their premises at Gosford. It is estimated that Contract works are expected to generate approximately the equivalent of eight weeks of labour requirements.

CONCLUSION

Tender no. 3 from Good Gear Pty Ltd is the highest scoring tender and meets all of Council's requirements for this contract. On balance, this tender represents the best value-for-money for Council.

ATTACHMENTS

Nil.

5.2 Contract CPA 170570 - Toowoon Bay Holiday Park Swimming Pool

TRIM REFERENCE: CPA/170570 - D02155602

AUTHOR: JP

SUMMARY

Evaluation and selection of tenders for Contract CPA/170570 Toowoon Bay Holiday Park Swimming Pool and associated works.

RECOMMENDATION

- 1 That Council accept Tender No 2 from Wright Pools Pty Limited in the lump sum amount of \$474,220.91 (excl GST).**
- 2 That for contract CPA/170570, Council approve a contract budget of \$521,643.00 (excl GST) that provides for a contingency amount of \$47,422.09 (excl GST), representing 10% of the contract value, to provide for any unforeseen additional works that may become necessary during the course of the project.**

BACKGROUND

A Business Development Strategy has been formulated to guide the future development and management of the four Central Coast Holiday Parks. The Strategy outlines the actions required to give the Parks the capacity to deliver appropriate financial outcomes to Council on an ongoing basis. The Strategy is based on a realistic informed view of the quality and potential of each Holiday Park's business assets that is practical, financially achievable and makes good business sense. At the same time the targeted business outcomes have been placed within the context of achieving ecological sustainability, intergenerational equity and identifiable public benefits.

The Business Development Strategy identified that Council commit \$4.659m to capital investment over a five year period. The new facilities that have been and/or will be added to the Parks over the five years include:

- shade structures to all children's playgrounds
- camp kitchens to service the requirements of guests and encourage greater use of the parks by new market target groups
- recreational pools at Toowoon Bay and Norah Head to cater for adults and children within recreational facility precincts
- additional barbecue shelters
- active recreational facilities.

The specific works for the 2009/2010 Toowoon Bay Holiday Park contract as included in this report are for:

- construction of a resort style swimming pool and associated works
- recreation facility (ie large inflatable jumping pillow) and associated landscaping works.

Tender Process

Tenders were invited by way of public invitation. Advertisements were placed in the Newcastle Herald on Saturday 28 November 2009, the Sydney Morning Herald on Tuesday 1 December 2009 and the Central Coast Express Advocate on Wednesday 2 December 2009. Tenders were also advertised on Council's e-Tender website. The advertised closing date was Thursday 17 December 2009.

The invitation documents called for lump-sum tenders, based on a detailed design and construct specification. However, to allow Council to consider cost saving alternatives to the pool finishes and feature water wall component of the works, tenderers were asked to consider and propose alternative prices for these components.

The following addenda were issued to all prospective tenderers during the invitation period:

- 1 Advice to tenderers on proposed project timings, existing site services (relocations if/as required by others), request for extra-over rates for rock excavation, request for extra-over rates for excavation spoil removal, specification correction regarding approval fees
- 2 Advice to tenderers on approximate Council budget for the works to ensure procedural fairness as Crystal Pools Pty Ltd under earlier engagement had provided design advice for the pool project.
- 3 Confirmation of allowances for sewer drainage to pool plant room.

Tenders closed at Council Chambers at 2:00pm on Thursday 17 December 2009.

EVALUATION OF TENDERS

Tenders were evaluated by a panel of three staff members (one of whom was from a unit other than the one managing the procurement process) using the following threshold and weighted criteria:

- conformance with the requirements of the Design & Construct specification and tender documents
- ability to manage financial, operational and safety risk
- the tendered price
- past experience with projects of a similar nature
- past performance in respect to past projects.

The evaluation criteria and their weightings were documented in the Contract Development Plan and approved by the Director Shire Services prior to tenders being invited. The Contract Development Plan is available on file.

To assess tenders against the evaluation criteria, the panel used information obtained from the tender documents and related correspondence, referees, external advisors and presentations made by the shortlisted tenderers.

5.2 Contract CPA 170570 - Toowoon Bay Holiday Park Swimming Pool (contd)

The evaluation was conducted according to the following process:

- assessment of receipt of tenders
- assessment of conformance of tenders
- detailed weighted evaluation of tenders
- due diligence checks on preferred tenderer.

Assessment of Receipt

The following tenders were received and are listed in alphabetical order.

Tender	Tendered Lump Sum (Ex. GST)	Status
1 Crystal Pools Pty Ltd	\$514,506.00	Submitted on time
2 Wright Pools Pty Ltd	\$494,221.00	Submitted on time

Assessment of Conformance

Tenders were assessed for conformance with the general tender requirements, including the specification. Tender No 2 (from Wright Pools Pty Limited) conformed to all requirements and was progressed to the next stage of evaluation.

Tender No 1 (from Crystal Pools Pty Limited) submitted a tender/quotation, but did not complete and return a completed Attachment 1: Returnable Forms & Schedules as required by the Request for Tender. However the essential tender information and pricing required was provided within the tendered documents. The panel decided to progress Tender No 1 (from Crystal Pools Pty Limited) to the next stage of evaluation.

Both tenders provided acceptable cost reduction for pebblecrete pool finishes in lieu of render and paint pool finishes. These are shown in the table below.

No	Tender	Tendered Lump Sum	Adjustment	Adjusted Tendered Lump Sum (Ex. GST)
1	Crystal Pools Pty Ltd	\$514,506.00	\$12,434.00	\$502,072.00
2	Wright Pools Pty Ltd	\$494,221.00	\$20,000.00	\$474,221.00

Weighted Evaluation

Tenders were scored against each of the weighted evaluation criteria (including price and non-price elements), and are listed below in descending order of weighted evaluation scores.

Tender	Adjusted Tendered Lump Sum (Ex. GST)	Weighted Evaluation Score
2 Wright Pools Pty Ltd	\$474,220.91	95
1 Crystal Pools Pty Ltd	\$502,072.00	92

Both tenderers are based in Sydney and have extensive experience in projects of similar scope and nature to the current works. Both have proven track records with successfully delivering projects on time and to required standards, and hence both scored very highly on the non-price criteria.

Both tenderers prices were adjusted to include for pebblecrete pool finishes (which was an option in the Request for Tender), and this has resulted in cost savings from the base price Lump Sum Tender Amount.

Tender No 1 (from Wright Pools Pty Ltd), being the highest scoring tender, was progressed to the due diligence stage of the evaluation.

Due Diligence

Tender No 1 (from Wright Pools Pty Limited) was subjected to a financial assessment, an in-house safety/environment system assessment and referee checks.

On the basis of the information provided by the tenderer, Council's independent financial assessor Kingsway Financial Assessments, and independent referees, it is considered that Wright Pools Pty Limited possesses all of the technical, financial and managerial resources necessary to satisfactorily complete the works.

Wright Pools Pty Limited is a Belrose (Sydney) based contractor with a history of successfully completed contracts similar in nature and scope to the current works. The company has in place fully documented Occupational Health Safety and Rehabilitation Management and Environmental Management systems.

The amount tendered by Wright Pools Pty Limited is within 2% of Council's pre-tender budget and is considered to represent a reasonable price for the contract.

Process Review

This evaluation process and recommendations have been endorsed by the Contract Systems Co-ordinator.

RISK ASSESSMENT

General

When letting a contract various risks exist that may result in the final contract cost exceeding the initial contract sum. These risks vary depending upon the type of work being undertaken; for example, design work versus construction work; and the type of contract, for example Lump Sum versus Schedule of Rates.

Generally, the contract is structured to have the party best placed to manage the risk responsible for that risk outcome. Some risks are passed on to the contractor, with the cost of those risks reflected in the tendered price. Other risks are best managed by Council rather than the contractor, as they would inflate the tender price whether the risk eventuated or not. For this reason Council retains and is required to manage some risks. These are minimised by Council's contract administration processes. However, to manage these risks it is necessary to provide a contingency sum in addition to the tender price to allow for unforeseen additional works that may become necessary during the course of the project.

Contract Risks

Contract risks include Generic Risks (generally found in most contracting situations) and Specific Risks leading to contract variations that have particular application to an individual contract. These major risks are summarised below for this contract.

Generic Risks

These are risks that Council manages through its contract administration procedures and processes. Major generic risks and mitigation measures for this contract include:

- contractor experiences financial difficulties or goes into liquidation, leading to additional project delays and costs. Mitigated through financial and referee checks before contract award and timely progress payments.
- completion time exceeds target leading to delays and damage to Council's reputation. Mitigated through close supervision and prompt directions where required.
- liability for injury and/or damage to people, property and the environment. Mitigated through on-going validation of contractor's insurances, safety and environmental management systems, together with close supervision including site audits.
- contract dispute over rights and obligations of the parties. Mitigated through use of Australian Standards General Conditions of Contract, which include dispute resolution mechanisms.

Specific Risks Leading to Contract Variations

The following are the major risks that Council bears in relation to this contract:

- the quality of the design is sub-standard resulting in additional costs during the construction phase. Mitigated by Design and Construct contract and appropriate technical reviews by others to ensure final design meets requirements.

5.2 Contract CPA 170570 - Toowoon Bay Holiday Park Swimming Pool (contd)

- changes to regulatory design standards requiring project re-design. Mitigated by using latest information in tender documents and minimising delays in award of contract.
- latent conditions encountered on site (i.e. unstable ground, rock or existing services). Mitigated by geotechnical investigations to determine ground conditions, and services searches to locate existing site services within pool excavation area.

Risk Contingency

The above risks are considered to be Low for this contract given the value of the contract and the nature of the work. Accordingly, it is recommended that a contingency sum of \$47,422.09 (excl GST) representing 10% of the contract sum be approved.

Based on previous experience with contracts of this nature and analysis of the risks involved, it is estimated that there is a high probability that the contract budget of \$521,643.00 (excl GST), which incorporates the contingency allowance, will not be exceeded.

BUDGET

Project funding of \$528,000.00 (excl GST) is available from the Holiday Park Reserve Trust for these works. An additional amount of \$22,000 in this Trust is available for the associated pool fencing works which shall be undertaken by others.

TIME-FRAME

The contract works are anticipated to commence on site in mid April 2010 (i.e. immediately after the Easter long weekend) and be completed in early September 2010 (ie ready for use in October 2010 school holidays period).

APPROVALS

A Part 4 approval under the Environmental Planning & Assessment Act for the original proposed works was obtained in December 2007. Section 96 approval was subsequently obtained in *February 2010* for the current proposed swimming pool location and details.

LOCAL CONTENT

Wright Pools Pty Limited has indicated that the contract works are expected to generate approximately 32 person-weeks of labour requirements on the project sourced from the Central Coast region (including Wright Pools supervision, excavation, pebblecrete and pool plumbing labour).

CONCLUSION

Tender No 1 from Wright Pools Pty Limited is the highest scoring tender and meets all of Council's requirements for this contract. On balance, this tender represents the best value-for-money for Council. It is recommended that the tender be accepted.

ATTACHMENTS

Nil.

6.1 Delegations of Authority under the Noxious Weeds Act 1993

TRIM REFERENCE: F2004/06923 - D02149394

AUTHOR: LS

SUMMARY

Advice from Industry & Investment NSW, (the State Agency which oversees the Noxious Weeds Act 1993 (the Act)) has resulted in recommendations that Council amend its process for delegations under the Act. A copy of advice is included in Attachment 2. This report states the recommended changes and requests that Council approve the changes in order to comply with standard delegation procedures for this Act.

RECOMMENDATION

- 1 That Council act in these matters as the Local Control Authority for the Shire of Wyong as per Section 35 (1) of the Act.**
- 2 That Council rescind all previous appointments and delegations under the Noxious Weeds Act 1993.**
- 3 That Council appoint the Noxious Weeds & Pest Species Officer as an inspector under Section 41 of the Noxious Weeds Act 1993.**
- 4 That Council's delegate to the General Manager, Director Shire Services, Manager Customer & Community Services, The Noxious Weeds & Pest Species Officer and the Natural Areas Co-ordinator Authority to carry out Council's duties and responsibilities under sections 12, 18a, 18, 19, 20, 28, 29, 30, 32, 36a, 41, 45, 46, 47, 50, 54, 55 and 64 of the Noxious Weeds Act 1993 outlined in Attachment 1.**

BACKGROUND

Industry & Investment NSW has recommended that all councils reissue their delegations to all staff involved in enforcing the provisions of the Act. The recommendation is based on a view that casts some doubt over the legitimacy of relying on the general delegation power contained in s377(1) of the Local Government Act 1993. While the matter is not free from doubt, Industry and Investment NSW considers it prudent for councils to use s68 of the Act in delegating the various noxious weed enforcement functions under the Act.

Whilst generally Council delegates authority to the General Manager, who then manages the delegation of that authority through the organisational structure, in this case the advice indicates that specific duties under the Noxious Weeds Act; Council should directly delegate this authority.

Specifically under Section 68 (part of Attachment 3) of the Noxious Weeds Act 1993, the Local Control Authority may delegate to a person any of the local control authority's functions under this Act other than the power of delegation. From this comes the ability of the Local Control Authority to delegate its powers under Section 41 (part of Attachment 3) of the Act to

6.1 Delegations of Authority under the Noxious Weeds Act 1993 (contd)

the General Manager allowing the General Manager to appoint persons as Noxious Weeds Inspectors as well as Council being able to appoint such persons.

However, only the Local Control Authority can delegate powers conferred under the various sections of this Act that allow the Noxious Weeds Inspector to carry out the tasks necessary to the functioning of the position.

A previous motion was passed by Council that delegated these powers to named individuals, which action was based on the information available at the time, this however, would cause problems if one of the named individuals was replaced. It is recommended these delegations be rescinded and delegations reissued to positions within Council's organisational structure.

The proposed delegations nominate a number of alternates. This will enable the continuation of noxious weed enforcement in the absence of any individuals.

CONCLUSION

This report recommends changes to staff Delegations of Authority under the Noxious Weeds Act and requests that Council approve the changes in order for staff to exercise these duties.

ATTACHMENTS

- | | | |
|----------|--|-----------|
| 1 | Table of persons that powers are to be conferred upon | D02149536 |
| 2 | Advice from NSW Dept of Primary Industries (body overseeing the operation of the Noxious Weeds Act 1993) | D02149537 |
| 3 | Sections 68, 35 and 41 of the Noxious Weeds Act 1993 | D02167377 |
| 4 | Section 46 of the Interpretation Act 1987 | D02149539 |

Table of persons that powers are to be conferred upon

SECTION	SECTION TITLE	POWERS CONFERRED	DELEGATED POSITIONS
12	Failure to Control Noxious Weeds	The power to initiate prosecutions	General Manager, Director, Shire Services and Manager, Customer & Community Services
18a	Prior Notice of Weed Control Notice	The power to issue prior notice of a proposed weed control notice	General Manager, Noxious Weeds & Pest Species Officer and Natural Areas Co-ordinator
18	Weed Control Notices	The power to issue weed control notices	General Manager, Noxious Weeds & Pest Species Officer and Natural Areas Co-ordinator
19	Failure to Comply with a Weeds Notice	The power to initiate prosecutions	General Manager, Director, Shire Services and Manager, Customer & Community Services
20	Noxious Weed Control by Local Control Authority after Weed Control Notice not complied with	Subsection (1) The power to authorise such work	General Manager, Director, Shire Services, Manager, Customer & Community Services, Noxious Weeds & Pest Species Officer and Natural Areas Co-ordinator
		Subsection (2) Authority to carry out such work	Noxious Weeds & Pest Species Officer, Natural Areas Co-ordinator and contractors working on behalf of Council
		Subsection (3) Power to issue notices to occupiers prior to taking action under this section	General Manager, Director, Shire Services, Noxious Weeds & Pest Species Officer and Natural Areas Co-ordinator
28	Sale or Removal from land Infested With Notifiable Weed Material	The power to initiate prosecutions under this section	General Manager, Director, Shire Services and Manager, Customer & Community Services
29	Sale of Turf etc. From Land Infested With Notifiable Weeds	The power to initiate prosecutions under this section	General Manager, Director, Shire Services and Manager, Customer & Community Services
30	Scattering of Notifiable Weed Material	The power to initiate prosecutions under this section	General Manager, Director, Shire Services and Manager, Customer & Community Services
32	Use of Agricultural Machines that are Carrying Notifiable Weeds	The power to initiate prosecutions under this section	General Manager, Director, Shire Services and Manager, Customer & Community Services
36a	Temporary Restrictions During Weed Control	The power to impose temporary restrictions	General Manager, Director, Shire Services and Noxious Weeds & Pest Species Officer
41	Appointment of Inspectors	Power to appoint inspectors under the Noxious Weeds Act 1993 for the Local Control Authority	General Manager, Director, Shire Services and Manager, Customer & Community Services
45	Notice of Entry	The power to give occupiers notice prior to entry	General Manager, Director, Shire Services and Manager, Customer & Community Services
46	Use of Force	The power to authorise use of force to gain entry to premises	General Manager, Director, Shire Services and Manager, Customer & Community Services
47	Notification of Use of Force	The power to notify an occupier of the use of force	General Manager, Director, Shire Services and Manager, Customer & Community Services
50	Certificates of Authority	The power to issue Certificates of Authority for	General Manager, Director, Shire Services and

		Inspectors	Manager, Customer & Community Services
54	Offence: Obstructing an Inspector etc	The power to initiate prosecutions under this section	General Manager, Director, Shire Services and Manager, Customer & Community Services
55	Offence: Impersonation of an Inspector	The power to initiate prosecutions under this section	General Manager, Director, Shire Services and Manager, Customer & Community Services
64	Certificates as to Weed Control Notices etc	Power to issue such certificates	Natural Areas Co-ordinator and Noxious Weeds & Pest Species Officer



**NSW DEPARTMENT OF
PRIMARY INDUSTRIES**

DELEGATIONS BY LOCAL CONTROL AUTHORITIES UNDER THE NOXIOUS WEEDS ACT

The Noxious Weeds Act (1993) grants a range of powers, duties and functions to local control authorities. Section 68 of the act permits a local control authority to delegate any of these functions, except the power of delegation, to a person. It is often desirable that these functions be delegated to staff to facilitate the efficient implementation of the Act and to create a separation of powers between the councillors who make policy and the staff who implement council policy. Therefore, it is recommended that local control authorities delegate by resolution, the following powers, functions and responsibilities to the named occupants of the listed staff positions or equivalent positions.

Note that Section 68 requires that delegations be made to a person, not to a position. This means that any delegation made by a Council must be to a named person, not merely to the position in the council that will carry out the delegated function.

It is **not** sound practice for the local control authority to delegate its functions to the general manager and the general manager to make sub-delegations to other staff. Delegations made by the local control authority should be made to the person who will carry out the delegated function.

Section 12 Failure to Control Noxious Weeds.

Delegate authority to initiate prosecutions under this section to the General Manager.

Section 18 Weed Control Notices.

Power to issue weed control notices should be delegated to either:

- i. the Chief Weeds Officer, or
- ii. the Director who administers the Weeds Unit, or
- iii. the General Manager.

Section 19 Failure to Comply with a Weed Control Notice.

Delegate authority to initiate prosecutions under this section to the General Manager.

Section 20 Noxious Weed Control by LCA after Weed Control Notice not complied with.

Subsection (1) - Delegate power to authorise such work to the General Manager.

Subsection (2) - Delegate authority to carry out such work to Inspectors and LCA Spray Operators.

Subsection (3) - Delegate responsibility to issue notices to occupiers, prior to action under this section to the General Manager.

Section 28 Sale or Removal from Land, of Notifiable Weed Material.

Delegate authority to initiate prosecutions under this section to the General Manager.

Section 29 Sale of Turf etc. From Land Infested With Notifiable Weeds.

Delegate authority to initiate prosecutions under this section to the General Manager.

Section 30 Scattering of Notifiable Weed Material.

Delegate authority to initiate prosecutions under this section to the General Manager.

Section 32 Use of Agricultural Machines that are Carrying Notifiable Weeds.

Delegate authority to initiate prosecutions under this section to the General Manager.

Section 36A Temporary Restrictions During Weed Control.

Delegate authority to impose temporary restrictions to the Chief Weeds Officer.

Section 41 Appointment of Inspectors.

Delegate the power to appoint inspectors under the Noxious Weeds Act for the local control authority to the General Manager.

Section 45 Notice of Entry.

Delegate the responsibility to give occupiers notice prior to entry to **all** Inspectors.

Section 46 Use of Force.

Delegate power to authorise use of force to gain entry to premises to the General Manager.

Section 47 Notification of Use of Force.

Delegate responsibility to notify an occupier of the use of force to the General Manager.

Section 50 Certificates of Authority.

Delegate power to issue Certificates of Authority for Inspectors under this act to the General Manager.

*** Note that under this section, (S.50 (2) (f)), the Noxious Weed Regulation (Clause 3) requires that the General Manager must also sign the Certificate of Authority.**

Section 54 Offences: Obstructing an Inspector etc.

Delegate authority to initiate prosecutions under this section to the General Manager.

Section 55 Offence: Impersonation of an Inspector.

Delegate authority to initiate prosecutions under this section to the General Manager.

Section 64 Certificates as to Weed Control Notices etc. on land.

Subsection (3)- Delegate power to issue such certificates to the General Manager.

Council Resolutions Regarding Delegations

Council resolutions should take the form:

(A) " That this Council resolve to appoint (Joe Bloggs) as an inspector under Section 41 of the Noxious Weeds Act 1993", and

(B) "It was resolved by this Council that (Joe Bloggs, the General Manager / Chief Weeds Officer / Weeds Officer) be delegated with Council's powers duties and responsibilities under the following section/s of the Noxious Weeds Act 1993 -

1. Section X - the power to.....
2. Section Y - the power to...."

Should you require any further information on this matter, please contact Philip Blackmore at Armidale by telephone on 02 6738 8504 or by e-mail at philip.blackmore@dpi.nsw.gov.au

Noxious Weeds Act 1993 No 11

Current version for 6 July 2009 to date (accessed 4 February 2010 at 09:21)

[Part 7](#)»[Section 68](#)

<< page >>

Section 68 Delegation by local control authorities

A local control authority may delegate to a person any of the local control authority's functions under this Act other than this power of delegation.

Noxious Weeds Act 1993 No 11

Current version for 6 July 2009 to date (accessed 4 February 2010 at 09:13)

[Part 4](#)»[Division 2](#)»[Section 35](#)

<< page >>

Section 35 What are the local control authorities?

- (1) The local control authority for land within a local government area is the council of the local government area or, if noxious weed control functions for that area have been conferred on a county council under any other Act, the county council having those functions.
- (2) The local control authority for land within the Western Division that is not within a local government area is the Western Lands Commissioner.
- (3) The local control authority for land within Lord Howe Island is the Lord Howe Island Board.

Noxious Weeds Act 1993 No 11

Current version for 6 July 2009 to date (accessed 4 February 2010 at 09:22)

[Part 5](#)»[Division 1](#)»[Section 41](#)

<< page >>

Section 41 Inspectors

- (1) A local control authority may appoint inspectors for the purposes of this Act.
- (2) An inspector has the functions conferred or imposed on inspectors by or under this Act.
- (3) An inspector appointed by a local control authority may not exercise any functions under this Act outside the local area of the authority.

Note. The noxious weed control functions of inspectors are set out in sections 39 and 40.

Interpretation Act 1987 No 15

Current version for 8 January 2010 to date (accessed 2 February 2010 at 11:05)

[Part 7](#) [Section 46](#)

<< page >>

Section 46 Appointments may be made by name or by office

- (1) If an Act or instrument confers a power on any person or body:
 - (a) to appoint a person to an office,
 - (b) to appoint a person or body to exercise a function, or
 - (c) to appoint a person or body to do any other thing,the person or body may make the appointment by appointing a person or body by name or by appointing a particular officer or the holder of a particular office by reference to the title of the office concerned.
- (2) Any appointment of a particular officer or the holder of a particular office shall be taken to be the appointment of the person for the time being occupying or acting in the office concerned.

6.2 Debtor Report

TRIM REFERENCE: F2004/06592 - D02086548

AUTHOR: DS

SUMMARY

Approval is sought to write off monies owed as bad debts.

RECOMMENDATION

That Council write off \$29,295.39 monies owed as bad debts as outlined in the confidential enclosure which are considered irrecoverable.

BACKGROUND

Provisions have been made in previous financial years to fund the write-off of these doubtful debts but not taken up as Wyong Shire Council (WSC) pursued possibilities for recovery. It is necessary to submit this report to Council for consideration as the amounts contained in this report exceed the amount that can be written off under delegation by the General Manager.

Financial Implications

Provision has been made in prior years to accommodate these debts to be written off.

CONSULTATION

Council has reviewed the events giving rise to these bad debts and has implemented processes to minimise future risks of unrecoverable debts arising:

- **Fines** – Improved processes for identification of individuals in instances of fines. All staff that issue infringement notices undergo Self Enforcement Infringement Notice Scheme (SEINS) training prior to commencing such duties and provided ongoing on the job training on processes for identifying individuals.
- **Tip Operations** - Generally tip operations are cash based or are guaranteed by bonds or bank guarantees. Issues around classification of materials leading to instances of unrecoverable monies are rare.
- **Rent** - Council's property management section manages rents and rental agreements, however in the event of bankruptcy Council can only rely on bonds and becomes an unsecured creditor.

CONCLUSION

Avenues for recovery of monies have been exhausted and write-off is the last practical option for WSC.

ATTACHMENTS

- 1 Confidential Enclosure - Details of Individual Debtors (distributed under separate cover) Enclosure

6.3 Proposed Councillors' Community Improvement Grants

TRIM REFERENCE: C2010/01723 - D02159617

AUTHOR: SG

SUMMARY

Councillors propose the following allocation of funds for expenditure from Councillors' Community Improvement Grants (CCIG).

RECOMMENDATION

That Council allocate an amount of \$5,649.00 from the 2009-10 Councillors' Community Improvement Grants as outlined in the report.

BACKGROUND

Provision has been made in Council's Management Plan for each Councillor to recommend to Council the donation of funds to individuals, local service, charitable or community organisations that operate in the Shire or provide a benefit specifically to the residents of the Shire.

Donations may also be made to individuals or groups in pursuit of excellence, including sporting and cultural excellence, subject to CCIG Policy. Funds may also be allocated for emergency assistance in the event of natural disasters such as bushfires, flood or drought anywhere in Australia, subject to CCIG Policy. The funds are granted subject to approval of the Council as a whole.

THE PROPOSAL

Under Council's Policy, all proposed allocations are subject to the approval of the Council as a whole.

OPTIONS

- 1 Approval of applications as submitted will provide a community benefit residents of the Shire.
- 2 Non approval could result in assistance not being provided to the community.

STRATEGIC LINKS

Management Plan

<i>Principal Activity</i>	<i>Key Issue(s) and Objective (s)</i>	<i>Financial Line Item No and Description</i>
A better community	Enhance the quality of life of the Shire's residents	1.1.11 – Community Financial Support

6.3 Proposed Councillors' Community Improvement Grants (contd)

Contribution of Proposal to the Principal Activity

The Councillors' Community Improvement Grants were developed to help charitable community groups and in doing so helping the broader community.

Link to Key Focus Areas

Funding is available specifically to projects outside of Council's Management Plan.

Financial Implications

Expenditure is approved until the end of the 2009-10 financial year. Unspent approvals lapse 30 June 2010.

Funding Return

An allocation of funding was provided to Toukley RSL Sub Branch for costs associated with the Merchant Mariner Memorial Service on 5 December 2009 for \$1,250 which was resolved at 9 December 2009. Toukley RSL Sub Branch has returned \$250 of that allocation as unspent money for that service. Four Councillors allocated funding and the unspent money has been apportioned back to their allocation for 2009-10 as shown in the spreadsheet below.

CONSULTATION

Applications that met the criteria were distributed to Councillors for their consideration.

GOVERNANCE

All expenditure recommended is permissible under Section 24 and 356(1) of the Local Government Act 1993.

CONCLUSION

The proposed allocations contained in this report are permissible under the Council's policy on Councillors' Community Improvement Grants. The process has been correct and Council may confirm the grants at its option.

Councillors' Community Improvement Grants 2009-10

COUNCILLORS' COMMUNITY IMPROVEMENT GRANTS ALLOCATION	Best	Eaton	Graham	Matthews	McBride	McNamara	Symington	Vincent	Webster	Wynn	SUB TOTAL
Allocation 01/07/2009 - 30/06/2010	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	150,000
Expenditure up to and including Ordinary Council Meeting of 24/02/2010	5,218	5,950	6,798	6,499	5,941	3,650	1,954	7,375	9,020	10,425	62,830
Available allocation as at 24/02/2010	9,782	9,050	8,202	8,501	9,059	11,350	13,046	7,625	5,980	4,575	87,171
Proposed Allocations for 10 March 2010											
Bateau Bay PCYC (\$1,000)			200		250				500		950
Lions Club of Munmorah Summerland Point Inc (\$658.50)	359						300				659
Toukley & District Chamber of Commerce (\$3,000)	300						750	1,000			2,050

6.3 Proposed Councillors' Community Improvement Grants (contd)

Councillors' Community Improvement Grants 2009-10 (contd)

COUNCILLORS' COMMUNITY IMPROVEMENT GRANTS ALLOCATION	Best	Eaton	Graham	Matthews	McBride	McNamara	Symington	Vincent	Webster	Wynn	SUB TOTAL
Allocation 01/07/2009 - 30/06/2010	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	150,000
Expenditure up to and including Ordinary Council Meeting of 24/02/2010	5,218	5,950	6,798	6,499	5,941	3,650	1,954	7,375	9,020	10,425	62,830
Available allocation as at 24/02/2010	9,782	9,050	8,202	8,501	9,059	11,350	13,046	7,625	5,980	4,575	87,171
Proposed Allocations for 10 March 2010											
Toukley & District Senior Citizens Club Inc (\$2,000)	200										200
Tuggerah Lakes Art Society Inc (\$2,000)	200	500	100		250						1,050
Tuggerawong Retirement Village Residents Committee (\$1,900)	190										190
Warnervale Family & Community Centre (\$2,000) (\$1,450 already allocated)									550		550
Total Proposed Allocations for 10/03/2010	1,249	500	300	0	500	0	1,050	1,000	1,050	0	5,649
Part Chq return -Toukley RSL Sub Branch - Merchant Mariners Memorial - 09/12/2009 allocations apportioned	30		50				70	100			250
Total Accumulated Allocations as at 10/03/2010	6,437	6,450	7,048	6,499	6,441	3,650	2,934	8,275	10,070	10,425	68,229
Total of Pending Allocations		400									400
Balance Uncommitted as at 10/03/2010	8,563	8,550	7,952	8,501	8,559	11,350	12,066	6,725	4,930	4,575	81,772

ATTACHMENTS

Nil

10 March 2010

Board/Committee/Panel Meeting
Report

To the Ordinary Meeting

Corporate Services Department

7.1 Minutes of the Strategic Finance Committee Meeting - 24 February 2010

TRIM REFERENCE: f2009/02538 - D02163126

AUTHOR: MW

SUMMARY

Minutes of the Strategic Finance Committee held on 24 February 2010.

RECOMMENDATION

That Council receive the minutes of the Strategic Finance Committee meeting held on 24 February 2010 and adopt the recommendations contained therein.

The minutes of the Strategic Finance Committee Meeting held on 24 February 2010 are attached.

ATTACHMENTS

1 Minutes - Strategic Finance Committee - 24 February 2010 D02166856

WYONG SHIRE COUNCIL

**MINUTES OF THE
STRATEGIC FINANCE COMMITTEE OF COUNCIL
HELD IN THE COUNCIL CHAMBER
WYONG CIVIC CENTRE, HELY STREET, WYONG
ON 24 February 2010
COMMENCING AT 10:00 AM**

PRESENT

COUNCILLORS E M McBRIDE (CHAIRPERSON), D P VINCENT AND L D WEBSTER.

APOLOGIES

COUNCILLORS R L GRAHAM, G P BEST, J J McNAMARA, W R SYMINGTON, L A MATTHEWS AND S A WYNN (GRANTED LEAVE OF ABSENCE).

IN ATTENDANCE

GENERAL MANAGER, DIRECTOR SHIRE PLANNING, DIRECTOR SHIRE SERVICES, DIRECTOR CORPORATE SERVICES, ACTING MANAGER FUTURE PLANNING, MANAGER ECONOMIC/CORPORATE PLANNING, MANAGER FINANCIAL SERVICES, INTERNAL AUDITOR, SENIOR INTERNAL AUDITOR, AND TWO ADMINISTRATION STAFF.

PROCEDURAL ITEMS**1.1 Disclosure of Interest**

RECOMMENDATION

That Members now disclose any conflicts of interest in matters under consideration at this meeting.

STRATEGIC FINANCE COMMITTEE RESOLUTION

That the Committee receive the report on Disclosure of Interest and the fact that no disclosures were made be noted.

CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**2.1 Minutes of the Strategic Finance Committee - 9 December 2009**

STRATEGIC FINANCE COMMITTEE RESOLUTION

That the Committee confirm the minutes of the previous Strategic Finance Committee Meeting held on 9 December 2009.

2.2 Strategic Finance Committee Action Plan

STRATEGIC FINANCE COMMITTEE RESOLUTION

That the Committee receive the report on Strategic Finance Committee Action Plan.

GENERAL REPORTS**3.1 Revised Strategic Finance Committee Charter**

RECOMMENDATION

That Council receive the report on Revised Strategic Finance Committee Charter.

STRATEGIC FINANCE COMMITTEE RESOLUTION

That the proposed amendments to the Strategic Finance Committee Charter be circulated to Committee Members in accordance with Clause 14.

3.2 Prioritisation Progress of Finance Topics

RECOMMENDATION

That the Committee note the report on prioritising debate on strategic financial issues.

STRATEGIC FINANCE COMMITTEE RESOLUTION

- 1** *That the Strategic Finance Priorities attachment be updated and redistributed to Councillors.*
- 2** *That Councillors be requested to provide input on the priority list by 5 March 2010.*

3.3 Working Capital Strategy

RECOMMENDATION

That the Committee receive the report on Working Capital Strategy and recommend to Council the Long Term Financial Strategy include an initial guideline that the target Working Capital be calculated to equate to 3% of Operating Cash Expenses.

STRATEGIC FINANCE COMMITTEE RESOLUTION

That the item be discussed informally and deferred to the next meeting.

3.4 Liquidity Strategy

RECOMMENDATION

That the Committee receive the report on Liquidity Strategy and recommend to Council the Long Term Financial Strategy includes an initial target Liquidity Ratio of above 1.5.

STRATEGIC FINANCE COMMITTEE RESOLUTION

That the item be discussed informally and deferred to the next meeting.

3.5 Borrowing

RECOMMENDATION

That the Committee receive the report on Borrowing and recommend to Council that the Long Term Financial Strategy include a guideline on Borrowing which:

- 1 Allows for debt to be used to finance long term intergenerational assets or where the return on investment inclusive of financing costs is positive.*
- 2 Complies with directives of IPART in the case of water and sewer.*
- 3 Adopts a target for the Consolidated Debt Service Ratio of below 15% and a General Fund Indebtedness Ratio less than 80%.*

STRATEGIC FINANCE COMMITTEE RESOLUTION

That the item be discussed informally and deferred to the next meeting.

THE MEETING closed at 10.35 am.

8.1 Information Reports

TRIM REFERENCE: F2010/00009 - D02162692

AUTHOR: SW

SUMMARY

In accordance with Council's Code of Meeting Practice reports for the Information of Council are provided for adoption either by nominated exception or in total.

RECOMMENDATION

That Council deal with the following Information Reports by the Exception Method.

ATTACHMENTS

Nil.

8.2 Mardi to Mangrove Link Project Status

TRIM REFERENCE: F2007/01120 - D02158866

AUTHOR: CC

SUMMARY

Report on status of Mardi to Mangrove Link Project.

RECOMMENDATION

That Council receive the report on Mardi to Mangrove Link Project Status.

PROJECT SCOPE

- Wyong River off-take structure and pumping station
- Wyong River to Mardi-Dam 2.1 kilometre pipeline
- Mardi-Mangrove transfer pumping station
- Mardi Dam to Mangrove Creek Dam 19 kilometre pipeline

CURRENT STATUS

Expenditure to date	\$27.5m
Project Estimate	\$120.6m

Construction Status

	Scheduled Start	Scheduled Completion	% Complete
Pre-construction – Management Plans & Approvals	4 January 2010	2 June 2010	10%
Work Package 1 – Wyong River Off-take	7 April 2010	14 January 2011	3%
Work Package 2 – Wyong River Pump Station	19 February 2010	16 January 2011	3%
Work Package 3 – Wyong Mardi Rising Main 3	16 February 2010	3 August 2010	
Work Package 4 – Wyong Mardi Inlet	6 May 2010	2 December 2010	
Work Package 6 – Mardi Mangrove Transfer Pump Station	21 June 2010	14 January 2011	
Work Package 7 – Mardi Mangrove Transfer Main	1 March 2010	12 January 2011	
Work Package 18 – Wyong Weir, Fishway & Gauging	4 August 2010	25 November 2010	
Commissioning	17 January 2011	19 April 2011	

Key Dates

	Scheduled Completion	Actual Completion	Complete
Review of Environmental Factors (REF) submitted	30 June 2009	30 June 2009	<input checked="" type="checkbox"/>
Call for Expressions of Interest (EOI)	9 July 2009	9 July 2009	<input checked="" type="checkbox"/>
EOI closes	30 July 2009	30 July 2009	<input checked="" type="checkbox"/>
Determination Approval	14 October 2009	23 September 2009	<input checked="" type="checkbox"/>
Issue Request for Tenders (RFT)	16 October 2009	16 October 2009	<input checked="" type="checkbox"/>
Tenders close	12 November 2009	12 November 2009	<input checked="" type="checkbox"/>
Council consider Award of Construction Contract	9 December 2009	9 December 2009	<input checked="" type="checkbox"/>
Expiry of PAN 90 day notification period	31 December 2009	31 December 2009	<input checked="" type="checkbox"/>
Minister/Governor determination of compulsory acquisition applications	27 January 2010	27 January 2010	<input checked="" type="checkbox"/>
Pipeline Construction	12 January 2011		<input type="checkbox"/>
Transfer Pump Station Construction	14 January 2011		<input type="checkbox"/>
Commissioning	19 April 2011		<input type="checkbox"/>
Project Completion	June 2011		<input type="checkbox"/>

Land Matters

- 55 privately owned properties require easements.
- 5 out of 6 agreements signed for additional land required for construction.
- Application notices for compulsory acquisition of easements issued to 22 landholders.
- Compulsory application notices lodged and approved by the Minister on 22 January, approved by the Governor on 27 January and gazetted on 29 January.
- 3 private and 1 Crown landholder easements have been compulsory acquired. For the remaining privately owned property requiring an easement, Council is continuing to negotiate an appropriate resolution, and will be seeking compulsory acquisition if an agreement cannot be reached prior to 31 March 2010.

	Properties	% Complete	Previous Report
Surveys completed	55	100%	100%
Valuations completed	55	100%	100%
Agreements signed	51	93%	93%
Easements compulsory acquired	3		
Land under negotiation	1		

Stakeholder Liaison

Community

- Displays at Erina Fair Shopping Centre (long-term display) and Karingong Tourist Centre. Undertaking discussion with Westfield Tuggerah and Lakehaven Shopping Centres regarding free space for displays during 2010.
- A media alert has been sent out to all local emergency services, schools and bus services advising stop/go controls associated with site establishment works.

- A media release was issued on the new 1800 phone number and website updates. The 1800 phone number is manned by John Holland Group for 24 hours per day. New business cards have also been printed to include the 1800 phone number.
- An expression of interest advertisement for soil disposal was placed in The Express on 26 February.
- A new Enquiries Register has been established. The Register is linked to the 1800 phone number and will track enquiries, complaints, questions and other issues from community, as well as how such enquiries are addressed.
- Radio and newspaper advertisements have been booked to promote the Open House Event on 6 March.
- Media releases have been issued in relation to lane closures and traffic control along Yarramalong Road as well as the Open House Event.
- An Open House was held on 6 March at Wyong Creek Hall.
- There has been a major update to the Mardi to Mangrove Link Project pages on the Joint Water Authority website.

Landholder

- There has been a bulk mail out to landholders advising the new 1800 phone number and Open House details.
- An article has been submitted for The Grapevine newsletter about the initial construction activities, new website pages and 1800 phone number. This also included a flyer for the Open House Event.
- Electronic message boards are in place along Yarramalong Road to alert residents of lane closures.
- An e-mail alert has been issued to local residents in relation to traffic conditions along Yarramalong Road.
- One correspondence item has been received in February.

Government

- Liaising with New South Wales Department of Environment, Climate Change and Water (DECCW) on finalising water licences upgrade applications.
- A letter was sent to all Local, State and Federal Members of Parliament inviting them to the Open House Event on 6 March.

Incidents

- There have been no OH&S or environmental incidents during the last reporting period.

Major Achievements / Issues

8.2 Mardi to Mangrove Link Project Status (contd)

The Project Team continues to achieve efficient project cost control through the following:

	<u>Estimated Benefit</u>
<ul style="list-style-type: none">• The Project Team re-negotiated for Public Works to utilise Council plant pool cars to effectively lower costs associated with travel/vehicle disbursements for the Public Works construction management team.	\$100 K
<ul style="list-style-type: none">• The Project Team has approached the Department of Environment, Water, Heritage and the Arts (DEWHA) to vary the funding deed and shift \$10 million from the construction to pre-construction phase. The key benefits of receiving the \$10 million earlier include significantly reduced interest charges and increased cash flow for Council as well as significantly lowering the risk that full Federal funding will not be utilised.	\$650 K
<ul style="list-style-type: none">• The Project Team has negotiated with DEWHA to remove the requirement for a Quantity Surveyor to certify progress claims as a result of Public Works being engaged for the construction management.	\$135 K
<ul style="list-style-type: none">• Local consultants have been sourced where possible.	\$150 K
<ul style="list-style-type: none">• Negotiated with GHD to decrease consultancy hourly rates.	\$30 K
<ul style="list-style-type: none">• Reduced numbers on core Project Team.	
<ul style="list-style-type: none">• Keeping tight control of weekly costs for consultant's fees.	

ATTACHMENTS

Nil.

8.3 Investments for January 2010

TRIM REFERENCE: f2004/06604 - D02160687

AUTHOR: HS

SUMMARY

The following report details Council's investments as at 31 January 2010.

RECOMMENDATION

That Council receive the report on Investments for January 2010.

BACKGROUND

Conservative management of Wyong Shire Council's (WSC) investment portfolio throughout the last financial year provided a defence against the world financial crisis. WSC's investments in managed funds were impacted by the loss of market confidence and liquidity and a hold-to-maturity strategy was adopted based on the underlying quality of investment assets.

The strategy has proven to be appropriate. Recovery of capital value has occurred and is expected to continue.

Council's investments are made in accordance with the Local Government Act (1993), the Local Government (General) Regulation (2005), Council's Investment Policy and the Minister for Local Government's Investment Order issued in August 2008.

CURRENT STATUS

In January 2010, the total net return was \$0.80m consisting of interest earnings \$0.43m and capital gains \$0.37m. Council's total investments as at January 2010 are summarised in Table 1 and detailed in Attachment 1.

Table 1 Investment Portfolio by Risk Category

	January 2010 \$ '000	Year-to-Date Returns		
		Total %	Interest Only \$ '000	Interest Only %
Cash at Call	13,220	4.56	590	4.56
Term Deposits	48,654	4.72	1,394	4.72
Cash Plus Funds	6,874	12.34	42	0.84
Cash Management Funds	21,963	12.87	807	5.81
Enhanced Income Funds	13,963	13.98	358	4.60
Total Investments	104,674	7.88	3,191	4.60

8.3 Investments for January 2010 (contd)

Favourable year-to-date returns of 7.88% (total) reflect WSC's capital recovery and compares at par with the year-to-date UBSA Bank Bill Index of 3.51%.

Investment transactions and earnings during January 2010 are shown in Table 2 Portfolio Performance.

WSC's investments have regained \$2.23m in value from the 2008-09 year end position – the recovery being equivalent to 56% of the paper losses in the previous financial year. WSC's continued hold-to-maturity strategy continues to be the preferred option in the recovering market environment.

Table 2 Portfolio Performance

	July - Sept 2009 \$m	Oct - Dec 2009 \$m	January 2010 \$m	Year to Date 2009/10 \$m
<i>Movement in Assets</i>				
Opening Balance	99.22	130.02	118.03	99.22
Capital Gain/Loss – (see below)	1.39	0.47	0.37	2.23
Net Cash/Investments(Withdrawals)	29.41	-12.46	-13.73	3.22
Closing Balance	130.02	118.03	104.67	104.67
<i>Trading Position</i>				
Capital Gain/(Loss) Realised	-	-	-	-
Capital Gain/(Loss) Unrealised	1.39	0.47	0.37	2.23
Interest Earnings	1.47	1.29	0.43	3.19
Total Return for Period	2.86	1.76	0.80	5.42

Interest Returns

Interest returns year-to-date continue above budget by \$0.51m reflecting the general recovery of the financial markets. From WSC's internal viewpoint the benefits of improved returns accrue mainly to restricted funds for sewerage and section 94 expenditure.

WSC's holdings in managed funds and the manner in which interest on these funds is distributed makes it difficult to predict future favourability of interest earnings in terms of timing and month. However, term deposits (other than the Workcover deposit) continue to yield above the Union of Switzerland Australia (UBSA) Bank Bill Index for January with investments ranging between 4.30% to 6.50% against the benchmark for the month of 4.16%.

Table 3 Interest Only Performance at 31 January 2010

Investment Source	YTD Budget \$ '000	YTD Actual \$ '000	Var. \$ '000
General Fund	1,430	1,700	270
Water (all)	263	313	50
Sewerage (all)	991	1,178	187
Total	2,684	3,191	507

Black Rock Care and Maintenance Fund

The return for the month of January was an overall gain of \$0.15m. Total capital gains continue to be positive for the year to date being \$0.96m.

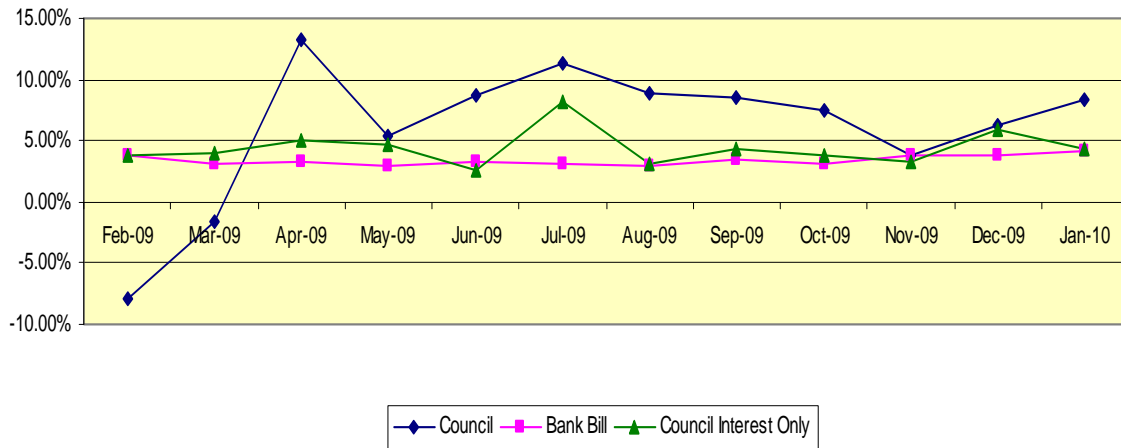
Regular close monitoring of the status of this investment continues and, over time, the “hold to maturity” strategy is seeing positive gains as markets have improved.

Benchmark - Monthly Returns (Annualised)

Council’s overall investment return is compared to the UBSA Bank Bill Index. This is a common benchmark used in Local Government and establishes a minimum performance level.

A graph detailing the monthly return on a 12 monthly basis is as follows:

Table 4 Monthly Annualised Returns (Interest and Capital Movements) Portfolio Performance Comparison to UBSA Bank Bill Index



Council: Council Total Return (Interest and Capital)
Bank Bill: UBSA Bank Bill Index
Council Interest Only: Council Interest Earnings

INVESTMENT STATEMENT

In accordance with the Local Government (General) Regulation 2005, Part 9, Division 5, Clause 212, it is certified that the investments held as at 31 January 2010 have been made in accordance with the Act, the Regulations and Council's Investment Policies.

CONCLUSION

The year end accounts for 2008-09 recognised all unrealised losses in full however as these assets improve in value they will re-appear in the accounts and be recognised as income in forthcoming periods. It should be noted this does not translate to surplus income in real terms.

ATTACHMENTS

- 1 Summary of Investments By Type As at 31 January 2010 D02160680

Wyong Shire Council
Summary of Investments - By Type
As at 31 January 2010

FUND MANAGER	MATURITY	PORTFOLIO BALANCE \$	INCOME FOR MONTH \$	YIELD % p.a.
CASH AT CALL:				
ANZ High Yield Cash Account (AA)	Daily	13,219,645	150,533	3.87
BT Institutional Managed Cash (AAA)	Daily	-	-	-
Total Cash At Call		13,219,645	150,533	
TERM DEPOSITS & BONDS				
T-Corp (WorkCover NSW)	02/03/2010	9,460,000	31,334	3.90
BankWest Term Deposit	04/01/2010	-	1,414	4.30
NAB Term Deposit	12/01/2010	-	14,137	4.30
ANZ Term Deposit	12/01/2010	-	6,986	4.25
SunCorp Term Deposit	18/01/2010	-	10,726	4.35
SunCorp Term Deposit	28/01/2010	-	18,308	4.95
CitiBank Term Deposit	25/02/2010	4,000,000	18,345	5.40
Allied Irish Term Deposit	25/02/2010	4,000,000	18,107	5.33
BankWest Term Deposit	13/04/2010	5,000,000	13,565	5.50
NAB Term Deposit	05/07/2010	5,000,000	19,726	6.00
Bank of Qld Term Deposit	12/07/2010	5,000,000	20,712	6.30
Allied Irish Term Deposit	12/07/2010	5,000,000	15,041	6.10
SunCorp Term Deposit	19/07/2010	5,000,000	16,027	6.50
SunCorp Term Deposit	26/11/2010	2,000,000	10,701	6.30
Westpac Deposit Bond	24/09/2012	4,194,455	24,834	5.13
Total Term Deposit & Bonds:		48,654,455	239,963	
CASH PLUS:				
Aberdeen Cash Plus Fund (A)	To be liquidated - Schedule in place	6,853,635	60,559	8.67
ING Enhanced (A)	To be liquidated - Fund Termination in Process.	20,145	150	0.03
LGFS 12-Month Cash Facility	Open Ended	-	-	-
Total Cash Plus		6,873,780	60,709	
CASH MANAGEMENT FUNDS:				
BlackRock Care & Maintenance Fund	June 2015 (Estimate)	9,965,411	153,842	12.61
LGFS Fixed Out-Performance Cash Fund (AA-f)	Open Ended	11,998,077	46,511	4.68
Total Cash Management Funds		21,963,488	200,353	
ENHANCED INCOME:				
Macquarie Income Cash Plus (A)	Open Ended	13,962,540	153,838	17.67
Total Enhanced Income		13,962,540	153,838	
TOTAL		104,673,908	805,396	

8.4 Outstanding Questions Without Notice and Notices of Motion

TRIM REFERENCE: F2010/00009 - D02162698

AUTHOR: SW

SUMMARY

Report on outstanding Questions Without Notice and Notices of Motion.

RECOMMENDATION

That Council receive the report on Outstanding Questions Without Notice and Notices of Motion.

Question Asked / Councillor	Department	Meeting Asked	Status
Q64/10 – Parking Code Review <i>“Can staff advise if the Parking Code Development Control Plan Chapter is scheduled for review in the near future?”</i>	Shire Planning	10 February 2010 Cr Eaton	A response will be submitted to Council's meeting of 24 March 2010.
Q65/10 – Old Warnervale Public School <i>“Could staff ask the Department of Education how long it will take to demolish the buildings gutted by fire at the old Warnervale Public School?”</i>	Shire Planning	10 February 2010 Cr McNamara	A response will be submitted to Council's meeting of 24 March 2010.

8.4 Outstanding Questions Without Notice and Notices of Motion (contd)

Notice of Motion	Department	Meeting Resolved	Status
<p>326 - National Natural Disaster Funding</p> <p>1 <i>That Council, via the Federal Local Members, request National Natural Disaster Funding include coastal erosion events and Council expenditure on preventative and remedial action.</i></p> <p>2 <i>That the Local Government Association via its annual conference be invited to support this initiative</i></p> <p>3 <i>That a further report be brought back to Council on information on predication on climate change impacts as a result of studies being undertaken by consultants in conjunction with the Coastal Hazard Study.</i></p>	Shire Planning	8 August 2007 Cr Eaton / Cr Best	<p>Letter sent to Local Government Association (LGA) applying for funding. Reply received advising Council was unsuccessful. Letter sent to the LGA requesting coastal erosion and risk management issues to be included in future funding. No response received.</p> <p>A report will be submitted to Council once the project plan for the Coastline Management Plan has been finalised.</p>
<p>298 - The Long Jetty Commercial Options Initiative</p> <p>1 <i>That Council receive a briefing as part of the Long Jetty master planning that will occur following the potential adoption The Entrance Long Jetty Strategy on the permissibility and benefits / disbenefits of considering sub leasing (subject to Departmental approval) an area of the Long Jetty to cater for a commercial operation such as a cafe with possible education aspects.</i></p> <p>2 <i>That any economical benefit derived from this activity be allocated to the maintenance and upkeep of the Long Jetty.</i></p>	Shire Planning	25 June 2008 Cr Best / Cr Eaton	Currently preparing the project Management documentation to initiate the commencement of the project for masterplanning the Long Jetty Village Centre. This project will consider the matters raised in Council's resolution. Staff are prepared to brief Council during the third quarter of this budget year. However, the briefing will be subject to availability of briefing times.

8.4 Outstanding Questions Without Notice and Notices of Motion (contd)

Notice of Motion	Department	Meeting Resolved	Status
<p>9.4 – Council’s Animal Care Facility Review</p> <p>1 <i>That Council acknowledge the strategic and operational review of the Animal Care Facility undertaken by the Regulation and Compliance Unit in late 2008.</i></p> <p>2 <i>That Council reiterate the earlier congratulations extended to the Manager of Regulation and Compliance and his team for “the complex review” undertaken which led to the Wyong Animal Care Facility “being nationally identified as a best case example of restructure and operation” as advised by Councillor Best in his Question Without Notice to the Ordinary Meeting held on 12 November 2008.</i></p> <p>3 <i>That staff report to Council on further options for the future management of the facility following the completion of the RSPCA’s strategic review of its operations which Council is advised will take approximately 12 months.</i></p> <p>4 <i>That in response to the success of the joint efforts of staff and animal rescue groups resulting in increased re-homing rates, Council acknowledge the need to provide additional kennels and cattery space and therefore give consideration to the provision of capital funds for the extension of the facility as part of its consideration of the 2009-10 Management Plan. However, should additional funds be voted, that the expenditure of such funds not occur until the outcome of the RSPCA strategic review.</i></p> <p>5 <i>That Council embark on a public awareness campaign focusing on responsible pet ownership.</i></p>	<p>Shire Planning</p>	<p>25 February 2009 Cr Best / Cr Matthews</p>	<p>Briefing held during Councillor weekend workshop. – a report will be submitted to 24 March 2010.</p>

8.4 Outstanding Questions Without Notice and Notices of Motion (contd)

Notice of Motion	Department	Meeting Resolved	Status
<p>9.2 – Notice of Motion – Community Gardens</p> <p><i>That Council develop a Strategic Policy for Community Gardens which involves the following:</i></p> <ol style="list-style-type: none"> 1 <i>That a policy to support the development of Community Gardens be formulated for Wyong Shire. This policy shall be guided by the following requirements:</i> <ol style="list-style-type: none"> a <i>Establish community gardens in new and existing residential areas in partnership with local residents.</i> b <i>Ensure that sufficient land is made available in newly planned residential areas to provide for community gardens, within planned open space areas.</i> c <i>The policy should provide opportunities to retrofit community gardens in established residential areas where it can be established that there is sufficient community will and interest to justify one.</i> d <i>That clearly identifies Council's roles and responsibilities.</i> 2 <i>That Council identify funding opportunities eg grants and other forms of in kind assistance to help community groups.</i> 3 <i>That the process for establishing community gardens be simplified by providing information to assist community groups in being able to meet Council requirements. This would involve the identification of suitable land upfront by Council and providing documentation which carefully explains what is needed in terms of development consent, consultation processes with nearby residents/competing user groups for existing open space, land leasing requirements and insurance liability requirements.</i> 4 <i>That this policy be prepared by the Shire Planning Department and submitted to Council for consideration.</i> 5 <i>That the policy be developed in partnership with the Community Development Unit.</i> 	<p>Shire Planning</p>	<p>22 July 2009 Cr Wynn / Cr Graham</p>	<p>A report will be prepared for Council's consideration once community consultation has been completed.</p> <p>The draft Policy has been incorporated within the Legal and Policy Unit Work Program to be developed in the third quarter of 2009-10.</p>

8.4 Outstanding Questions Without Notice and Notices of Motion (contd)

Notice of Motion	Department	Meeting Resolved	Status
<p>9.3 - Notice of Motion - Review of All Boat Ramps with Lake Macquarie Frontage.</p> <p><i>That Council conduct an audit/review of all boat ramps and adjacent infrastructure in those areas of Wyong Shire that have frontage to Lake Macquarie.</i></p>	Shire Planning	26 August 2009 Cr Symington / Cr Graham	A report has been prepared for 24 March 2010 Council Meeting following a Councillor Briefing.
<p>8.1 - Notice of Motion – Energy Reduction Targets</p> <p><i>That the Shire Planning Department, in consultation with Shire Services Department, provide a report to Council that outlines the implications (social, economic and environmental) of applying a minimum 30% reduction by 2030 or earlier in greenhouse emissions based on 1999-2000 performance levels to:</i></p> <ul style="list-style-type: none"> • <i>the top 10 sites for energy consumption as identified in Council's Energy Saving Action Plan (as these sites consume two-thirds of all electricity consumed by Council);</i> • <i>vehicle and small plant fleet; and</i> • <i>Buttonderry landfill site.</i> <p><i>Further, that the report include the implications (social, economic and environmental) of achieving carbon neutrality for these sites and activities by 2050 based on 1999-2000 performance levels.</i></p> <p><i>The report is to take into account but not be limited to, the effects of population growth, drought mitigation actions and staff retention and attraction issues.</i></p>	Shire Planning	9 September 2009 Cr Wynn / Cr Best	This report has not been finalised due to other earlier priorities such as Climate Change requiring an additional resource. A secondment from Shire Services has now commenced to ensure that a Councillor Briefing and report can be presented in April.
<p>8.2 - Possibility for the Establishment of an Environmental Committee</p> <p><i>That the Shire Planning Department provide a report that outlines the possibilities for establishment of an Environment Committee.</i></p>	Shire Planning	9 September 2009 Cr Wynn / Cr Best	A report to be submitted to Council's meeting on 24 March 2010.

8.4 Outstanding Questions Without Notice and Notices of Motion (contd)

Notice of Motion	Department	Meeting Resolved	Status
<p>U17/09 - Motion of Urgency - Proposed Sale Of Lot 83 DP 27286 Charmhaven Avenue And Lot 94 Section 1 DP 11824 Moala Parade, Charmhaven</p> <p><i>That Council defer the sale of Lot 83 DP27286 Charmhaven Avenue, Charmhaven and Lot 94 Section 1 DP 11824 Moala Parade, Charmhaven pending;</i></p> <p><i>a the submission of a report by local residents regarding the use of these two blocks;</i></p> <p><i>b an opportunity being given to the local residents to address Councillors at a future resident's forum;</i></p> <p><i>c a report from staff in regard to the submission by local residents. This report is also to include a list (developed in consultation with the broader community of Charmhaven and Lake Haven) of potential projects that could be funded from the proceeds of the sale if it proceeds.</i></p> <p><i>d a report about alternative uses of the land such as the path combined with a park or community garden retaining as much of the old growth as possible.</i></p>	<p>Corporate Services</p>	<p>14 October 2009 Cr Vincent / Cr Symington</p>	<p>Wider consultation to be conducted and reported to Council's meeting on 24 March 2010.</p>
<p>8.1 - Notice of Motion – Shire Civic Garden</p> <p><i>1 That Council consider the creation of a civic garden within the Shire that consists predominantly of native plantings</i></p> <p><i>2 That Council staff provide a report by March 2010 on the implementation cost, maintenance, including planting and/or maintenance, by local garden clubs and/or land care groups/schools/communities.</i></p>	<p>Shire Planning</p>	<p>11 November 2009 Cr Vincent / Cr Matthews</p>	<p>A report to be submitted to Council's meeting on 24 March 2010.</p>

8.4 Outstanding Questions Without Notice and Notices of Motion (contd)

Notice of Motion	Department	Meeting Resolved	Status
<p>8.4 - Notice of Motion – Proposed Additional Development Policy</p> <p>1 <i>That taking into account the unsightly appearance of a number of unfinished and empty buildings throughout the Shire, that staff develop a policy that can be integrated into the relevant chapters of Development Control Plan 2005.</i></p> <p>2 <i>That the draft policy be written to apply to major residential, commercial and industrial development.</i></p> <p>3 <i>That the provisions of the policy include:</i></p> <p style="margin-left: 20px;">a <i>objectives relating to ensuring visual amenity is maintained should buildings remain unfinished or empty;</i></p> <p style="margin-left: 20px;">b <i>requirements for ensuring visual amenity by way of hoardings, landscape buffers, painting and / or other means of screening; and</i></p> <p style="margin-left: 20px;">c <i>a focus on buildings located within town centres and on major roads within the Shire.</i></p> <p>4 <i>That the draft policy be reported back to Council for consideration.</i></p>	Shire Planning	11 November 2009 Cr Best / Cr Webster	The drafting of this policy has been placed on Legal and Policy Works program for 2010/2011. Commencement of drafting this policy will occur when current projects are completed.
<p>10.2 - Notice of Motion - Pilot Program for Construction of Local Footpaths by Work for the Dole Recipients</p> <p><i>That Council <u>prepare</u> a report, working within the existing Federal Government framework, for the implementation of a pilot program for the construction of local footpaths using “Work for the Dole” recipients.</i></p>	Shire Services	9 December 2009 Cr Symington/ Cr Wynn	A report will be submitted to Council on 24 March 2010.

8.4 Outstanding Questions Without Notice and Notices of Motion (contd)

Notice of Motion	Department	Meeting Resolved	Status
<p>5.1 - Notice of Motion – Planning Disputes Mediation Process Trial</p> <p>1 That Council <u>recognise</u> in principle that the establishment of a Mediation process may reduce litigation and expedite dispute resolution in appropriate cases.</p> <p>2 That Council <u>receive</u> a report on the establishment of a Mediation process. The report should include the following:</p> <p>a A review of “best practice” mediation committees / mediation processes operating elsewhere.</p> <p>b A review of practices / procedures / committees operating in adjoining Councils.</p> <p>c The means of ensuring compliance of such a committee with Department of Local Government guidelines, ICAC guidelines, applicable legislation and Code of Conduct.</p>	Shire Planning	<p>10 February 2010</p> <p>Cr Eaton / Cr Graham</p>	A report is being prepared and will be submitted to Council once investigations have been completed.
<p>5.2 - Notice of Motion – Elected Council Independent Legal Advisor</p> <p>1 That Council <u>invite</u> tenders from separate independent firms of solicitors to advise the Mayor and Councillors in those circumstances where the interests of the staff and the elected Council may not be identical or in cases where Council wishes to seek further legal opinion.</p> <p>2 That Council <u>receive</u> quarterly reports on expenditure and information on general details of the matters on which legal advice has been sought.</p>	Shire Planning	<p>10 February 2010</p> <p>Cr Eaton / Cr Graham</p>	Discussions regarding tender process have commenced. Councillors will be notified via a Business Update when Tenders have been called.
<p>5.3 - Notice of Motion – Warnervale Airport and Associated Lands</p> <p>That staff <u>report</u> to Council generally on the history and legal status of the Warnervale airport including the impact of the Warnervale Airport Restrictions Act.</p>	Shire Planning	<p>10 February 2010</p> <p>Cr Best / Cr Eaton</p>	A report will be submitted to Council on 28 April 2010.

8.4 Outstanding Questions Without Notice and Notices of Motion (contd)

Questions Without Notice and Notices of Motion Removed from the Above Lists since the Previous Meeting

Question without Notice / Notice of Motion	Date Asked / Resolved	Outcome
Q61/10 - Upgrade of the Pacific Highway through Wyong township	27 January 2010 Cr Eaton	Response included in this business paper.
Q63/10 – Schedule of Joint Meetings between Wyong and Gosford Councils for 2010	10 February 2010 Cr Eaton	Response included in this business paper
<p>10.2 – Notice of Motion –Review of Fees for Home Buyers</p> <p>1 <i>That Council work with the State and Federal Governments to ensure affordable housing for first home buyers.</i></p> <p>2 <i>That Council make representations to the Minister for Planning seeking her agreement to exempt development within the Shire from the requirement to contribute to Special Infrastructure Contributions which are levied on new development to fund State infrastructure and services.</i></p> <p>3 <i>That Council convene workshop(s) with senior staff and Councillors, as soon as practicable, to consider how Council could assist increasing affordability for first home buyers.</i></p>	<p>12 August 2009 Cr McBride / Cr Matthews</p>	<p>Briefing conducted during Councillor weekend workshop 20/21 February 2010.</p>
<p>10.3 – Notice of Motion – Aged Housing Strategic Planning</p> <p>1 <i>That Council recognise the domination of aged housing in its “Greenfield” urban release areas as reported in Question Without Notice No 038.</i></p> <p>2 <i>That Council acknowledge that this proliferation of aged housing dictates changes to Council’s strategic plans for these areas including, for example, sporting facility provision, employment and commercial lands, community service provisions etc.</i></p> <p>3 <i>That Council convene workshop(s) with senior staff and Councillors as soon as practicable to consider changes to Council plans relevant to this significant demographic shift.</i></p>	<p>12 August 2009 Cr Eaton / Cr Wynn</p>	<p>Briefing conducted during Councillor weekend workshop 20/21 February 2010.</p>

ATTACHMENTS

Nil.

9.1 Answers to Question Without Notice

TRIM REFERENCE: F2004/13054 - D02153396 AUTHOR: RB

9.1 Q61/10 - Upgrade of the Pacific Highway through Wyong Township

The following question was asked by Councillor Doug Eaton at the Ordinary Meeting on 27 January 2010:

“Could staff advise on the progress, or non progress, of the RTA’s upgrade of the Pacific Highway through Wyong township?”

Council staff held a meeting with RTA Engineers on 1 February 2010 to obtain an update on the status of the project. The RTA Engineers advised that:

- The RTA’s planning has been delayed due to the Department of Planning (DoP) investigating the Tuggerah Town Centre proposals by Westfields. The RTA had requested the DoP carry out appropriate traffic modelling and studies to determine the anticipated traffic volumes from the proposed Tuggerah developments. This was to identify the additional traffic generated by the developments along the Pacific Highway, through Wyong. The RTA has only just received that information, and they are now revising its previous traffic reports for the Highway through Wyong.
- Whilst RTA has been waiting for the traffic report from the DoP, the RTA has been undertaking further design work. At the meeting, Council staff identified a number of issues that the RTA needs to take into account. These included right turn movements to and from Howarth St and right turns into and out of the Town Centre (Council Office, Court House and Wyong Central Plaza).

The RTA requested Council forward the latest information it had on anticipated future developments within the Wyong Township area.

Due to the additional traffic analysis required, the RTA is unable to give any indication as to when it is likely to have a proposal for public exhibition. The RTA will continue to discuss technical issues at Council staff level. A briefing of the Councillors will be arranged once Council staff are satisfied with the traffic analysis and further designs have been completed by the RTA.

ATTACHMENTS

Nil.

9.2 Answers to Question Without Notice

TRIM REFERENCE: F2004/13176 - D02166311 AUTHOR: MR

9.2 Q63/10 - Schedule of Joint Meetings between Wyong and Gosford Councils for 2010

The following question was asked by Councillor Eaton at the Ordinary Meeting on 10 February 2010:

“Can I be advised when the next Joint Council Meeting is proposed and indeed the second meeting for 2010?”

A joint meeting of Wyong Shire and Gosford City Councils is tentatively scheduled for Thursday 18 March 2010 at Wyong. Since there is no specific schedule for these Joint Meetings, no further dates have been set as this is usually an adhoc arrangement.

ATTACHMENTS

Nil.

10.1 Notice of Motion - LDO Coal Chain Valley Bay Colliery

TRIM REFERENCE: F2006/00261 - D02159640

AUTHOR: SW

Councillors Wynn, Symington and Vincent have given notice that at the Ordinary Meeting to be held on 10 March 2010 they will move the following Motion:

"That Wyong Shire Council:

- 1 *Take all steps possible to make LDO Coal Chain Valley Colliery exclude any mine operations under residential and/or commercial areas*
- 2 *Request that LDO Coal Chain Valley Colliery undertake and provide a work as executed survey to establish the extent of past mining as mining in the past has exceeded the boundaries of the mining leases.*
- 3 *Seek an independent surveyor provide the monitoring data for regular review, to establish that once mining has commenced it is within its bounds and specified extraction amounts in accordance with lease conditions. Results to be reported to the Council and the community. Cost to be borne by LDO Coal.*
- 4 *Inform the State Government Department of Planning of the LDO Coal Chain Valley Coal Project to take it into account in their proposed North Wyong Structure Plan.*
- 5 *Conduct an audit and survey of Wyong Shire Council's roads and infrastructure in the affected area in order to be able to assess the impact of LDO Coal Chain Valley Coal Project on them for adequate reparation, if required. The conditions of approval should include the appropriate dilapidation reporting and monitoring with this validation cost to be borne by LDO Coal.*
- 6 *Have LDO Coal seek alternative transport for their coal to the Newcastle port due to the safety issues and concerns for damage to Rutley's Road due to the increased volume of coal truck movements on the suburban road.*
- 7 *Nominate a Councillor delegate as Council's representative on the Chain Valley Coal Project Stakeholder Reference Group."*

COUNCILLORS' NOTE

Chain Valley Bay suffered subsidence after the then State-owned company Elcom mined the Newvale Colliery illegally, causing a section of the Lake Macquarie shoreline to sink into the lake. About 300 homes were affected, some were completely destroyed while others continue to sink and crack. The subsidence was both lateral and vertical.

Subsidence is ranked in a preliminary report as a medium risk.

10.1 Notice of Motion - LDO Coal Chain Valley Bay Colliery (contd)

LDO Coal is seeking mining approvals to mine for the next 21 years. It wants to increase coal production from 750 000 tonnes to 1.2 million tonnes a year in the Chain Valley Bay Colliery.

Truck movements will increase from 75 to 270 movements/day with a possible maximum peak of 540 movements/day. This will result in a huge increase in truck traffic volumes along Rutley's Road, the Pacific Highway and the F3 Freeway to the coal port in Newcastle.

10 March 2010
To the Ordinary Meeting

Director's Report
Councillor

10.2 Notice of Motion - Outstanding Mine Subsidence Claims Chain Valley Bay South

TRIM REFERENCE: F2006/00246 - D02159651

AUTHOR: SW

Councillors Wynn, Symington and Vincent have given notice that at the Ordinary Meeting to be held on 10 March 2010 they will move the following Motion:

“That Wyong Shire Council make urgent and pressing representations to the State Government representatives, the Hon Ian MacDonald, Minister for Minerals and Forest Resources, Minister for the Central Coast, David Harris, Member for Wyong and Parliamentary Secretary for the Central Coast and Robert Coombs, Member for Swansea and the Mine Subsidence Board to finally settle the remaining outstanding mine subsidence claims by residents of Chain Valley Bay South”.

10.3 Notice of Motion - Fuel Efficient Fleet

TRIM REFERENCE: F2009/01484 - D02168948

AUTHOR: DE

Councillor Eaton has given notice that at the Ordinary Meeting to be held on 10 March 2010 he will move the following Motion:

- "1 That Council report on current initiatives of moving its motor vehicle fleet towards greater fuel efficiency.*
- 2 That Council develop a policy on trialling the use of new fuel efficient vehicles including, hybrid, electric and diesel and offer emerging technologies in its fleet including reporting on running costs, capital costs etc in a publicly accessible way for the benefit of our community."*

10.4 Notice of Motion - Amendment to General Manager's delegations

TRIM REFERENCE: F2009/00067 - D02168994

AUTHOR: BG

Councillor Graham has given notice that at the Ordinary Meeting to be held on 10 March 2010 he will move the following Motion:

- "1 That on the basis that individual Councillors have called up a number of Development Applications to Council for determination (19 in total to date) due to those developments being affected by sea level rise benchmarks mandated by the State Government, Council amend the delegations of the General Manager to require that any Development Application affected by those benchmarks be determined by the full Council.*
- 2 That this amendment to the General Manager's delegations apply until such time as the Council adopts a Climate change Policy."*

10.5 Notice of Motion - Traffic Gridlock San Remo

TRIM REFERENCE: C2010/05521 - D02169549

AUTHOR: GB; JM

Councillors Best and McNamara have given notice that at the Ordinary Meeting to be held on 10 March 2010 they will move the following Motion:

- 1 *“That Council note the unacceptable traffic congestion currently being experienced in the vicinity of the new Northlakes Shopping Centre as a result of the RTA’s recently approved works and that the RTA is the sole consent authority.*
- 2 *That Council as a matter of urgency request the RTA to advise what remedial works they propose to be conducted at the new intersection at the Northlakes shops and the light phasing at the intersection of Goorama and Colorado (Bokhara Avenue) to achieve their original intended design flow objectives.*
- 3 *That to avoid confusion, Council erect appropriate signage in the general vicinity to advise motorists that the Pacific Highway is the responsibility of the RTA.”*