



To increase understanding of our general operations and wide range of services, we ran tours, open days and special events during Local Government Week, 3 – 8 August.

ORDINARY MEETING

12 August 2009



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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 12 AUGUST 2009 at **5.00 pm,**
for the transaction of the business listed below:

OPENING PRAYER

ACKNOWLEDGEMENT OF COUNTRY

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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: f2009/00008 - D01969823

AUTHOR: MR

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: F2009/00008 - D01969830

AUTHOR: MR

SUMMARY

Inspections held on 29 July and 5 August 2009 are listed as follows:

Date of Inspection	Location	Requested By
29 July 2009	DA 382/2009 - Boundary Adjustment Corona Lane, Glenning Valley (Previously inspected 19 November 2008)	Director Shire Planning
29 July 2009	DA 525/2009 - Proposed Torrens Title Subdivision Wyong Road Killarney Vale	Director Shire Planning
29 July 2009	Upgrade of Existing Boat Ramp, Seawall and Roadworks at Picnic Point, The Entrance.	Director Shire Services
29 July 2009	DA 1300/2008 - 41 Hutton Road, The Entrance North – Dwelling.	Director Shire Planning
5 August 2009	Rouse Hill Town Centre, Sydney.	Director Shire Planning

RECOMMENDATION

That Council receive the report on Inspections.

1.3 Address By Invited Speakers

TRIM REFERENCE: F2009/00008 - D01970031

AUTHOR: MR

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 standing orders be varied to allow reports from Director's and/or the General Manager to be dealt with following an Invited Speaker's address.*

12 August 2009
To the Ordinary Meeting

Procedural Item
Corporate Services Department

1.4 Confirmation of Minutes of Previous Meeting

TRIM REFERENCE: F2009/00008 - D01971656

AUTHOR: MR

SUMMARY

Confirmation of minutes of the previous Ordinary Meeting of Council held on 22 July 2009.

RECOMMENDATION

That Council confirm the minutes of the previous Ordinary Meeting of Council held on 22 July 2009.

ATTACHMENTS

1 Minutes of Ordinary Meeting held on 22 July 2009 D01973605

WYONG SHIRE COUNCIL
MINUTES OF THE
ORDINARY MEETING OF COUNCIL
HELD IN THE COUNCIL CHAMBER
WYONG CIVIC CENTRE, HELY STREET, WYONG
ON WEDNESDAY, 22 JULY 2009,
COMMENCING AT 5.01 PM

PRESENT

COUNCILLORS R L GRAHAM (CHAIRPERSON), D J EATON, E M McBRIDE, J J McNAMARA, L A MATTHEWS, W R SYMINGTON, D P VINCENT, L D WEBSTER AND S A WYNN.

IN ATTENDANCE

GENERAL MANAGER, DIRECTOR SHIRE SERVICES, DIRECTOR SHIRE PLANNING, DIRECTOR CORPORATE SERVICES, ACTING MANAGER DEVELOPMENT ASSESSMENT, MANAGER PLANNING – LEGAL AND POLICY, PROJECT DIRECTOR AND THREE ADMINISTRATION STAFF.

MANAGER CONTRACTS, SENIOR PLANNER AND DEVELOPMENT PLANNER.

THE MAYOR INVITED COUNCILLORS TO REPORT ON EVENTS THEY HAD ATTENDED ON COUNCIL'S BEHALF AS FOLLOWS:

COUNCILLOR WYNN PROVIDED AN UPDATE ON THE 36TH ANNUAL GARDEN COMPETITION COMMENTING THAT THIS YEAR EXPANDED ENTRIES HAD BEEN RECEIVED AND NEW SECTIONS HAD BEEN ADDED TO CATER FOR THE CHANGING CULTURE IN AUSTRALIA. COUNCILLOR WYNN ASKED FELLOW COUNCILLORS TO PROMOTE THE COMPETITION DURING ANY PUBLIC MEETINGS THEY ATTEND AND FURTHER COMMENTED THAT THE ORGANISERS ARE A DEDICATED GROUP OF PEOPLE AND WISHED THEM WELL.

THE MAYOR, COUNCILLOR GRAHAM, DECLARED THE MEETING OPEN AT 5.01 PM AND ADVISED IN ACCORDANCE WITH THE CODE OF MEETING PRACTICE THAT THE MEETING IS BEING RECORDED.

JOHN HARDWICK DELIVERED THE OPENING PRAYER AND READ AN ACKNOWLEDGMENT OF COUNTRY STATEMENT.

APOLOGY

AN APOLOGY FOR THE INABILITY TO ATTEND THE MEETING WAS RECEIVED ON BEHALF OF COUNCILLOR BEST WHO IS CURRENTLY OVERSEAS ON ANNUAL LEAVE.

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

That the apology be accepted and leave of absence from the meeting be granted.

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

AGAINST: NIL.

1.1 Disclosure of Interest

9.4 NOTICE OF MOTION - YOUTH EMPLOYMENT TARGET

COUNCILLOR EATON DECLARED A NON-PECUNIARY INSIGNIFICANT CONFLICT OF INTEREST IN THE MATTER FOR THE REASON THAT HE IS THE CHAIR OF CENTRAL COAST GROUP TRAINING LTD AND PARTICIPATED IN CONSIDERATION OF THIS MATTER.

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 PUBLIC AND PRIVATE DUTY ARE NOT IN CONFLICT AND IT IS A NON REMUNERATED POSITION."

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

That the report on Disclosure of Interest be received and advice of disclosure noted.

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

AGAINST: NIL.

1.2 Proposed Inspections

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

That Council receive the report on Proposed Inspections, with the inclusion of the boat ramp, seawall and roadworks at Picnic Point, The Entrance.

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

AGAINST: NIL.

1.3 Address By Invited Speakers

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

That Council receive the report on Invited Speakers and the fact that no speakers were present be noted.

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

AGAINST: NIL.

1.4 Confirmation of Minutes of Previous Meeting

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

That Council confirm the minutes of the previous Ordinary Meeting of Council held on 8 July 2009.

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

AGAINST: NIL.

BUSINESS ARISING FROM THE MINUTES

THERE WAS NO BUSINESS ARISING FROM THE MINUTES.

2.1 Notification of Dwellings Not Required to be Notified Under Chapter 70

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

- 1 That Council receive the report on Notification of Dwellings not Required to be Notified Under Chapter 70.**
- 2 That Council adopt Option 1 as contained in this report as Council's procedure for the notification of single storey dwelling houses that are otherwise exempt from notification under DCP 2005, Chapter 70.**

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

AGAINST: NIL.

2.2 E1 - Erosion and Sedimentation Control Policy

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

- 1 That Council adopt the updated Draft E1- Erosion and Sedimentation Control policy and appropriate public notice be given.**
- 2 That Council's policy manual be updated accordingly and Policy E1 be made available to the public and staff via Council's webpage following adoption.**

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

AGAINST: NIL.

3.1 Acquisition of Easements and Land for Warnervale Town Centre Sewerage Infrastructure at Sparks Road, Virginia Road, Warnervale Road and Minnesota Road

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

- 1 That Council acquire easements to drain sewage, generally 5m wide over the following land:**

Lot 38 DP 7091	90-100 Minnesota Road, Hamlyn Terrace
Lot 49 DP 7091	107-171 Virginia Road, Warnervale
Lot 14 DP 371162	112-116 Warnervale Road, Hamlyn Terrace
Lot 101 DP 829060	93-123 Warnervale Road, Hamlyn Terrace
Lot 3 DP 559441	38-58 Virginia Road, Hamlyn Terrace
Lot 42 DP 7091	102-112 Minnesota Road, Hamlyn Terrace
Lot 1E DP 24673	30-34 Virginia Road, Hamlyn Terrace
Pt Lot 3 DP 748588	98 Sparks Road, Hamlyn Terrace
Lot 45 DP 7091	121-131 Minnesota Road, Hamlyn Terrace
Lot 48 DP 7091	107-171 Virginia Road, Warnervale
Lot 111 DP 705880	10-28 Virginia Road, Hamlyn Terrace
Lot 1 DP 700096	119-121 Sparks Road, Woongarra
Lot 41 DP 7091	109-119 Minnesota Road, Hamlyn Terrace
Lot 36 DP 7091	100-134 Virginia Road, Hamlyn Terrace
Lot 40 DP 7091	100-134 Virginia Road, Hamlyn Terrace
Lot 44 DP 7091	100-134 Virginia Road, Hamlyn Terrace

- 2 That Council acquire part of Lot 48 DP 7091, 107-171 Virginia Road, Warnervale for a sewerage pump station.**
- 3 That Council authorise the payment of compensation, if necessary, for the acquisition of the easements in Item 1 and the acquisition of the land in item 2 in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 and based on assessment by a qualified valuer.**
- 4 That Council proceed to compulsorily acquire the easements and land in the event that negotiations with the property owners cannot be satisfactorily resolved.**
- 5 That Council authorise the Common Seal of Wyong Shire Council to be affixed to the formal documents relevant to the acquisition.**
- 6 That Council authorise the Mayor and the General Manager to execute all documents.**

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

AGAINST: NIL.

3.2 Acquisition of Easements and Land for Wyong Employment Zone Sewerage Infrastructure at Sparks Road, Halloran

RESOLVED unanimously on the motion of Councillor McNAMARA and seconded by Councillor WYNN:

- 1 That Council acquire part of land (approximately 725m²) for sewerage pump station and easements to drain sewage, generally 5m wide and a right of carriageway over Lot 23 DP 259530.**
- 2 That Council authorise the payment of compensation, if necessary, for the acquisition of the proposed pump station land and the easement in Item 1 in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 and based on assessment by a qualified valuer.**
- 3 That Council proceed to compulsorily acquire the land and easement in the event that negotiations with the property owners cannot be satisfactorily resolved.**
- 4 That Council authorise the Common Seal of Wyong Shire Council to be affixed to the formal documents relevant to the acquisition.**
- 5 That Council authorise the Mayor and the General Manager to execute all documents.**

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

AGAINST: NIL.

3.3 Proposed Land Acquisition for Car Parking - Lot 9 DP 14527, No 18 Manning Road, The Entrance

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

- 1 That Council authorise the acquisition by purchase of Lot 9 DP 14527 at No 18 Manning Road, The Entrance for an amount based on an assessment by a qualified valuer.**
- 2 That Council propose classification of Lot 9 DP 14527 as Operational Land.**
- 3 That the proposal be advertised in accordance with Section 34 of the Local Government Act, 1993.**
- 4 That Council confirms the classification subject to no adverse submissions being received.**
- 5 That Council authorise a residential lease of No 18 Manning Road, The Entrance for market rent.**

- 6 That Council authorise the Common Seal of Wyong Shire Council to be affixed to the formal documents as required between Wyong Shire Council and the owner of Lot 9 DP 14527.**
- 7 That Council authorise the Mayor and the General Manager to execute all documents.**

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

AGAINST: NIL.

3.4 Proposed Dedication of Council Land Lot 2 DP 1068298, 5A King Street Ourimbah for Public Road

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

That Council dedicate Lot 2 DP 1068298, 5A King Street Ourimbah as public road by way of notification in the NSW Government Gazette.

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

AGAINST: NIL.

3.5 Proposed Sale of Land at Lot 83 DP 27286 and Lot 94 Section 1 DP 11824 Charmhaven

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

- 1 That Council authorise the sale of Lot 83 DP 27286 Charmhaven Avenue, Charmhaven and Lot 94 Section 1 DP 11824 Moala Parade, Charmhaven for an amount not less than market value for each parcel as determined by an independent registered valuer.**
- 2 That Council authorise the Common Seal of the Wyong Shire Council to be affixed to the formal the documents for the Sale and Transfer of the land.**
- 3 That Council authorise the Mayor and the General Manager to execute all documents.**

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

AGAINST: NIL.

3.6 Wyong Shire Family Day Care Lease at 31 Alison Road, Wyong

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

- 1 That Council agree to the early termination of the lease of Lot 3 DP Section 10 DP 3136 Alison Road Wyong to Family Childcare Services Central Coast Inc. without penalty.**
- 2 That Council grant a lease of Lot 3 Section 10 DP 3136 at 31 Alison Road Wyong to Central Coast Legal Centre for a period of five years at a commencing rent of \$20,800.00 per annum plus GST.**

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

AGAINST: NIL.

4.1 Contract Variations and Finalisation - May and June 2009

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

- 1 That Council note the variations to contracts in Attachment 1.**
- 2 That Council approve increases to the contract budgets for the following contracts to provide for further potential variations.**

Contract Name	Contract No.	Increase to Contract Budget \$ (ex GST)
Cabbage Tree Harbour - Investigation And Design Of Toe Drainage Structure	CPA/135454	116,000.00
Manufacture, Supply and Deliver Liquid Aluminium Sulphate For a 3 year period	CPA/107734	88,000.00
Concept Design, Detail Design and Tender Documentation Water Supply Trunk Mains Warnervale Town Centre and Wyong Employment Zone Stages I & II	CPA/130591	65,000.00
Investigation and Design Consultancy for Woongarra Sports fields	CPA/94559	60,000.00

- 3 That Council note that commensurate changes will be made to the Management Plan to reflect revisions to contract budgets.**

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

AGAINST: NIL.

4.2 CPA 150848 - Stormwater Treatment Works Project - Bundilla Parade, Berkeley Vale

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

- 1 That Council decline all tenders received for Contract CPA/150848 – Stormwater Treatment Works Project – Bundilla Parade, Berkeley Vale in accordance with Section 178 (1) (b) of the Local Government (General) Regulations.**
- 2 That Council cancel Contract CPA/150848 – Stormwater Treatment Works Project – Bundilla Parade, Berkeley Vale in accordance with Section 178 (3) (a) of the Local Government (General) Regulations.**

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

AGAINST: NIL.

4.3 CPA 158140 - Upgrade of Existing Boat Ramp, Seawall and Roadworks at Picnic Point, The Entrance

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

That Council defer this report pending an inspection of Picnic Point and that a brief interim report on strategic directions for boat ramps in the Long Jetty to North Entrance areas be provided.

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

AGAINST: NIL.

4.4 CPA 159880 - Construction of Mannering Park Sewage Treatment Plant Inlet Works

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

- 1 That Council accept in accordance with the approved Tender Evaluation Plan, Tender No 3 from Eire Contractors Pty Ltd in the amount of \$1,191,000.00 (excl GST) for Contract CPA/159880.**
- 2 That Council approve a contract budget of \$1,369,000.00 (excl GST) that provides for a contingency amount of \$178,000.00 (excl GST), representing approximately 15% of the contract value, to provide for any unforeseen additional works that may become necessary during the course of the project.**

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

AGAINST: NIL.

4.5 CPA 163500 - Hire of Plant and Trucks for the Operation of Buttonderry Waste Management Facility

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

- 1 That all complying tenders received for the hire of plant/trucks for the operation of Buttonderry Waste Management Facility be accepted for inclusion on a priority ranking list for a period of 12 months.**
- 2 That Council approve a contract budget of \$1,188,000.00 (excl GST) that provides for a contingency amount of \$100,000.00 (excl GST), representing approximately 10% of the contract value, to provide for any unforeseen additional works that may become necessary during the course of the project.**
- 3 That the Director Shire Services be authorised to arrange engagement of plant as required from time to time for the effective operation of the facility in accordance with Contract CPA/163500 Hire of Plant for the Operation of Buttonderry Waste Management Facility.**

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

AGAINST: NIL.

5.1 NSW Local Government Association Conference 2009

RESOLVED unanimously on the motion of Councillor McNAMARA and seconded by Councillor WYNN:

- 1 That Council authorise interested Councillors to attend the Local Government and Shires Association Annual Conference 2009.**
- 2 That Council pay reasonable expenses incurred in Councillors attending the conference in accordance with Council's policy.**
- 3 That Council determine the five delegates with voting entitlements should more than five Councillors indicate their intention to attend the conference.**
- 4 That Council determine any additional motions to be submitted to the conference prior to 10 August 2009.**

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

AGAINST: NIL.

5.2 Proposed Councillors' Community Improvement Grants

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

- 1 That Council allocate an amount of \$7,694 from the 2008-09 Councillors' Community Improvement Grants as outlined in the report.**
- 2 That Council allocate an amount of \$975 from the 2009-10 Councillors' Community Improvement Grants as outlined in the report.**

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

AGAINST: NIL.

5.3 Webcasting of Council Meetings

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

- 1 That Council receive the report on Webcasting of Council Meetings.**
- 2 That Council receive a demonstration on the systems available prior to making a final decision**
- 3 That Council receive a report on the cost effectiveness of the webcasting of Council Meetings in respect of the current form of audio recordings and community engagement.**
- 4 That Council include a workshop on the legal implications specifically in regards to defamation as part of the demonstration and/or briefing.**

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

AGAINST: NIL.

5.4 Bid to Host the NSW Surf Lifesaving Championships

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

That Council prepare a joint submission with Gosford City Council to seek the 2011, 2012, 2013 State Surf Life Saving Championships.

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

AGAINST: NIL.

5.5 Minutes - Wyong Shire Senior Citizens' Council Meeting - 28 May 2009

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

That Council receive the minutes of the Wyong Shire Senior Citizens' Council Meeting held on 28 May 2009 and adopt the recommendations contained therein.

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

AGAINST: NIL.

6.1 Minutes - Central Coast Regional Organisation of Councils - 17 June 2009

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

That Council receive the minutes of the Central Coast Regional Organisation of Councils meeting held on 17 June 2009 and adopt the recommendations contained therein.

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

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 number 7.3 the information reports be received and the recommendations adopted.

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

AGAINST: NIL.

7.2 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 EATON, GRAHAM, McBRIDE, McNAMARA, MATTHEWS, SYMINGTON, VINCENT, WEBSTER AND WYNN.

AGAINST: NIL.

7.3 Corporate Uniform

COUNCILLOR VINCENT LEFT THE CHAMBER AT 5.59 PM AND RETURNED TO THE CHAMBER AT 6.02 PM DURING CONSIDERATION OF THIS ITEM.

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.**

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

AGAINST: NIL.

7.4 Results of Water Quality Testing for Beaches and Lake Locations

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

That Council receive the report on Results of Water Quality Testing for Beaches and Lake Locations.

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

AGAINST: NIL.

7.5 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 EATON, GRAHAM, McBRIDE, McNAMARA, MATTHEWS, SYMINGTON, VINCENT, WEBSTER AND WYNN.

AGAINST: NIL.

7.6 Water and Sewerage - Works in Progress

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

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

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

AGAINST: NIL.

7.7 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 EATON, GRAHAM, McBRIDE, McNAMARA, MATTHEWS, SYMINGTON, VINCENT, WEBSTER AND WYNN.

AGAINST: NIL.

9.1 Notice of Motion - Livistonia Australis

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

That as part of the Revegetation Plan for the Crown Land behind the proposed Cabbage Tree Harbour Toe-drainage Structure, Council incorporate a trial planting of the endemic species Livistonia Australis, commonly known as Cabbage Tree Palm. As the revegetation will be staged Livistonia Australis would be planted in clumps as part of the subsequent plantings in the gullys after the slope has been initially stabilised.

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

AGAINST: NIL.

9.2 Notice of Motion - Community Gardens

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

That Council develop a Strategic Policy for Community Gardens which involves the following:

- 1 That a policy to support the development of Community Gardens be formulated for Wyong Shire. This policy shall be guided by the following requirements:**
 - a Establish community gardens in new and existing residential areas in partnership with local residents.**
 - b Ensure that sufficient land is made available in newly planned residential areas to provide for community gardens, within planned open space areas.**
 - c 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.**
 - d That clearly identifies Council's roles and responsibilities.**
- 2 That Council identify funding opportunities eg grants and other forms of in kind assistance to help community groups.**
- 3 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.**
- 4 That this policy be prepared by the Shire Planning Department and submitted to Council for consideration.**
- 5 That the policy be developed in partnership with the Community Development Unit.**

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

AGAINST: NIL.

9.3 Notice of Motion - Forum on Community Facilities

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

That Council invite community groups, sporting associations, Non Government Organisations, charities, 355 Committees and corporate clients to a community forum to discuss topics including but not limited to:

- * **community facilities: availability/utilisation,**
- * **conducting/hosting events: application process,**
- * **support available – financial/in kind,**

with a view to engaging residents by responding to community needs and appropriate utilisation of facilities consistent with Shire Strategic Vision, Asset Management Strategy, Long Term Financial Strategy, Management Plan 2009-10, Community Plan 2008 and Cultural Plan 2008.

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

AGAINST: NIL.

9.4 Notice of Motion - Youth Employment Target

COUNCILLOR EATON DECLARED A NON-PECUNIARY INSIGNIFICANT CONFLICT OF INTEREST IN THE MATTER FOR THE REASON THAT HE IS THE CHAIR OF CENTRAL COAST GROUP TRAINING LTD AND PARTICIPATED IN CONSIDERATION OF THIS MATTER.

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 PUBLIC AND PRIVATE DUTY ARE NOT IN CONFLICT AND IT IS A NON REMUNERATED POSITION."

COUNCILLOR MATTHEWS LEFT THE CHAMBER AT 7.17 PM AND RETURNED TO THE CHAMBER AT 7.19 PM DURING CONSIDERATION OF THIS ITEM.

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

- 1 **That Council adopt in principle, a long term youth employment target of 15% of its workforce in recognition of the appalling local youth unemployment rate of some 38.7%.**

- 2 That Council provide a report on:**
- a implementation strategies to achieve this target in compliance with the Anti- Discrimination Act, Equal Employment Principles and;**
 - b current youth employment levels, job profiles filled and availability by young employees.**
- 3 That Council include in the annual Equal Employment Opportunity (EEO) report a section on youth employment and movement towards the target and that this report be an information report to a formal Council Meeting.**
- 4 That Council forward this motion to the Local Government Association Conference for consideration by all Councils for adoption and also for the Conference to consider a resolution to the State Government seeking an amendment to the Anti-Discrimination Act requiring Councils to also report in their EEO report on youth employment levels.**
- 5 That Council make a submission to the Keep Australia Working Forum regarding our region's Youth Employment Problem.**

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

AGAINST: NIL.

QUESTIONS WITHOUT NOTICE ASKED

Q044 - Wyong Chamber of Commerce Levy Increase Councillor Eaton

F2005/00704

“Could Council advise Wyong Chamber of Commerce why its total levy has only increased by some \$500 this year despite a significant general rate rise?”

Q045 – Cabbage Tree Harbour Surveillance Councillor Eaton

F2004/07782

“Could Council staff advise the cost to date of maintaining surveillance/security at Cabbage Tree Harbour and when this surveillance is expected to conclude?”

THERE BEING NO FURTHER BUSINESS, THE MEETING CLOSED AT 7.20 PM.

.....
CHAIRPERSON

2.1 Notice of Intention to Deal with Matters in Confidential Session

TRIM REFERENCE: F2009/00008 - D01954550

AUTHOR: MR

SUMMARY

It is necessary for the Council to adopt a resolution to formalise its intention to deal with certain matters in Confidential Session. The reports are incorporated in the "Confidential" business paper which has been circulated to Councillors.

The Local Government Act, 1993 requires the General Manager to identify those matters listed on the business paper which may be categorised as confidential in terms of Section 10A of the Local Government Act, 1993.

RECOMMENDATION

- 1 That Council consider the following matters in Confidential Session, pursuant to Sections 10A(2)(c) & (g) of the Local Government Act 1993:**
 - 11.1 Proposed Purchase of a Second Hand Grader**
 - 11.2 CPA 115479 - Bateau Bay Tip Contractor Meeting**
- 2 That Council note its reason for considering Report Nos 11.1 and 11.2 as it may confer a commercial advantage (Section 10A(2)(c)) should the discussions be held in a non-confidential environment and the reason for considering Report No 11.2 being that it contains information concerning litigation.**
- 3 That Council request the General Manager to report on this matter in open session of Council.**

Note: Explanation - Section 10A of the Local Government Act 1993 states:

"2(c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business,"

2(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,

3.1 DA 382/2009 - Proposed Boundary Adjustment at Lots 101 and 103 DP 806178 Corona Lane, Glenning Valley

TRIM REFERENCE: DA/382/2009 - D01962455

AUTHOR: MG

SUMMARY

An application has been received to adjust a common boundary involving land in Corona Lane at Glenning Valley. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment Act and other statutory requirements with the issues requiring attention and consideration being addressed in the report. The application is reported to Council as directed by the Mayor at the request of a Councillor.

Applicant	Highlight Consulting Pty Ltd
Owner	Mr and Mrs Law
Application No	382/2009
Description of Land	Lots 101 and 103 DP 806178 Corona Lane, Glenning Valley
Proposed Development	Boundary Adjustment
Site Area/Zoning	Lot 101 = 2.997 hectares, 7(a) Conservation Lot 103 = 1.00 hectare, 7(c) Scenic Protection

RECOMMENDATION

- 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 refusal of the application subject to appropriate reasons for refusal.***
- 2 That Council not support the use of State Environmental Planning Policy No 1 in order to vary the subdivision standards of Wyong Local Environmental Plan 1991***

PRECIS

- The application involves the adjustment of the common boundary between two properties at Glenning Valley. This form of application is considered as subdivision and the subdivision standards in Council's Planning Instrument apply.
- The subject allotments comprise environmental zonings.
- The applicant proposes the use of State Environmental Planning Policy No 1 (SEPP 1) to vary the subdivision standards of Wyong Local Environmental Plan 1991 (WLEP). The variation extends to 90% of the subdivision standard.

INTRODUCTION

The Site

The subject land involves two parcels held in the same ownership in Corona Lane at Glenning Valley. The site is approximately 1.2 km from Wyong Road via Berkeley Road and is part of the Corona Lane rural residential land precinct.

Lot 103 has an area of one (1) hectare, zoned 7(c) - "*Scenic Protection*" and presently contains a dwelling, in-ground pool, stables and several other outbuildings. The Scenic Protection zone is generally characterised by small rural-residential holdings generally between one and two hectare allotments comprising typically of a residence with a broader expanse than urban zones and capable of sustaining minor hobby farm uses. Access to the subject land is via Corona Lane.

Lot 101 has an area of 2.997 hectares, zoned 7(a) - "*Conservation*" and presently contains horse paddocks and several stables or outbuildings. The Conservation zone is generally characterised by land having special aesthetic, ecological and conservation values and generally refers to land best suited to remain in its natural state. The site has frontage to Corona Lane and is accessed via a driveway through lot 103.

The Proposed Development

Consent is sought to adjust the common boundary between lots 101 and 103 in order to establish an additional dwelling site. Currently only existing lot 103 has a dwelling right with a residence approved and constructed in the mid 1990's. Lot 101 does not have any development right due to a Section 88B restriction imposed with the previous subdivision in 1990. A Section 88B restriction (as it is generally referred to) is a restrictive covenant imposed under (Section 88B of) the *Conveyancing Act* with the intent to control land uses (as in this case) and establish beneficiaries.

The type of restriction referred to above is common practice identified in the LEP as a mechanism to control subdivision in an orderly manner and thereby protect scenic protection and/or conservation zoned land. The imposition of the restriction has been used extensively throughout Wyong's rural and rural-residential regions where certain subdivisions of split zoned land occurs. Therefore, any decision taken by Council to lift the 88B Instrument restricting a dwelling on the 7A land will form a precedent for a number of other similar properties. This may have the effect of undermining the intent of the LEP which is to quarantine this 7A land from development.

The applicant seeks to adjust the property boundary which currently corresponds to the zone boundary to establish two allotments both of which would be split zoned land. Split zoned land is land affected by two or more different zones described in Council's zoning table. The applicant seeks to use SEPP 1 to enable Council to vary the development standards of WLEP for the purpose of the boundary adjustment.

SEPP 1 is a planning policy established by the NSW State Government to enable flexibility in development standards. It allows Councils to approve a development proposal that does not comply with a set standard where this compliance can be shown to be unreasonable or unnecessary. However, in this case, Council does not support the request for variation for reasons pertaining to WLEP planning provisions in addition to current Section 88B dwelling restrictions on the land and the inability to promote good planning and land management practices. The body of the report provides in-depth detail as to the reasons for refusal.

3.1 DA 382/2009 - Proposed Boundary Adjustment at Lots 101 and 103 DP 806178 Corona Lane, Glenning Valley (contd)

Council, at its meeting held on 26 November 2008, resolved on the motion of Councillor Graham and seconded by Councillor Symington:

- 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 refusal of the application subject to appropriate reasons for refusal.*
- 2 *That Council not support the use of State Environmental Planning Policy No 1 in order to vary the subdivision standards of Wyong Local Environmental Plan 1991.*

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

AGAINST: COUNCILLORS BEST AND EATON.

The current application, a replica of DA 408/2008, fails to respond to the previous determination offering no fresh investigation nor further justification why the 2008 refusal should be overturned in favour of the current application.

Council is undertaking a review of the WLEP to compliment the standard planning template initiated by the State Government. The present zoning and subdivision provisions in the draft LEP have not been determined in detail to date. Whilst the 7(c) and 7(a) zones are likely to change in terms of identification, at this point of time the detail of minimum standards for subdivision has not been determined. However, the issue of small lot rural residential and whether there is a sufficient supply is under review, which will include a review of the Glenning Valley area.

VARIATIONS TO POLICIES

Clause	14(2)
Standard	40 hectares
LEP	Wyong Local Environmental Plan 1991
Extent of Variation/Departure	90% for proposed Lot 1011 50% for proposed Lot 1031
Departure Basis	Not supported by Council –see report for detail

Clause	13(3)(b)
Standard	10%
LEP	Wyong Local Environmental Plan
Extent of Variation/Departure	22% for proposed lot 1031
Departure basis	Not supported by Council – See report for detail

HISTORY**Land History**

Lots 101 and 103 in DP 806178 were registered 4 December 1990 from the subdivision of Lot 9 in DP 739783 approved on 20 July 1990 under Development Consent No 383/90.

Applications involving Lot 101 DP 806178

Council records do not indicate any approvals been granted to this allotment. There is a Section 88B restriction on this parcel established at the subdivision stage that prohibits the erection of any building on the land. In years subsequent to the registration of the subdivision a number of outbuildings have been erected on Lot 101 that have not been granted approval. (See attachment 2)

Applications involving Lot 103 DP 806178

On 1 November 1994, DA 983/94 for a rural dwelling was approved with construction undertaken during 1995 and 1996.

On 17 September 1999, DA 2634/99 for an in-ground pool was approved.

At the Council meeting of 26 November 2008, DA 408/2008, a two lot boundary adjustment was refused for reasons pertaining to:

- (i) Inappropriate use of State Environmental Planning Policy No 1
- (ii) Contrary to LEP and zone objectives
- (iii) Contrary to LEP subdivision provisions
- (iv) Contrary to the current restrictions on the title of the land
- (v) Impact on the scenic and conservation value of the land

RELEVANT STATE/COUNCIL POLICIES AND PLANS**Environmental Planning and Assessment Act 1979**

There are no state policies (SEPP's) specifically applicable to the site. However, the applicant has elected to submit a SEPP 1 objection which is addressed in detail in the body of this report.

The application is subject to assessment against the heads of consideration under Section 79C of the EP&A Act.

The application is defined as "Integrated Development" under the provisions of Section 91 of the EP&A Act. Integrated Development is described as development that requires an approval (licence etc) or concurrence from a state body. In this case, the application was referred to the NSW Rural Fire Service (RFS) as it is bush fire prone land.

NSW RFS responded by granting a "Bush Fire Safety Authority" under the Rural Fires Act.

Wyong Local Environmental Plan 1991

(i) LEP Definition

Subdivision (including boundary adjustment) is defined under Section 4B – *Subdivision of land*, in the EP&A Act 1979. Although not specifically defined in Clause 7 – *Definitions*, of WLEP 1991, the development is separately referred to as “Subdivision” in Clause 13 – *Subdivision of Land*, in the LEP and is permitted with Council consent, and subject to compliance with other LEP provisions.

(ii) LEP Zoning

The subject properties are zoned 7(a) “*Conservation*” and 7(c) “*Scenic Protection*” under Clause 10 of Wyong Local Environmental Plan (LEP) 1991.

“The objectives of the 7(a) “Conservation” zone are:

- (a) *to restrict the type and scale of development which will be carried out on land possessing special aesthetic, ecological or conservation values to that compatible with such environments, and*
- (b) *to allow such development where:*
 - (i) *it can be demonstrated that it can be carried out in a manner that minimises risks from natural hazards, functions efficiently, does not prejudice other economic development and does not detract from the scenic quality of the land referred to in the objective specified in paragraph (a), and*
 - (ii) *it is unlikely to have a significant detrimental effect on the growth of native plant communities, the survival of native wildlife populations or the provision and quality of habitats for both indigenous and migratory species, and*
 - (iii) *it is unlikely to have an adverse impact on the region’s water resources.*

The objectives of the 7(a) “Scenic Protection” zone are:

- (a) *to enable development for the purposes of small rural-residential holdings to be carried out on land which is suitable for those purposes and which is unlikely:*
 - (i) *to inhibit the potential for urban expansion, particularly at the urban fringe, or*
 - (ii) *to create a demand for the uneconomic provision of services, or*
 - (iii) *to detract from the scenic quality of rural lands.”*

The underlying similarity between the two zones is the focus on controlling development on land having scenic quality values.

(iii) Subdivision/Boundary Adjustment and other Provisions

The proposal is required to meet the criteria of Clause 13(3) of the WLEP, which describes general criteria for boundary adjustments.

Note that the application is also assessed under Clause 14 as the applicant has lodged a SEPP 1 objection under the latter clause provisions.

Development Control Plan No 2005 Chapter No 69 – Waste Management.

The application involves designating a waste disposal area for the building envelope on the proposed vacant parcel. Further detail is provided in the body of the report.

W1 – Water Catchment Development Areas

This policy controls development in the drinking water catchments. Subdivisions are not listed as prohibited development.

F4 – Floodplain Development

This policy controls development on land affected by flooding. The subject land is identified as being affected by 1 in 100 year flood events. The application to adjust the common boundary is not prohibited under this policy; however a merits assessment is required. The flood issue is addressed in greater detail in the body of the report.

ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the EP&A Act 1979 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.

Preamble

Existing lot 103, the 7(c) zoned parcel, is triangular in shape with its north-western boundary following the zone boundary, the common division with lot 101. It is proposed to absorb the northern part of the land, a dimensional area of about 2,200m² into existing lot 101 to create proposed lot 1011. It is this section of land that the applicant identifies as an area for a building envelope for future residential development.

To balance the boundary adjustment, part of existing lot 101, the 7(a) zoned parcel will be absorbed into existing lot 103 to establish proposed lot 1031.

The proposal would effectively create two split zoned parcels when currently both properties are singularly zoned. It is generally not regarded as good planning nor good land management to establish split zoned land because of the potential for zoning and land use conflicts in future situations. Historically, Council's LEP prohibited the creation of split zoned parcels.

Background to Subdivision creating Subject Lots – DC 383/90

Before addressing the proposal within the LEP provisions, it is worth noting the planning framework used in assessing the original subdivision that created the subject allotments as this has a bearing on the assessment of the current application.

Lots 101 and 103 along with neighbouring lots 100 and 102 (neither are part of current DA) were created under a four lot subdivision under DC 383/90. The application was assessed under WLEP 1987 which included provisions enabling subdivision of split zoned land. The planning provisions of the day permitted the creation of three lots from the 7(c) zoning with the fourth lot comprising the whole of the 7(a) zone which became lot 101.

When approval was granted a condition of consent was imposed that all structures (residential or non-habitable) were to be prohibited on lot 101, the 7(a) portion of the subdivision. It is noted that the same restriction was also on the parent lot (being lot 9 in DP 739783) prior to the 1990 subdivision. The restriction remains on that land today.

The intent of the restriction is to limit development rights on land established under special subdivision provisions where such land formed a substandard allotment (in this case lot 101) in terms of minimum dimensional criteria. Being 7(a) zoned land, the minimum area requirement is 40 hectares otherwise where the land does not achieve the standard a dwelling restriction is imposed. The underlying purpose is to ensure that the conservation zone maintains aesthetic value without being compromised or destroyed by subsequent development.

This form of subdivision was an early form of offsets on land recognised for environmental value to allow some development to occur i.e., it enabled a “win-win” situation. The method used in approving DC 383/90 under WLEP Plan 1987 is generally similar to the provisions in the current version of WLEP 1991. If the four lot subdivision was to be considered today the same dwelling prohibition would be imposed as it was in 1990. This aspect is important to note in that the issues associated with the subdivision provisions have not altered in any significant manner since Council’s planning instrument of 1987.

Property Dimensional Summary

The following is the status of the current land circumstances and proposed arrangement.

The current lot status:

Lot 101 DP 806178 = 2.997 hectares, 7(a) zoned

Lot 103 DP 806178 = 1.00 hectares, 7(c) zoned

The proposed lot arrangement:

Lot 1011, predominantly from existing lot 101 = 2.997 hectares, 7(a) and 7(c) zoned – no increase in area

Lot 1031, predominantly from existing lot 103 = 1.00 hectare, 7(a) and 7(c) zoned – no increase in area

Boundary Adjustment Strategy – Clause 13(3) of WLEP

Boundary adjustments are considered under Clause 13(3) of the WLEP, which provides certain criteria for applications of this nature.

Clause 13(3) states:

“Subdivision of land - generally

13(3) *Notwithstanding any other provisions of this plan, including the provisions of clause 14, the Council may consent to a subdivision of land for the purpose of a minor adjustment of the boundary between two lots provided that:*

- (a) the configuration of the allotments remains substantially the same, and*
- (b) the area of each allotment proposed is varied by no more than 10 per cent, and*
- (c) the Council is satisfied that the boundary adjustment is necessary in the circumstances of the case.”*

The following comment is provided with regard to the criteria of 13(3)(a), (b) and (c).

(a) *Configuration*

The configuration is not substantially the same in that the proposed new boundary alignment is not consistent with the zoning and topographical features of the land. The current boundary generally follows the line of flooding. The proposed boundary does not follow any distinct land feature and in fact deviates substantially from the natural contours of the land and indeed the extent of flooding.

In this regard the proposed boundary adjustment does not comply with the criteria of the clause.

(b) *Dimensional Compliance*

While there is a direct land balance between both proposed lots the extent of change to one of the lots is greater than the nominal 10%. For existing lot 103 the change in area of about 2,200m² equates to 22% which exceeds the provisions of the clause.

In this regard the proposed boundary adjustment does not comply with the criteria of the clause.

(c) *Circumstances of the case*

There does not appear to be any circumstances that support the need to adjust the boundaries to this extent. The applicant clearly suggests by way of the indicative building envelope that the circumstance is to establish an additional dwelling right.

The intent of the boundary adjustment provisions is not to increase development rights but to merely correct any abnormal boundary situations that may have occurred through historical boundary problems. The purpose of the provision is to “tweak” the boundary to overcome site issues.

In this regard the proposed adjustment does not comply with the criteria of the clause.

In summary, the assessment reveals that the proposal is not able to comply with any of the criteria of Clause 13(3) and thus cannot be supported under this provision.

Subdivision Strategy – Clause 14(2) of WLEP

As noted in this report the application does not comply with the boundary adjustment criteria of Clause 13(3). Given that the applicant has specifically lodged the application with reference to Clause 14 it is necessary for Council’s assessment to extend beyond the boundary adjustment provisions to the subdivision criteria of Clause 14.

Clause 14 states:

“Subdivision of land within Zone No 1 (a), 1 (c), 7 (a), 7 (b), 7 (c), 7 (d), 7 (e) 7 (f) or 7 (g)

- 14 (1) *This clause applies to land within Zone No. 1(a), 1(c), 7(a), 7(b), 7(c), 7(d), 7(e), 7(f) or 7(g).*
- (2) *Except as provided by subclauses (3) and (4), a person shall not subdivide land to which this clause applies so as to create an allotment having an area of less than -*

- (a) *in the case of land within Zone No. 1(c), 7(a), 7(d), 7(e), 7(f) or 7(g) - 40 hectares;*
- (b) *in the case of land within Zone No. 1(a) or 7(b) - 20 hectares;*
- (c) *in the case of land within Zone No. 7(c) - 2 hectares."*

The subdivision does not comply with the minimum dimensional standards of Clause 14(2); therefore the applicant prepared a SEPP 1 objection. The extent of departure to the standards is 92% for proposed lot 1011 and 50% for proposed lot 103.

Objection under State Environmental Planning Policy No 1

It has been recognised by Council in previous instances of applying the criteria of the clause, that the numerical values of Clause 14(2) are able to be varied under SEPP 1.

SEPP 1 provides flexibility in the application of planning controls of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5 (a) (i) and (ii) of the EP&A Act, which are to encourage proper and appropriate land management within the natural environment.

A Land and Environment Court (LEC) judgement outlined the procedure for considering SEPP1 objections. The application is assessed in accordance with this procedure. See "Attachment 3" for a full copy of the applicant's SEPP 1 objection.

It must be stated that the applicant's objection is confusing in that part of the submission refers to sections of Clause 14 that are irrelevant to the assessment process for this application. The submission objects to provisions regarding split zoned land and developer contributions which were relevant in the 1990 subdivision proposal but have no bearing on the assessment of the current DA.

First, is the planning control in question a development standard?

Putting a numerical description onto the minimum subdivision lot size permissible within particular zones, as identified under Clause 14(2), classifies this as a development standard.

The extent of departure to the minimum standards of clause 14(2) is 90% for proposed lot 1011 and 50% for proposed lot 1031. The extent of departure to the criteria of clause 13(3) is 22% for proposed lot 1031.

It should be noted that Council's delegation may not extend to assuming concurrence of the Department of Planning (DOP) for the use of SEPP 1 in this instance. The delegation notes that Council can only assume concurrence for two lot boundary adjustments where both lots are presently below the minimum subdivision standards subject to no additional allotments created, that the agricultural use of the land is not jeopardised and that no additional housing entitlements are created. The last point is the issue of doubt. Given that the two lots presently have only one housing entitlement due to the section 88b restriction it is suggested that the proposed boundary adjustment promotes an additional housing entitlement. In this respect if Council was of a mind to approve the application, concurrence of the DOP for the use of SEPP 1 would need to be sought.

Second, what is the underlying object or purpose of the standard?

The purpose of the LEP standards in this instance is to protect land with conservation or scenic values. The subject land exhibits a topography that features a broad open space land depression generally following the line of the known flood extent in the area. The original zoning strategy recognised the flood limitations and accordingly the zone boundary reflects the 1 in 100 year flood line.

In addition the subdivision strategy adopted by Council in assessing Development Consent 383/90 also recognised the site constraints which in turn were used in establishing the parameters of the lot size and shape which evolved into lots 100, 101, 102 and 103. It is considered that this determination reflects the full extent of development potential of the land.

In this regard the standard adopted in the LEP has been devised to ensure that the geographical assets identified for respective parcels are contained wholly within those parcels. As such existing lot 101 includes most of the flood affect while lot 103 comprises generally the more aesthetically pleasant and higher part of the original parent property.

The proposed boundary adjustment dramatically alters the balance that was achieved in the 1990 subdivision approval. The proposed layout promotes an allotment shape that in effect would create both parcels as partly flood affected which is not consistent with the objective of the development standard.

Third, does compliance with the development standard tend to hinder the attainment of the objects specified in S.5 of the EP & A Act.

It is considered that the proposal does not promote good land management in terms of conserving the natural environment. As noted the proposed shape of the allotments would create both proposed lots 1031 and 1011 as partly flood affected land, a circumstance that existing lot 103 does not experience to any significant degree.

Fourth, is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The applicant has not provided any justification in real terms as to why the development standards are unreasonable or unnecessary. The objection appears to have an underlying desire to establish an additional dwelling right which is not regarded as grounds for objection. The submission suggests that the boundary adjustment is minor and that no development rights are proposed. This is not true in that an additional dwelling right would be created if the subdivision was to be approved. The previous approval clearly established the potential on each approved lot and that as a package of four allotments (Lots 100, 101, 102 and 103) only three dwelling rights could ever be established those belonging to lots 100, 102 and 103. Lot 101 had a restriction imposed under the LEP that prohibited a dwelling or any building for that matter.

Fifth, is the objection well founded?

The applicant's objection is considered as not well founded with no grounds for Council to confidently approve the application. The objection does not prove that the standards hinder the potential of the land nor does the objection appear to counter argue the intent of the original restriction imposed on lot 101. The objection merely concludes that there is suitable land available for another dwelling with no regard to the planning ideology that established the subdivision in 1990.

The relationship to the regional and local context and setting

The zone objectives (noted earlier in this report) for the 7(a) and 7(c) zones provide a backdrop by which rural subdivision development is assessed.

As detailed earlier both zone objectives are consistent in approach regarding the aesthetic values of land. The application is however considered to be inconsistent with the objectives in that the change in boundaries would have an impact on natural hazards and could in fact have a detrimental affect on the scenic and conservation values of the respective zones.

Currently the package of the two existing properties (lots 101 and 103) has only one dwelling right which is regarded as the optimum residential density of both lots. As this report identifies there is good reason for the building restriction on lot 101, if the application was to be approved the residential density doubles and effectively erodes the quality of the landscape.

The fact that there are existing structures (illegally built) on lot 101 is by no means a reason to continue to promote the land as viable for residential uses. It is accepted that a residence (approved) on lot 103 is sustainable in terms of planning and environmental grounds. What is not acceptable is the additional dwelling that would likely occur if the subdivision layout was to be supported.

The applicant has verbally indicated that one of the non-habitable structures on lot 101 has been used for residential purposes for many years, being built prior to the introduction of planning legislation. The structure is not listed as a heritage item and resembles an old outbuilding more than likely used in an unauthorised manner over the years as a residence. The applicant is attempting to establish that the shed should be "granted" residential status enabling a pseudo dwelling right on lot 101. It is noted in Council's report of 16 July 1990 (for DC 383/90) that the parcel now known as lot 101 was indeed clear of any structure with several other structures identified as stables and sheds located on the lot now known as lot 103. A survey prepared in 1990 and submitted with DA 383/90 supports this conclusion.

Given that no approval exists, no residential rights can be considered for any structure on lot 101.

In essence the catchment of land encompassing all four lots (lots 100, 101, 102 and 103) in the previous subdivision has exhausted its residential capacity. That being the 7(c) parcels with a total area of 3ha has established dwelling rights for lots 100, 102 and 103. Given that there is a restriction on lot 101 no further potential exists. The proposed layout attempts to create the additional dwelling right that was purposely restricted in the 1990 approval process, and upheld by Council when it refused the previous Development Application 408/2008.

The access, transport and traffic management measures

An additional access is proposed from the existing dwelling on lot 103 to Corona Lane. While there are no apparent traffic safety issues with the new access it does promote an additional access that could create further land erosion issues by way of its construction.

The impact on utilities supply

The waste disposal details submitted with the application are not conclusive and given the restrictive area involved with the indicative building envelope of proposed lot 1011, Council cannot be satisfied the issue has been totally resolved.

The effect on heritage significance

There are no Aboriginal or European heritage items in or nearby the land.

Any effect on the flora and fauna

In order to establish the proposed new vehicle access for the existing residence to Corona Lane some tree loss within the roadway would occur. The road reserve is Council controlled "land" and therefore the impact to the trees to establish a second access is inappropriate.

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

The issue of flooding has been identified elsewhere in this report. To reiterate, the change in boundaries would effectively establish a dividing line directly in the path of the flood pattern rather than the existing subdivision being sympathetic with the constraints. Where the current common boundary matches the extent of flooding, the proposed boundary ignores the natural flood pattern.

The proposed layout promotes both parcels of land as partly flood affected, an undesirable situation compared to the current circumstances. Such a scenario is not encouraged in subdivision design and is not regarded as good planning or good land management.

Comparison with DA 408/2008 – Boundary Adjustment

The introduction to this report notes that the application is a replica of DA 408/2008, a refusal determined at the Ordinary Meeting of Council on 26 November 2008. The applicant had previously requested Council's review of the determination under Section 82A, a process that allows the review of a determination. However, as the application involved referral to an integrated body, in this case to NSW Rural Fire Service, the provisions of S82A could not be undertaken – hence the submission of a fresh DA.

The applicant has submitted the same plan and supporting documentation as supplied with DA 408/2008, essentially as a means for Council to review the previous determination. The current application has been assessed within the same planning legislation and policy given the short space of time between both applications.

In this regard the same issues arise leading to the same conclusions, and the same recommendation is therefore forwarded to Council.

ANY SUBMISSION MADE IN ACCORDANCE WITH THIS ACT OR REGULATIONS (s79C(1)(d)):*Any submission from the public*

The application was advertised in accordance with DCP 2005 Chapter 70 - Notification of Development Proposals with no submissions being received.

CONCLUSION

It is considered that the proposal fails to satisfy a fair and accurate assessment under Section 79C on a number of issues including the use of SEPP 1. It is considered that the applicant has not proven that the development standards of Clause 14 are neither unnecessary nor unreasonable in the case of the proposal to warrant Council varying the development standards of the LEP.

**3.1 DA 382/2009 - Proposed Boundary Adjustment at Lots 101 and 103 DP
806178 Corona Lane, Glenning Valley (contd)**

A brief summary of the issues of concern are listed below:

- WLEP 1991:
- Non-compliance with Clauses 13(3) and 14(2), the criteria for boundary adjustment and subdivision.
 - Contrary to the zone objectives of 7(a) and 7(c) zones.
- Suitability of the site:
- The proposal promotes a subdivision layout that is not compatible with the natural or physical constraints of the land including the impact of flooding.
 - The proposal attempts to establish an additional dwelling right beyond the scope of the original subdivision that has direct impact from flooding and aesthetic issues.
 - The proposal will promote poor land management and create split zoned land.
 - Impact on trees within the road reserve.
- SEPP 1:
- The use of SEPP 1 is not supported for this application.
- Precedent
- Unacceptable precedent for similarly affected land throughout the shire.

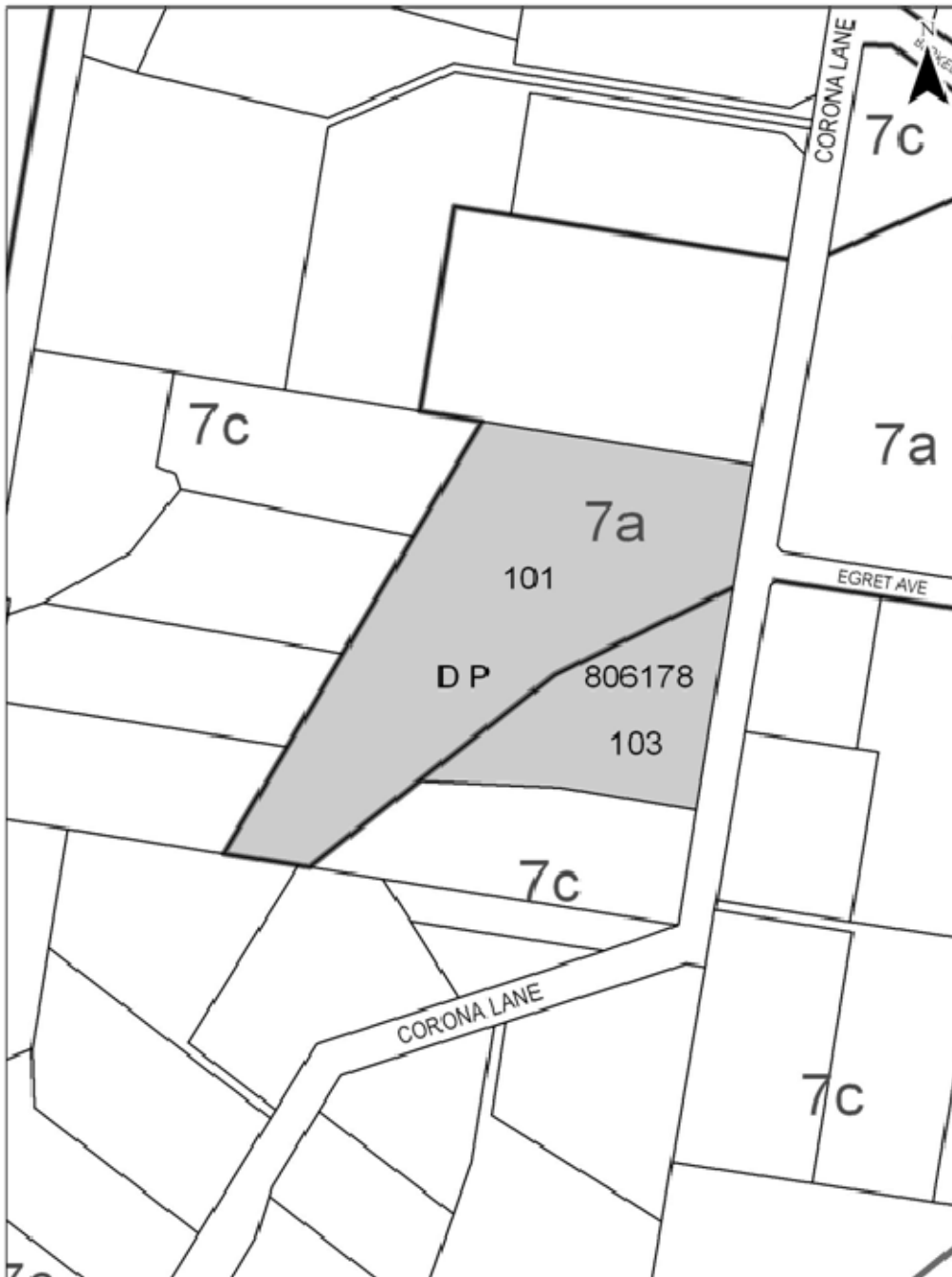
The subdivision approved in 1990 establishing four lots (lots 100, 101, 102 and 103) out of the original land parcel effectively exhausted its residential capacity as intended under the subdivision provisions in the LEP. That is; the 7(c) zoned parcels of land having a total area of 3 ha established dwelling rights (for lots 100, 102 and 103) equating to one dwelling right per hectare which is the basis for the intent of the LEP provision (ie three dwelling rights on three lots, the fourth lot having no entitlement). The proposed layout attempts to create an additional dwelling right beyond the scope of the LEP, which was the logic for the restriction imposed in the 1990 subdivision approval process.

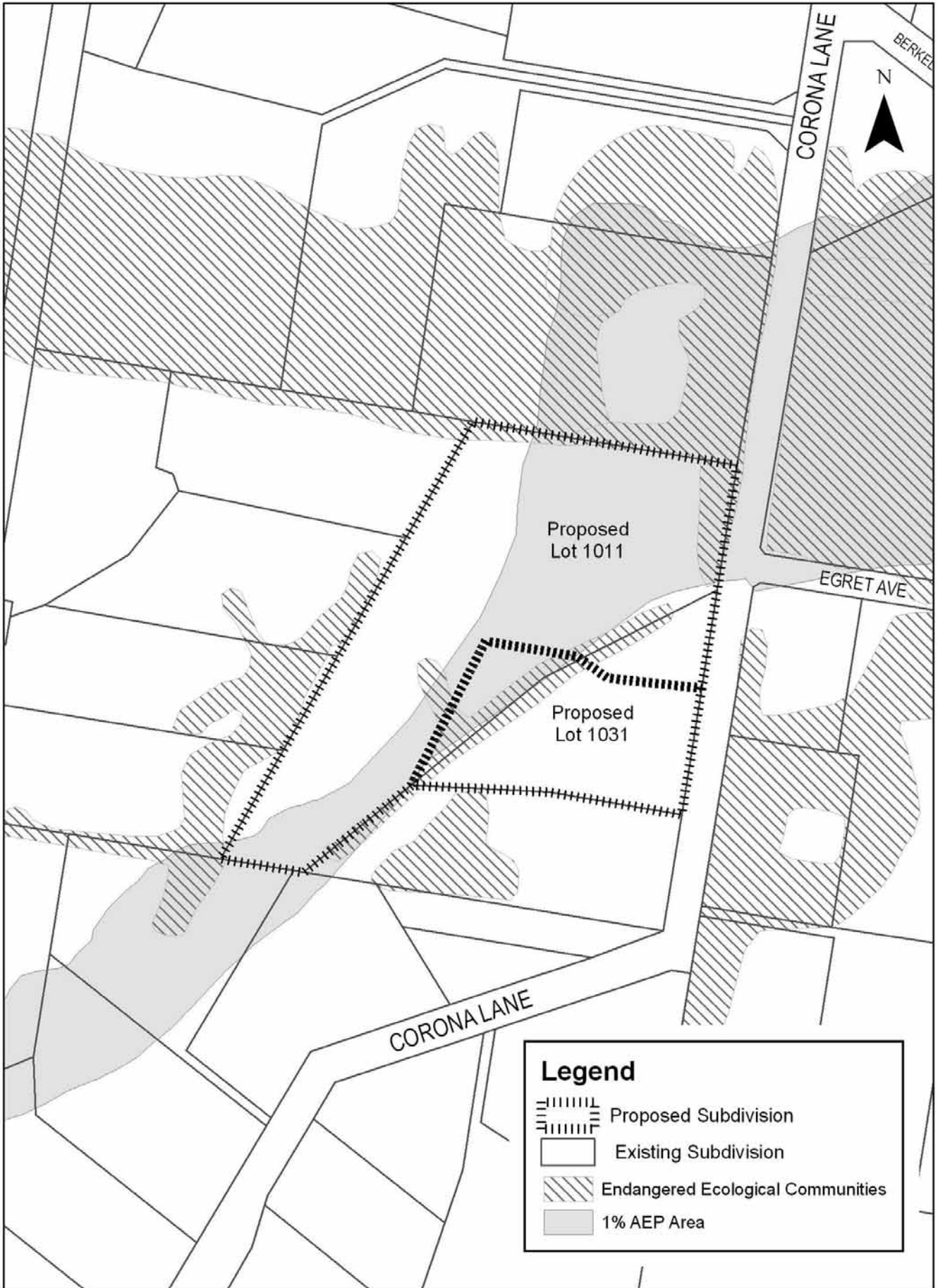
All of the above mentioned issues were addressed in detail as part of the assessment for the same boundary adjustment proposal (DA408/2008) refused in 2008. Nothing has changed in terms of planning legislation or assessment strategies to warrant a different outcome for the current application.

The proposed boundary adjustment is not supported and accordingly is recommended for refusal. However, should Council be of a mind to approve the application concurrence from the DOP will be required.

ATTACHMENTS

1	Locality Plan	D01956584
2	Site Plan	D01977882
3	Section 88B Restriction for Lot 101	D01957011
4	Applicant's SEPP 1 Objection	D01957015
5	Photographs	D01982300
6	Previous Council Report to 26 November 2008 Council Meeting	D01390890
7	Plan of Proposed Boundary Realignment	D01973429





INSTRUMENT SETTING OUT TERMS OF EASEMENTS AND RESTRICTIONS
ON THE USE OF LAND INTENDED TO BE CREATED PURSUANT TO
SECTION 88B OF THE CONVEYANCING ACT, 1919.

Lengths are in metres

(Sheet 1 of 2 Sheets)

Plan: **DP806178** Subdivision of Lot 9, D.P. 739783 covered
by Council Clerk's Certificate No.
dated

PART 1.

Full name and address of the Proprietors of the land: John Charles Innes and Joan Helen Innes,
Corona Park, Corona Lane, Berkeley Vale.

Full name and address of the Mortgagees of the land: Commonwealth Bank of Australia,
108 Pitt Street, Sydney.
A.G.C. (Advances) Limited,
82 Mann Street, Gosford.

1. Identity of easement or restriction firstly referred to in the above-mentioned plan Easement for Services 3 wide.

Schedule of lots, etc. affected.

<u>Lots Burdened</u>	<u>Lots Benefited</u>
103	101 and Lot 12, DP 739783
101	Lot 12, DP 739783

2. Identity of easement or restriction secondly referred to in the above-mentioned plan Easement for inundation variable width

Schedule of lots, etc. affected.

<u>Lots Burdened</u>	<u>Authority Benefited</u>
101 and 103	Wyong Shire Council

3. Identity of easement or restriction thirdly referred to in the above-mentioned plan Restriction on Use

Schedule of lots, etc. affected.

<u>Lots Burdened</u>	<u>Authority Benefited</u>
101	Wyong Shire Council

PART 2

1. Terms of Easement for services firstly referred to in the abovementioned plan.

Full and free right for every person or authority who is at anytime entitled to an estate or interest in possession in the land herein indicated as the dominant tenement, or any part thereof which shall be capable of enjoyment of the right, and every person authorised by him to make, layout, construct, erect, install, carry, maintain and use through,

REGISTERED  4.12.1990

[Signatures]

INSTRUMENT SETTING OUT TERMS OF EASEMENTS AND RESTRICTIONS
ON THE USE OF LAND INTENDED TO BE CREATED PURSUANT TO
SECTION 88B OF THE CONVEYANCING ACT, 1919.

Lengths are in metres

(Sheet 2 of 2 Sheets)

Plan: *D.P. 806178*

Subdivision of Lot 9, D.P. 739783 covered
by Council Clerk's Certificate No.
dated

above, on and under the servient tenement all pipes, conduits, poles, wires or other equipment and materials necessary to provide, and carry all or any of water, sewerage, gas, electricity, and telephone services to and from the said dominant tenement TOGETHER WITH the right for the grantee and every person authorised by him, with any tools, implements, or machinery necessary for the purpose to enter upon the servient tenement and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining or renewing such equipment or any part thereof to such extent as may be necessary PROVIDED THAT the grantee and the persons authorised by him will take all reasonable precautions to ensure as little disturbance as possible to the surface of the servient tenement and/or free access to the dominant tenement and will restore without delay that surface as nearly as practicable to its original condition.

2. Terms of Easement for inundation secondly referred to in the abovementioned plan.

The Wyong Shire Council shall have the right to retain water upon and drain water including rain, storm, spring, soakage or seepage water in any quantities from those parts of the lots burdened and denoted * on the plan and the Wyong Shire Council shall have the right to enter upon the lots burdened for the purpose only of restoring, reinstating, replacing or repairing any damage which shall have been caused by the retention and drainage of such water upon the said parts of the lots burdened.

3. Terms of Restriction on use thirdly referred to in the abovementioned plan.

No building shall be erected or permitted to remain erected on the lot hereby burdened.

signed in my presence by)
John Charles Innes and Joan)
Helen Innes who are)
personally known to me.)

[Handwritten signatures]

[Handwritten signature]

J. C. INNES
[Handwritten signature]

J. H. INNES

[Handwritten signature]

Council Clerk.

Goerrop
Executed in Subdivision No. W by AGC (Advances) Limited.
by being sealed and delivered by John Schwanbeck
who certifies that he is the Branch Manager (NSW)
in the true sense of the said company
as Attorney under Power No. 604 Book 3700
in the presence of *[Handwritten signature]*
[Handwritten signature]

**STATE ENVIRONMENTAL PLANNING POLICY NO. 1
OBJECTION TO DEVELOPMENT STANDARDS**

<i>Name and address of objector</i>	Highlight Consulting Pty Ltd PO Box 4105, Wagstaffe, NSW, 2257
<i>Property description</i>	Lots 101 and 103 DP 806178 Corona Lane, Glenning Valley
<i>Proposed development</i>	re-subdivision of 2 lots into 2 lots/ minor boundary adjustment
1. <i>Development standard to which the objection relates</i>	Wyong LEP Clause 14(2)
<i>Proposed variation to the development standard</i>	standard: 7(a) 40ha minimum; proposal: retain existing size of 2.997ha standard: 7(c) 2ha minimum; proposal: retain existing size of 1ha

Reason for proposed variation

It is believed that Lot 101 was created with Consent as a 2.997 ha 7(a) lot and Lot 103 was created as a 1ha 7(c) lot some years **after** the LEP came into force. The current proposal retains those lot sizes but reconfigures the boundaries in order to create a flood-free building envelope and effluent disposal area on proposed Lot 101.

In these circumstances, application of the LEP standard is unreasonable and unnecessary. The departure from the standard is large (Lot 101) and medium (Lot 103), however the departure has already been consented to by Council. In so doing, Council exercised flexibility in relation to its own planning controls.

According to the S149 Planning Certificate, there is no prohibition on a dwelling on Lot 101. Council is therefore voluntarily introducing flexibility in relation to its own planning controls, which would otherwise prohibit a dwelling on this undersized 7(a) lot. A 7(c) zoning (which applies to Lot 103) favours dwellings on small lots. This proposal addresses both these situations, therefore refusal of a building envelope and dwelling entitlement would be unreasonable.

With the proposed replacement of about 4 Melaleucas (removed for the access onto Lot 103), there is virtually no effect on fauna or ecological communities (cf. S 5(A) EPA Act) from this proposal. A 40ha minimum (7(a)) and a 2ha minimum (7(c)) serves principally to maintain ecological and aesthetic values, as well as to minimise risk from natural hazards. Council has already accepted that in the case of each of these particular lots, the standard for a minimum area in each zone can be significantly reduced, because the zoning in this case reflects a well-defined natural hazard only. Therefore the current objection is well founded.

Compliance with Council's standard hinders the attainment of the objects specified in 5(a)(i) and (ii) of the EPA Act. The proposal, however, supports infill housing on land where it is explicitly not prohibited. Compliance with the standard is therefore unreasonable in the circumstances of the case.

2. *Development standard to which the objection relates* Wyong LEP Clause 16(1)

Proposed variation to the development standard

standard: 7(a) 40ha minimum for a dwelling entitlement; proposal: retain existing size of 2.997ha
 standard: 7(c) 2ha minimum; proposal: retain existing size of 1ha

Reason for proposed variation

The proposal is for one dwelling-house to be foreshadowed via a building envelope and dwelling entitlement on 7(c) land, although the 7(c) component on Lot 1011 will be less than the applicable minimum area. Sufficient land needed to be found within the two lots for a flood-free effluent disposal area, as well as a flood-free building envelope. The design achieves this, with no change proposed to the floodway or its buffer area. Therefore the purpose of the development standard is completely fulfilled.

As a result of the objective, the proposal creates a mixed zone lot (Lot 1011), where the area of 7(c) land (of approx. 2054 sq m) on which the building envelope is proposed is considered within the context of a 2.997ha lot. That is, the area of land is not just 2054 sq m, but a total of 2.997 ha. Further, development in the valley floor and watercourse are not proposed, and therefore remain effectively prohibited, which fulfils the original objective of the 7(a) zoning in this case (because there is no other zoning relating to flood-prone land).

Application of the standard is therefore unreasonable and unnecessary. In the case of Lot 1011, the departure from the standard is small, however in the case of Lot 1031 the departure is large. Nevertheless, Lot 1031 is not proposed for further development because a substantial and relatively new dwelling already exists there. On balance, the departure is therefore considered small.

Compliance with Council's standard hinders the attainment of the objects specified in 5(a)(i) and (ii) of the EPA Act. The proposal, however, supports infill housing on land where it is explicitly permissible. Compliance with the standard is therefore unreasonable in the circumstances of the case.

The objection is well founded.

3. *Development standard to which the objection relates* EPA Act, S94

Proposed variation to the development standard

no contribution of land should apply

Reason for proposed variation

S94 of the EPA Act states:

94 Contribution towards provision or improvement of amenities or services

(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:

- (a) the dedication of land free of cost, or
- (b) the payment of a monetary contribution, or both.

(2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.

As Council has already anticipated (in its S149 Certificate) that an application will be made for a dwelling on Lot 101 and a dwelling has already been approved, constructed and occupied on Lot 103, provision of or an increase in demand for public amenities and public services can be assumed to already have been factored into the previous application which created the two lots along with a number of others in the valley. That subdivision occurred about 20 years ago, with a contribution for additional demand having been made by the developer at that time. Therefore under S94, it would be unreasonable to require an additional contribution.

The arguments in 4. below also apply generally above.

4. Development standard to which the objection relates

Wyong LEP, Clause 14(3)(b) (with consequent calculation in Cl. 14(4))

Proposed variation to the development standard

no contribution of either cash or land should apply

Reason for proposed variation

The proposal is for a minor boundary adjustment and any dedication of land or cash contribution lacks merit in these circumstances.

A contribution was made by a previous owner at the time when Lots 101 and 103 (with others) were subdivided from a larger holding. The current proposal does not increase the demand for public facilities which usually arises from a subdivision. The current proposal does not create additional lots: it is for a minor boundary realignment. The current proposal has been anticipated by Council, which has

continued to permit a dwelling on Lot 101 by explicitly not prohibiting one (cf. S149 Planning Certificate). Therefore application of the development standard is both unreasonable and unnecessary.

The extent of the departure from the standard is large, because no further contribution is proposed. However, a contribution has already been made.

The standard exists to cater for provision of public facilities to cater for extra demand when additional lots are created by subdivision. The current proposal does not create additional lots. Additional demand for public facilities appears to have already been factored into the Consent for the subdivision which included Lots 101 and 103, as reflected in the S149 statement that a dwelling on Lot 101 is not prohibited. That statement infers that one was planned for when the contribution calculation was made with that earlier subdivision application and Consent.

This LEP requirement is not considered to be a "development standard".

The number of hectares to be dedicated in accordance with the calculation in Cl. 14(4)(a) and (b) is 7.5ha, which is impossible as the property (2 lots in common ownership) totals only 3.997ha. Further, the clause (14) referring to a contribution to Council relates to mixed zone properties, not to minor boundary adjustments (which is found in Clause 13).

Compliance with the requirement hinders the attainment of the objects specified in 5(a)(i) and (ii) of the EPA Act, as no contribution of land or cash is possible as a consequence of its application in this case.

5. *Development standard to which the objection relates* Wyong DCP 89, side setback

Proposed variation to the development standard 10m side setback required; 2m side setback is proposed

Reason for proposed variation

The objectives of the DCP (2003) are to

- Reinforce and enhance the rural residential lifestyle;
- Maintain the natural environment;
- Minimise the impact, both within and outside the Valley, of future development;
- Encourage a local sense of community;
- Promote the establishment of a high quality living environment through planning principles which encourage rural residential development."

Clause 2.3 states "Each application shall be considered on its merits. Council may vary its requirements depending upon the circumstances of individual applications." That flexibility is sought in relation to the side setback.

The proposal addresses the constraints listed in Cl. 2.1, particularly the existing subdivision pattern and the aesthetic impact of further development. Combined with the Cl. 3.4 requirement that all development is to be located above the 1:100 year flood level, a consequence of the Cl. 2.1 concerns is that a building envelope location has been preferred close to its effluent disposal area,, with acknowledgement of existing structures and infrastructure (driveways, vegetation, buildings, services).

Two alternatives existed, in order to meet a 10m side setback. The first was to move the building envelope's location and shape, so that it remained clear of the floodplain but otherwise achieved a 10m side setback. That would necessarily impinge on one or both existing driveways onto the lot. If the driveway to its north was affected, that driveway would have to be moved further north, which risked an unacceptable proximity to the drainage channel. No move to the east was possible, because of the building line which relates to the street frontage. A change in shape to a more rectangular shape would affect the potential design of a new dwelling (but remains a compromise option).

The second alternative was to move the Lot 1011/Lot 1031 boundary to the south. However, to retain Lot 1031 as 1ha (Council's minimum for a 7(c) lot) would push its western boundary further into the floodplain. This was not consistent with the local subdivision pattern (cf. Lot 102 among others), and made Lot 1011 less workable due to the constriction in the valley floor. Adherence to the 1ha minimum was preferred over other design considerations.

As the proposed boundary takes into account several existing structures and a hedge which provides privacy for Lot 1031 as well as for Lot 1011, a smaller setback was preferred. Aesthetically, a future change from the existing structures to a new dwelling may also be considered more desirable than retention of the former. Because those structures already exist, there is unlikely to be a negative impact on Glenning Valley, its sense of community or rural residential living, which are objectives of the DCP. The proposal also addresses the provisions of Cls. 3.13 and 3.14 of the DCP, with the proposed design being the preferred solution to multiple planning issues.

As a result of these design considerations, the application of the DCP's standard is considered both unreasonable and unnecessary. SEPP 1's aim of flexibility in the application of planning controls is addressed here, as it the DCP's own ability to remain flexible. The standard being objected to is not embedded within Council's LEP, but in a weaker planning document.

If no structures existed in the side setback area, then another result may have ensued. However, the standard does not fit the current situation well. Equally, if no hedge existed, then an argument might be mounted that the spaciousness typical of rural residential living would be hindered by this proposal. However, with an existing hedge and a relatively new dwelling on Lot 1031 which is set against its southern boundary at some distance from the Lot 1011 structures, spaciousness has been achieved, both perceptually and in fact. Solar access to the Lot 1031 house and its surrounds will be unaffected by the 2m side setback, partly because of the uphill slope in that area and the distance from the boundary to the dwelling.

Compliance with the standard does tend to hinder the attainment of the objects specified in 5(a) (i) and (ii) of the EPA Act, although it is acknowledged that some design options do exist.

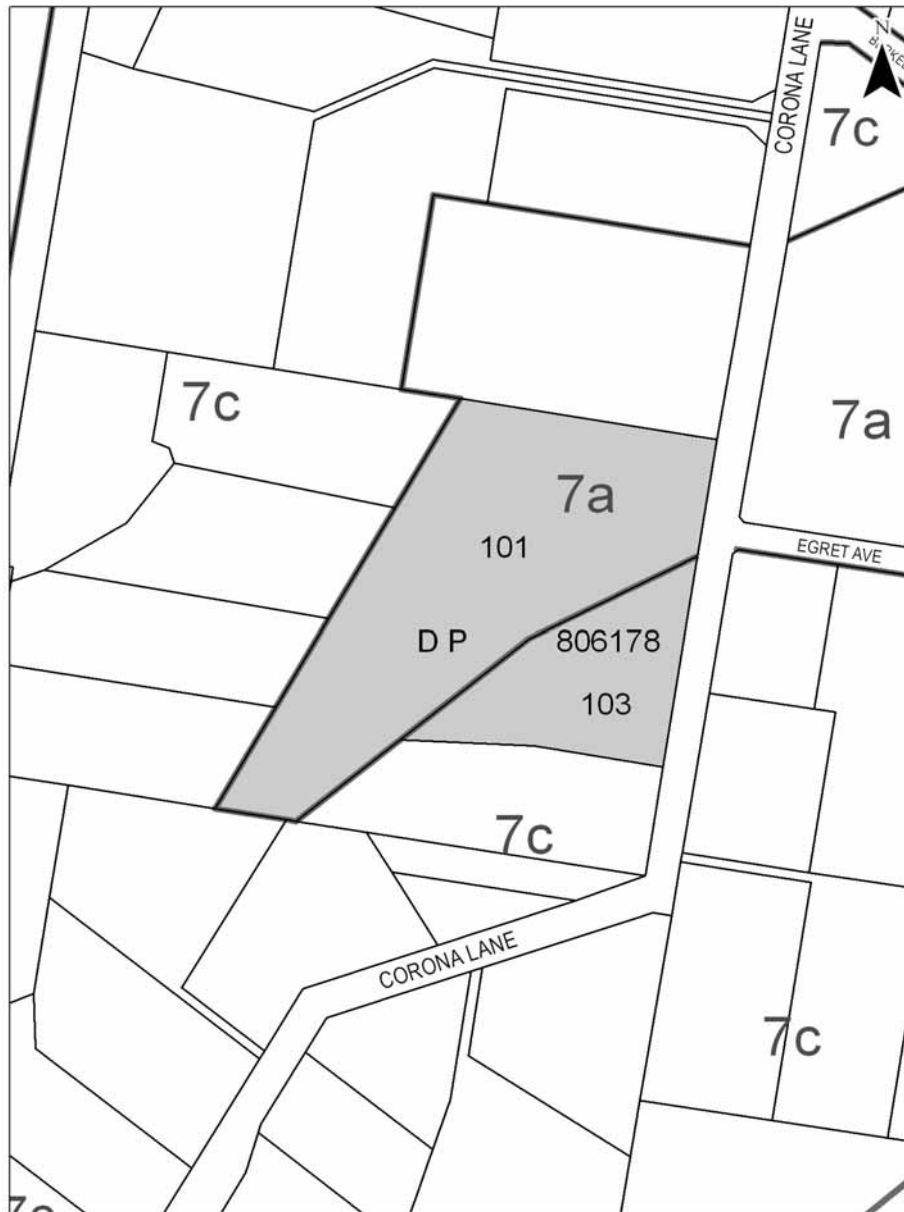


26 November 2008
To the Ordinary Meeting of Council

Director's Report
Shire Planning Department

**510 Proposed Boundary Adjustment at Lots 101 and 103
DP 806178 Corona Lane, Glenning Valley
(Attachment 1)**

Locality Plan

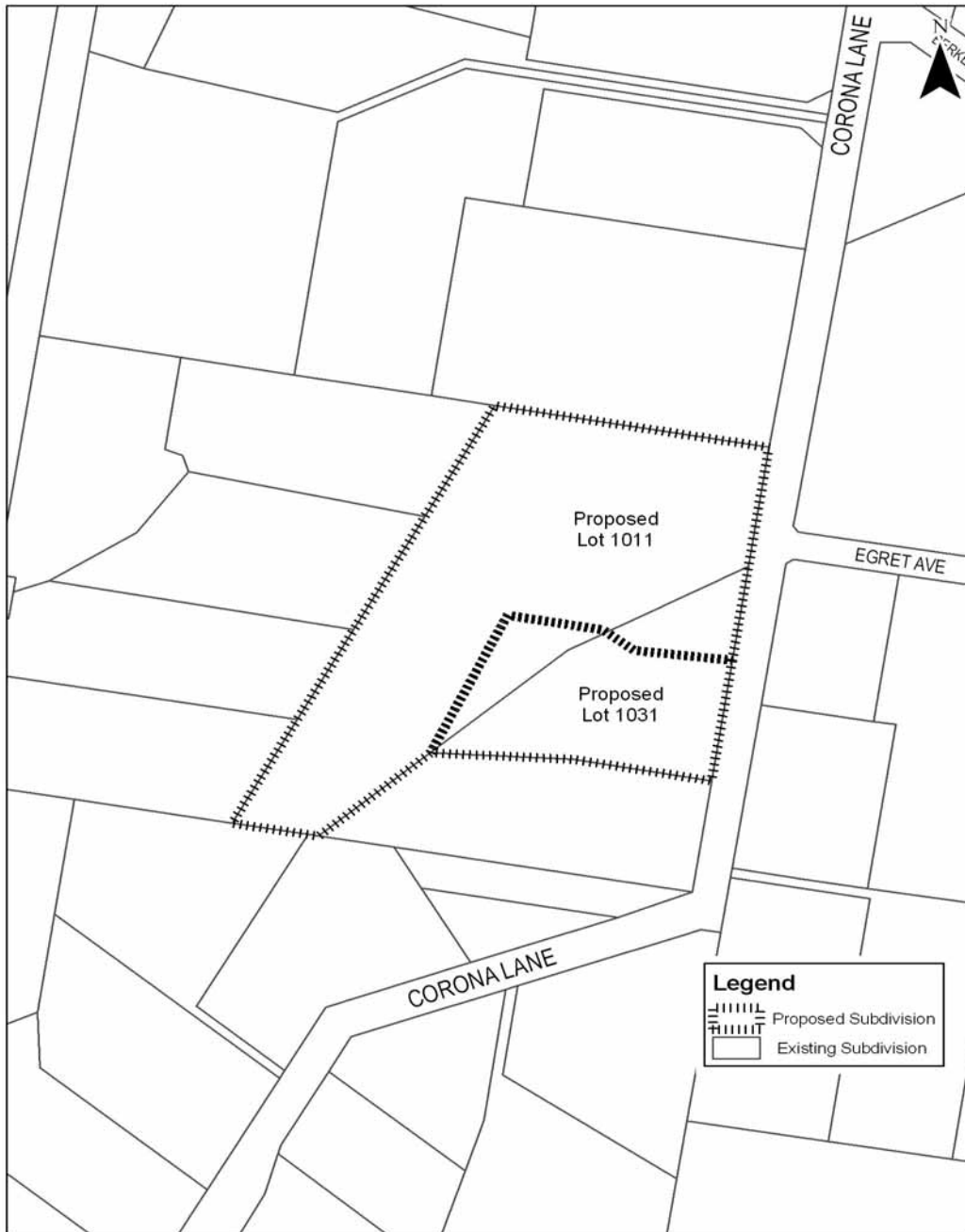


26 November 2008
To the Ordinary Meeting of Council

Director's Report
Shire Planning Department

Proposed Boundary Adjustment at Lots 101 and 103 DP 806178 Corona Lane, Glenning Valley (Attachment 2)

Plan Showing Existing and Proposed Subdivision



WYONG SHIRE COUNCIL

26 November 2008
To the Ordinary Meeting of Council

Director's Report
Shire Planning Department

**510 Proposed Boundary Adjustment at Lots 101 and 103 DP
806178 Corona Lane, Glenning Valley**

DA/408/2008 MLG

SUMMARY

An application has been received to adjust the common boundary involving land in Corona Lane, Glenning Valley. 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.

Applicant	Highlight Consulting Pty Ltd
Owner	R Law
Application No	408/2008
Description of Land	Lots 101 and 103 DP 806178 Corona Lane, Glenning Valley
Proposed Development	Boundary Adjustment
Site Area/Zoning	Lot 101 = 2.997 hectares, 7(a) Conservation Lot 103 = 1.00 hectare, 7(c) Scenic Protection

RECOMMENDATION

- 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 refusal of the application subject to appropriate reasons for refusal.*
- 2 *That Council not support the use of State Environmental Planning Policy No 1 in order to vary the subdivision standards of Wyong Local Environmental Plan 1991.*

ORDINARY MEETING HELD ON 26 NOVEMBER 2008

COUNCILLOR BEST LEFT THE CHAMBER AT 5.36 PM AND RETURNED TO THE CHAMBER AT 5.37 PM DURING CONSIDERATION OF THIS ITEM.

COUNCILLOR WYNN LEFT THE CHAMBER AT 5.47 PM AND RETURNED TO THE CHAMBER AT 5.48 PM DURING CONSIDERATION OF THIS ITEM.

COUNCILLOR VINCENT LEFT THE CHAMBER AT 5.53 PM AND RETURNED TO THE CHAMBER AT 5.55 PM DURING CONSIDERATION OF THIS ITEM.

MRS HELEN MONKS, HIGHLIGHT CONSULTING, REPRESENTING THE OWNER, ADDRESSED THE MEETING AT 5.36 PM, ANSWERED QUESTIONS AND RETIRED AT 5.50 PM.

26 November 2008
To the Ordinary Meeting of Council

Director's Report
Shire Planning Department

Proposed Boundary Adjustment at Lots 101 and 103 DP 806178 Corona Lane, Glenning Valley (contd)

It was MOVED by Councillor EATON and SECONDED by Councillor BEST:

- 1 *That Council advise the applicant it favours the application.*
- 2 *That Council defer determination of the application and obtain legal advice on the necessity for seeking concurrence from the Department of Planning.*
- 3 *That Council consider a further report listing appropriate conditions to be attached to a development approval.*

The MOTION was put to the vote and declared LOST.

FOR: COUNCILLORS BEST, EATON, GRAHAM AND McNAMARA.

AGAINST: COUNCILLORS McBRIDE, MATTHEWS, SYMINGTON, VINCENT, WEBSTER AND WYNN.

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

- 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 refusal of the application subject to appropriate reasons for refusal.***
- 2 ***That Council not support the use of State Environmental Planning Policy No 1 in order to vary the subdivision standards of Wyong Local Environmental Plan 1991.***

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

AGAINST: COUNCILLORS BEST AND EATON.

PRÉCIS

- Application involves the adjustment of the common boundary between two properties at Glenning Valley. This form of application is considered as subdivision and the subdivision standards in Council's Planning Instrument apply.

26 November 2008
To the Ordinary Meeting of Council

Director's Report
Shire Planning Department

Proposed Boundary Adjustment at Lots 101 and 103 DP 806178 Corona Lane, Glenning Valley (contd)

- The subject allotments are zoned environmental being conservation and scenic protection.
- The applicant proposes the use of State Environmental Planning Policy No 1 (SEPP 1) to vary the subdivision standards of Wyong Local Environmental Plan 1991 (WLEP). The variation extends to 90% of the subdivision standard.

INTRODUCTION

The Site

The subject land involves two parcels held in the same ownership in Corona Lane at Glenning Valley. The site is approximately 1.20 kilometres from Wyong Road via Berkeley Road and is part of the Corona Lane rural residential land precinct.

Lot 103 has an area of one hectare, zoned 7(c) - "*Scenic Protection*" and presently contains a dwelling, inground pool, stables and several other outbuildings. The Scenic Protection zone is described as small rural-residential holdings generally between one and two hectare allotments comprising typically of a residence with broader expanse than urban zones and capable of sustaining minor hobby farm uses. Access is via Corona Lane.

Lot 101 has an area of 2.997 hectares, zoned 7(a) - "*Conservation*" and presently contains horse paddocks and several stables or outbuildings. Throughout the Shire the Conservation Zone is generally land having special aesthetic, ecological and conservation values and generally refers to land best suited in the natural state. The site has frontage though no formal access to Corona Lane.

The Proposed Development

Consent is sought to adjust the common boundary between lots 101 and 103 in order to establish an additional dwelling site. Currently only existing lot 103 has a dwelling right with a residence approved and constructed in the mid 1990's. Lot 101 does not have any development right due to a Section 88B restriction imposed with the previous subdivision in 1990. A Section 88B restriction (as it is generally referred to) is a restrictive covenant imposed under (Section 88B) of the *Conveyancing Act* with the intent to control land uses (in this case) construction of a dwelling and establish beneficiaries. In the case of this specific 88B Instrument, Wyong Shire Council is a party to the instrument and has the ability to vary it under the application. The 88B would not apply to the newly created lots, thereby allowing for an additional dwelling.

26 November 2008
To the Ordinary Meeting of Council

Director's Report
Shire Planning Department

Proposed Boundary Adjustment at Lots 101 and 103 DP 806178 Corona Lane, Glenning Valley (contd)

The applicant seeks to adjust the property boundary which currently corresponds to the zone boundary to establish two allotments both of which would be split zoned land. Split zoned land is land affected by two or more different zones described in Council's zoning table. The applicant seeks to use State Environmental Planning Policy No 1 (SEPP 1) in order for Council to vary the development standards of Wyong Local Environmental Plan 1991 (LEP) for the purpose of the boundary adjustment.

SEPP 1 (as it generally referred to) is a planning policy established by the NSW State Government to make development standards more flexible. It allows councils to approve a development proposal that does not comply with a set standard where this can be shown to be unreasonable or unnecessary. However, in this case Council does not support the application for reasons pertaining to planning provisions in addition to current land restrictions and the inability to promote good planning and land management practices. The body of the report provides in-depth detail as to the reasons for refusal.

VARIATIONS TO POLICIES

<i>Clause</i>	14(2)
<i>Standard</i>	40 hectares
<i>LEP</i>	Wyong Local Environmental Plan 1991
<i>Extent of variation/departure</i>	90% for proposed lot 1011 50% for proposed lot 1031
<i>Departure basis</i>	Not supported by Council – see report for detail

<i>Clause</i>	13(3)(b)
<i>Standard</i>	10%
<i>LEP</i>	Wyong Local Environmental Plan 1991
<i>Extent of variation/departure</i>	22% for proposed lot 1031
<i>Departure basis</i>	Not supported by Council – see report for detail

HISTORY

Land History

Lots 101 and 103 in DP 806178 were registered 4 December 1990 from the subdivision of Lot 9 in DP 739783 approved on 20 July 1990 under Development Consent No 383/90.

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Lot 101 DP 806178

Council records are limited regarding approvals for the structures presently on this allotment. All structures are non habitable and have not been approved.

One aspect to be noted is that there is a Section 88B restriction on this parcel established at the subdivision stage that prohibits the erection of any building on the land (copy contained in Attachment 3).

Lot 103 DP 806178

On 1 November 1994, DA 983/94 for a rural dwelling was approved with construction undertaken during 1995 and 1996.

On 17 September 1999, DA 2634/99 for an inground pool was approved.

THE PROVISIONS OF ANY ENVIRONMENTAL PLANNING POLICIES

Environmental Planning and Assessment Act 1979

There are no SEPP'S specifically applicable to the site. However the applicant has elected to submit a SEPP 1 objection which is addressed in detail in the body of this report.

The application is subject to assessment against the heads of consideration under Section 79C of the EP&A Act.

The application is defined as "Integrated Development" under the provisions of Section 91 of the EP&A Act. Integrated Development is described as development that requires an approval (licence etc) or concurrence from a state body. In this case, the application was referred to the NSW Rural Fire Service (RFS) as it is bush fire prone land.

NSW RFS responded by granting a "Bush Fire Safety Authority" under the Rural Fires Act.

Wyong Local Environmental Plan 1991

The subject properties are zoned 7(a) "Conservation" and 7(c) "Scenic Protection" under Clause 10 of Wyong Local Environmental Plan (LEP) 1991.

"The objectives of the 7(a) "Conservation" zone are:

- (a) *to restrict the type and scale of development which will be carried out on land possessing special aesthetic, ecological or conservation values to that compatible with such environments, and*

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- (b) *to allow such development where:*
- (i) *it can be demonstrated that it can be carried out in a manner that minimises risks from natural hazards, functions efficiently, does not prejudice other economic development and does not detract from the scenic quality of the land referred to in the objective specified in paragraph (a), and*
 - (ii) *it is unlikely to have a significant detrimental effect on the growth of native plant communities, the survival of native wildlife populations or the provision and quality of habitats for both indigenous and migratory species, and*
 - (iii) *it is unlikely to have an adverse impact on the region's water resources.*

The objectives of the 7(a) "Scenic Protection" zone are:

- (a) *to enable development for the purposes of small rural-residential holdings to be carried out on land which is suitable for those purposes and which is unlikely:*
 - (i) *to inhibit the potential for urban expansion, particularly at the urban fringe, or*
 - (ii) *to create a demand for the uneconomic provision of services, or*
 - (iii) *to detract from the scenic quality of rural lands."*

The underlying similarity between the two zones is the focus on controlling development on land having scenic quality values.

Subdivision (including boundary adjustment) is defined under Section 4B – *Subdivision of land*, in the EP&A Act 1979. Although not specifically defined in Clause 7 – *Definitions*, of WLEP 1991, the development is separately referred to as "Subdivision" in Clause 13 – *Subdivision of Land*, in the LEP and is permitted with consent.

The proposal is required to meet the criteria of Clause 13(3) of the WLEP, which describes general criteria for boundary adjustments.

Note that the application is also assessed under Clause 14 as the applicant has lodged a SEPP 1 objection under the latter clause provisions.

RELEVANT COUNCIL POLICIES AND PLANS

The proposed development is considered with regard to the plans and policies identified in the Section 149 property certificate, with particular reference drawn to the following development guidelines:

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Development Control Plan No 2005 Chapter No 69 – Waste Management.

The application involves designating a waste disposal area for the building envelope on the proposed vacant parcel. Further detail in the body of the report.

W1 – Water Catchment Development Areas

This policy controls development in the drinking water catchments. Subdivisions are not listed as prohibited development.

F4 – Flood Plain Development

This policy controls development on land affected by flooding. The subject land is identified as being affected by 1 in 100 year flood events. The application to adjust the common boundary is not prohibited under this policy; however a merits assessment is required. The flood issue is addressed in greater detail in the body of the report.

ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the EP&A Act 1979 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 LIKELY IMPACTS OF THE DEVELOPMENT (s79C(1)(b)):

Discussion and assessment of Boundary Adjustment/Subdivision Strategy

Preamble

Existing lot 103, the 7(c) zoned parcel, is triangular in shape with its north-western boundary following the zone boundary, the common division with lot 101. It is proposed to absorb the northern part of the land, a dimensional area of about 2,200m² into existing lot 101 to create proposed lot 1011. It is this section of land that the applicant identifies as an area for a building envelope for future residential development.

To balance the boundary adjustment, part of existing lot 101, the 7(a) zoned parcel will be absorbed into existing lot 103 to establish proposed lot 1031.

The proposal would effectively create two split zoned parcels when currently both properties are singularly zoned. It is generally not regarded as good planning nor land management to establish split zoned land because of potential zoning and land use conflicts. Historically, Council's LEP prohibited the creation of split zoned parcels.

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Background to Previous Subdivision – DC 383/90

Before addressing the proposal within the LEP provisions it is worth noting the planning framework used in assessing the original subdivision that created the subject allotments as this has a bearing on the assessment of the current application.

Lots 101 and 103 along with neighbouring lots 100 and 102 (neither are part of current DA) were created under a four lot subdivision under DC 383/90. The application was assessed under WLEP 1987 which included provisions enabling subdivision of split zoned land. The planning provisions of the day permitted the creation of three lots from the 7(c) zoning with the fourth lot comprising the whole the 7(a) zone which became lot 101.

When approval was granted a condition of consent was imposed that any structure (residential or non-habitable) was prohibited on lot 101, the 7(a) portion of the subdivision. It is noted that the same restriction was also on the parent lot (being lot 9 in DP 739783) prior to the 1990 subdivision. The restriction remains on that land today.

The intent of the restriction is to limit development rights on land established under special subdivision provisions where such land promoted a substandard allotment (in this case lot 101) in terms of minimum dimensional criteria. Being 7(a) zoned land, the minimum area requirement is 40 hectares otherwise where the land does not achieve the standard a dwelling restriction is imposed. The underlying purpose is to ensure that the conservation zone maintains aesthetic value without being compromised by development.

This form of subdivision was an early form of offsets on land recognised for environmental value to allow some development to occur.

The method used in approving DC 383/90 under WLEP Plan 1987 is generally similar to the provisions in the current version of WLEP 1991. If the four lot subdivision was to be considered today the same dwelling prohibition would be imposed as it was in 1990. This aspect is important to note in that the issues associated with the subdivision provisions have not altered in any significant manner since Council's planning instrument of 1987.

Property Dimensional Summary

The following is the status of the current land circumstances and proposed arrangement.

The current lot status:

Lot 101 DP 806178 = 2.997 hectares, 7(a) zoned

Lot 103 DP 806178 = 1.00 hectares, 7(c) zoned

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The proposed lot arrangement:

- | | |
|---|--|
| Lot 1011, predominantly from existing lot 101 = | 2.997 hectares, 7(a) and 7(c)
zoned – no increase in area |
| Lot 1031, predominantly from existing lot 103 = | 1.00 hectare, 7(a) and 7(c)
zoned – no increase in area |

Boundary Adjustment Strategy – Clause 13(3) of WLEP

Boundary adjustments are considered under Clause 13(3) of the WLEP, which provides certain criteria for applications of this nature.

Clause 13(3) states:

“Subdivision of land - generally

- 13(3) *Notwithstanding any other provisions of this plan, including the provisions of clause 14, the Council may consent to a subdivision of land for the purpose of a minor adjustment of the boundary between two lots provided that:*
- (a) the configuration of the allotments remains substantially the same, and*
 - (b) the area of each allotment proposed is varied by no more than 10 per cent, and*
 - (c) the Council is satisfied that the boundary adjustment is necessary in the circumstances of the case.”*

The following comment is provided with regard to the criteria of 13(3)(a), (b) and (c).

(a) Configuration

The configuration is not substantially the same in that the proposed new boundary alignment is not consistent with the zoning and topographical features of the land. The current boundary generally follows the line of flooding. The proposed boundary does not follow any distinct land feature and in fact deviates substantially from the natural contours of the land and indeed the extent of flooding.

In this regard the proposed boundary adjustment does not comply with the criteria of the clause.

(b) Dimensional Compliance

While there is a direct land balance between both proposed lots the extent of change to one of the lots is greater than the nominal 10%. For existing lot 103 the change in area of about 2,200m² equates to 22% which exceeds the provisions of the clause.

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In this regard the proposed boundary adjustment does not comply with the criteria of the clause.

(c) *Circumstances of the case*

There does not appear to be any circumstances that support the need to adjust the boundaries to this extent. The applicant clearly suggests by way of the indicative building envelope that the circumstance is to establish an additional dwelling right.

The intent of the boundary adjustment provisions is not to increase development rights but to merely correct any abnormal boundary situations that may have occurred through historical boundary problems. The purpose of the provision is to "twig" the boundary to overcome site issues.

In this regard the proposed adjustment does not comply with the criteria of the clause.

In summary, the assessment reveals that the proposal is not able to comply with any of the criteria of Clause 13(3) and thus cannot be supported under this provision.

Subdivision Strategy – Clause 14(2) of WLEP

As noted in this report the application does not comply with the boundary adjustment criteria of Clause 13(3). Given that the applicant has specifically lodged the application with reference to Clause 14 it is necessary for Council's assessment to extend beyond the boundary adjustment provisions to the subdivision criteria of Clause 14.

Clause 14 states:

"Subdivision of land within Zone No 1 (a), 1 (c), 7 (a), 7 (b), 7 (c), 7 (d), 7 (e) 7 (f) or 7 (g)

- 14 (1) *This clause applies to land within Zone No. 1(a), 1(c), 7(a), 7(b), 7(c), 7(d), 7(e), 7(f) or 7(g).*
- (2) *Except as provided by subclauses (3) and (4), a person shall not subdivide land to which this clause applies so as to create an allotment having an area of less than -*
- (a) *in the case of land within Zone No. 1(c), 7(a), 7(d), 7(e), 7(f) or 7(g) - 40 hectares;*
- (b) *in the case of land within Zone No. 1(a) or 7(b) - 20 hectares;*
- (c) *in the case of land within Zone No. 7(c) - 2 hectares."*

The subdivision does not comply with the minimum dimensional standards of Clause 14(2); therefore the applicant prepared a SEPP 1 objection. The extent of departure to the standards is 92% for proposed lot 1011 and 50% for proposed lot 103.

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Objection under State Environmental Planning Policy No 1

It has been recognised by Council in previous instances of applying the criteria of the clause, that the numerical values of Clause 14(2) are able to be varied under SEPP 1.

SEPP 1 provides flexibility in the application of planning controls of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5 (a) (i) and (ii) of the EP&A Act, which are to encourage proper and appropriate land management within the natural environment.

A Land and Environment Court judgement outlined the procedure for considering SEPP1 objections. The application is assessed in accordance with this procedure. See "Attachment 3" for a full copy of the applicant's SEPP 1 objection.

It must be stated that the applicant's objection is confusing in that part of the submission refers to sections of Clause 14 that are irrelevant to the assessment process for this application. The submission objects to provisions regarding split zoned land and developer contributions which were relevant in the 1990 subdivision proposal but have no bearing on the assessment of the current DA.

First, is the planning control in question a development standard?

Putting a numerical description onto the minimum subdivision lot size permissible within particular zones, as identified under Clause 14(2), classifies this as a development standard.

The extent of departure to the minimum standards of clause 14(2) is 90% for proposed lot 1011 and 50% for proposed lot 1031. The extent of departure to the criteria of clause 13(3) is 22% for proposed lot 1031.

It should be noted that council's delegation may not extend to assuming concurrence of the department of planning (DOP) for the use of SEPP 1 in this instance. The delegation notes that council can only assume concurrence for two lot boundary adjustments where both lots are presently below the minimum subdivision standards subject to no additional allotments created, that the agricultural use of the land is not jeopardised and that no additional housing entitlements are created. The last point the issue of doubt. Given that the two lots presently have only one housing entitlement due to the section 88b restriction it is suggested that the proposed boundary adjustment promotes an additional housing entitlement. In this respect if council was of a mind to approve the application, concurrence of the department of planning for the use of SEPP 1 would need to be sought.

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Second, what is the underlying object or purpose of the standard?

The purpose of the LEP standards in this instance is to protect land with conservation or scenic values. The subject land exhibits a topography that features a broad open space land depression generally following the line of the known flood extent in the area. The original zoning strategy recognised the flood limitations and accordingly the zone boundary reflects the 1 in 100 year flood line.

In addition the subdivision strategy adopted by Council in assessing DC 383/90 also recognised the site constraints which in turn were used in establishing the parameters of the lot size and shape which evolved into lots 100, 101, 102 and 103. It is considered that this determination reflects the full extent of development potential of the land.

In this regard the standard adopted in the LEP has been devised to ensure that the geographical assets identified for respective parcels are contained wholly within those parcels. As such existing lot 101 includes most of the flood affect while lot 103 comprises generally the more aesthetically pleasant and higher part of the original parent property.

The proposed boundary adjustment dramatically alters the balance that was achieved in the 1990 subdivision approval. The proposed layout promotes an allotment shape that in effect would create both parcels as partly flood affected which is not consistent with the objective of the development standard.

Third, does compliance with the development standard tend to hinder the attainment of the objects specified in S.5 of the EP & A Act.

It is considered that the proposal does not promote good land management in terms of conserving the natural environment. As noted the proposed shape of the allotments would create both proposed lots 1031 and 1011 as partly flood affected land, a circumstance that existing lot 103 does not experience to any significant degree.

Fourth, is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The applicant has not provided any justification in real terms as to why the development standards are unreasonable or unnecessary. The objection appears to have an underlying desire to establish an additional dwelling right which is not regarded as grounds for objection. The submission suggests that the boundary adjustment is minor and that no development rights are proposed. This is not true in that an additional dwelling right would be created if the subdivision was to be approved. The previous approval clearly established the potential on each approved lot and that as a package of four allotments (Lots 100, 101, 102 and 103) only three dwelling rights could ever be established those belonging to lots 100, 102 and 103. Lot 101 had a restriction imposed under the LEP that prohibited a dwelling or any building for that matter.

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Fifth, is the objection well founded?

The applicant's objection is considered as not well founded with no grounds for Council to confidently approve the application. The objection does not prove that the standards hinder the potential of the land nor does the objection appear to counter argue the intent of the original restriction imposed on lot 101. The objection merely concludes that there is suitable land available for another dwelling with no regard to the planning ideology that established the subdivision in 1990.

In summary Council is unable to concur with the applicants' reasoning for the SEPP 1 objection and finds no suitable argument to vary the standards of Clause 14(2) of the LEP.

The relationship to the regional and local context and setting

The zone objectives (noted earlier in this report) for the 7(a) and 7(c) zones provide a backdrop by which rural subdivision development is assessed.

As detailed earlier both zone objectives are consistent in approach regarding the aesthetic values of land. The application is however considered to be inconsistent with the objectives in that the change in boundaries would have an impact on natural hazards and could in fact have a detrimental affect on the scenic and conservation values of the respective zones.

Currently the package of the two existing properties (lots 101 and 103) has only one dwelling right which is regarded as the optimum residential density of both lots. As this report identifies there is good reason for the building restriction on lot 101, if the application was to be approved the residential density doubles and effectively erodes the quality of the landscape.

The fact that there are existing structures (illegally built) on lot 101 is by no means a reason to continue to promote the land as viable for residential uses. It is accepted that a residence (approved) on lot 103 is sustainable in terms of planning and environmental grounds. What is not acceptable is the proliferation of dwellings that would occur if the subdivision layout was to be supported.

The applicant has verbally indicated that one of the non-habitable structures on lot 101 has been used for residential purposes for many years, been built prior to the introduction of planning legislation. The structure is not listed as a heritage item and resembles an old outbuilding more than likely used in an unauthorised manner over the years as a residence. The applicant is attempting to establish that the shed should be "granted" residential status enabling a pseudo dwelling right on lot 101. It is noted in Council's report of 16 July 1990 (for DC 383/90) that the parcel now known as lot 101 was indeed clear of any structure with several other structures identified as stables and sheds located on the lot now known as lot 103. A survey prepared in 1990 and submitted with DA 383/90 supports this conclusion.

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Given that no approval exists, no residential rights can be considered for any structure on lot 101.

In essence the catchment of land encompassing all four lots (lots 100, 101, 102 and 103) in the previous subdivision has exhausted its residential capacity. That being the 7(c) parcels with a total area of 3.00 hectares has established dwelling rights for lots 100, 102 and 103. Given that there is a restriction on lot 101 no further potential exists. The proposed layout attempts to create the additional dwelling right that was purposely restricted in the 1990 approval process.

The access, transport and traffic management measures

An additional access is proposed from the existing dwelling on lot 103 to Corona Lane. While there are no apparent traffic safety issues with the new access it does promote an additional access that could create further land erosion issues by way of this construction.

The impact on utilities supply

The waste disposal details submitted with the application are not conclusive and given the restrictive area involved with the indicative building envelope of proposed lot 1011, Council cannot be satisfied the issue has been totally resolved.

The effect on heritage significance

There are no Aboriginal or European heritage items in or nearby the land.

Any effect on the flora and fauna

In order to establish the proposed new vehicle access for the existing residence to Corona Lane some tree loss within the roadway would occur. Given that the road reserve is Council controlled "land" the impact to the trees is inappropriate under these circumstances.

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

The issue of flooding has been identified elsewhere in this report. To reiterate, the change in boundaries would effectively establish a dividing line directly in the path of the flood pattern rather than the existing subdivision being sympathetic with the constraints. Where the current common boundary matches the extent of flooding, the proposed boundary ignores the natural flood pattern.

The proposed layout promotes both parcels of land as partly flood affected, an undesirable situation compared to the current circumstances. Such a scenario is not encouraged in subdivision design and is not regarded as good planning nor good land management.

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

Any submission from the public

The application was advertised in accordance with DCP 2005 Chapter 70-Notification of Development Proposals with no submissions being received.

CONCLUSION

It is considered that the proposal fails to satisfy a fair and accurate assessment under Section 79C on a number of issues including the use of SEPP 1. It is considered that the applicant has not proven that the development standards of Clause 14 are neither unnecessary nor unreasonable in the case of the proposal to warrant Council varying the development standards of the LEP.

In brief the issues of concern are listed below:

- | | | |
|--------------------------|---|---|
| WLEP 1991: | - | Non-compliance with Clauses 13(3) and 14(2), the criteria for boundary adjustment and subdivision. |
| | - | Contrary to the zone objectives of 7(a) and 7(c) zones. |
| Suitability of the site: | - | The proposal promotes a subdivision layout that is not compatible with the natural or physical constraints of the land including the impact of flooding. |
| | - | The proposal attempts to establish an additional dwelling right beyond the scope of the original subdivision that has direct impact from flooding and aesthetic issues. |
| | - | Promoting poor land management; creating split zoned land. |
| | - | Impact to trees within the road reserve. |
| SEPP 1: | - | The use of SEPP 1 is not supported for this application. |
| Precedent | - | Unacceptable precedent for similarly affected land throughout the shire. |

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The precinct, approved in 1990 establishing four parcels (lots 100, 101, 102 and 103) of the original subdivision has exhausted its residential capacity. That is; the 7(c) zoned parcels of land having a total area of 3.00 hectares established dwelling rights (for lots 100, 102 and 103) equating to one dwelling right per hectare which is the basis for the intent of the LEP provision. The proposed layout attempts to create an additional dwelling right beyond the scope of the LEP, the logic for the restriction imposed in the 1990 subdivision approval process.

The proposed boundary adjustment is not supported and accordingly is recommended for refusal. However, should Council be of a mind to approve the application concurrence from the Department of Planning will be required.

Attachment 1	Locality Plan (1 page)
Attachment 2	Plan Showing Existing and Proposed Subdivision (1 page)
Attachment 3	Section 88B Restriction for Lot 101 (2 pages)
Attachment 4	Applicant's SEPP 1 Objection (6 pages)

Enclosure	Aerial Photograph
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**Proposed Boundary Adjustment at Lots 101 and 103 DP 806178 Corona Lane,
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Section 88B Restriction for Lot 101

INSTRUMENT SETTING OUT TERMS OF EASEMENTS AND RESTRICTIONS
ON THE USE OF LAND INTENDED TO BE CREATED PURSUANT TO
SECTION 88B OF THE CONVEYANCING ACT, 1919.

Lengths are in metres (Sheet 1 of 2 Sheets)

Plan: **DP806178** Subdivision of Lot 9, D.P. 739783 covered
by Council Clerk's Certificate No.
dated

PART 1.

<u>Full name and address of the Proprietors of the land:</u>	John Charles Innes and Joan Helen Innes, Corona Park, Corona Lane, Berkeley Vale.
<u>Full name and address of the Mortgagees of the land:</u>	Commonwealth Bank of Australia, 108 Pitt Street, Sydney. A.G.C. (Advances) Limited, 82 Mann Street, Gosford.

1. Identity of easement or restriction firstly referred to in the above-mentioned plan Easement for Services 3 wide.

Schedule of lots, etc. affected.

<u>Lots Burdened</u>	<u>Lots Benefited</u>
103 101	101 and Lot 12, DP 739783 Lot 12, DP 739783

2. Identity of easement or restriction secondly referred to in the above-mentioned plan Easement for inundation variable width

Schedule of lots, etc. affected.

<u>Lots Burdened</u>	<u>Authority Benefited</u>
101 and 103	Wyong Shire Council

3. Identity of easement or restriction thirdly referred to in the above-mentioned plan Restriction on Use

Schedule of lots, etc. affected.

<u>Lots Burdened</u>	<u>Authority Benefited</u>
101	Wyong Shire Council

PART 2

1. Terms of Easement for services firstly referred to in the abovementioned plan.

Full and free right for every person or authority who is at anytime entitled to an estate or interest in possession in the land herein indicated as the dominant tenement, or any part thereof which shall be capable of enjoyment of the right, and every person authorised by him to make, layout, construct, erect, install, carry, maintain and use through,

REGISTERED 4-12-1990

[Signatures]

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**Proposed Boundary Adjustment at Lots 101 and 103 DP 806178 Corona Lane,
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INSTRUMENT SETTING OUT TERMS OF EASEMENTS AND RESTRICTIONS
ON THE HER OF LAND INTENDED TO BE CREATED PURSUANT TO
SECTION 255 OF THE CONVEYANCING ACT, 1919.

Lengths are in metres

(Sheet 2 of 2 Sheets)

Plan: *D.P. 806178*

Subdivision of Lot 9, D.P. 739783 covered
by Council Clerk's Certificate No.
dated

above, on and under the servient tenement all pipes, conduits, poles, wires or other equipment and materials necessary to provide, and carry all or any of water, sewerage, gas, electricity, and telephone services to and from the said dominant tenement TOGETHER WITH the right for the grantee and every person authorised by him, with any tools, implements, or machinery necessary for the purpose to enter upon the servient tenement and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining or renewing such equipment or any part thereof to such extent as may be necessary PROVIDED THAT the grantee and the persons authorised by him will take all reasonable precautions to ensure as little disturbance as possible to the surface of the servient tenement and/or free access to the dominant tenement and will restore without delay that surface as nearly as practicable to its original condition.


2. Terms of Easement for inundation secondly referred to in the abovementioned plan.


The Wyong Shire Council shall have the right to retain water upon and drain water including rain, storm, spring, soakage or seepage water in any quantities from those parts of the lots burdened and denoted * on the plan and the Wyong Shire Council shall have the right to enter upon the lots burdened for the purpose only of restoring, reinstating, replacing or repairing any damage which shall have been caused by the retention and drainage of such water upon the said parts of the lots burdened.

3. Terms of Restriction on use thirdly referred to in the abovementioned plan.

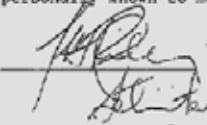
No building shall be erected or permitted to remain erected on the lot hereby burdened.

Signed in my presence by)
John Charles Innes and Joan)
Helen Innes who are)
personally known to me.)



J. C. INNES


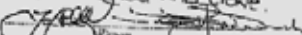
J. H. INNES



Council Clerk.



Council Clerk.

GOSFORD
Executed in Gosford, N.S.W. by AGC (Advances) Limited
by being authorised and authorised by John Schonbeck
who declares to be the Branch Manager (NSW)
in the true belief of the said company
as Attorneys under Power No. 604 Book 3700
in the presence of Lynch and Grove


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**Proposed Boundary Adjustment at Lots 101 and 103 DP 806178 Corona Lane,
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Applicant's SEPP 1 Objection

**STATE ENVIRONMENTAL PLANNING POLICY NO. 1
OBJECTION TO DEVELOPMENT STANDARDS**

<i>Name and address of objector</i>	Highlight Consulting Pty Ltd PO Box 4105, Wagstaffe, NSW, 2257
<i>Property description</i>	Lots 101 and 103 DP 806178 Corona Lane, Glenning Valley
<i>Proposed development</i>	re-subdivision of 2 lots into 2 lots/ minor boundary adjustment
1. <i>Development standard to which the objection relates</i>	Wyong LEP Clause 14(2)
<i>Proposed variation to the development standard</i>	standard: 7(a) 40ha minimum; proposal: retain existing size of 2.997ha standard: 7(c) 2ha minimum; proposal: retain existing size of 1ha

Reason for proposed variation

It is believed that Lot 101 was created with Consent as a 2.997 ha 7(a) lot and Lot 103 was created as a 1ha 7(c) lot some years **after** the LEP came into force. The current proposal retains those lot sizes but reconfigures the boundaries in order to create a flood-free building envelope and effluent disposal area on proposed Lot 1011.

In these circumstances, application of the LEP standard is unreasonable and unnecessary. The departure from the standard is large (Lot 101) and medium (Lot 103), however the departure has already been consented to by Council. In so doing, Council exercised flexibility in relation to its own planning controls.

According to the S149 Planning Certificate, there is no prohibition on a dwelling on Lot 101. Council is therefore voluntarily introducing flexibility in relation to its own planning controls, which would otherwise prohibit a dwelling on this undersized 7(a) lot. A 7(c) zoning (which applies to Lot 103) favours dwellings on small lots. This proposal addresses both these situations, therefore refusal of a building envelope and dwelling entitlement would be unreasonable.

With the proposed replacement of about 4 Melaleucas (removed for the access onto Lot 103), there is virtually no effect on fauna or ecological communities (cf. S 5(A) EPA Act) from this proposal. A 40ha minimum (7(a)) and a 2ha minimum (7(c)) serves principally to maintain ecological and aesthetic values, as well as to minimise risk from natural hazards. Council has already accepted that in the case of each of these particular lots, the standard for a minimum area in each zone can be significantly reduced, because the zoning in this case reflects a well-defined natural hazard only. Therefore the current objection is well founded.

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Proposed Boundary Adjustment at Lots 101 and 103 DP 806178 Corona Lane, Glenning Valley (Attachment 4) (contd)

Compliance with Council's standard hinders the attainment of the objects specified in 5(a)(i) and (ii) of the EPA Act. The proposal, however, supports infill housing on land where it is explicitly not prohibited. Compliance with the standard is therefore unreasonable in the circumstances of the case.

2. *Development standard to which the objection relates* Wyong LEP Clause 16(1)

Proposed variation to the development standard

standard: 7(a) 40ha minimum for a dwelling entitlement; proposal: retain existing size of 2.997ha
standard: 7(c) 2ha minimum; proposal: retain existing size of 1ha

Reason for proposed variation

The proposal is for one dwelling-house to be foreshadowed via a building envelope and dwelling entitlement on 7(c) land, although the 7(c) component on Lot 1011 will be less than the applicable minimum area. Sufficient land needed to be found within the two lots for a flood-free effluent disposal area, as well as a flood-free building envelope. The design achieves this, with no change proposed to the floodway or its buffer area. Therefore the purpose of the development standard is completely fulfilled.

As a result of the objective, the proposal creates a mixed zone lot (Lot 1011), where the area of 7(c) land (of approx. 2054 sq m) on which the building envelope is proposed is considered within the context of a 2.997ha lot. That is, the area of land is not just 2054 sq m, but a total of 2.997 ha. Further, development in the valley floor and watercourse are not proposed, and therefore remain effectively prohibited, which fulfils the original objective of the 7(a) zoning in this case (because there is no other zoning relating to flood-prone land).

Application of the standard is therefore unreasonable and unnecessary. In the case of Lot 1011, the departure from the standard is small, however in the case of Lot 1031 the departure is large. Nevertheless, Lot 1031 is not proposed for further development because a substantial and relatively new dwelling already exists there. On balance, the departure is therefore considered small.

Compliance with Council's standard hinders the attainment of the objects specified in 5(a)(i) and (ii) of the EPA Act. The proposal, however, supports infill housing on land where it is explicitly permissible. Compliance with the standard is therefore unreasonable in the circumstances of the case.

The objection is well founded.

3. *Development standard to which the objection relates*

EPA Act, S94

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**Proposed Boundary Adjustment at Lots 101 and 103 DP 806178 Corona Lane,
Glenning Valley (Attachment 4) (contd)**

Proposed variation to the development standard no contribution of land should apply

Reason for proposed variation

S94 of the EPA Act states:

94 Contribution towards provision or improvement of amenities or services

(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:

(a) the dedication of land free of cost, or
(b) the payment of a monetary contribution, or both.

(2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.

As Council has already anticipated (in its S149 Certificate) that an application will be made for a dwelling on Lot 101 and a dwelling has already been approved, constructed and occupied on Lot 103, provision of or an increase in demand for public amenities and public services can be assumed to already have been factored into the previous application which created the two lots along with a number of others in the valley. That subdivision occurred about 20 years ago, with a contribution for additional demand having been made by the developer at that time. Therefore under S94, it would be unreasonable to require an additional contribution.

The arguments in 4. below also apply generally above.

4. *Development standard to which the objection relates* Wyong LEP, Clause 14(3)(b) (with consequent calculation in Cl. 14(4))

Proposed variation to the development standard no contribution of either cash or land should apply

Reason for proposed variation

The proposal is for a minor boundary adjustment and any dedication of land or cash contribution lacks merit in these circumstances.

A contribution was made by a previous owner at the time when Lots 101 and 103 (with others) were subdivided from a larger holding. The current proposal does not increase the demand for public facilities which usually arises from a subdivision. The current proposal does not create additional lots: it is for a minor boundary realignment. The current proposal has been anticipated by Council, which has

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continued to permit a dwelling on Lot 101 by explicitly not prohibiting one (cf. S149 Planning Certificate). Therefore application of the development standard is both unreasonable and unnecessary.

The extent of the departure from the standard is large, because no further contribution is proposed. However, a contribution has already been made.

The standard exists to cater for provision of public facilities to cater for extra demand when additional lots are created by subdivision. The current proposal does not create additional lots. Additional demand for public facilities appears to have already been factored into the Consent for the subdivision which included Lots 101 and 103, as reflected in the S149 statement that a dwelling on Lot 101 is not prohibited. That statement infers that one was planned for when the contribution calculation was made with that earlier subdivision application and Consent.

This LEP requirement is not considered to be a "development standard".

The number of hectares to be dedicated in accordance with the calculation in Cl. 14(4)(a) and (b) is 7.5ha, which is impossible as the property (2 lots in common ownership) totals only 3.997ha. Further, the clause (14) referring to a contribution to Council relates to mixed zone properties, not to minor boundary adjustments (which is found in Clause 13).

Compliance with the requirement hinders the attainment of the objects specified in 5(a)(i) and (ii) of the EPA Act, as no contribution of land or cash is possible as a consequence of its application in this case.

5. *Development standard to which the objection relates* Wyong DCP 89, side setback

Proposed variation to the development standard 10m side setback required; 2m side setback is proposed

Reason for proposed variation

The objectives of the DCP (2003) are to

- Reinforce and enhance the rural residential lifestyle;
- Maintain the natural environment;
- Minimise the impact, both within and outside the Valley, of future development;
- Encourage a local sense of community;
- Promote the establishment of a high quality living environment through planning principles which encourage rural residential development."

Clause 2.3 states "Each application shall be considered on its merits. Council may vary its requirements depending upon the circumstances of individual applications." That flexibility is sought in relation to the side setback.

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Proposed Boundary Adjustment at Lots 101 and 103 DP 806178 Corona Lane, Glenning Valley (Attachment 4) (contd)

The proposal addresses the constraints listed in Cl. 2.1, particularly the existing subdivision pattern and the aesthetic impact of further development. Combined with the Cl. 3.4 requirement that all development is to be located above the 1:100 year flood level, a consequence of the Cl. 2.1 concerns is that a building envelope location has been preferred close to its effluent disposal area,, with acknowledgement of existing structures and infrastructure (driveways, vegetation, buildings, services).

Two alternatives existed, in order to meet a 10m side setback. The first was to move the building envelope's location and shape, so that it remained clear of the floodplain but otherwise achieved a 10m side setback. That would necessarily impinge on one or both existing driveways onto the lot. If the driveway to its north was affected, that driveway would have to be moved further north, which risked an unacceptable proximity to the drainage channel. No move to the east was possible, because of the building line which relates to the street frontage. A change in shape to a more rectangular shape would affect the potential design of a new dwelling (but remains a compromise option).

The second alternative was to move the Lot 1011/Lot 1031 boundary to the south. However, to retain Lot 1031 as 1ha (Council's minimum for a 7(c) lot) would push its western boundary further into the floodplain. This was not consistent with the local subdivision pattern (cf. Lot 102 among others), and made Lot 1011 less workable due to the constriction in the valley floor. Adherence to the 1ha minimum was preferred over other design considerations.

As the proposed boundary takes into account several existing structures and a hedge which provides privacy for Lot 1031 as well as for Lot 1011, a smaller setback was preferred. Aesthetically, a future change from the existing structures to a new dwelling may also be considered more desirable than retention of the former. Because those structures already exist, there is unlikely to be a negative impact on Glenning Valley, its sense of community or rural residential living, which are objectives of the DCP. The proposal also addresses the provisions of Cls. 3.13 and 3.14 of the DCP, with the proposed design being the preferred solution to multiple planning issues.

As a result of these design considerations, the application of the DCP's standard is considered both unreasonable and unnecessary. SEPP 1's aim of flexibility in the application of planning controls is addressed here, as it the DCP's own ability to remain flexible. The standard being objected to is not embedded within Council's LEP, but in a weaker planning document.

If no structures existed in the side setback area, then another result may have ensued. However, the standard does not fit the current situation well. Equally, if no hedge existed, then an argument might be mounted that the spaciousness typical of rural residential living would be hindered by this proposal. However, with an existing hedge and a relatively new dwelling on Lot 1031 which is set against its southern boundary at some distance from the Lot 1011 structures, spaciousness has been achieved, both perceptually and in fact. Solar access to the Lot 1031 house and its surrounds will be unaffected by the 2m side setback, partly because of the uphill slope in that area and the distance from the boundary to the dwelling.

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**Proposed Boundary Adjustment at Lots 101 and 103 DP 806178 Corona Lane,
Glenning Valley (Attachment 4) (contd)**

Compliance with the standard does tend to hinder the attainment of the objects specified in 5(a) (i) and (ii) of the EPA Act, although it is acknowledged that some design options do exist.

3.2 DA 525/2009 - Proposed Torrens Title Subdivision of Part Lot 4 DP 14776 Wyong Road, Killarney Vale

TRIM REFERENCE: DA/525/2009 - D01962453

AUTHOR: KO

SUMMARY

An application has been received for the Torrens title subdivision of an existing dual occupancy at Killarney Vale. The dual occupancy is constructed and is complete. 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. As a result of a directive by the Department of Planning (DOP) to all NSW Councils, any applications that rely on a numerical variation to State Environmental Planning Policy No 1 (SEPP1) greater than 10% are required to be reported to full Council for determination.

Applicant	P McCarthy C/- Trehy Ingold Neate
Owner	P McCarthy
Application No	525/2009
Description of Land	Part Lot 4 DP 14776 (71) Wyong Road, Killarney Vale
Proposed Development	Torrens title Subdivision
Site Area	690.9m ²
Zoning	2(a) Residential
Existing Use	Residential
Estimated Value	N/A

RECOMMENDATION

That Council, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues, grant consent subject to the conditions detailed in the schedule attached to the report.

PRECIS

- The application is for the Torrens title subdivision of an existing dual occupancy building.
- The site is zoned 2(a) Residential under the provisions of the Wyong Local Environmental Plan 1991 (WLEP).
- If the application for dual occupancy and application for Torrens title subdivision had been applied for concurrently, WLEP enables subdivision of the dual occupancy without reference to a minimum lot size variation.
- However, as the application for subdivision is separate to the application for the development, the proposal involves a numerical variation greater than 10% under SEPP1 to Clause 42D of the WLEP.

**3.2 DA 525/2009 - Proposed Torrens Title Subdivision of Part Lot 4 DP 14776
Wyong Road, Killarney Vale (contd)**

- As a result of a directive by the Department of Planning (DOP) to all NSW Councils, any application that relies on a SEPP 1 numerical variation greater than 10% are required to be reported to full Council for determination.
- It is recommended that the application be approved.

INTRODUCTION

An application has been received for the Torrens title subdivision of an existing dual occupancy building at 71 Wyong Road, Killarney Vale. The dual occupancy is located within a residential area that consists of a mixture of single residences and dual occupancy developments.

The subject dual occupancy development was approved in December 2004 under development consent 2324/2004 and was amended in May 2006. The current application now proposes to Torrens title subdivide the existing dual occupancy. No physical changes to the existing development will result from this application.



The property is currently zoned 2(a) Residential and requires a SEPP 1 objection to Clause 42D under the WLEP 1991 for the subdivision of the dual occupancy building. The DOP released a circular in November 2008 that requires all development applications where there is a variation greater than 10% in numerical standards under SEPP 1 to be determined by full Council. This application includes a SEPP 1 variation greater than 10% and as such is required to be determined by full Council.

The Torrens title subdivision of the dual occupancy is considered appropriate and will not impact adjoining properties. As such, it is recommended that the application be approved subject to conditions.

VARIATIONS TO POLICIES

Clause	42D
Standard	450m ² minimum lot size
LEP/DCP	WLEP 1991
Departure basis	Lot 1 = 382.8m ² / Lot 2 = 390.2m ²
Variation %	Lot 1 = 15%, Lot 2 = 13%

PERMISSIBILITY

The subject site is zoned 2(a) Residential. Within this zone, Clause 13 of the WLEP permits subdivision with development consent. Under the provisions of Clause 42D of the above plan, subdivision within the 2(a) zone shall not create lots that have an area less than 450m² unless the subdivision consent:

- “(a) is for the subdivision of land on which a dual occupancy building or detached dual occupancy was erected with consent pursuant to a development application lodged with the Council prior to 5 November 1997, or*
- (b) in the case of land within Zone No 2 (a), is granted concurrently with a development consent for a dual occupancy building or a detached dual occupancy on the same land and the subdivision will be carried out in conjunction with the dual occupancy development.”*

The proposed subdivision will create two lots with an area less than 450m². The dual occupancy that is to be subdivided was approved in May 2006. The subdivision of the land was therefore not undertaken concurrently with the dual occupancy development and a SEPP 1 objection is therefore required to enable the Torrens title subdivision to be considered.

The only reason for the variation to the minimum lot size is because the subdivision was not applied for concurrently with the dual occupancy development application. The consideration of whether the development had adequate land size was therefore considered as part of the dual occupancy and the approval of the subdivision will make no physical difference on site.

RELEVANT STATE/COUNCIL POLICIES AND PLANS

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

- Wyong Local Environmental Plan 1991 (WLEP)
- State Environmental Planning Policy 1 – Development Standards (SEPP 1)
- Development Control Plan 2005, Chapter 66 – Subdivision (Chapter 66)

ECOLOGICALLY SUSTAINABLE PRINCIPLES

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

ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the 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):**State Environmental Planning Policy No 1 – Development Standards**

To ensure that a SEPP 1 objection is well founded and that compliance with a standard is unreasonable or unnecessary a number of questions identified within the Winton Property Group Ltd v North Sydney Council , [2001] NSWLEC 46 Judgement need to be addressed. These questions and the appropriate answers are as follows:

Is the planning control in question a development standard?

Clause 42D of the WLEP 1991 is a development standard.

What is the underlying object or purpose of the standard?

The purpose of Clause 42D is to maintain the residential character of the 2(a) Residential Zone through limiting the minimum size of new lots created through subdivision.

Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EP&A Act?

The non-compliance with the standard will not result in development that is inconsistent with the aims of the WLEP 1991 as the subdivision of the land will complement the orderly development of the land.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The site already has a dual occupancy building approved and built on the site. To not allow the subdivision of the development would be unreasonable given the building already exists on the site and subdivision of the property will allow the future sale of both dwellings.

Is the objection well founded?

The objection is well founded in that the subdivision of the dual occupancy will allow the creation of two parcels of land which will then provide an alternative housing choice for members of the community.

Reason for proposed variation

The proposal involves a paper Torrens title subdivision of an existing constructed dual occupancy which would not require any physical changes to the development to allow the subdivision.

The subdivision would provide diversity in lot size and opportunities for housing choice within the locality.

The subdivision would not detract from the overall scenic quality of the locality nor would it compromise the setting of the surrounding area.

The Torrens title subdivision of the land would not reduce the amenity of the surrounding area.

Non-compliance with clause 42D of the WLEP 1991 does not raise any matter of significance and there is no public benefit in maintaining the planning controls in this instance. Council is satisfied that the objection is well founded and that, in this instance, strict compliance with clause 42D of the WLEP 1991 is unnecessary

THE LIKELY IMPACTS OF THE DEVELOPMENT (s79C(1)(b)):

The relationship to the regional and local context and setting.

The development is within a residential area that contains a mixture of detached single dwellings and dual occupancy developments. The subdivision of the existing dual occupancy will not result in development that is incompatible with surrounding developments.

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

Any submission from the public.

In accordance with DCP 2005 Chapter 70-Notification of Development Proposals, the application was not advertised.

CONCLUSION

The proposed development is for the Torrens title subdivision of a recently constructed dual occupancy building. The development requires a SEPP 1 objection to clause 42D of the WLEP 1991 which is supported given that compliance with the clause is considered unreasonable in the current case. The application is therefore recommended for approval subject to suitable conditions of consent.

ATTACHMENTS

- | | | |
|---|---|-----------|
| 1 | Locality Plan | D01959784 |
| 2 | Draft Conditions of Approval | D01978614 |
| 3 | Plan - Proposed Subdivision Wyong Road, Berkeley Vale | D01959151 |



Approved Plans

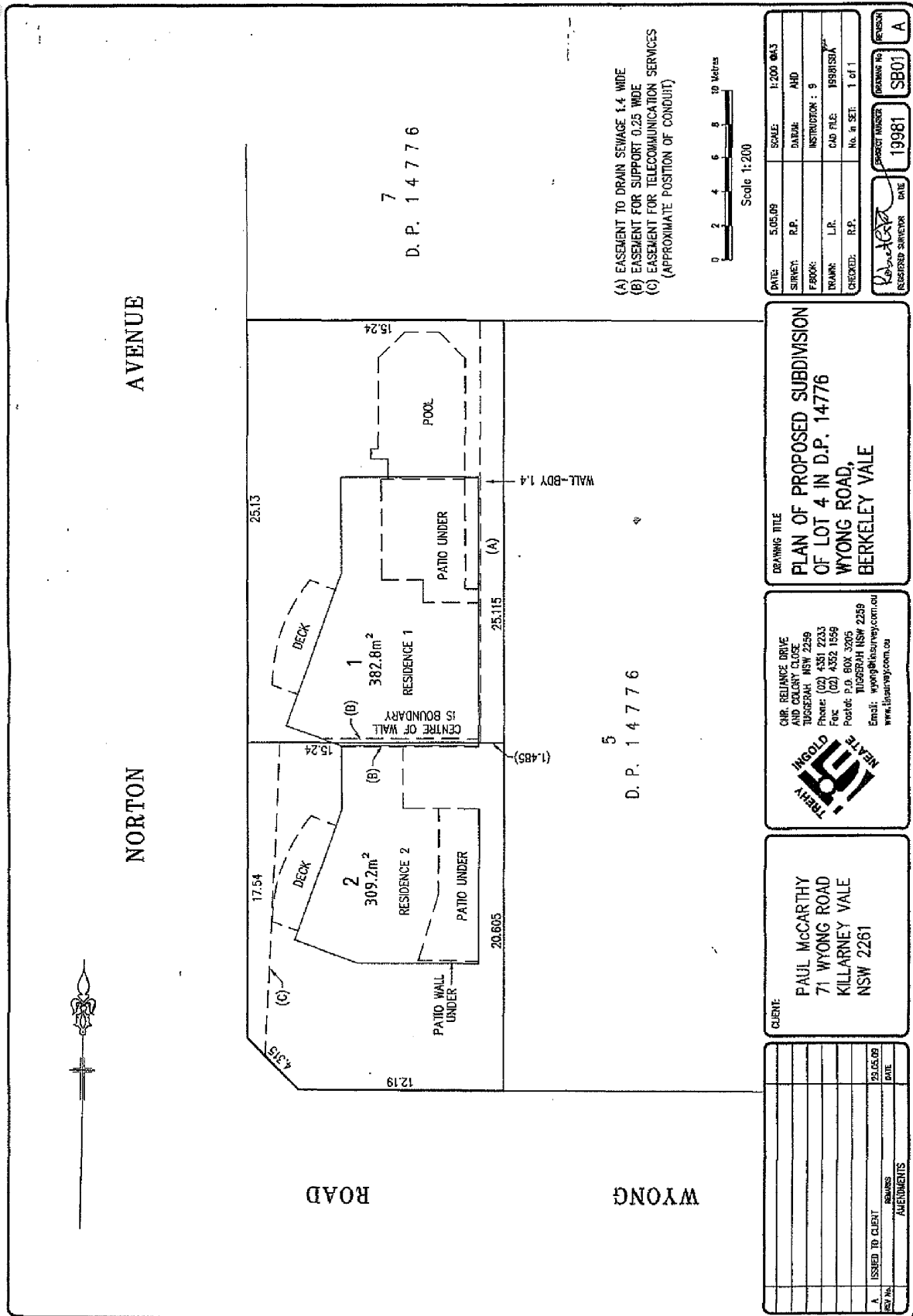
- 1 The development is to be undertaken in accordance with the approved development plans and specifications, reference number 19981 Drawing No SB01 Rev A prepared by Trehy Ingold Neate dated 5.05.09 except as modified by any conditions of consent and any amendments in red.

Certificates/Engineering Details

- 2 A Subdivision Certificate is to be issued by the Certifying Authority prior to the registration of the plan of subdivision. The application for this Certificate is to satisfy all of the requirements of the Environmental Planning and Assessment Regulation 2000.

Subdivision Works

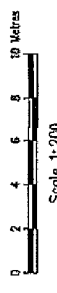
- 3 The registration of a reciprocal easement for maintenance over those parts of the building common to both occupancies including walls, eaves, roof and guttering prior to the issue of a Subdivision Certificate.
- 4 The certification by a Registered Surveyor, prior to issue of a Subdivision Certificate that all services domestic, drainage lines and accesses are wholly contained within the respective lots and easements.
- 5 The submission of details to demonstrate the completion of all works required under Development Consent No 2324/2004 prior to issue of a Subdivision Certificate.
- 6 The registration of the necessary restrictions as to user.



D. P. 1 4 7 7 6

D. P. 1 4 7 7 6

- (A) EASEMENT TO DRAIN SEWAGE 1.4 WIDE
- (B) EASEMENT FOR SUPPORT 0.25 WIDE
- (C) EASEMENT FOR TELECOMMUNICATION SERVICES (APPROXIMATE POSITION OF CONDUIT)



DATE:	5.05.09	SCALE:	1:200 (A3)
SURVEY:	R.P.	DRAWN:	AHD
FROM:		INSTRUMENT:	9
DRAWN:	L.R.	CAD FILE:	19981A
CHECKED:	R.P.	No. in SET:	1 of 1
REGISTER SURVEYOR	DATE	PROJECT NUMBER	DRAWING NO
		19981	SB01
			A

DRAINING TITLE
PLAN OF PROPOSED SUBDIVISION
OF LOT 4 IN D.P. 14776
WYONG ROAD,
BERKELEY VALE

TRINITY
MEATTE
GLOBAL

OUR RELIANCE DRIVE
 AND COLONY CLOSE
 TUGGERAH NSW 2259
 Phone (02) 4351 2233
 Fax (02) 4352 1559
 Postbox P.O. BOX 3205
 TUGGERAH NSW 2259
 Email: www@trinity.com.au
www.trinity.com.au

CLIENT:
PAUL MCCARTHY
71 WYONG ROAD
KILLARNEY VALE
NSW 2261

REV	ISSUED TO CLIENT	REVISIONS	AMENDMENTS	DATE
A				25.05.09

3.3 Program to Reduce Drowning Deaths in Wyong Shire

TRIM REFERENCE: F2004/06257 - D01918038

AUTHOR: MA; DD

SUMMARY

The above program encompasses two elements: a program that aims to achieve a reduction in the incidence of drowning in private swimming pools; and a series of options to enhance the safety of the use of the Shire's beach assets. This report includes a response to the Council Resolutions of the Ordinary Meeting of 25 June 2008 and 26 November 2008 that encompass these initiatives and has been prepared jointly by Shire Planning and Shire Services.

The report also outlines a number of initiatives that have been undertaken to assist in improving the safety of private swimming pools to date and enhancements to the current lifeguard services to provide extended safety of surf patrol beaches.

RECOMMENDATION

- 1 That Council seek the support of the local NSW State Members to amend the Local Government Act / Swimming Pools Act 1992 to make provision for either: an inspection fee to be levied annually on the owners of private swimming pools; or the inclusion of a Compliance Cost notice to be issued to non compliant pools allowing Council to recover its costs and enable this program of inspection to be funded sustainably.**
- 2 That Council support the appropriate use of legal processes, where required, to achieve compliance with the Swimming Pool Act for non compliant private pools in the Shire.**
- 3 That Council approve the proposed additional lifeguard services, comprising extended discretionary work hours for beach lifeguard operations as well as a water and beach safety awareness program targeted at Budgewoi Beach, in 2009-10 at an estimated cost of \$17,500. That Council also endorse that lifeguards be redeployed in the winter off-season to undertake net additional swimming pool audit inspections, in 2009-10 at an estimated first year additional cost of \$9,700. This cost is projected to reduce to \$4,600 in future years. In 09-10 this will be funded by increased income from regulatory activity for pool inspections and an estimated additional minimum of \$27,200. Source of this funding to be considered in the quarterly review process.**
- 4 That Council consider in the development of the 2010-11 Four Year Delivery Program the other priority options for extending safety of surf patrol beaches, identified in this report.**
- 5 Council undertake a media program, within existing mechanisms, emphasising the low level of compliance that currently exists in private swimming pools in the Shire and the role of the private pool inspection program and the complementary regulatory process in ensuring private pool safety. The program would also emphasise the typical areas of non compliance, action that can be taken by the property owner to improve safety, and the role of ongoing maintenance of swimming pools and supervision of toddlers in saving lives.**

BACKGROUND

At its meeting held on 25 June 2008, Council resolved unanimously on the motion of Councillor Best and seconded by Councillor Eaton:

- “1 *That as drowning is the leading cause of accidental death of children below the age of five years and further to staff advice that Wyong Shire has approximately 10,000 backyard pools, Council review effectiveness of its current swimming pool audit program, which has only achieved 140 pool inspections with almost 50% failing to comply with pool safety requirements.*
- 2 *That to assist staff in delivering this important compliance / education program, staff report to Council on the likely benefits of redeployment of Council’s professional lifeguards from their winter / off season duties in the Parks and Gardens Section with a view to utilising their extensive expertise in water safety education.”*

This report had been on hold, pending the release of the revised Swimming Pools Act (SP Act), which has been under review for a significant time, including a period of exhibition seeking public submissions. Given the spate of domestic pool drownings experienced in the 2008-09 summer season it is now understood that the release of the amended Act is no longer imminent and is under further review by the State Government. Therefore the report addressing the 25 June 2008 resolution is now released for consideration together with the related report on further information requested by Councillors regarding extended safety of surf patrol beaches as per the resolutions below.

At the ordinary meeting held on 26 November 2008 Council also resolved unanimously on the motion of Councillor BEST and seconded by Councillor EATON:

- “1 *That having regard to the increasing incidence of unseasonably warm weather associated with global warming and the resultant high beach usage outside current patrol hours, Council take a proactive approach with a view to providing our residents and ratepayers with greater coverage of patrolled surf beaches.*
- 2 *That Council receive a briefing on current coverage and resources required to patrol our Shire’s beaches including any recommendation for Council to consider a more flexible approach to beach patrol timetables.”*

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

In response to the 26 November 2008 Council resolutions, a briefing on Extended Safety of Surf Patrol Beaches was presented to Council on 1 April 2009. That briefing included the following information:

- Current coverage and resources.
- Comparisons to neighbouring local government areas.
- Reference to the recommendations of the Strategic and Operational Beach Management Plan 2005-2010.
- Consideration of options to extend:
 - Geographic Coverage of Shire beaches by lifeguards
 - Time of Day that beaches are patrolled by lifeguards
 - Days of the week that beaches are patrolled by lifeguards
 - Months of the year that beaches are patrolled by lifeguards.
 - Cost estimates for the above options.

3.3 Program to Reduce Drowning Deaths in Wyong Shire (contd)

- Need for appropriate items of plant, equipment and facilities.
- Consideration of increased surf awareness/education programs.

Councillors present in the briefing also raised a number of issues and advised that further consideration needed to be given to extending the coverage of hours of each beach during the patrol season, and reducing coverage at less popular beaches such as North Entrance, during the patrol season.

The latter part of this report provides the additional information that Councillors sought out of issues discussed at the extended safety of surf patrol beaches briefing on 1 April 2009. The additional information provided in this report also includes a more detailed analysis and recommendations on extending safety of surf patrol beaches.

PROGRAM TO REDUCE TODDLER DROWNING IN PRIVATE POOLS

Précis

- Over the preceding year Council has implemented a program to inspect private swimming pools to ensure that they meet the requirements of the SP Act.
- The aim of the program is to reduce the instance of toddlers drowning.
- The findings of the program, at the end of the first year, indicate that currently the Shire's private pools have a low level of compliance with over 60% not complying at the time of first inspection by Council.
- The typical deficiencies include:
 - Gates not self closing and locking (often due to lack of maintenance);
 - Inappropriate fencing configuration;
 - Fences removed for convenience; and
 - Placement of objects adjoining fences that reduce the effective height of the fence and encourage climbing.
- At the completion of the inspection Council issue the property owner with a *Direction to Comply*, which details any rectification works required and provides a timeframe in which the works are to be actioned.
- None of the typical issues are high cost maintenance concerns; in fact some are no cost. However at the expiration of the timeframe a significant number are not actioned. This is requiring significant additional follow up from Council.
- It is suggested that in the future Council issue a fine to those property owners who fail to complete the required actions detailed in the *Direction to Comply* in the stated timeframe.
- To increase the number of pools inspected annually it is proposed to redirect the lifeguards from their winter duties in Open Space to the inspection program.
- In conjunction with the above Council will expand the existing water education program to emphasise the findings of the pool inspection program including the typical areas of non compliance, action that can be taken by the property owner to improve safety, and the role of ongoing maintenance swimming pools and supervision of toddlers in saving lives.
- This report is drafted with consideration of the offsetting of some of the resource costs of the audit with regulatory income from fines. This will encourage those members of the public with defects to rectify them promptly. This is consistent with the aim of the audit which is to reduce the instance of toddlers drowning. Over time level of compliance within the community should increase as a result of the parallel education program. Councils preferred long term solution is that the audit is able to be funded by the introduction of changes to the SP Act including the potential of an annual licensing scheme.

Introduction

Wyong Shire continues to grow and develop and one of Council's roles is to ensure this growth is regulated and completed in an appropriate manner. To achieve this, Council must take both proactive and reactive roles in development and land use generally.

Council has implemented a number of initiatives throughout 2008 as part of its proactive compliance role. One of these is the inspection of private pools to ensure compliance with the SP Act. Research indicates that no other Hunter or Central Coast Council is currently undertaking a comparable program.

The aim of the private pool inspection program is to prevent young children from drowning in private swimming pools in the Shire. The private pool inspection program is a key platform for achieving this outcome. It directly addresses one of the issues of greatest risk, which is, unsupervised access to the pool. This risk can be minimised by identifying and correcting non compliant fencing, non-latching gates or removing climbable objects in proximity to the fencing. The other facet of this risk is lack of appropriate supervision. Raising community awareness of these risks and the need to action non compliances in a timely manner, is a key factor in ensuring the program's aim is achieved.

Toddler Drowning Statistics for Backyard Swimming Pools

A press release from the Royal Life Saving Society of Australia in June 2008, reinforced the risk profile of private swimming pools, and in particular, the 0-5 age group. The preliminary figures from 2008 show that drowning deaths within this age group doubled from 2007. The highest number of incidents were within the past five years.

Current Programs

Council is currently utilising the following means to increase community awareness and achieve increased levels of statutory compliance for private pools:

- 1 The private pool inspection program includes audit inspections of private pools on Council's pool register. This includes the issue of regulatory notices, if required, and the need for follow up inspections to ensure that appropriate rectification works occur.
- 2 Parallel to these activities, Council is offering a proactive service of issuing Compliance Certificates. Members of the public can apply for a certificate that confirms that their pool meets the specific requirements of the SP Act.
- 3 Council staff are liaising with real estate agents and property conveyancers to provide the Compliance Certificate service at property transfer.
- 4 A checklist is being developed that will enable property owners to undertake a review of their own pools and to highlight any risk areas and /or triggers that would indicate a need to seek advice from Council.

According to Council's records, there are approximately 10,000 private swimming pools in Wyong Shire. Given this number of pools, the age profile of the population and the coastal lifestyle experienced in the Shire, there is a high level of potential risk of swimming pool drowning. This is compounded by the high proportion of pools that are not compliant with current legislation.

In 2008, through use of existing resources, Council undertook a significant number of inspections to achieve full compliance for 418 private pools in the Shire. A number of the pools inspected had non compliances, some of which are still being resolved through legal means due to lack of action on the part of the property owner. A number of property owners have remained unwilling to rectify the defects identified, including minor fencing issues

Given the limited effectiveness of completing the compliance upgrade of only 418 out of 10,000 pools, redeployment of the lifeguards during the winter season would inject a significant and appropriately skilled existing Council resource into the pool audit program.

Proposal to Redeploy Lifeguards

In order to increase the level of available Council resources to perform the annual private pool inspection program and conduct public education programs, it is proposed to redeploy Council's professional lifeguards from their winter/off season duties with Open Space and Recreation (OSR) to the DAU. If provided on an ongoing basis, it may enable Council to inspect the pools on the audit program on a more regular cycle. This would also assist in improving compliance levels and increase the base level of community capacity to allow for improved self regulation and understanding of the risks involved in pool ownership.

To confirm the compliance of all 10,000 pools on Council's register with existing resources, it would take in excess of 20 years at the current rate. The additional resources from redeployment of Council's lifeguards would increase the rate at which both inspections and compliance could be achieved. Conservatively, it would increase the number of pools that could be completed annually to around 1,000. However, given the high level of non compliance and the need for reinspection, the number of pools completed and registered as compliant may be lower. This figure is also reliant on the continuing redeployment of existing resources from within the DAU. In the event that there is an increased workload as a result of an economic turn around, the availability of these staff to undertake this work may not be present.

Once trained in the specific requirements of the SP Act, the lifeguards would bring a unique blend of water safety education and regulatory skills to the role when undertaking the inspections. It is expected that these skills, along with their capability in dealing with the public, would be of assistance in providing property owners with increased levels of understanding regarding why defects are required to be rectified and the risk and potential consequences of non-compliance.

Additionally, the lifeguards could, as an extension of their schools education program, increase general public awareness regarding the risks of pool ownership with children and the need for ongoing vigilance. It is expected that much of the training and cross skilling of both the lifeguards and existing staff in DAU would be done through coaching and mentoring, requiring limited external training with the exception of basic legislation training.

A limited school's education program is currently implemented during the off-season where primary school aged children and younger are taught about the basics of beach safety such as swimming between the flags. This is also complemented with some high school programs which help high school students to identify rips and teach them how to react if they are caught by a rip. These programs will continue to be implemented at current levels within existing budget allowances. However the content will be expanded to: emphasise the findings of the private pool inspection program including discussion of typical areas of non compliance; action that can be taken by the property owner to improve safety; and the role of ongoing maintenance swimming pools and supervision of toddlers in saving lives.

Financial Implications of Lifeguard Redeployment

Council does not receive any direct fee income from undertaking the private pool inspection program and has raised this issue with the State Government as part of its current review of the SP Act. Council has recommended the introduction of a licensing system for private pools (similar to On Site Sewer Management or Places of Public Entertainment) which would require an annual inspection or the inclusion of a Compliance Cost notice, similar to that under the Protection of the Environment Act that would be issued to non compliant pools allowing Council to recover its costs. This would allow the recognition of this function as a core ongoing part of Councils regulatory activities.

Table 1: Additional Wages Budget Required to Fund Lifeguards for swimming pool inspections based on Current Pay Rate

		Period of Employment Each Year (months – at 4.33 weeks per month)			
		1	2	3	4
Number of Lifeguards	3	\$11,480	\$22,961	\$34,441	\$45,921
	4	\$15,307	\$30,614	\$45,921	\$61,228
	5	\$19,134	\$38,268	\$57,402	\$76,535

**nb. Wages based on current rate of \$22.58 per hour.*

Typical functions that would be affected in OSR due to transfer of lifeguard resources from OSR to DAU would be 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.

In discussions with Council's lifeguards regarding this potential off season deployment it should be noted that not all affected staff expressed interest in undertaking the regulatory inspections. It is suggested that the allocation of roles to implement this recommendation be in consultation with the staff and aim to match the individual staff skills.

It should be noted that all lifeguards typically take all of their annual leave, any accrued Time In Lieu (TIL) and rostered days off over the winter months. This generally equates to five to seven weeks for each staff member. This means that any lifeguard would only be available for a maximum of approximately three months work. The cost implication highlighted in the table is proposed to be offset by increased income from fines issued as a result of the regulatory process implemented, this is detailed below. The sustainability of this initiative would be substantially improved by the introduction of an annual inspection fee in the amendment of the SP Act and this remains the preferred outcome. Given the need for regulatory reform it is recommended that Council continue to lobby for amendments to the SP Act.

Given the regulatory focus of the program Council does have the potential to generate some funds through the issue of fines. On the first pool inspection any defects are noted and the property owner is issued with a *Direction to Comply* that details the action required by the property owner. Pools are reinspected to confirm compliance and no fines are imposed on complying pool owners. Council has the power to issue a fine once the time period for this notice expires, if the rectification works have not been completed. From a review of last year's outcomes this failure to undertake the necessary works occurs in about 25% of cases. The fine has a value of \$220, meaning the maximum estimated income that could be generated, based on last year's results, is around \$13,750 (25% of the 250 non compliant sites equates to approximately 62 fines).

If the same ratios of non compliance and failure to comply with the notice were experienced in future years, Notices to Comply would be issued to approximately 660 properties (based on completing an estimated 1,100 pools annually). This would increase fines income to approximately \$52,800, based on the same rate of non compliance with Councils Direction to Comply. It should be noted however, that if the program is effective this level of non compliance should reduce over time. The cumulative estimate of the projected cost of the program to inspect private swimming pools is included below.

In considering this estimate it should be noted that:

- The table is based on the scenario of up to five lifeguards being seconded to DAU for the Winter Season;
- Development Assessment will be able to continue to invest the current level of resourcing. This is possible during the current downturn in building activity, but resources available to the audit will be reduced as application volumes increase;
- The administration support for the program is sourced from within the current complement and during the Winter period will impact on their efficiency in processing applications such as DAs and CCs; and
- The income projected from fines is uncertain and based on trends determined in the preceding twelve months of the audit.

Changes in any of these factors will affect the net cost.

Table 2: Typical Year Projected Cost of the program to inspect private swimming pools with the deployment of the Lifeguards based on a joint target completing 1100 pools (note that actual inspections undertaken would be significantly higher).

	Average Time Allowance (hours/yr)	Cost (\$)	Potential fine Income (\$)
Base level Regulatory Site Inspections (current)	1,045	47,025	No fines currently issued
Administration	825	20,625	
Potential fine income			52,800
Cost of additional inspections undertaken by the redeployment of the lifeguards for three months	1,705	57,402	
Totals		125,052	52,800
Net Cost			72,252

From the above table it can be seen that the ongoing cost to achieve the swimming pool audits in a typical year is \$70K, when offset by the total projected fine income.

Costs and income in the financial 09-10 will be impacted by the reduced time period that the lifeguards will be seconded to DAU. This is because of the staggered start to the program and that the Winter off season straddles two financial years. If the recommendations are adopted by Council, this financial year the lifeguards will be seconded for the remainder of August and September 09 for training and to undertake the preceding education program. They will come back to DAU for two months of the 2010 winter season (May, June 2010). Therefore in 09/10 it is expected that the lifeguards will undertake the majority of their inspections in June 2010, having completed refresher training and orientation predominately in May 2010. Given this, the net cost of the audit for 09-10 would be increased over the typical year costs to approximately \$77K due to the reduced potential fine income.

Conclusion for Private Pool Inspection Program and Education Program

The key aim of this program is to prevent young children from drowning in private swimming pools in the Shire. The inspection program is a key platform for achieving this aim. The additional resourcing provided by the lifeguards will allow the acceleration of the program by way of the number of audits able to be undertaken per annum as well as the added benefit of the public education service they can offer to residents whilst carrying out the pool audit. However to be effective, appropriate regulatory action is essential to achieve compliance with the 25% that fail to respond to the educational / awareness approach.

The recommended provision of the lifeguards for three months each winter to undertake these audits will add in a typical year a direct additional cost to Council of approximately \$57,000 (rounded from \$57,402) per year which can be partially funded from revenue generated by fines generated out of the private pool inspection program as indicated above, with a net end position, with consideration of all resourcing costs of \$72,252.

EXTENSION OF BEACH SAFETY

This section of the report deals with the various issues raised by Councillors at the briefing on Extended Safety of Surf Patrol Beaches on 1 April 2009. In assessing the various options for amending the lifeguard's existing levels of service, consideration was given to identifying how lifeguard services could be aligned to achieve a more consistent approach on Central Coast patrolled beaches as a whole. Visitors and tourists to the Central Coast may not distinguish between Gosford and Wyong Council boundaries and may view all beaches on the Central Coast similarly with respect to anticipated levels of service for patrolled beaches. Options were therefore considered with regard to endeavouring to achieve a whole of Central Coast view for levels of service on beaches. It should be noted that the Wyong Lifeguard Supervisor has also been consulted in preparing the information, various options and some of the relevant cost estimates for this report.

Surf Life Saving Central Coast (SLSCC) have also been consulted regarding this report and related issues that are currently topical within the SLSCC organisation. They are generally supportive of the key recommendations contained within this report and any initiatives Wyong Council may implement to help reduce drowning deaths in the Shire. Should there be significant shifts in the levels of service for lifeguards resulting from the development of the Four Year Delivery Program, further consultation with SLSCC would be necessary to ensure complimentary services are able to be achieved during the SLSCC weekend service.

Current Coverage and Resources

Council's lifeguard patrol coverage begins on the October long weekend and continues until Anzac Day with a minimum of two lifeguards per patrolled beach. During this time Council Lifeguards patrol all week days except public holidays, and Surf Life Saving Central Coast (SLSCC) volunteers patrol weekends and public holidays.

3.3 Program to Reduce Drowning Deaths in Wyong Shire (contd)

Six beaches are patrolled during the season from 8:30am to 5:00pm (6:00pm during Christmas peak which is approx 5 weeks from Christmas to Australia Day):

- Lakes Beach
- Soldiers Beach
- North Entrance
- The Entrance
- Toowoan Bay
- Shelly Beach

Vera's Water Garden (The Entrance) and Fraser Beach are also patrolled by Council Lifeguards during the Christmas school holidays. These services are contracted by The Entrance Town Centre Management and National Parks and Wildlife Service respectively.

Comparative range of lifeguard service levels for various NSW Council patrolled beaches.

The range of lifeguard services provided within NSW Council patrolled beaches generally range from the lower resource levels of service for a number of northern 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 as shown in Table 2. The annual 2009-10 cost of Wyong Shire's lifeguard service is approximately \$630,000 and to move to a higher or lower level of service and the resultant estimated impact on the existing annual cost is detailed in the table above.

For illustrative purposes Table 3 provides an indicative cost range associated with providing the Wyong Shire lifeguard service to each of the five varying service levels depicted in the table.

Table 3: Comparative range of lifeguard levels of service.

Typical Level of Coverage	Lower resources	←→	Middle/Average	←→	Higher resources
Hours/day	6 - 8	8	8 - 10	12	13
Days/week	5	5	5 - 6	6	7
Months	Christmas School Holidays	Plus October School Holidays	October to April	All Year for some beaches	All Year for all beaches
Resources per Beach	1 lifeguard per beach during peak only	1 lifeguard minimum during patrol times, 2 per beach during peak	2 lifeguards per beach minimum, 3 lifeguards on some beaches during peak	2 lifeguards per beach minimum, up to 5 lifeguards on some beaches during peak	4 lifeguards minimum, up to 10 lifeguards per beach on some beaches during peak
Rescue Equipment per Beach	Rescue Boards only	1 jet ski per three beaches, plus rescue boards and irb	1 jet ski per two beaches plus rescue boards, irb and club car	1 jet ski per beach plus rescue boards, irb and club car.	Multiple Jet Skis per beach plus rescue boards, irb and club car

Typical Level of Coverage	Lower resources	↔	Middle/Average	↔	Higher resources
Cost to Wyong Shire Council to Implement to this service level	-\$500,000	-\$450,000	WSC current annual cost \$630,000	+\$900,000	+\$3,700,000

History of Drowning in Wyong Shire

The overall objective of this report is to identify initiatives that will reduce drowning deaths in Wyong Shire and Table 6 (please refer to Appendix) provides data that identifies that twelve drowning deaths have occurred in the past decade on ocean beaches in the Shire. Of these deaths, the following information is noteworthy:

- No drowning deaths have occurred on beaches patrolled by Council Lifeguards.
- Only one drowning death has occurred on a beach patrolled by volunteer lifesavers.
- Four of the six drownings that occurred during patrol hours were at Budgewoi or Birdie Beach (National Parks jurisdiction), which are both unpatrolled.
- The four deaths at Shelly Beach occurred outside patrol hours. Three of the four deaths occurred in the early hours of the morning.
- Ten of twelve deaths were people visiting the area.
- Eight of the twelve drownings occurred in January and December and all of these were tourists.
- Five of twelve deaths involved alcohol consumption (Source: Lifeguard Records).
- All drownings were males.

Summary of Options and Priorities

Following the Councillor briefing of 1 April 2009 a variety of options for extending beach safety have been considered. Of the various scenarios that were discussed, five options have been identified (see table 4 below) as being the priority for Wyong Shire. These five recommended options were identified and given a priority order by taking into account the statistical information (as provided in tables 6, 7 and 8 in the appendix) relating to drownings, both in Wyong Shire and all of New South Wales, as well as having regard to the funding required to achieve the required outcomes and other criteria as listed below.

Table 4: Summary of recommended options.

Proposed Priority	Option	Estimated Additional Cost per annum
Proposed to be funded in 09/10		
1	Risk management based discretionary extension of daily hours on patrolled beaches	\$10,000
2	Water & beach safety awareness program targeted at Budgewoi Beach (6 week Christmas peak)	\$7,500
Possible Future Priorities		

Proposed Priority	Option	Estimated Additional Cost per annum
3	Budgewoi Trial Lifeguard Patrol (6 weeks)	\$40,000
4	Additional rostered lifeguards (6) to allow roving patrols and increased lifeguard service intensity to all six beaches (\$905 per beach/week)	\$168,200
5	Extended hours during Christmas peak (8.00 AM to 7.00 PM) to all beaches (\$3,750 per beach/year).	\$23,000

Note: Options 3, 4 and 5 are unfunded in 2009-10 but are recommended to be considered as part of the development of the Four Year Delivery Program.

In assessing which lifeguard service initiatives to consider for inclusion in Table 4 and the order of priority for the nominated options the following criteria were considered:

- estimated effectiveness in addressing conclusions made from the review of available statistics and data relating to drownings,
- feedback and anecdotal evidence from lifeguards and SLSCC as to beach drowning risks,
- cost effectiveness and assessed value derived from invested additional funds,
- ability to fund recommended enhancement options in the 09-10 financial year.

Of the five recommended options and based on the abovementioned criteria, 'Risk management based discretionary extension of daily hours on patrolled beaches' was considered the highest priority option as it allows the lifeguards to monitor existing and forecast surf conditions and the number of swimmers on each beach and exercise their professional judgement in assessing the prevailing risk to swimmers on the beach at any time. This initiative is considered important in potentially preventing future drowning incidents during high use periods of the Shire's patrolled beaches, that is, apply additional resources where and when the majority of patrons attend the beach. This has the endorsement of the Lifeguard Supervisor as the highest priority. An additional benefit of this option is that given the inherent flexibility of responsive discretionary assessment of beach conditions there will not be redundant resourcing during the extended patrol periods (i.e. lifeguards on beach on rainy days).

Given the local drowning data (Table 6 in the appendix) indicates that there were two (weekday afternoon during school holidays) tourist drownings at Budgewoi Beach, the second priority recommendation is for a water & beach safety awareness initiative targeted at Budgewoi Beach.

Options two and three complement each other in increasing beach safety at Budgewoi Beach. In future years, if funding is available to implement option 3, it is recommended that the awareness program be complemented with a Budgewoi Beach trial lifeguard patrol (6 weeks Christmas period). The Strategic and Operational Beach Management Plan 2005 – 2010 identifies this location as the highest priority for expansion of beach safety services. If the initial trial is successful the service could be continued and/or expanded assuming commensurate allocated funding is made available.

Option 4 was considered to have the greatest synergy with the previous three options in reducing the risk for drownings at the Shire's beaches. Additional rostered lifeguards will provide for roving patrols and a higher level of lifeguard services (\$905 per beach/week). This option can be revised to nominate specific beaches, rather than all six beaches, to tailor additional lifeguards to match the allocated agreed budget.

The fifth recommended option is 'Extended hours at all beaches during Christmas peak (8.00 AM to 7.00 PM)'. This is similar to option 1, the difference being this option entails implementing agreed beach opening hours to which the public would become aware as 'set' times versus option 1 which allows lifeguards the daily discretion to open longer than the 'core' hours based on prevailing conditions per beach. Although this would improve safety, it is not being recommended as high a priority as options 1-4, given a similar result, but with greater flexibility, could be achieved by adopting option 1.

Various other scenarios were also discussed in the Councillor briefing of 1 April 2009 and information relating to these has been included later in this report. These scenarios include 365 day per annum coverage at some beaches, as well as weekend and public holiday patrols by lifeguards over Christmas period (in conjunction with volunteer lifesavers).

Compatibility with SLSCC services

One of the difficulties with formally extending beach safety during the week is that it may create a disparity between beach patrol hours for lifeguards and weekend lifesavers. SLSCC have indicated that they may be able to cover some beaches for extended hours on weekends by requiring volunteers to patrol for extended hours. However, they have not been able to give this full consideration at this stage. If SLSCC is not able to provide this service, some beaches would be open longer during the week than on weekends. As weekends generally correlate with peak usage, extending the patrol hours on the less busy days may appear to some members of the public as an anomaly.

Option 1

Discretionary risk management based extension of daily hours on currently patrolled beaches

Lifeguards, in consultation with the Lifeguard Supervisor, would assess potential and actual beach conditions to determine if beaches should remain open later, or open earlier the next day. In doing this, they would consider factors including crowds, climatic conditions and sea/swell conditions.

By implementing this option, lifeguards will have the discretion to stay in attendance for longer in the day or option to arrive earlier the next day based on actual assessed needs and risk. This option will also be relatively easy to implement whilst representing a relatively low cost – high return outcome in managing risk. Given Council's limited funding resources it also allows the flexibility for the lifeguards to take into account prevailing conditions and not incur additional costs on days that didn't require the extension of hours. With reference to the local drowning data (Table 6) and related statistics in the appendix, this initiative may have resulted in the prevention of one of the drownings in Wyong Shire.

Budgeting for these additional discretionary times for lifeguard provision is difficult as the weather conditions and crowds on any given day are hard to predict. Bureau of Meteorology statistics indicate that from October to April there are on average 8.7 days above 30 degrees Celsius at the Norah Head weather station. The available weather data does not consider weekends and public holidays versus weekends. Based on there being 8.7 days on average per year, Council could consider that on days forecast to exceed 30 degrees Celsius, lifeguards could plan to open all six beaches half an hour earlier at 8.00 AM on (rounding up the 8.7 days) 10 days per year. The additional cost of this would be approximately \$1,500 per annum.

On these same days, it may be reasonable to expect that there will be greater crowd numbers remaining at the beach for longer periods. On this basis, the nominated closure time could also be extended. Therefore the total additional annual cost of the earlier opening and later closing times would be approximately \$5,000.

3.3 Program to Reduce Drowning Deaths in Wyong Shire (contd)

If further similar allowances to extend opening/closing times on an as-needs basis were to be considered by lifeguards, particularly in order to manage increased crowds over Christmas, a recommended additional 10 days (total of 20 days of extended hours per annum) should be considered to allow for peak beach usage.

Overall, to conduct an interim discretionary extension of beach hours, a \$10,000 budget allocation is recommended. This budget and the assumptions/calculations have been prepared with input from the Lifeguard Supervisor.

Option 2

Water & beach safety awareness initiative targeted at Budgewoi beach

A schools program is currently implemented during the off-season where on average approximately 12 schools are visited and younger aged children are taught about the basics of beach safety such as swimming between the flags. This is also complemented with some high school programs which help high school students to identify rips and teaches them how to react if they are caught by a rip. These programs could continue to be implemented at current levels within existing budget allowances as discussed earlier in this report.

As identified by the local drowning data in Table 6 (refer to appendix), the highest proportion of incidents relates to male tourists between 17 and 50 years of age and there have been two drownings at Budgewoi Beach on a weekday afternoon. Improved availability of information and public/tourist awareness at key locations such as Budgewoi Beach may prevent future similar incidents.

Therefore a specifically targeted water & beach safety awareness program for the unpatrolled Budgewoi Beach is recommended. This is based on the anecdotal evidence from nearby Lakes Surf Club and Council's lifeguards as to the increasing patronage of Budgewoi Beach by the general public plus tourists attracted from the nearby Council owned Tourist park, particularly over the Christmas peak period.

This targeted limited awareness program of the Budgewoi Beach area is recommended over a wider less specifically targeted campaign due to the difficulties in achieving an effective outcome unless multi-media is employed and budgets in excess of \$100,000 are made available. For example, the recent joint Water Authority education campaign across the Central Coast regarding water restrictions during the drought cost in the order of \$500,000 a year to drive behaviour change. There is little research to assess the effectiveness in conveying the key message to the target audience in driving behaviour change especially as it is conveyed to such a wide audience. Therefore given the much higher cost of a wider awareness campaign, a more specific program aimed at Budgewoi Beach area is recommended instead.

From 14 December 2009 to 26 January 2010, a six week water and surf awareness program could be implemented at Budgewoi Beach and adjacent areas and focus on the male tourist demographic. This would best be accomplished by deploying a lifeguard for two days per week over this period to target beach users, with specific emphasis on male and young holiday makers, and engage them in basic beach safety awareness. Given that the lifeguards would also be targeting male holiday makers, the messages that they would most seek to convey would be to swim between the flags and to encourage them not to swim after the consuming of alcohol.

Information flyers would also be developed that convey much of this similar information to a wider audience in the Budgewoi Beach area. Flyers could be left at nearby surf club kiosks, kept at lifeguard towers and given to new arrivals at Council Tourist parks. It is also recommended that brochures plus strategically placed new signage be used on the beaches, accompanied by similarly branded A3 posters that could be posted at Budgewoi and other

3.3 Program to Reduce Drowning Deaths in Wyong Shire (contd)

beaches, Budgewoi Tourist park and in other major coastal tourist areas with the consent of property owners (for example licensed clubs, supermarkets).

The total estimated cost of this water & beach safety awareness program is \$7,500.

The major focus of the initial awareness program would be in the Budgewoi Beach area, but with additional future funding this could be extended to other unpatrolled beaches such as Magenta Shores, Birdie Beach and Cabbage Tree Bay.

General Note

The following three recommended options are unfunded in 2009-10 but are recommended to be considered as part of the development of the Four Year Delivery Program.

Option 3 - unfunded

Commencement of a trial lifeguard patrol at Ocean Street, Budgewoi during peak season

The Strategic and Operational Beach Management Plan 2005–2010 is Council's current strategic document to assist with proactive planning of beach safety services.

Six priority areas were identified under the Strategic and Operational Beach Management Plan 2005-10 for expansion of Lifeguard services to beaches which are currently unpatrolled. These locations were considered the highest priority based on a number of criteria such as consideration of the drowning histories at each site, beach safety ratings (as detailed in "Beaches of the NSW Coast", Andrew Short 2000), and beach attendance. In priority order, these were identified as:

1. Ocean Street, Budgewoi
2. Karagi Park, The Entrance North
3. North Shelly Beach
4. Wyuna Ave, The Entrance North
5. Magenta Shores, The Entrance North
6. Hargraves Beach North

As per the data above and as discussed in the Councillor briefing of 1 April 2009 and in terms of decreasing the risk potential for future ocean drownings in the Wyong Shire, a key recommendation for extending current beach safety services would be to commence a lifeguard service in the vicinity of Ocean Street, Budgewoi.

Given its proximity to the Budgewoi township, residential areas and Council owned Tourist park, it is considered that the most advantageous location for establishment of a new lifeguard patrol service would be in the vicinity of the Ocean Street Beach access during the Christmas holiday season. This is supported by the Strategic and Operational Beach Management Plan.

All four drownings in this area occurred in January and December and were all tourists, indicating further correlation with the peak Christmas tourist season. It is considered that establishment of a lifeguard presence at this site from October to April would be costly, and is initially difficult considering that there is no infrastructure presently available at the location.

As a first step and to validate the Lakes Beach surf club's anecdotal evidence as to patronage volumes at Budgewoi Beach, an initial six week trial is recommended. A service could be commenced by procuring items as identified in Table 9 (refer to appendix). Table 9 also indicates overall estimated costs of \$40,000 in establishing a service at this location, on a trial basis for six weeks per annum (14 December 2009 to 26 January 2010). By conducting this trial additional accurate beach patronage statistics will be compiled to allow comparison of incidents/preventative actions with other patrolled Wyong beaches and a further report on the outcomes of this trial will be prepared for Council's further consideration.

Alternatively, within existing budgets, lifeguards could install additional warning signage which can be deployed when conditions demand at Budgewoi Beach during school holidays advising beach users that the beach is closed for swimming.

The cost estimates in Tables 9 (refer to appendix) excludes Council lifeguards undertaking weekend and Public Holiday patrols. Preliminary discussions with SLSCC indicate they are likely to undertake weekend and public holidays patrols as per other patrolled beaches, if Council were to proceed with this option.

This option, if implemented over the previous 10 year period could have potentially resulted in the prevention of two of the 12 drownings in Wyong Shire as identified in local drowning data (Table 6 of the appendix).

Option 4 - unfunded

Additional rostered lifeguards to allow roving patrols and increased lifeguard service intensity

Another option to improve beach safety would be to increase the number of lifeguards per beach by one. This would allow the current successful coverage to be supplemented by the availability of a roving lifeguard that could traverse unpatrolled areas of coastline in the vicinity of a flagged beach. The lifeguard could temporarily stop and observe sections of unpatrolled beach to identify risks and/or inform patrons of the dangers of their activities and ask them to move to flagged area. The cost is an estimated \$905/week per beach. As a minimum, this option is recommended to be implemented for the six week Christmas peak season. This represents the peak period for beach patronage and tourist visitations on the Central Coast and therefore the highest benefit derived from an increased lifeguard service. The estimated cost to implement this option on all six patrolled beaches for the Christmas period is \$32,580. Alternatively, to implement this option for the entire October to April season would cost an estimated \$168,200 for all six patrolled beaches.

The extra lifeguard per each of the six patrolled beaches would allow the flexibility for one lifeguard to roam unpatrolled areas and/or inform persons swimming in non-flagged areas of the dangers. The additional lifeguard(s) could also supplement the surf education program.

Option 5 - unfunded

Extended hours during Christmas peak (8.00 AM to 7.00 PM) to all beaches.

An alternative option to that discussed in option 1 would be to extend hours at Council's beaches, for a six week period (14 December 2009 to 26 January 2010). It is estimated that an additional \$3,750 per beach would be required to formally extend the hours from the current 8.30 AM to 6.00 PM, to 8.00 AM to 7.00 PM. If the hours are extended, this would keep lifeguards on the beach for the whole of this period, but may not necessarily mean that lifeguards keep flags up on the beach. Like all other times, maintaining a flagged swimming area is dependent on the conditions. It is also recognised by NSW Department of Primary Industries that dawn and dusk can be higher risk periods for shark attack which may need to be considered by lifeguards when deciding to close the beach.

This option 5 is a blunt initiative where if the weather is poor and there is nobody on the beach, the beach remains open. The recommended preferred option in the interim is to increase the discretionary ability of lifeguards to open and close beaches at different times depending on conditions (ie option 1).

Additional scenarios discussed in the Councillor briefing of 1 April 2009

July school holiday coverage of existing beaches

Additional data sourced from SLSCC regarding NSW coastal drownings from 2004 to 2008 identified a spike in drownings in July, which may correlate with July school holidays, the only school holiday period throughout the year that does not fall in the recognised patrol season.

Consequently, Councillors discussed the scenario of providing lifeguard services to some or all of Wyong Shire's currently patrolled beaches over the two week July school holiday period.

However, a further review of the July spike data indicates there were 10 drownings over a four year period but none of these occurred on the Central Coast. The 10 drownings included 3 rock fishermen drownings at non patrolled beaches as well as boating accidents and were spread out over a number of Local Government areas ranging from Shoalhaven in the south of NSW to Tweed in the north with for example three of the drownings occurring in the Wollongong area and one in City of Sydney.

To provide this service to all six beaches, it is estimated that the cost would be approximately \$85,000 per annum. If this service were to be provided to one beach only over the same period (say Soldiers Beach or Shelly Beach), the estimated annual cost would be approximately \$14,200.

Discussions with SLSCC in preparing this report, have identified that there is little support from the surf clubs for this proposal. SLSCC reviewed this option in recent years, and the anecdotal evidence from the various surf clubs indicated that there was very low beach patronage at Council's six key beaches during this period and over the winter months generally. SLSCC concluded that surf patrols during the two week July school holiday period was not justified. Instead, the surf clubs decided that lifesaver resources should be invested into other initiatives. If Council were to proceed with lifeguard services for the two week July school holiday period it is unlikely to be supported with complementary weekend patrols from volunteer lifesavers based on SLSCC's recent feedback.

Later closure times of beaches during daylight savings

Councillors requested further information and consideration of this matter.

During the briefing of 1 April 2009, Councillors were advised that from an analysis of national data provided by Surf Life Saving Australia, the likelihood of a drowning occurring was higher during the existing patrol hours as compared to outside of existing patrol hours.

National Surf Life Saving coastal drowning data for 2004 to 2008 'by hour' is shown in order of highest to lowest occurrence in Table 7 (refer to appendix).

From this analysis 65.8% of all national coastal drownings have occurred during the current regular season patrol hours. By including the 5pm – 6pm timeslot, the percentage of drownings that then occur within the patrol period rises to 75.2%, that is approximately 9% of drownings occur in that timeslot. If later closures were considered, it is recommended that they only be considered during daylight savings periods which is the highest beach patronage period of the year.

Further consideration of the local drowning data as discussed in Table 6 (refer to appendix) indicates that of the local drownings mentioned, only two occurred in these 'fringe' periods. One was at Birdie Beach (National Park) at 5.15 pm and the other was at Shelly Beach at 7.00 pm. These were both during the Christmas peak period.

It should also be recognised that Council's lifeguards and volunteer lifesavers presently operate with a degree of flexibility and will stay at the beach longer if crowds and conditions warrant it. For example, extended hours are currently typically deployed on hot days with large beach crowds remaining in the water after the normal closing time or early opening the following morning if hot weather and unfavourable sea conditions are forecast. This current flexibility would be supported by the adoption of option 1 for discretionary extension of patrolling hours.

Extension of current patrol season beyond October to April

During the briefing, consideration was given to establishing a year round lifeguard service at the Shire's two most popular beaches, being Soldiers Beach and Shelly Beach, in order to provide a viable safe alternative for winter swimmers.

Wollongong City Council, which has the largest lifeguard service in NSW, established a similar service in 2008. This followed an extensive trial and public consultation period which identified that there was a need to undertake such a service at its most popular beaches, but other 'satellite' beaches did not warrant it. Through the SSV consultation process the issue of extended beach patrol season was not raised by the public as a significant issue that Council needed to improve/enhance.

If this were considered to also be a preferred option, lifeguards would be required to work weekends and public holidays at the two beaches for the entire off-season, as surf life saving volunteers are, at this stage, not active over the same period. The costs of providing this service would be approximately an additional \$320,000 per annum.

The additional data sourced from SLSCC regarding NSW coastal drownings from 2004 to 2008 indicate that the peak drowning months are January through to April, months which are already covered by existing services.

Weekend Lifeguard Patrols at all beaches during Peak (six weeks)

Statistics sourced from SLSCC for 2004 to 2008 NSW coastal drownings (Figure 2 of appendix) indicate that there is a higher incidence of drownings in NSW on Saturdays and Sundays, with approximately twice the number of drownings on these days compared to any other day.

The local drowning data presented in Tables 6 and Figure 3 (refer to appendix), shows that the same trend is not apparent in the Wyong Shire over the course of the last 10 years. From this data there have been more drownings on Thursdays (4) than any other day. Saturday and Sunday do however follow from this.

During the current patrol seasons, Surf Life Saving Australia volunteers undertake all patrols in the Wyong Shire on weekends and public holidays with no lifeguard presence.

From the local and state drownings data (presented in Figures 2 and 3 of the appendix), it is clear that generally there have been more drownings on weekends than most week days. The local drownings data from Table 6 (refer to appendix) does however indicate that each of these weekend drownings in Wyong was in unpatrolled areas (not considering the Monday Public Holiday drowning at Soldiers Beach in 2001). With greater numbers of beach users over weekend periods and in order to better address safety concerns, there is an option of lifeguards being deployed, along with surf life saving volunteers, on some weekends and public holidays as, for example, occurs at Bondi Beach and the Gold Coast.

Rather than considering deploying lifeguards on weekends and public holidays for the whole season, consideration is instead being given to their deployment during the six-week Christmas holiday peak.

Initial estimates presented during the briefing for a six-week weekend lifeguard service were costed at \$200,000 to \$215,000 per annum. This initiative is considered a lower priority than extending the current patrol season beyond October to April.

Reduction in Lifeguard Services to Less popular beaches such as North Entrance, The Entrance and Lakes Beach

Councillors requested that consideration be given to reducing services at some of the other beaches considered less popular, such as North Entrance, in order to fund the extension of beach safety services at other locations.

As illustrated in Table 3, various levels of service can be implemented at varying cost levels for each location depending on the agreed outcomes. Consideration of changing service levels on any of Wyong Council's beaches could be undertaken as part of the development of the Four Year Delivery Program later this year. As part of this review process, further research could be undertaken to review other similar Council's lifeguard services in order to provide additional objective data in support of any proposed changes.

Shire Strategic Vision

The Shire Strategic Vision (SSV) provides a broad base for the direction of our community over the next 20 years. Specific levels of service for a variety of Council assets and programs are not covered at this strategic level. Whilst surf lifeguard services may be considered part of the community's diverse range of services (page 19 of the draft SSV) what level of service, how that service level will be funded and agreed needs are to be considered during the preparation of the Asset Management Strategy and Council's Four Year Delivery Plan. These projects have commenced and a first draft will be available for review by the end of 2009.

However, extension of beach safety services meets a number of the priority objectives of the Shire Strategic Vision such as:

- 'Communities will have access to a diverse range of affordable and coordinated facilities, programs and services.' – page 19 of the draft SSV (through lifeguard coverage over longer periods of the year in more locations) ;
- 'There will be a sense of community ownership of the natural environment through direct public involvement with environmental programs.' – page 23 of the draft SSV (by encouraging public access and usage); and

3.3 Program to Reduce Drowning Deaths in Wyong Shire (contd)

- ‘Communities will be vibrant, caring and connected with a sense of community belonging and pride in their local neighbourhood.’ – page 16 of the draft SSV (by expanding and supporting programs that increase participation among all ages in sports and recreation through increasing levels of safety at beaches).

The extension of beach safety services would also link with the identified strategy of establishing a world-class beach and cliff walk.

Funding Opportunities

There are currently no funds identified for the ongoing maintenance and operations of the proposed extensions to beach safety services as outlined above. The Long-Term Financial Strategy, which will be considered later this year, may be one source for identifying additional funds for initiatives identified in this report.

The Long-Term Financial Strategy will assist Council to make decisions about allocating its limited resources to competing priorities and provide assurance that there are sufficient resources to meet both ongoing commitments and undertake new projects

CONCLUSION

As an interim improvement to reducing drowning deaths in Wyong Shire and increasing the level of lifeguard services at Wyong’s beaches, it is proposed that the pool audit initiative and lifeguard service level option priorities 1 and 2 (as listed in Table 4 of this report) be implemented by sourcing funds in 2009-10 from the anticipated additional revenues resulting from increased pool inspection regulatory activity and the additional \$27,200 from Shire Services budgets. The source of this funding is to be considered in the quarterly review process.

As Council is currently not in a position to fund other priorities, listed in Table 4 on an ongoing basis, it would be prudent to defer committing to the other priorities until the Shire Strategic Vision process and Four Year Delivery Program is finalised and the Long-Term Financial Strategy is considered later this year.

Table 5: Cost of the various recommended initiatives.

Recommended Initiative	Cost (\$)
Additional net cost of expanding the pool audit inspections program by seconding the lifeguards (refer to Table 2 for detailed cost break-up)	9,700
Proposed option 1: Risk management based discretionary extension of daily hours on patrolled beaches (as funded for 09/10)	10,000
Proposed option 2: Water & beach safety awareness program targeted at Budgewoi Beach (as funded for 09/10)	7,500
Total	27,200

APPENDIX

Wyong Shire Ocean Drowning Statistics

Council staff have collated data on all known drowning deaths on Wyong Shire beaches over the past decade. Data that includes details such as those listed in table 2 were only available for incidents since 1999 and as such any prior incidents were not considered.

Table 6: Fatal ocean drownings in Wyong 1999-2009:

Date	Day	Time	Location	Activity	Age	Gender	Local/ Tourist	Location Status
17/01/09	Sat	2-3:30am	Shelly Beach	Swimming	26	male	Tourist	Not Patrolled
17/01/09	Sat	2-3:30am	Shelly Beach	Swimming	20	male	Tourist	Not Patrolled
15/04/07	Sun	2:00pm	Toowoona Bay*	Swimming	Unknown	male	Tourist	Not Patrolled*
04/01/07	Thur	2:20pm	Budgewoi Beach	Swimming	36	male	Tourist	Not Patrolled
20/03/05	Sun	1:00am	Shelly Beach	Swimming	36	male	Tourist	Not Patrolled
27/01/05	Thur	2:00pm	Budgewoi Beach	Swimming	22	male	Tourist	Not Patrolled
06/01/05	Thur	7:00pm	Shelly Beach	Swimming	26	male	Tourist	Not Patrolled
31/12/04	Fri	5:15pm	Birdie Beach	Slipped on Rocks	60	male	Tourist	Not Patrolled (National Parks)
14/01/03	Tue	11:45am	Birdie Beach	Swimming	17	male	Tourist	Not Patrolled (National Parks)
06/03/02	Wed	Unknown	Cabbage Tree Bay	Swimming	79	male	Local	Not Patrolled
01/10/01	Mon**	Unknown, during patrol hours	Soldiers Beach	Swimming	50	male	Tourist	Patrolled Surf Life Saving
09/12/99	Thur	Unknown	Pelican Beach	Surfing	35	male	Local	Not Patrolled (National Parks)

* Outside Patrol Area

** Public Holiday

Shaded rows reflect incidents that may have been directly affected by increased patrols.

Sources: Central Coast Express Advocate, The Royal Life Saving Society NSW Branch and Lifeguard records.

Table 7: 2004-2008 National Coastal Drowning Data by one hour timeslot (source: Surf Life Saving Central Coast) in order of most drownings to least:

Timeslot	Number of Drownings	Within Current Patrol Hours?
3pm-4pm	35	Yes
10am-11am	31	Yes
5pm-6pm	29	During Peak
12pm-1pm	26	Yes
4pm-5pm	26	Yes
2pm-3pm	25	Yes
1pm-2pm	19	Yes
8am-9am	15	Partly (8.30 am start)
11am-12pm	15	Yes
6pm-7pm	15	No
7am-8am	10	No
9am-10am	10	Yes
7pm-8pm	9	No
9pm-10pm	8	No

Timeslot	Number of Drownings	Within Current Patrol Hours?
1am - 2am	7	No
6am - 7am	6	No
3am-4am	5	No
5am - 6am	4	No
12am - 1am	3	No
4am - 5am	3	No
8pm-9pm	3	No
10pm-11pm	2	No
11pm-12am	1	No
2am - 3am	0	No

Table 8: Lifeguard Rescues during 2008-09 Patrol Season at North Entrance, The Entrance and Soldiers Beach:

Item	North Entrance	The Entrance	Soldiers Beach
Rescues	5	5	109
First Aid	47	33	75
Marine Stings	108	3	58
Preventative Actions	2,420	2,477	21,432
Beach Usage	82,100	78,300	224,200

Table 9: Costs associated with establishing a temporary lifeguard service at Ocean Street, Budgewoi for six weeks:

Item	Estimated Cost for a six week period in the First Year
2 x Lifeguard Wages (excluding Public Holidays and Weekends – to be performed by volunteers)	\$15,000
4WD Dual Cab Utility Hire	\$1,500
Jet Ski (based at Lakes Beach) and trailer	\$8,500
Other Equipment (Flags, signs, boards, uniforms, wetsuits, defibrillators, oxy vivas, medical equipment, esky, portable toilet)	\$10,000
Removable shelter for existing viewing platform	\$5,000
TOTAL	\$40,000

Figure 1: Wyong Shire Patrolled Beach Coverage Map showing National Parks

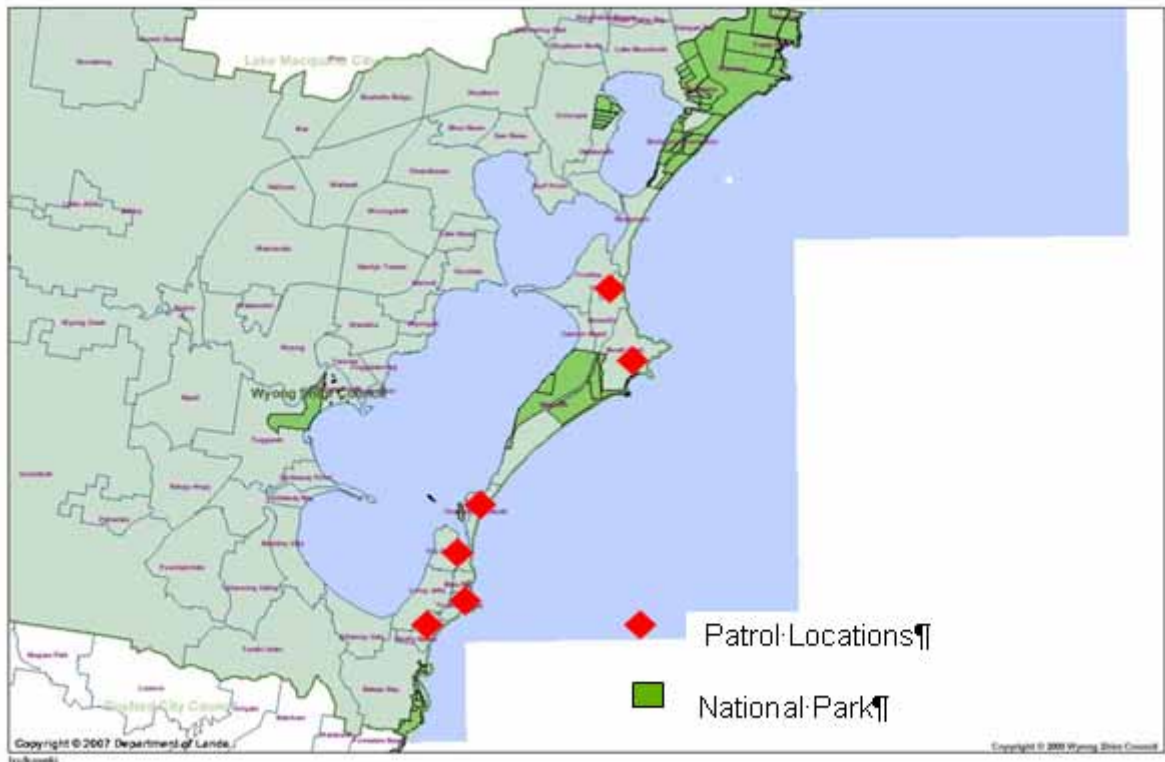


Figure 2: Coastal Drownings NSW 2004-2008 By Day (source Surf Life Saving Central Coast)

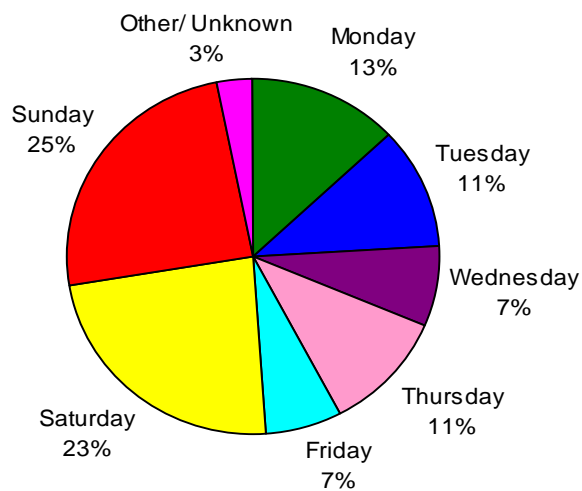
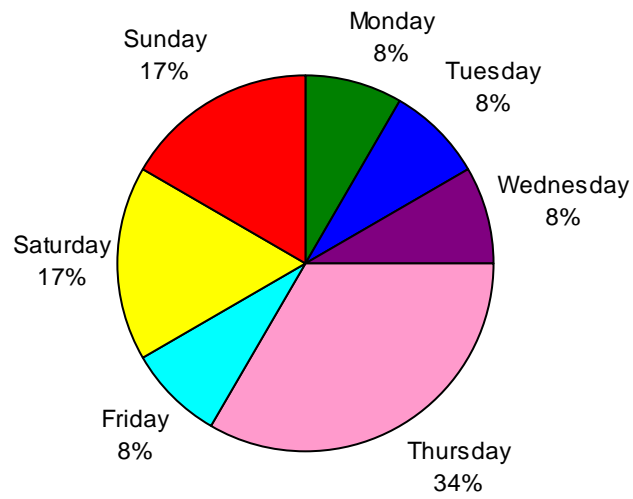


Figure 3: Coastal Drownings Wyong Shire 1999-2009 by Day (from Table 2)



ATTACHMENTS

Nil.

4.1 Proposed Land Acquisition for Open Space and Recreation - Part of Lot 911 DP 786112, 25 Mataram Road, Woongarra

TRIM REFERENCE: F2009/01347 - D01964070

AUTHOR: JT

SUMMARY

Approval is sought to acquire part of Lot 911 DP 786112 at 25 Mataram Road, Woongarra for open space and recreation purposes.

RECOMMENDATION

- 1 That Council authorise the acquisition of part of Lot 911 DP 786112 at 25 Mataram Road, Woongarra for an amount based on an assessment by a qualified valuer.**
- 2 That Council authorise the Common Seal of Wyong Shire Council to be affixed to the formal documents as required between Wyong Shire Council and the owner of Lot 911 DP 786112.**
- 3 That Council authorise the Mayor and the General Manager to execute all documents.**

BACKGROUND

Wyong Shire Council Local Environmental Plan 1991 (WLEP) includes provision for land zoned 6 (c) Proposed Open Space and Recreation.

Clause 44 of the WLEP applies to the acquisition of special uses and open space land including land within Zone 6 (c). Clause 44 provides that the owner of any land which is the subject of this clause may, by notice in writing, require Wyong Shire Council (WSC) to acquire that land and that WSC shall acquire that land on receipt of such notice.

Lot 911 DP 786112 is 26,710m² and zoned 2 (e) Urban Release Area except for the 6 (c) land to be acquired. On 8 July 2008, Council resolved to acquire part of Lot 911 DP 786112 and part of Lot 90A DP 22837 at Hakone Road, for drainage purposes. Agreement with the property owners has not been reached in relation to the acquisitions for drainage and compulsory acquisition has commenced.

In addition to the drainage land, the land zoned 6 (c) is required to provide buffer to the industrial area between Mataram Road and Hakone Road. In accordance with the Public Land Classification Table adopted by Council on 14 August 1996, land owned by WSC for open space and recreation should be classified as Community Land.

THE PROPOSAL

The Solicitor acting for the owner of 25 Mataram Road, Woongarra (Lot 911 DP 786112) has requested in writing that WSC purchase the property. A valuation will be obtained and negotiations will be entered into to achieve the best possible price for WSC.

OPTIONS

Clause 44 of the WLEP requires WSC to acquire the land on receipt of written notice to acquire.

STRATEGIC LINKS**Financial Implications**

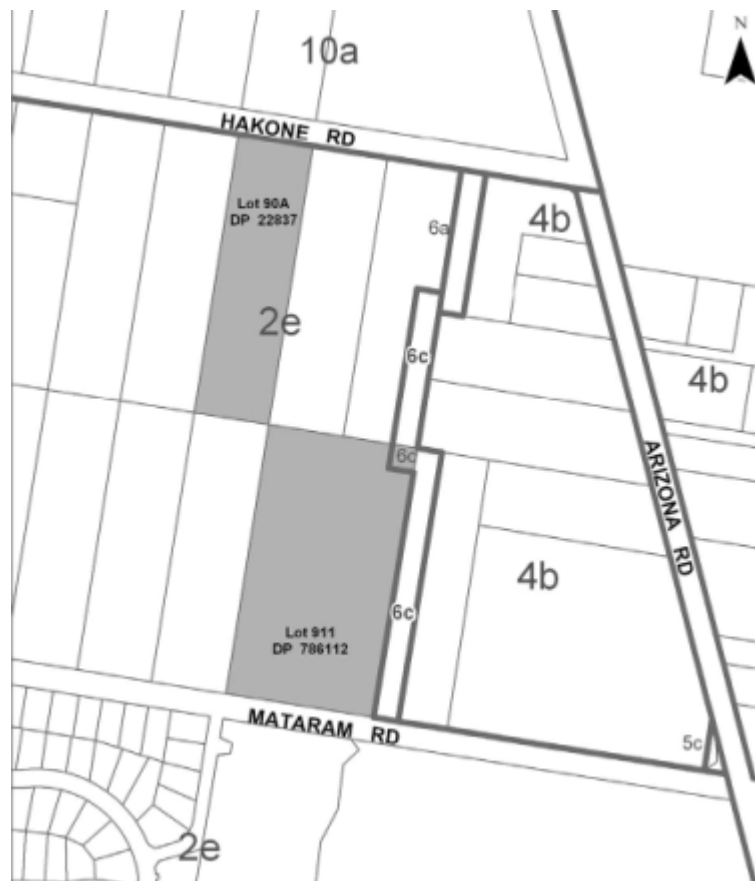
Funds for the purchase of the land are available from Section 94 Developer Contribution Plans.

CONSULTATION

The owner of the property has requested that WSC purchase the property as required by the WLEP. Negotiations will proceed subject to Council approval.

GOVERNANCE

The Wyong Local Environment Plan requires WSC to acquire the land zoned 6 (c) Proposed Open Space and Recreation and the Local Government Act 1993 authorises Council to acquire land for public purposes.

Location Plan**CONCLUSION**

WSC has been requested to acquire the property detailed above by the owner of the land. The request is in accordance with the WLEP and WSC is obliged to proceed with the acquisition. Council approval is required to proceed with the purchase.

ATTACHMENTS

Nil.

4.2 Proposed Easement for Water Supply over Lot 994 DP 1035659 Waterhen Close, Blue Haven and over Lot 1000 DP 1035659 Roper Road, Blue Haven

TRIM REFERENCE: F2009/01080 - D01968049

AUTHOR: SB

SUMMARY

Approval is sought to grant an easement for water supply 3m wide to Hunter Land over Lot 994 DP 1035659 Waterhen Close, Blue Haven and Lot 1000 DP 1035659 Roper Road, Blue Haven for the construction of a proposed water main.

Hunter Land has further sought endorsement by Wyong Shire Council (WSC), as the owner of land Lot 994 DP 1035659 Waterhen Close, Blue Haven and Lot 1000 DP 1035659 Roper Road, Blue Haven, of a development application for the construction of a proposed water main on Council land.

RECOMMENDATION

- 1 That Council grant an easement for water supply 3m wide over Council's land, Lot 994 DP 1035659 Waterhen Close, Blue Haven to Hunter Land.**
- 2 That Council grant an easement for water supply 3m wide over Council's land, Lot 1000 DP 1035659 Roper Road, Blue Haven to Hunter Land.**
- 3 That Council endorse, as owner of Lot 994 DP 1035659 Waterhen Close, Blue Haven and Lot 1000 DP 1035659 Roper Road, Blue Haven, a development application by Hunter Land for the construction of the proposed water main.**
- 4 That Council authorise for the Common Seal of the Wyong Shire Council to be affixed to related documents as required.**
- 5 That Council authorise the Mayor and the General Manager to execute all documents relating to the grant of easement between Wyong Shire Council and Hunter Land.**

BACKGROUND

Hunter Land proposes to construct a water main to service the development of the Hunter Land property at Lot 10 DP 834953 Tooheys Road, Bushells Ridge.

The water main would affect the Darkinjung Local Aboriginal Land Council (DLALC) being Lot 7009 DP 1029045 on the southern side of the motorway, continue under the Main Northern Railway, across Springs Creek, affecting Council land Lot 994 DP 1035659 and Lot 1000 DP 1035659 to connect into the existing water reticulation system at Blue Haven.

Approval is required to grant easements for water supply over the Council properties involved.

4.2 Proposed Easement for Water Supply over Lot 994 DP 1035659 Waterhen Close, Blue Haven and over Lot 1000 DP 1035659 Roper Road, Blue Haven (contd)

THE PROPOSAL

Hunter Land proposes to service the development of the Hunter Land property at Lot 10 DP 834953 Tooheys Road, Bushells Ridge by the construction of a water main within a 3m wide easement over Lot 994 DP 1035659 and Lot 1000 DP 1035659 to allow connection to the existing water reticulation system at Blue Haven.

Associated with the construction of the water main, it will be necessary to grant to Hunter Land an easement 3m wide over the proposed water main to satisfy requirements in respect to the operation and maintenance of the water main over Council land.

Development Application

Hunter Land is also seeking Council's consent, as the owner of the land, for the lodgement of a development application to construct a water main to allow connection to the existing water reticulation system at Blue Haven.

The water main is proposed to be constructed within a 3m wide easement over Lot 994 DP 1035659 and Lot 1000 DP 1035659.

Council will have the opportunity to consider the merits of the design for the construction of the water main during the development application process.

STRATEGIC LINKS

Financial Implications

All costs associated with the construct of the water main and the grant of the easement by Council will be borne by Hunter Land. There is no cost to Council.

CONSULTATION

ADW Johnson Pty Limited and Hunter Land have approached Council in order to obtain the granting of the easement. A copy of the proposed route from Tooheys Road to Blue Haven has been provided to Council for approval. The granting of the easement will proceed subject to Council's approval.

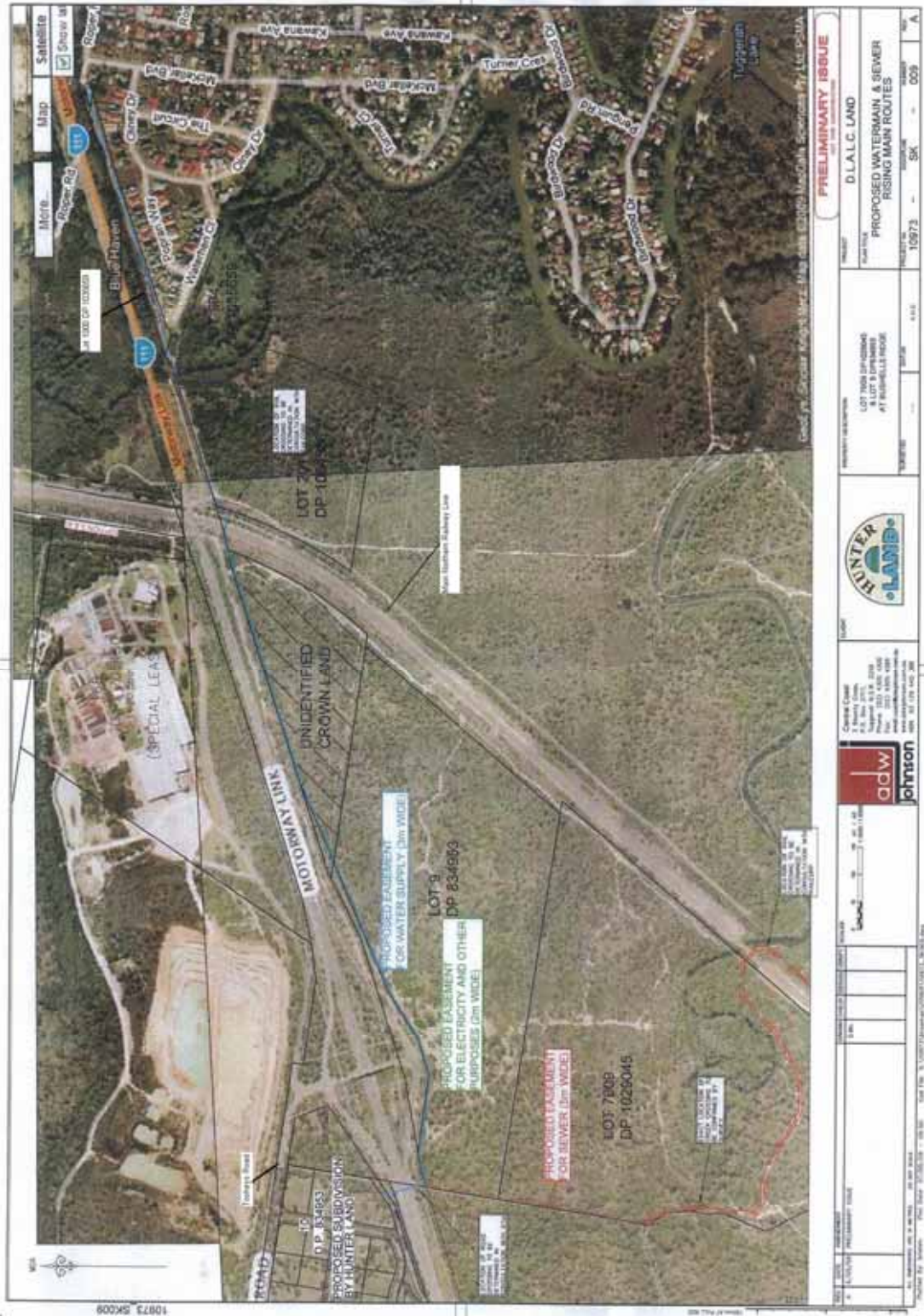
GOVERNANCE

Lot 994 DP 1035659 is Zoned 6(a) Open Space and Recreation and is Classified as Community Land and Plan of Management No. 5 Community Uses applies which authorises the construction of utilities such as water supply.

Lot 1000 DP 1035659 is zoned 2(b) Multiple Dwelling, is used as road buffer and is classified as Operational land. There is no impediment to granting an easement.

4.2 Proposed Easement for Water Supply over Lot 994 DP 1035659 Waterhen Close, Blue Haven and over Lot 1000 DP 1035659 Roper Road, Blue Haven (contd)

Aerial View showing water main and Tooheys Road



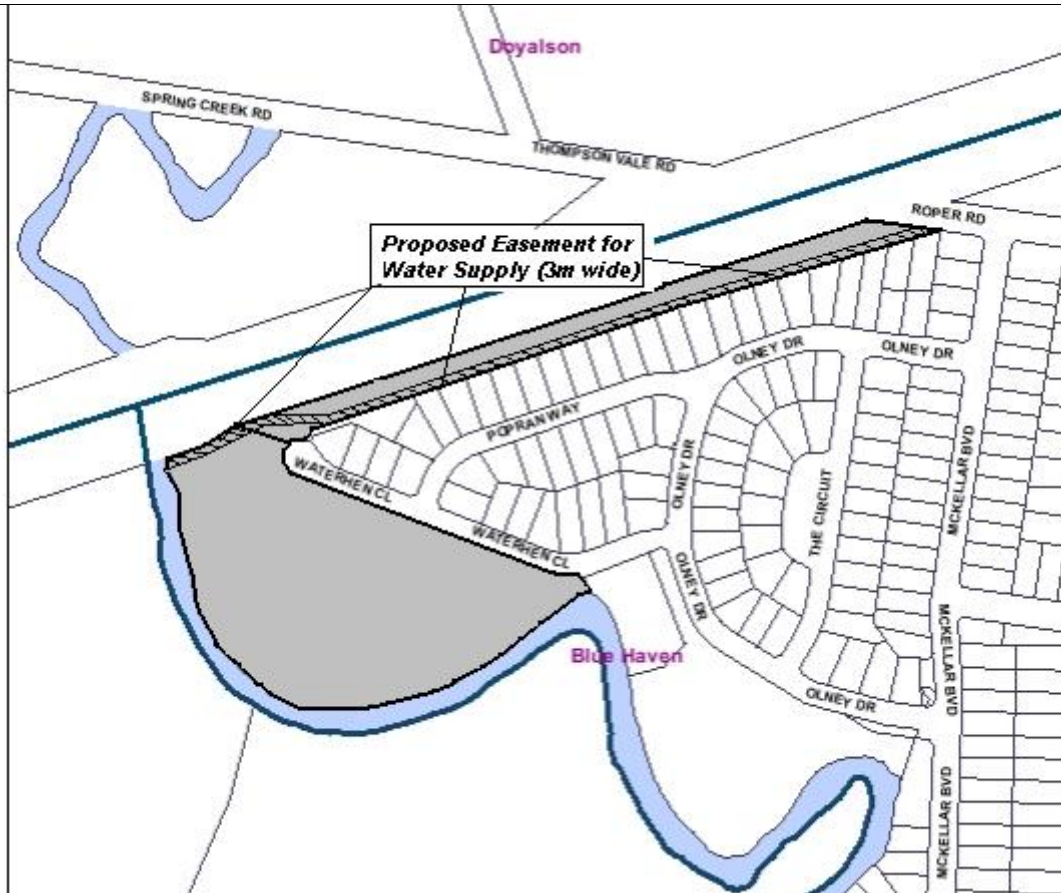
4.2 Proposed Easement for Water Supply over Lot 994 DP 1035659 Waterhen Close, Blue Haven and over Lot 1000 DP 1035659 Roper Road, Blue Haven (contd)

Plan showing the location of the affected Lots (highlighted)



4.2 Proposed Easement for Water Supply over Lot 994 DP 1035659 Waterhen Close, Blue Haven and over Lot 1000 DP 1035659 Roper Road, Blue Haven (contd)

Plan showing the location of the proposed easement (hatched)



CONCLUSION

Granting of easements in this instance is to allow connection to the existing water reticulation system at Blue Haven. Council's approval is an administrative step for the construction and is required to ensure legal requirements are satisfied in relation to ownership of the land concerned.

ATTACHMENTS

Nil.

4.3 Acquisition of Easements for the Mardi-Mangrove Link Water Supply Project

TRIM REFERENCE: F2007/01123 - D01971600

AUTHOR: GM

SUMMARY

Approval is sought for the acquisition of additional easements required for the new water pipeline which will be built through Yarramalong Valley. The pipeline is a key part of the Mardi-Mangrove Link Project which, in turn, is a key element of *WaterPlan 2050*.

This report is similar to a report provided in January 2009 when approval was sought for the majority of easement acquisitions for the Mardi-Mangrove Link Project. The additional approval now being sought reflects modifications to the pipeline route corridor in recent months which has resulted in some additional easements on private properties now being required. Additional approvals are also due to changes in the way some land parcels are identified.

RECOMMENDATION

- 1 That Council acquire the easements for a water supply pipeline over the properties within the Wyong Shire Council area, identified in Table 1 in this report.**
- 2 That Council authorise 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 easements.**
- 3 That Council arrange licence agreements with affected land owners to access to properties for construction purposes, prior to and during the construction period, and to pay a licence fee for such licence agreements as assessed by the Project's Valuers in accordance with procedures approved by the General Manager.**
- 4 That Council proceed to compulsorily acquire the easements over the land in accordance with the provisions of the Water Management Act 2000, in the event that negotiations with affected landholders cannot be satisfactorily resolved within three months.**
- 5 That Council proceed at the completion of construction works to compulsorily acquire with agreement the easements over the properties which are the subject of Agreements for Easements, in accordance with the provisions of the Water Management Act 2000 and the Land Acquisition (Just Terms Compensation) Act 2000.**
- 6 That Council authorise the exercise of its Powers of Entry in accordance with the Water Management Act 2000 to gain access to the land within Wyong Shire if negotiations with affected landholders cannot be satisfactorily resolved.**
- 7 That Council obtain the prior approval of the Minister to appoint Authorised Officers in accordance with the Water Management Act 2000, where required.**
- 8 That Council authorise the affixing of the Common Seal of the Wyong Shire Council to all documents relating to the acquisition of easements.**

9 That Council authorise the Mayor and the General Manager to execute all documents relevant to the acquisition of the easements.

BACKGROUND

The Mardi-Mangrove Link Project is a key element of *WaterPlan 2050* which is the long-term strategy for securing the Central Coast's water supply into the future. It is an initiative of Wyong Shire and Gosford City Councils with Australian Government funding of \$80.3 million from the Water Smart Australia Program.

The project involves building two new water pipelines, two new pump stations and associated works:

- One pump station will be located at lower Wyong River
- One pump station will be located at Mardi Dam
- One pipeline will be 2.7km long and will run from Wyong River to Mardi Dam
- One pipeline will be 19 km long and will run from Mardi-Dam to Mangrove Creek Dam

In May 2009 Council determined to modify the previously agreed route corridor in Sectors 3, 6 and 8 of the pipeline route through Yarramalong Valley. This redirected the route in Sector 6 away from four river crossings and along the road reserve, it also resolved to pipe-bridge two river crossings in Sector 3 instead of underboring them, and it also redirected part of the pipeline route in Sector 8 away from a hill which would need to have been underbored. The full pipeline route is now considered to be locked in and no more route changes are anticipated.

THE PROPOSAL

It is necessary for Council to acquire permanent easements over 72 parcels of private and public land for the purposes of constructing, operating and maintaining the two water pipelines which form part of the Mardi-Mangrove Link Project. Some 55 of these easements are on privately-owned land.

When easements are acquired, they will be registered on individual land titles and compensation payments will be made in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

The permanent easements will be 10 metres wide along most of the pipeline route, except in Sector 1 where the permanent easements will be 12 metres wide to accommodate two parallel pipelines.

The Mardi-Mangrove Link Project Team is continuing to work with affected landholders to negotiate easements which are required on private land. Formal valuations have been carried out by accredited valuers engaged by Council. The Project Team is confident it will secure the majority of easements by negotiation.

The Project has also provided \$3,000 for each affected landholder to obtain their own professional advice (such as legal and valuation advice) if they wish.

It is proposed that negotiations with individual landholders would continue for a period of three months. Meanwhile, the necessary steps enabling the compulsory acquisition process would be arranged from the outset, but would be implemented only if agreement with a landholder had not been reached after the three month negotiation period. These activities would be carried out in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* and under authority of the *Water Management Act 2000*.

4.3 Acquisition of Easements for the Mardi-Mangrove Link Water Supply Project (contd)

While the majority of easements required for this project were approved for acquisition by Council in January 2009, the remaining nine properties which require Council approval are as follows:

Table 1:

Sector	Land Label	Lot No	DP
3	Private Land	12	1083358
5	Private Land	100	1133862
6	Private Land	21	737197
8	Private Land	62	755271
8	Crown Road	Separating lots 96, 7006 and 7004	Separating DPs 755271, 1021292 and 1021289
8	Crown Licence	7004	1021289
8	Private Land	192	566582
8	Crown Road	Between lots 8112 and 61	877749 and 867170
9	Crown Road	Through Lot No 95	1101803

During construction it may also be necessary to secure temporary access to some additional land either side of the permanent easement. This will be necessary for locating construction equipment and materials needed to construct the water pipeline. The use of this temporary work space is known as the 'licensed' area. An accredited valuer will assess the rental amount payable for this licensed land.

The Project Team is working closely with the Department of Water and Energy to ensure all departmental guidelines and processes are followed during these actions.

Without Council's authorisation to acquire the necessary easements the Project could experience significant delays due to extended negotiations with affected landholders. These delays could affect the overall Project schedule, including the anticipated timeframes for issuing tenders, awarding construction contracts and ultimately completing the works.

The NSW Minister for Lands has already agreed to the acquisition of Crown Land based on compensation being determined by the Property Valuation Service (see attached letter from NSW Department of Lands, 29 June 2009).

STRATEGIC LINKS

<i>Key focus area</i>	<i>How the proposal contributes or links to the Key Focus Areas in Council's Management Plan</i>
Water Supply	The Mardi-Mangrove Link Project is a key element of <i>WaterPlan 2050</i> which is the long-term strategy for securing the Central Coast's water supply into the future.

Financial and Legal Costs

A recent report to the Gosford/Wyong Council's Water Authority and subsequently to Council identified a preliminary cost estimate range for the Mardi-Mangrove Link Project. This range included all elements of the project including project design, engineering and environmental investigations, community liaison, easement acquisition, project management, construction and commissioning.

Principles of Sustainability

Council has previously considered sustainability in general across the Project. The potential of financial sustainability is managed in the easement acquisition process in accordance with the Land Acquisition (Just Terms Compensation) Act.

CONSULTATION

Extensive consultation has been undertaken by the Mangrove-Mangrove Link Project Team in relation to the overall project and the pipeline route corridor specifically. Significant community liaison has also been undertaken with affected landholders in relation to the easement acquisition process. This has involved formal letters, one-on-one landholder visits and responses to landholder questions. It has also involved the development of a comprehensive Easement Pack which was hand delivered to affected landholders and sought to explain a range of issues about the land valuation and easement acquisition process.

GOVERNANCE

Council must have regard to the following legislation in relation to the easements acquisition process:

- *Local Government Act 1993.*
- *Land Acquisition (Just Terms Compensation) Act 1991.*
- *Water Management Act 2000.*
- *Conveyancing Act 1919.*

CONCLUSION

Council needs to acquire easements on land in the Yarramalong Valley for the construction, maintenance and operation of the water supply pipeline which is part of the Mardi-Mangrove Link Project. Authorisation by Council to proceed with compulsory acquisition of these easements if necessary is required to help ensure the Project moves forward in a timely manner.

ATTACHMENTS

- 1 Letter from NSW Department of Lands - 29 June 2009 D01970680



Department of Lands

Wyong Shire Council
c/- Mardi-Mangrove Link
PO Box 20
Wyong NSW 2259

Cnr New England Highway & Banks Street
(PO Box 6) East Maitland NSW 2323
Contact Officer: Mrs Virginia Rodway
Phone: (02) 49 379 306
Fax: (02) 49 348 417
E-mail: virginia.rodway@lands.nsw.gov.au

Date: 29th June, 2009

Our Ref: 08 / 8130
Your Ref: F2008/01678

**PROPOSED ACQUISITION OF CROWN LAND FOR
EASEMENTS OVER PARISHES WYONG, OURIMBAH & EGLINGTON**

I refer to your letter 7th August, 2008 seeking consent to establish easements between Wyong River and Mangrove Creek Dam via Mardi Dam.

The Minister for Lands agrees pursuant to section 29 of the Land Acquisition (Just Terms Compensation) Act 1991 (LA (JTC) Act) to the acquisition of Crown land for easement and further agrees that compensation for the acquisition shall be the land value as determined by Property Valuation Services. The Crown land sites for acquisition are shown by red line on the attached diagrams "A" and "B" over numerous Lot identifiers within the Parishes of Wyong, Ourimbah and Eglington.

In respect of the land being acquired, Mardi-Mangrove Link shall:-

1. Ensure the holder of Licences 160869 and 181463 Mr Olbert William Rogers Oam is appropriately advised as to the proposal and also prior to any works being undertaken.
2. Ensure the holder of Enclosure Permit 32471 Mr Bradley John Bowman is appropriately advised as to the proposal and also prior to any works being undertaken.

Please note that the Minister for Lands may not be the only owner of the land for the purposes of obtaining agreement under section 30 of the LA (JTC) Act.

The Department is not aware of any prior act of the Crown that has extinguished native title in the land the subject of the proposed acquisition.

Wyong Shire Council may have an obligation under section 24MD of the Commonwealth Native Title Act 1993 to accord potential native title holders with certain procedural rights in relation to the proposed acquisition. In particular, section 24MD requires that notice of the proposed future act (in this case, acquisition) must be given to any representative Aboriginal and Torres Strait Islander bodies for the area concerned and any registered native title claimants in relation to land or waters in the area concerned.

Within NSW a notice should be sent to both the NSW Aboriginal Land Council (formerly appointed as the representative Aboriginal body) and NSW Native Title Services

2. Limited (the entity that currently performs the functions of the Aboriginal representative body but which has not been formally recognised).

Notices to the NSW Aboriginal Land Council should be addressed as follows:

**Manager
Legal Division
NSW Aboriginal Land Council
33 Argyle Street
PARRAMATTA NSW 2150**

Notices to NSW Native Title Services Limited should be addressed as follows:

**Manager
NSW Native Title Services Ltd
Suite 15
245 Chalmers Street
REDFERN NSW 2016**

The Department is not aware of any registered native title claim affecting the area.

The Department has not been provided with any evidence to date that native title does exist in the land. Accordingly, the Department would argue that the Minister for Lands is entitled to be paid the full amount of the agreed compensation.

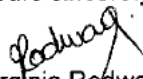
This letter is to be treated as a formal claim for compensation by the State under section 39 of the LA (JTC) Act if the acquisition is to proceed.

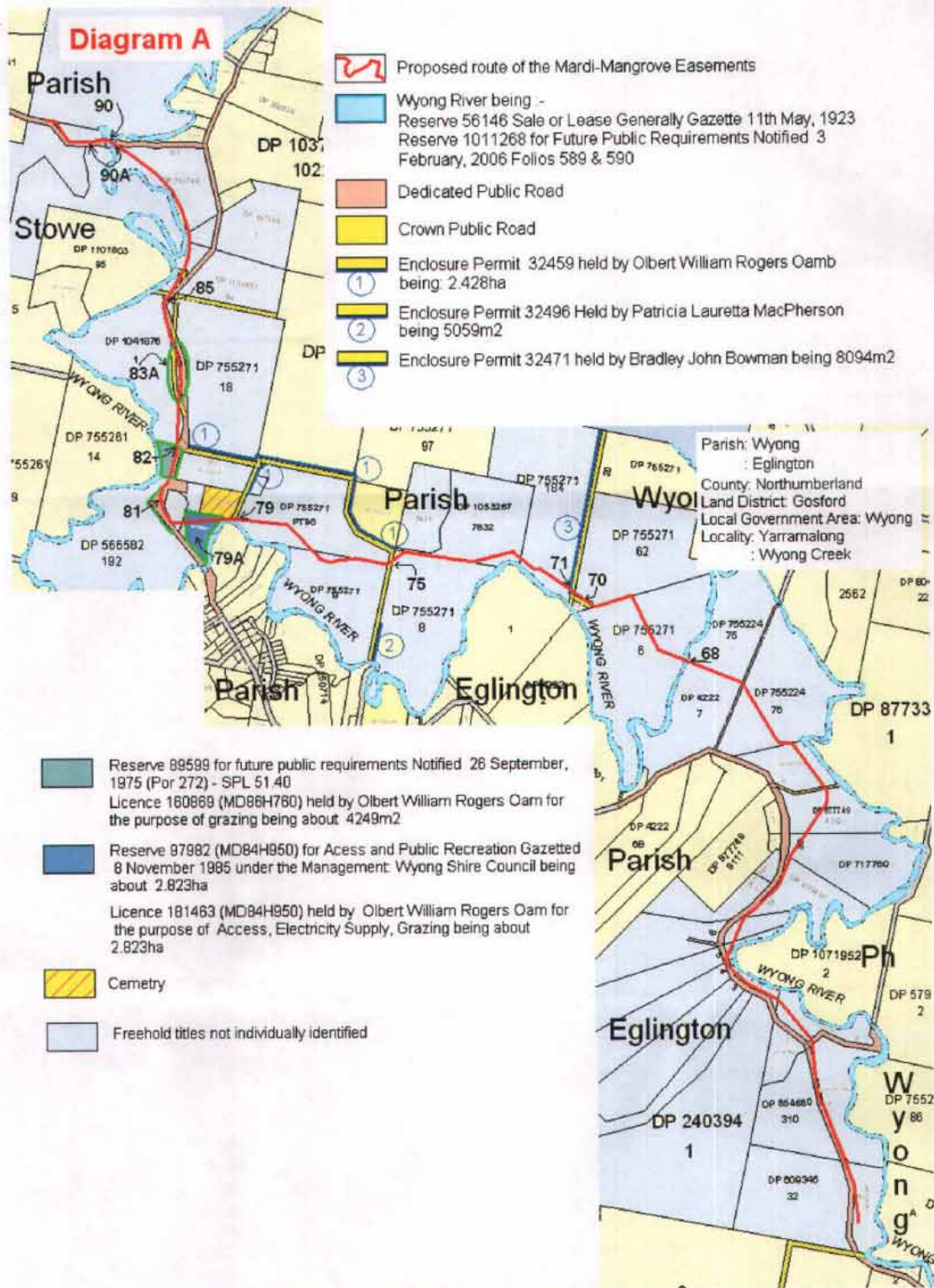
There is no objection to Wyong Shire Council entering upon the Crown land site prior to acquisition to undertake survey and preliminary construction. Wyong Shire Council shall ensure the Crown is suitably indemnified against any action, suit or claim that may result as a consequence of work undertaken by or on behalf of Wyong Shire Council.

Please forward a copy of the gazette notice and a revised copy of Property Valuation Service's valuation report in line with the Land Acquisition (Just Terms Compensation) Act when they become available. Council should endeavour to finalise this acquisition within twelve months from the date hereof.

In regard the Department's Business policy relating to Local Government procurement of Crown Land the policy dictates that for roads should be acquired under the provisions of Land Acquisition (Just Terms Compensation) Act 1991

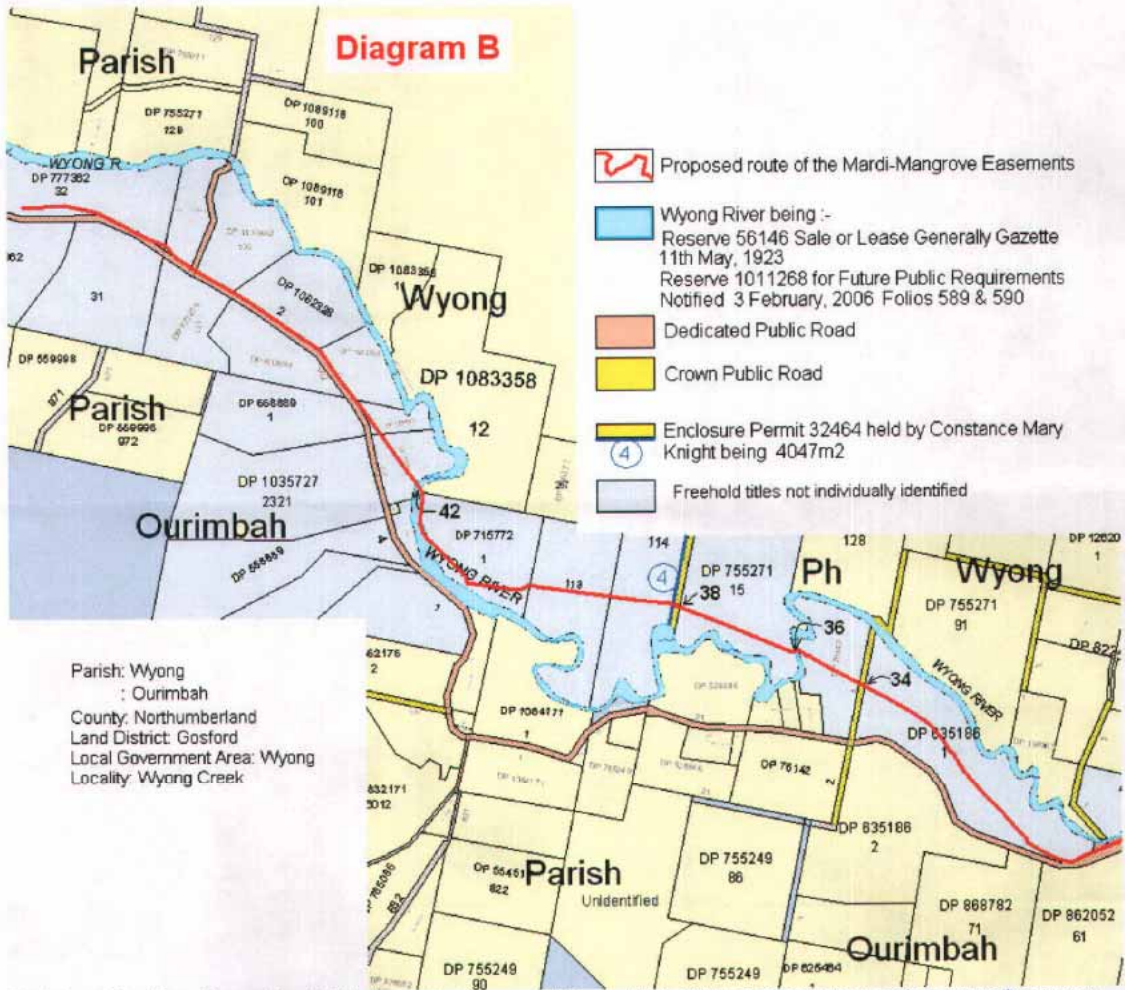
Yours sincerely


Virginia Rodway 29.6.09
**Senior Lands Officer
Crown Lands Division, Maitland**



Disclaimer: The information contained in this diagram has been provided in good faith. Whilst all effort has been made to ensure the accuracy and completeness of this information the data providers take no responsibility for errors or omissions nor any loss or damage that may result from the use of this information Copyright: Department of Lands, 2007. This diagram was prepared by Virginia Rodway on 11th June, 2009 for the investigating of the proposed acquisition of land by Mardi-Mangrove Link Project. Please Note: That this diagram is a diagrammatical representation only and is not to scale.

G:\LAND ADMINISTRATION\Acquisitions\08 B130 Mardi Mangroce Link Project\AIP = approval in principle.doc



Disclaimer: The information contained in this diagram has been provided in good faith. Whilst all effort has been made to ensure the accuracy and completeness of this information the data providers take no responsibility for errors or omissions nor any loss or damage that may result from the use of this information. Copyright: Department of Lands, 2007. This diagram was prepared by Virginia Rodway on 11th June, 2009 for the investigating of the proposed acquisition of land by Mardi-Mangrove Link Project. Please Note: That this diagram is a diagrammatical representation only and is not to scale.

5.1 CPA 158140 - Upgrade of Existing Boat Ramp, Seawall and Roadworks at Picnic Point, The Entrance

TRIM REFERENCE: CPA/158140 - D01972241

AUTHOR: KM

SUMMARY

Evaluation and selection of lump sum tenders for Contract CPA/158140 - Upgrade of Existing Boat Ramp, Seawall and Roadworks at Picnic Point, The Entrance.

RECOMMENDATION

- 1 ***That Council accept Tender number 2 from Bixli Pty Ltd t/a P & H Constructions including acceptable alternatives in the lump sum amount of \$280,306.36 (excl GST).***
- 2 ***That Council approve a budget of \$308,306.36 (excl GST) that provides for a contingency amount of \$28,000.00 (excl GST), representing approximately 10% of the contract value, to provide for any unforeseen additional works that may become necessary during the course of the project.***

BACKGROUND

At the Ordinary Meeting held on 22 July 2009 this tender report was considered by Council. Council resolved unanimously on the motion of Councillor EATON, seconded by Councillor SYMINGTON:

“That Council defer this report pending an inspection of Picnic Point and that a brief interim report on strategic directions for boat ramps in the Long Jetty to North Entrance areas be provided.”

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

AGAINST: NIL.

Interim Strategic Position

Under the Estuary Management Plan (EMP) the Tuggerah Lakes Foreshore Recreation Strategy was developed in 2008. This Strategy prioritised the location and type of recreational facilities, including boat ramps, required to enhance recreational opportunities around the shores of the Tuggerah Lakes estuary. The strategy made the following recommendations in regards to the Picnic Point Reserve;

*“Upgrade capacity of recreation facilities – play equipment, shelters.
Increase boat ramp capacity and provide access pontoon.
Provide interpretive signage about the habitat values of Picnic Point reserve and its creation.
Provide better sightlines in the southern portion of the reserve.
Provide fitness trail opportunities along the shared pathway corridor.
Upgrade foreshore along channel edge.”*

The Estuary Management Unit is currently working through the priority list of works identified by the Tuggerah Lakes Foreshore Recreation Strategy. This included the upgrade of the Picnic Point boat ramp as work to commence in the first year of implementation. However, due to changes to the funding criteria from the Federal Government this project became ineligible and the project was deferred to commence in 2009/10. Council was subsequently successful in attracting NSW Maritime grant funding to allow the project to proceed.

5.1 CPA 158140 - Upgrade of Existing Boat Ramp, Seawall and Roadworks at Picnic Point, The Entrance (contd)

The construction of the boat ramp upgrade at Picnic Point has been given a high priority for completion under the EMP, and to this end construction tenders have been invited as reviewed in this report.

An inspection by Councillors of the boat ramps at Picnic Point, North Entrance and Saltwater Creek was subsequently undertaken on the 29 July 2009 to further review the current status of these boat ramps and to examine the Picnic Point boat ramp in particular.

At the inspection of Picnic Point boat ramp a number of design issues were raised, including the circulation of traffic in the area, the height of the fish cleaning table and the width of the proposed boat ramp. It was determined at the inspection that the design should achieve the following:

- The works should improve circulation, reversing and movement of boats that are launching and retrieving;
- Any potential conflict between park users, motorists and boat users should be limited.

It is proposed that additional consultation with local user groups be undertaken to determine any required amendments to the design. Following award of the tender any required amendments will be undertaken as a variation to the contract as the enhancements being considered would be in excess of the current scope of works under the proposed contract.

In summary, upgrades to the boat ramps at Picnic Point and Saltwater Creek Reserve were recommended in the Foreshore Recreation Strategy. This tender report recommends award of a contract to undertake works at Picnic Point Reserve boat ramp immediately. Further funding will be required before similar improvements may be undertaken at Saltwater Creek Reserve.

General

The existing Picnic Point Reserve boat ramp shows significant signs of deterioration and aging, including dilapidation of the concrete launching ramp and timber jetty, erosion of the existing foreshore protection structures and deterioration of the access road. Tenders were invited for the reconstruction of this facility and included widening of the boat ramp and other improvements to provide additional user capacity.

The proposed upgrade works include the following major items:

- Increase in width of the existing concrete boat ramp from 2 lanes to 4 lanes.
- Replacement of the existing timber wharf.
- Installation of a new floating pontoon and gangway.
- Reconstruction of the existing sea walls and bank protection system.
- Improvements to the existing access road, trailer manoeuvring area and parking facilities.
- Demolition of the existing fish cleaning table and replacement with a new covered fish cleaning table.

The Department of Commerce was engaged to review the original pre-tender estimate, manage the tendering process and administer the construction phase of the project.

Tender Process

Tenders were invited by way of public invitation. Advertisements were placed in the Newcastle Herald on 4 April 2009 and the Sydney Morning Herald on 7 April 2009. Tenders were also placed on Wyong Shire Council's e-Tendering web site. The original advertised closing date was 16 April 2009.

5.1 CPA 158140 - Upgrade of Existing Boat Ramp, Seawall and Roadworks at Picnic Point, The Entrance (contd)

The tender documents called for lump sum tenders with a 12 week construction period to minimise disruption to users during the busier summer period. Alternative boat ramps will be available at North Entrance and Saltwater Creek during construction. The provision of alternative tenders was also allowed under the Conditions of Tender.

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

- 1 Issued 1 April 2009. Extension of the closing date by one week. This was considered appropriate as the tender period extended over the Easter break.
- 2 Issued 15 April 2009. Clarification relating to the required sandstone facing on the block walls following request for additional information.
- 3 Issued 22 April 2009. Provision of additional information relating to tender evaluation criteria.

Tenders closed at Council Chambers at 2 pm on 23 April 2009.

EVALUATION OF TENDERS

Tenders were evaluated by a panel of three members comprising two Council staff and one officer from the Department of Commerce. The following threshold and weighted criteria were used.

Threshold Criteria

- Conformance with the specification/brief and other tender requirements.
- Ability to manage financial risk.
- Possession of an Environmental Management System and a Safety Management System.

Weighted Criteria

- The tendered price and price structure, as well as any other potential costs to Council that may be identified.
- Experience on projects of a similar nature.
- Performance on similar projects including subcontractors, backed up by referee reports.
- Methodology and construction program.
- Implementation and performance of environmental and safety management systems.

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 and external advisors.

The evaluation was conducted according to the following process:

- Assessment of receipt of tenders.
- Assessment of conformance of tenders.
- Shortlisting of tenders.
- Detailed weighted evaluation of shortlisted tenders.
- Due diligence checks on preferred tenderer.

Assessment of Receipt

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

No.	Tender	Tendered Lump Sum (Ex. GST)	Status
1	GW Building Pty Ltd	\$609,148.18	Received by e-Tender on time
2	P & H Constructions (Bixli Pty Ltd)	\$351,403.64	Received manually on time
3	P Geddes Construction Pty Ltd	\$469,000.00	Received manually on time
4	Sydney Marine Contracting Pty Ltd	\$540,654.55	Received by e-Tender on time
5	Talon Civil	\$692,653.73	Received manually on time

No late tenders were received.

Assessment of Conformance

Tenders were assessed for conformance with the general tender requirements including the specification. All tenders conformed to the requirements and were progressed to the next stage of evaluation.

All alternatives were assessed by the Tender Evaluation Panel and ranked Acceptable or Not Acceptable based on potential cost savings for Council and suitability.

With the exception of the tender submitted by Tenderer number 1 (GW Building Pty Ltd), all other tenders contained alternatives as summarised in the following table. An assessment was conducted by the tender evaluation panel to determine whether the proposed alternatives were acceptable or not and the results are shown in the table.

No.	Tender	Adjusted Acceptable Alternative Lump Sum Tender Price* (Excl. GST)	Alternatives Offered by the Tenderer	Comment
2	Bixli Pty Ltd t/a P & H Constructions	\$280,306.36	<p>Pour concrete ramp insitu using alternative pile system in lieu of precast slabs and concrete piles.</p> <p>Install alternative pile system for timber jetty in lieu of specified piles.</p> <p>Install split sandstone block sea walls in lieu of sawn blocks outside of ramp area.</p> <p>Replace floating pontoon and ramp with timber wharf (not suitable for disabled access).</p>	<p>Saving \$60,643.00. <u>Acceptable</u></p> <p>Saving \$3,636.00. <u>Acceptable</u></p> <p>Saving \$6,818.0. <u>Acceptable.</u></p> <p>Saving of \$18,182.00. <u>Not Acceptable.</u></p>
3	P Geddes Constructions Pty Ltd	\$464,455.00	<p>Alternative pontoon and ramp system.</p> <p>Alternative timber piles in lieu of specified concrete piles.</p>	<p>Saving \$4,545.00. <u>Acceptable.</u></p> <p>Saving \$16,364.00. <u>Not Acceptable.</u></p>

No.	Tender	Adjusted Acceptable Alternative Lump Sum Tender Price* (Excl. GST)	Alternatives Offered by the Tenderer	Comment
			Steel piles for pontoon in lieu of concrete to save construction time.	No cost saving. <u>Acceptable.</u>
4	Sydney Marine Contracting Pty Ltd	\$645,200.00	Alternative marine pontoon and ramp system. Alternative Bellingham Marine Custom Boat Ramp pontoon	Extra \$13,636.00. <u>Not Acceptable.</u> Extra \$90,909.00. <u>Not Acceptable.</u>
5	Talon Civil	\$686,322.00	Use screw piles in lieu of specified piles under ramp. Alternative ramp attachment to block wall. Additional inspection points in fish cleaning table drainage line. Provide full engineering drawings for pontoon and ramp.	Saving \$8,182.00. <u>Acceptable.</u> Extra \$1,300.00. <u>Acceptable.</u> Extra \$550.00. <u>Acceptable.</u> Extra \$3,800.00. <u>Not Acceptable.</u>

* The Adjusted Acceptable Alternative Lump Sum Tender Price comprises the original Tendered Lump Sum adjusted with the savings or extras shown as "Acceptable" in the last column in the table.

Shortlisting

Tenders were shortlisted against Criterion No. 3 – Price. Tender numbers 1, 4 and 5 (from GW Building Pty Ltd, Sydney Marine Contracting Pty Ltd and Talon Civil) tendered respective amounts of 114%, 141% and 173% higher than the pre-tender estimate. These amounts were also 75%, 102% and 173% higher respectively than the lowest priced tender. The suspected reason for the substantial difference between the lowest two tenders and the highest three tenders was because the lowest two tenders were from local contractors with lower establishment costs and greater knowledge of the local conditions.

Regardless of how they rated on non-price criteria the substantial price difference would make it virtually impossible for any of the highest three tenderers to rate as the preferred option after a full weighted evaluation. Furthermore, at the prices offered by the highest three tenders Council would need to reconsider the overall viability of the project. These tenders were therefore eliminated to allow the panel to concentrate its assessment efforts on the lowest two competitive tenders, being Tender number 2 (from P&H Constructions) and Tender number 3 (from P Geddes Constructions Pty Ltd).

Weighted Evaluation

The two lowest tenders were scored against each of the weighted evaluation criteria (including price and non-price elements). They are listed in the table below in descending order of weighted evaluation scores.

5.1 CPA 158140 - Upgrade of Existing Boat Ramp, Seawall and Roadworks at Picnic Point, The Entrance (contd)

No.	Tender	Lump Sum (Ex. GST) (Conforming Alternative)	Weighted Evaluation Score
2	Bixli Pty Ltd t/a P & H Constructions	\$280,306.00	81
3	P Geddes Constructions Pty Ltd	\$464,455.00	75

Tender number 2 (from Bixli Pty Ltd t/a P & H Constructions), being the highest scoring tender, was progressed to the due diligence stage of the evaluation.

Due Diligence

Tender number 2 (from Bixli Pty Ltd t/a P & H Constructions) was subjected to a financial assessment, and assessed in-house for its safety/environment systems and referee checks.

Council's independent financial assessor Kingsway Financial Assessments was engaged to assess the tenderer's financial position. That assessment revealed a potential short-fall in working capital. However, the short-fall is relatively minor and the risk to Council will be mitigated through the provision of security in the form of a bank guarantee as required under the contract. The tenderer has successfully completed contracts of a similar nature and value for both Wyong and Gosford Councils without any adverse financial issues. The risk is considered to be acceptable.

On the basis of the information provided by the tenderer and independent referees, it is considered that Bixli Pty Ltd t/a P & H Constructions possesses all of the technical and managerial resources necessary to satisfactorily complete the works.

Bixli Pty Ltd t/a P & H Constructions is a Killarney Vale 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.

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 appropriate technical reviews by others to ensure design meets requirements.
- The price of materials may increase significantly which will impact the Contractor's price to Council for the finished work. The contract does not allow for the rise and fall in the price of materials to be passed on to Council.

Risk Contingency

The above risks are considered to be Medium for this contract given the value of the contract and the nature of the work. The proposed construction method will allow for the work on the boat ramp to be undertaken behind a cofferdam and hence "in the dry". The lake environment at this location is not as hostile as a coastal site and the usual construction risks will be the responsibility of the contractor. Accordingly, it is recommended that a budget contingency sum of \$28,000.00 (excl GST) representing approximately 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 \$308,000.00 (excl GST), which incorporates the contingency allowance, will not be exceeded.

BUDGET

The amount tendered by Bixli Pty Ltd t/a P & H Constructions, including the accepted alternatives, is within 11% of Council's pre-tender estimate and is considered to represent a reasonable price for the contract works.

Subsidised Estuary Management funding for the project was originally sought through the NSW Caring for Our Country program in 2007/2008 but was unsuccessful.

A subsequent request for subsidised funding through NSW Maritime's Maritime Infrastructure Program was successful with an offer of \$125,000.00 (being 50% of the then- estimated total cost of \$250,000.00) made to Wyong Shire Council (WSC) in February 2009. This funding must be expended by February 2010. The grant is to be included in Management Plan line item 3.2.5 Lakes Improvement funding. Recent advice has been received that this grant will be extended by \$50,000.00 in light of tender prices received, and written confirmation is being sought.

A further \$245,000.00 will be provided for Lakes Improvement works from Holiday Park funds. This includes an amount of \$175,000.00 that will be rolled over into 2009/10 and has not yet been shown in Management line item 3.2.5. These funds are to cover not only the contract costs but also project management costs and minor associated works on site undertaken by Council.

TIME-FRAME

The specified contract period is 12 weeks. Every endeavour will be made to complete sufficient components of the work to allow public access to the boat ramp by the October 2009 school holidays. The works will be completed in time to meet the expiry date for the Maritime grant of February 2010.

The original tender validity period expired on 22 July 2009 but has been extended at no additional cost by four weeks by the proposed tenderer.

LOCAL CONTENT

The tenderer has indicated that the contract works are expected to generate approximately 50 person-weeks of labour requirements and that all labour resources to be employed on the project will be sourced from within the Central Coast.

CONCLUSION

The conforming tender from Bixli Pty Ltd t/a P & H Construction 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 this tender be accepted.

ATTACHMENTS

Nil.

5.2 CPA 161651 - Construction of 300mm Diameter Gravity Sewer main - Gavenlock Road, Tuggerah

TRIM REFERENCE: CPA/161651 - D01970982

AUTHOR: LP

SUMMARY

Evaluation and selection of Schedule of Rates tenders for Contract CPA/161651 - Construction of 300mm Diameter Gravity Sewer main to divert sewage flows and avoid the need to upgrade Sewer Pump Station (SPS) WS9.

RECOMMENDATION

- 1 That Council accept Schedule of Rates Tender no. 8 from Kilbraney Civil in the extended rates amount of \$367,709.00 (excl GST).**
- 2 That Council approve a contract budget of \$422,000.00 (excl GST) that provides for a contingency amount of \$54,291.00 (excl GST), representing approximately 15% of the contract value, to provide for any unforeseen additional works that may become necessary during the course of the project.**

BACKGROUND

Development within the catchment of SPS WS9 has resulted in the theoretical pump station loading exceeding the existing capacity of the station.

Investigations were undertaken to determine the best option to address the problem of overload at this pump station. It was confirmed that a new 300mm dia gravity main, 590m long, could be constructed along Gavenlock Road to divert some flows into the adjoining SPS WS8 catchment.

The benefits of this approach will be to divert sewage flows from SPS WS9 to SPS WS8 to reduce the risk of sewage overflows, avoid the more expensive option of upgrading SPS WS9 and reducing the energy demand by lowering overall pump operation.

The location of the proposed diversion is shown in Figure 1.

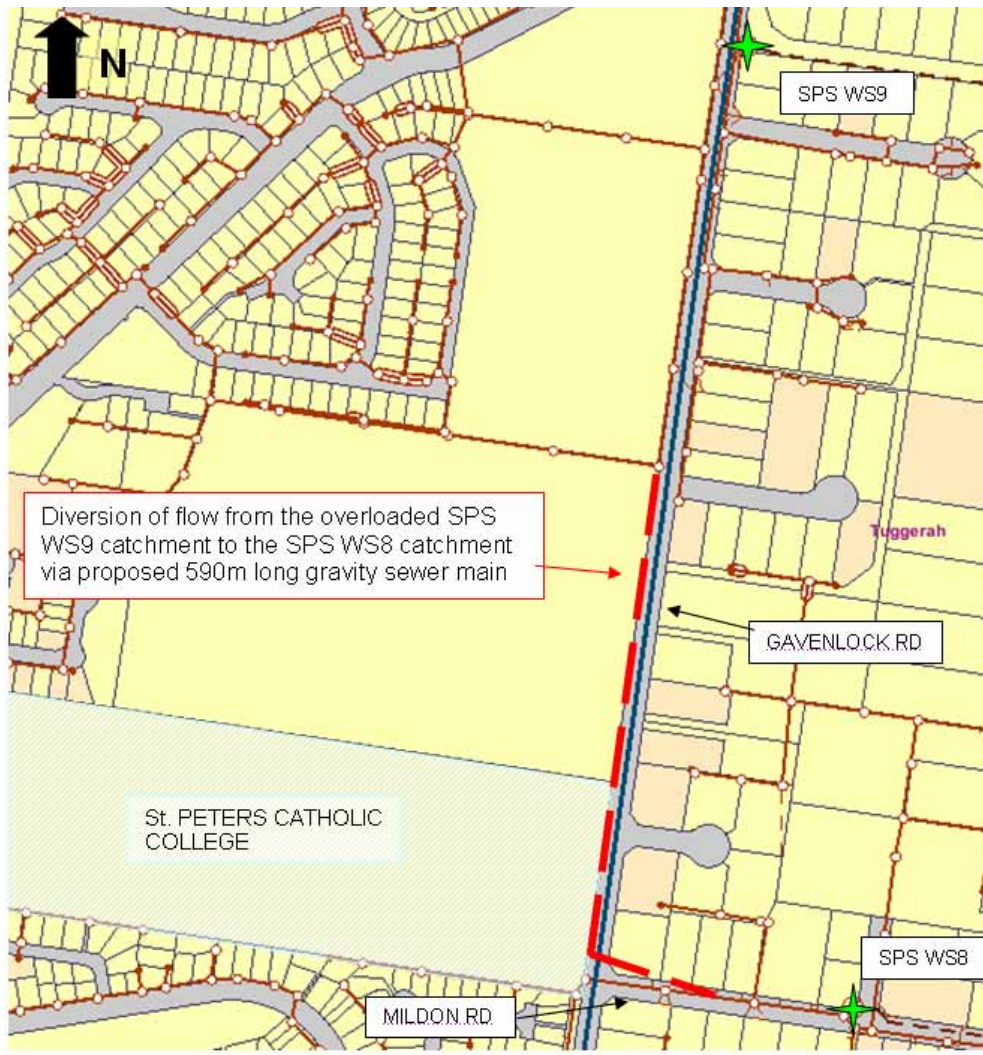



Figure 1 Proposed gravity sewer diversion 

Tender Process

Tenders were invited by way of public invitation. Advertisements were placed in the Newcastle Herald on 2 May 2009, Sydney Morning Herald on 5 May 2009 and the Central Coast Express Advocate on 6 May 2009. Tenders were also advertised on Council's e-Tender website. The advertised closing date was 4 June 2009.

The invitation documents called for schedule of rates tenders, based on a detailed specification and detailed design.

No pre-tender meetings were considered necessary.

Tenders closed at Council Chambers at 2pm Thursday 4 June 2009.

EVALUATION OF TENDERS

Schedule of Rates 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 tender documents.
- * Ability to manage financial and safety risk.
- * Price.
- * Proposed methodology and construction program.
- * Experience.
- * Past performance using referee reports.

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.

The evaluation was conducted according to the following process.

- Assessment of receipt of tenders.
- Assessment of conformance of tenders.
- Shortlisting of tenders.
- Detailed weighted evaluation of shortlisted tenders.
- Due diligence checks on preferred tenderers.
- Independent review of the tender selection process.

Assessment of Receipt

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

No.	Tender	Tendered Extended Schedule of Rates (Ex. GST)	Status
1	Delcare Constructions Pty Ltd	\$801,661.00	Submitted on time
2	Draincorp	\$887,102.00	Submitted on time
3	Eire Contractors Pty Ltd	\$707,027.00	Submitted on time
4	EL Civil Engineering Pty Ltd	\$992,727.00	Submitted on time
5	Emerald Civil Engineering Pty Ltd	\$994,802.00	Submitted on time
6	Kanal Construction Pty Ltd	\$524,318.00	Submitted on time
7	Kerroc Constructions Pty Ltd	\$880,586.00	Submitted on time
8	Kilbraney Civil Pty Ltd	\$367,673.00	Submitted on time
9	Knock Contractors Pty Ltd	\$958,200.00	Submitted on time
10	Ledonne Constructions Pty Ltd	\$528,879.00	Submitted on time
11	Michael Graham Plumbing Pty Ltd	\$709,231.00	Submitted on time
12	Milbant Constructions Pty Ltd	\$621,761.00	Submitted on time
13	RK Civil & Environmental Eng.	\$1,059,818.00	Submitted on time
14	MacCormick Civil and Tunnelling	\$1,328,530.00	Submitted via email to Contact Officer

5.2 CPA 161651 - Construction of 300mm Diameter Gravity Sewer main - Gavenlock Road, Tuggerah (contd)

Tender no. 14 (from MacCormick Civil and Tunnelling) was sent to the Contact Officer via his email account and thereby failed to comply with formal lodgement requirements. This tender was also the highest priced tender. This tender was not progressed for further assessment.

Assessment of Conformance

Tenders were assessed for conformance with the general tender requirements including the specification. Tender no 6 (from Kanal Construction) did not include a construction program although it was listed as an inclusion with the tender. This tender was considered to be conforming subject to receiving this program during further assessment. Tender no. 1 through to Tender no. 13 were all considered to be conforming tenders and were progressed to the next stage of assessment.

Shortlisting of Tenders

Tenders were shortlisted against Criterion No. 3 – Price. The four lowest priced conforming tenders were shortlisted. No matter how well they performed on non-price criteria the remaining nine tenders would not be able to achieve higher scores than the lowest four tenders. These nine tenders were therefore not considered further to allow the Tender Panel to concentrate on detailed evaluation of the four lowest tenders. Tender nos 6, 8, 10 and 12 were therefore progressed for further assessment.

Post Tender Clarifications

Tender no. 8 (from Kilbraney Civil) contained an inconsistency in that the amount for pipe installation in the Schedule of Rates totalled \$45,760.00; whereas Schedule 10 “Anticipated subcontracting proposals” stated that the supply of pipes was for a value of \$62,000.00. Clarification was sought from the company who advised that it had made an error in Schedule 10 and the correct amount for the Subcontract proposal was in fact \$32,000.00. The company confirmed the price stated in the Schedule of Rates was correct and did not alter the tendered amounts. The panel accepted this clarification. A minor \$36.00 arithmetic error was also identified in the addition of the extended Schedule of Rates. This error was corrected and the adjusted amount used in further assessments.

Tender no. 10 (from Ledonne Constructions Pty Ltd) advised after close of tenders that it had failed to take into account some of the backfilling requirements in its pricing. The company advised that it would need to increase its rates such that the extended Schedule of Rates amount would increase from \$528,879.00 to \$789,990.00 (excl. GST). Such significant adjustment to a tendered amount is not allowed under the Tender Regulations. This Tender was therefore excluded from further consideration. Tenders no. 6, 8 and 12 progressed for further evaluation.

The following table shows the adjusted prices of shortlisted tenders:

No.	Tender	Adjusted Tendered Extended Schedule of Rates (excl GST)	Reason for Adjustment
8	Kilbraney Civil Pty Ltd	\$367,709.00	Tender made a mistake in the addition of the totals.
6	Kanal Constructions Pty Ltd	\$524,318.00	No adjustment
12	Milbant Constructions Pty Ltd	\$621,761.00	No adjustment

Weighted Evaluation

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

No.	Tender	Tendered Extended Schedule of Rates (excl GST)	Weighted Evaluation Score
8	Kilbraney Civil	\$367,709.00	90
6	Kanal Constructions	\$524,318.00	55
12	Milbant Constructions	\$621,761.00	54

Milbant Constructions Pty Ltd

Milbant Constructions tendered the third lowest price but scored low on the price criteria as this was 70% higher than Kilbraney Civil. The tenderer has completed gravity sewer main and sewer rising main construction for Hunter Water and Coffs Harbour Council. No copies of Quality, Safety or Environmental Management Plans were submitted with the tender but the tenderer advised that Gosford City Council had certified their Quality and Safety Plans. This tender was not considered further.

Kanal Constructions Pty Ltd

Kanal Constructions was the second lowest tendered price but was 43% more expensive than Kilbraney Civil. The tenderer has had experience in the installation of deep gravity sewer mains but no construction program was submitted with their tender documents. The company was requested to submit a program to allow a full evaluation. The program submitted showed that the company could not commence work until the end of October 2009 and would not complete the work until January 2010. This was not in accordance with the contract requirements and not considered acceptable by the Tender Panel. This tender was not considered further.

Kilbraney Civil Pty Ltd

Kilbraney Civil obtained the highest weighted evaluation score. However, the extended Schedule of Rates amount was approximately 43% below the pre-tender estimate of \$673,000.00 (excl GST) and warranted more detailed investigation to ensure that the tendered amount was not unacceptably low.

The current construction market for these types of works is extremely competitive as evidenced by the number of tenders received and the close grouping of prices in several bands. The evaluation considered the pre-tender estimate and how it was prepared, and reviewed the capacity of the tenderer. The following points are noted:

Review of Pre-Tender Estimate

- The plant and labour component of the pre-tender estimate used a generous construction period of 13 weeks based on previous projects completed by Council's day labour staff. This also provided a large buffer for the construction period. Following receipt of tenders it was seen that the market anticipated a construction period of between five and nine weeks. This is a reduction of 30% to 50% in the estimated construction duration. As labour and plant costs are time dependent the pre-tender estimate is also sensitive to this time variation. Using the shortened construction period of 9 weeks proposed by Kilbraney Civil, considerably reduced the pre-tender estimate and provided a much closer alignment with this tender.

5.2 CPA 161651 - Construction of 300mm Diameter Gravity Sewer main - Gavenlock Road, Tuggerah (contd)

- A separate check was carried out to ascertain the appropriateness of the prices submitted, using industry-based reference rates indicated in 'NSW Reference Rates Manual' for water and sewer pipeline construction. This produced an estimate that was comparable to the price tendered by Kilbraney Civil.

Company Review

- A post tender meeting with a representative from Kilbraney Civil confirmed that the company's structure had sufficient staff to manage and carry out construction projects as well as all contract administration. The representative also demonstrated good knowledge of contract administration and previous experience in executing construction contracts for bridges and road construction with the RTA.
- The tenderer confirmed at the meeting that the company had reviewed its prices and confirmed its willingness to proceed with its tender at the tendered rates.
- The tenderer confirmed that in previous projects it operated very successfully in a sub-contractor role and was now seeking further contracts in its own right.

These further investigations provided confidence that the company was able to undertake the required work in a period of nine weeks as submitted in the tender program. It also gave confidence that the tendered rates were reasonable for this work, notwithstanding the higher Council pre-tender estimate that was based on a more conservative construction period.

Sensitivity Analysis

A sensitivity analysis was carried out on the scores allocated to non-price criteria. This additional weighted evaluation kept the scores for Kilbraney Civil unchanged but awarded maximum scores for all non-price criteria to the other two tenders. This analysis did not change the relativities between the tenders.

Tender no. 8 (from Kilbraney Civil), being the highest scoring tender, was progressed to the due diligence stage of the evaluation.

Due Diligence

Tender no. 8 (from Kilbraney Civil) 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 Kilbraney Civil possesses all of the technical, financial and managerial resources necessary to satisfactorily complete the works.

Detailed referee checks were also completed on the tenderer. Three referees were contacted. All of the referees gave very positive feedback on this company. Significant information from the referee checks that provides further confidence in the ability of this company, are provided below:

- Kilbraney Civil Pty Ltd has completed sewer main construction, stormwater construction and general civil works successfully in the past. It has completed shallow and deep gravity sewer main construction in the last three years on residential subdivision projects.

5.2 CPA 161651 - Construction of 300mm Diameter Gravity Sewer main - Gavenlock Road, Tuggerah (contd)

- Kilbraney Civil Pty Ltd has worked to required timeframes and has shown the ability to effectively employ additional resources to bring forward major milestone dates if required.
- No history of excessive variation claims was reported.
- Good on-site co-operation and attitude were reported.
- Safety plans and onsite PPE were all up to standard.
- Referees would engage Kilbraney Civil Pty Ltd again in the future.

Kilbraney Civil Pty Ltd is a Strathfield (NSW) based contractor with a history of successfully completed contracts (as sub contractor to main contractors), similar in nature and scope to the current works. The company has in place a documented Integrated Management System that includes Occupational Health, Safety and Rehabilitation Management and Environmental Management.

The amount tendered by Kilbraney Civil is below Council's pre-tender estimate and is considered to represent a reasonable price for the contract works.

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:

5.2 CPA 161651 - Construction of 300mm Diameter Gravity Sewer main - Gavenlock Road, Tuggerah (contd)

- 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.

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 appropriate technical reviews by others to ensure design meets requirements.
- Quantities for work items under the contract are greater / lesser than pre-award estimates leading to variation claims by the contractor. Mitigated through the tender process by requiring specified rates for each work item under a Schedule of Rates arrangement with upper and lower control limits. Contract payments are then calculated by multiplying the actual quantity for each work item by the tendered rate. Actual quantities are confirmed by Council through measurement / survey prior to payment.
- Potential Acid Sulphate Soils present at the site requiring additional management of excavated material. Contractor to undertake soil testing prior to excavation and prepare an Acid Sulphate Soil Management Plan to manage this condition if it exists. These items have been requested in the Specification and Schedule of Rates.
- Due to deep excavations, underground conditions could pose risks related to poor ground conditions, raised water table, inclement weather patterns resulting in extensive dewatering and storm damage. The required geotechnical testing at 100m intervals for Acid Sulphate Soils will provide additional information on ground conditions with an allowance for dewatering has been made in the Schedule of Rates. The required construction management plans will provide an additional tool to manage construction risks.

Risk Contingency

The above risks are considered to be Medium for this contract given the value of the contract and the nature of the work. Accordingly, it is recommended that a contingency sum of \$54,291.00 (excl GST) representing approximately 15% 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 \$422,000.00 (excl GST), which incorporates the contingency allowance, will not be exceeded.

BUDGET

This project is funded from the Shire Services Capital Works Budget. The initial budget estimate for the project was \$740,000.00 (adjusted to 2009 dollars with CPI) and a total budget amount of \$800,000.00 has been allocated in the 2009/10 budget for the contract costs, project management fees and associated costs.

TIME-FRAME

The contract period is 13 weeks from the date of award. The tenderer has indicated an earlier completion period of nine weeks from the date of award. This is expected to allow for completion prior to mid-December 2009.

LOCAL CONTENT

The tenderer has indicated that all of the sub-contracting proposals have utilised local labour and resources and these components represent an approximate value of \$74,500.00 to the Central Coast.

CONCLUSION

Following a careful analysis of the tender provided by Tender no. 8 from Kilbraney Civil Pty Ltd, this tender was found to be 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 Management of Feral Animals under the Companion Animals Act

TRIM REFERENCE: F2009/00055 - D01884695

AUTHOR: JH

SUMMARY

Section 64 and 64A of the Companion Animals Act (CAA) 1998 enables Council to adopt a policy in relation to the management of feral animals, which provides for the euthanising of the seized or surrendered animal concerned before the end of the minimum prescribed holding period of 7 days. The definition of feral animals within the CAA is limited to dogs and cats. Therefore, this Policy does not apply to any other type of feral animal, such as pigs, rabbits and foxes. In addition, the management of feral dogs is dealt with separately under the Dangerous and Restricted Dogs section of the legislation and therefore, in practical terms, the Policy will only apply to feral cats.

In accordance with section 64(2A) of the CAA 1998, any policy adopted by Council for the purposes of managing feral animals must comply with such guidelines as may be issued by the Director-General.

As the Director-General has not issued guidelines to date on managing feral animals, this Policy has been prepared to enhance staff safety by minimising the amount of time they are exposed to feral animals. The Policy also responds to concerns raised by the RSPCA that the caging of feral cats can be considered as "cruelty" under the provisions of the Prevention of Cruelty to Animals Act (PCAA).

RECOMMENDATION

- 1** *That Council place the draft Council Policy for the Management of Feral Animals on public exhibition for a period of 28 days for public comment.*
- 2** *That should there be no significant objections received, Council adopt the Policy under delegation of the General Manager.*
- 3** *That Council update the Policy Manual and make it available to the public and staff via Council's webpage once the Policy is adopted.*

BACKGROUND

Feral cats are regularly received at Council's Animal Care Facility. These animals are generally in poor condition, are difficult to handle and house and are not suitable to be re-homed. The wild and potentially dangerous nature of these animals makes it virtually impossible to re-home them. Advice received from the RSPCA is that holding a feral cat in a confined space such as a cat cage for any period of time is cruel and contrary to the PCAA. Further, feral cats present a higher disease exposure risk to domestic cats, therefore requiring separate housing which often takes up valuable limited space from domestic cats that are more likely to be successfully re-homed. It is therefore recommended that Council place on exhibition a policy which will minimise the risk to staff and other animals within the Animal Care Facility by minimising the period of time that feral cats are held within the facility. Implementation of the Policy will also ensure that Council is not acting contrary to the provisions of the PCAA by minimising the stress and suffering to feral cats.

6.1 Management of Feral Animals under the Companion Animals Act (contd)

Council's Animal Care Facility receives feral cats either through the seizure process or as surrendered animals. These animals require extra care to that provided to the mainstream population of cats and dogs impinging on limited staff time and resources.

Regardless of the nature of the animal when it first presents at the Animal Care Facility, any companion animal wearing a collar, identification tag or microchip must not be deemed feral and therefore must be kept for the minimum prescribed holding period whilst the owner is formally notified by way of a Seizure Notice.

Relevant Legislation

Companion Animals Act, 1998

Definitions:

Section 5 – “Companion animal” means each of the following:

- a) *a dog*
- b) *a cat*
- c) *any other animal that is prescribed by the regulations as a companion animal.*

Note: No other animals have been prescribed by the regulations.

“Feral” - means wild, or existing in a state of nature and showing no signs of domestication. Animals which are wearing a collar, identification tag or microchip must not be deemed feral.

Section 64 – Unclaimed, seized or surrendered animal may be sold or destroyed;

- 1) *If a seized animal (including an animal delivered to a Council pound under section 63A) or a surrendered animal (other than an animal surrendered by its owner) has not been claimed, the Council may sell or destroy the animal.*
 - a) *if notice under section 63 (1) or (1A) has been given-after the period of 14 days following the giving of the notice, or*
 - b) *if such a notice is not required to be given-after the animal has been held at the Council pound for a period of 7 days*
 - 2) *However, the Council may, in accordance with any policy that has been adopted by the Council in relation to the management of feral or infant companion animals, destroy the seized or surrendered animal concerned before the end of any such period referred to in subsection 1).*
- 2A) *Any policy adopted by the Council for the purposes of subsection (2) must comply with such guidelines as may be issued by the Director General.*

ATTACHMENTS

- 1 Policy - Management of Feral Animals D01893567

M1 MANAGEMENT OF FERAL ANIMALS

Department:	Shire Planning
Unit:	Regulation and Compliance
File:	F2009/00055
Adopted on:	

POLICY OBJECTIVES

- 1 To minimise the risk to staff by reduced handling of feral animals.
- 2 To comply with RSPCA standards with regard to the Prevention of Cruelty to Animals Act.

POLICY PROCEDURE

- 1 Observe and assess the behaviour of the companion animal/s to determine if it/they are feral.
- 2 Examine each animal for identification in the form of a collar, identification tag or microchip.
- 3 In the case of a cat where a form of identification is found, the animal **must not** be considered to be feral. The owner of the animal must be formally notified by way of a Seizure Notice and the animal kept for a minimum of 14 days.
- 4 In the case of a cat that has no form of identification and is wild, showing no signs of domestication, the cat will be deemed to be feral. The cat shall be placed within a standard cage separate from the general cat population for disease control purposes.
- 5 At the earliest opportunity, the feral cat will be euthanased by intravenous injection only.
- 6 In every case, details of each feral animal shall be recorded in the appropriate registers in accordance to Councils policy and procedures.

LEGISLATION: COMPANION ANIMALS ACT 1998

6.2 Proposed Councillors' Community Improvement Grants

TRIM REFERENCE: C2009/01723 - D01969019

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 \$3,755 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.

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

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.

Financial Implications

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

6.2 Proposed Councillors' Community Improvement Grants (contd)

CONSULTATION

Applications that met the criteria were distributed to Councillors for their consideration. Applications received directly from Councillors were not distributed to other Councillors.

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 12/08/09	125	1,100	2,000	1,100	0	400	0	1,000	690	0	6,415
Available allocation as at 22/07/2009	14,875	13,900	13,000	13,900	15,000	14,600	15,000	14,000	14,310	15,000	143,585
Proposed Allocations for 12 August 2009											
Budgewoi Girl Guides (\$649)				499	150						649
Central Coast Community Council (\$113)					113						113
Central Coast Group Training (\$5,000) (\$3,850 already allocated)				500							500
Central Coast Multiple Sclerosis and Handicapped Group Inc (\$5,780)			500	100					500		1,100
St John Fisher Catholic School (\$493)					493						493
The Troubadours (\$500)		100		100							200
Toukley District Senior Citizens Club (\$2,000)				200						500	700
Total Proposed Allocations for 12/08/2009	0	100	500	1,399	756	0	0	0	500	500	3,755
Total Accumulated Allocations as at 12/08/2009	125	1,200	2,500	2,499	756	400	0	1,000	1,190	500	10,170
Balance Uncommitted as at 12/08/2009	14,875	13,800	12,500	12,501	14,244	14,600	15,000	14,000	13,810	14,500	139,830

ATTACHMENTS

Nil.

6.3 Mannering Park Precinct Committee

TRIM REFERENCE: F2009/01535 - D01972243

AUTHOR: LC

SUMMARY

This report seeks to appoint the Executive Members of the newly formed Mannering Park Community Precinct Committee.

RECOMMENDATION

- 1 That Council approve the formation of a Community Precinct Committee to serve the area of Mannering Park.**
- 2 That Council appoint the following Executive Members of the Mannering Park Community Precinct Committee in accordance with the provisions of Section 355 of the Local Government Act 1993:**

Chairperson	Robert Regnis
Assistant Chairperson	Trevor Wrightson
Secretary	Jennifer Petersen
Assistant Secretary	Norell Lee
Treasurer	Lou Gambrill
Assistant Treasurer	Andrew Whitbourne
Publicity Officer	Tracey Maguire

- 3 That Council amend the 2009/2010 Management Plan to reflect the additional Precinct Committee.**

BACKGROUND

A community meeting was held on July 7th 2009 to consider the formation of a Precinct Committee for the Mannering Park community. This meeting was held in accordance with the requirements set out in the Wyong Shire Council Community Precinct Committee Information and Guidelines Booklet.

The meeting demonstrated widespread community support for the formation of a new Community Precinct to represent the Mannering Park area.

Community Precinct Committees are not a sub-committee of Council, however, the Executive is appointed under the provisions of s.355 of the Local Government Act 1993 in order to assist Council in exercising its function of consulting with the community. The Executive of a Precinct Committee are afforded the protection available under that section of the Act and are therefore the details of the Executive members are submitted to Council for adoption.

THE PROPOSAL

At a community meeting on 7 July 2009 a resolution was passed requesting Council to consider the establishment of the Mannering Park Community Precinct Committee and appoint the following nominations to fill the executive member positions of the Committee.

Chairperson	Robert Regnis
Assistant Chairperson	Trevor Wrightson
Secretary	Jennifer Petersen
Assistant Secretary	Norell Lee
Treasurer	Lou Gambrill
Assistant Treasurer	Andrew Whitbourne
Publicity Officer	Tracey Maguire

Management Plan

Principal Activity	Key Issue(s) and Objective (s)	Financial Line Item No and Description
Organisation (governance)	To provide the framework to facilitate sound decision making	5.04.02 Administrative Services

This proposal also links to the strategic direction of a community where residents have a sense of belonging, identity and a strong interest in local issues.

Council's 2009/2010 Management Plan provides funding of up to \$500 administrative costs available on application to each Precinct Committee. As the proposal is to add another Precinct Committee, it is intended to reflect the change at the next quarterly review of the Management Plan.

CONCLUSION

Formation of the Mannering Park Precinct Committee fulfils the community's wishes to have a focal point for managing local issues. The process is in accordance with Council's requirements and there is no impediment to the formation of the Committee proceeding.

ATTACHMENTS

Nil.

6.4 Minutes - Wyong Shire Senior Citizens' Council Meeting - 25 June 2009

TRIM REFERENCE: F2008/00407 - D01971671

AUTHOR: AE

SUMMARY

Report on the Minutes of Senior Citizens' Council meeting held 25 June 2009.

RECOMMENDATION

That Council receive the report on Minutes - Wyong Shire Senior Citizens' Council Meeting - 25 June 2009 and adopt the recommendations contained therein.

A meeting of the Wyong Shire Senior Citizens' Council was held on 25 June 2009. The minutes are included as Attachment 1.

ATTACHMENTS

1 25 June 2009 minutes of Seniors Citizens Council D01961743

	Item Description	Responsibility
	<p>community were identified. These were worked through to reduce the main objectives to 24 issues. The groups then worked to see how these issues were interrelated and condensed them to eight main objectives. Through concentrating on these eight issues they will focus on how to improve, enhance, maintain and retain life on the coast over the next 20 years.</p> <p>It was also stated that when examining the issues, all involved had to keep in mind Councils fiscal responsibility.</p> <p>Within the Shire Strategic Vision document there are five stories showing how it relates to the average resident and how it works.</p> <p>Debbie stated the Shire Strategic Vision is a community document that Council is facilitating on the behalf of all Wyong Shire residents, and that this is a final draft.</p> <p>Seniors Council members would like it noted that they recommend an additional strategy in the 'I Love Community' section (page 16) that utilises the Terms of Reference of the SCC by stating that vibrant caring communities would be achieved by: <i>"Providing opportunities for seniors and retirees to use their knowledge and experience to assist in planning, organising and promoting healthy ageing activities..."</i>.</p> <p>Debbie suggested that when the Positive Ageing Survey is collated it should be evaluated against what is already in the SSV.</p>	
3.	BUSINESS ARISING FROM PREVIOUS MINUTES	
3.1	<p>Welcome to Maryanne Housham: as per Item 5.2, 28 May 2009.</p> <p>Maryanne is well connected to the Samaritans support network of Grandparents Groups; Eleanor Duncan Aboriginal Health Services; Marawarpina Aboriginal Women's Group; the Maori Council and she is a Marriage Celebrant.</p>	ALL
3.2	<p>Park Bench Design Update</p> <p>Bruce Kirkness and Annette Evans will visit Northlakes High School on 29 June 2009. Andrew Scoufis, Council Landscape Designer, will join the meeting to assist with any queries.</p>	BK/AE
3.3	<p>Positive Aging Survey Results</p> <p>A Councillor Business Update has been sent out with the developments of the project to date.</p> <p>Annette informed the SCC that the NSW Aging Survey covers six principal fields. The group will look at how it coincides with SCC surveys six key areas.</p> <p>Comments from the surveys will be looked at to see what possible strategies local council can do.</p>	AE

	Item Description	Responsibility
3.4	<p>“Broadband for Seniors” Update</p> <p>Annette relayed that the Wyong Village Plaza would not be interested in hosting a “computer kiosk”.</p> <p>The Old School Site where the Wyong Family History Group meets was also looked into for availability. It is not suitable for the electronic system the kiosk would require.</p> <p>Annette will speak to The Oasis Youth Centre to see if they are interested in hosting the kiosk.</p>	ALL
3.5	<p>Program of Guest Speakers Update</p> <p>23 July NSCCAHS – Mark O’Dwyer & Carol Hume 27 Aug Martine Brieger – Communications Manager Sister City Committee – awaiting confirmation 24 Sept Sian Fawcett - Estuary Management Asset Manager – Robert Fulcher Cultural Planner – Stuart Slough</p>	AE
4.	GENERAL BUSINESS	
4.1	<p>Review –</p> <p>The SCC asked Cr Best to explain how to request more information on specific items.</p> <p>Cr Best explained the process of questions without notice.</p> <p>Cr Best will put forward a question without notice on behalf of the SCC. “In regards to the Cultural Centre the SCC would like to know where Council is up to in consideration to preliminary stages.”</p> <p>Cr Best informed the SCC that they could send queries through him which they thought needed to be brought to a Council meeting. He also said that it was important that SCC minutes are part of the Council business papers as is the case at the moment.</p> <p>It was moved by Juliet Axford and seconded by Bruce Kirkness that the SCC would promote in principle the idea of a cultural centre, put forward by Council, which catered to all age groups.</p> <p>Cr Best stated he would request the Mayor to attend an informal afternoon tea to be held at 3:30pm of the SCC 27 August 2009 meeting.</p>	GB/ALL
5.	CORRESPONDENCE	
5.1	Correspondence – Out – none recorded	AE

Item Description		Responsibility
5.2	<p>Correspondence – In Jill Hall – Expressed thanks to Juliet Axford, Patricia Parparis and Annette Evans for speaking at the Positive Living Forum for Seniors held at The Halekulani Bowling Club on 22 May 2009.</p> <p>Don Flint – resignation from Senior Citizens Council because he is relocating to Woy Woy to live and will no longer be a resident of Wyong</p>	AE
6.	INFORMATION SHARING	
6.1	John Cochrane brought in some brochures with information regarding bench products.	JC
6.2	John Cochrane – actions from Sutherland Shire Council summarized	JC
6.3	Allen Booth – confirmed race meeting for 2010 Seniors Week has been booked. SCC will not be organizing although will be attending this function.	ALL
6.4	<p>Allen Booth – has begun investigating and promoting ideas for activities for Seniors Week 2010. He has negotiated with Wyong RSL who are very happy to run a Trivia Day that includes questions about both Wyong Shire and Ageing issues.</p> <p>This activity would support the quest to keep an active mind as the highest priority in positive ageing (survey result).</p>	ALL
The meeting closed at 4:00pm		
7.	NEXT MEETING	
7.1	<p>23 July 2009 1:00pm – 4:00pm Wyong Shire Council Civic Centre Tony Sheridan Function Room Guest Speakers: NSCCAHS – Mark O’Dwyer & Carol Hume</p>	

7.1 Delegates' Report - National General Assembly 2009

TRIM REFERENCE: F2004/06466 - D01963138

AUTHOR: DE

SUMMARY

Report submitted by Councillors Graham, Eaton and Wynn on attendance at the Australian Local Government Association 2009 National General Assembly held in Canberra between 22 and 24 June 2009.

RECOMMENDATION

That Council receive the report on Delegates' Report - National General Assembly 2009.

In accordance with Council's Facilities and Expenses Policy for Councillors, Councillors attending conferences must provide a written report detailing the proceedings of conferences attended.

The Mayor Councillor Graham and Councillors Eaton and Wynn attended the Australian Local Government Association 2009 National General Assembly held in Canberra between 22 and 24 June 2009. Whilst the Mayor reported verbally to the Ordinary meeting of 8 July 2009 as follows:

- “* an amount of \$1.529m in funding has been made available to Wyong Shire Council. Further funding of \$648,000, which is the sixth largest allocation made to a Council in NSW, will become available provided that the allocation of \$1.529m has been spent on community works completed by September 2009.
- * three notices of motion were submitted at the National General Assembly but only one of these motions was raised. The motion for extension of parental leave for Council staff, however, it was not supported by attendees.
- * the Federal Member for Dobell Craig Thomson advised of a decision by the Minister of Employment that the Central Coast–Hunter Region has been designated as a priority employment area and a local employment coordinator will be appointed to deal with employment issues in particular youth employment which currently runs at 40%.”

the following formal report has been submitted by Councillors Graham, Eaton and Wynn regarding their attendance at the Assembly:

“This year's National General Assembly of Local Government (NGA) saw over 700 participants meet in Canberra to discuss and debate recommendations for national local government policy under the theme *Rising to the Challenge – Climate Change, Infrastructure and Finances*.

Delegates heard from a range of senior Federal Ministers and various policy experts. The speeches and presentations are available at www.nga.alga.asn.au/event/2009/

The NGA resulted in two key outcomes: the resolutions of the Assembly and the Communiqué which have been presented to the Australian Government.

Delegates voiced a clear and consistent message in calling for further community infrastructure funding. It is pleasing that the Australian Government responded last week in announcing an additional \$220m for nation-building investment in community infrastructure.

Specifically the NGA Communiqué called for:

- * inclusion of local government in the Australian Constitution;
- * more ambitious targets for the Carbon Pollution Reduction Scheme;
- * all levels of government to work together to develop and improve climate change mitigation and adaptation strategies;
- * national action to provide water supply certainty throughout Australia utilising ecologically sustainable measures;
- * entrenching the successful Community Infrastructure Program payments under the stimulus packages as an ongoing annual program;
- * an increase to the base funding for Financial Assistance Grants paid by the Australian Government to local government each year for recurrent expenditure; and
- * a permanent framework to address cost-shifting between the three levels of government.

The NGA Communiqué is available at

www.alga.asn.au/newsroom/communiques/22.nga/2009GACommunique.pdf

ALGA received 139 motions this year, with motions that were similar in content being amalgamated into 'composite motions' to allow for more efficient and effective debate. The motions were considered in detail during focused panel discussion sessions on each of the three conference themes facilitated by ABC journalist George Negus and specialists in each area.

The NGA Resolutions are published at <http://nga.alga.asn.au/event/2009/> “

ATTACHMENTS

Nil.

8.1 Information Reports

TRIM REFERENCE: f2009/00008 - D01969455

AUTHOR: MR

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 englobo.

RECOMMENDATION

That Council deal with the following Information Reports by the exception method.

ATTACHMENTS

Nil.

8.2 Investments for June 2009

TRIM REFERENCE: F2004/06604 - D01971226

AUTHOR: SJG

SUMMARY

The following report provides details of Council's investments as at 30 June 2009.

RECOMMENDATION

That Council receive the report on Investments for June 2009.

BACKGROUND

Throughout the 2008-2009 financial year Wyong Shire Council's (WSC) investment portfolio has been conservatively managed. This strategy provided a reasonable defence against the world financial crisis, however, Council's investments in managed funds were impacted by the loss of market confidence and liquidity, and this resulted in a decline in market valuations in the first half of the year. During this time Council put in place a "hold to maturity" strategy which minimised the negative effects of realising under-valued assets.

Since Christmas 2008, the Federal Government has put in place some initiatives to restore confidence in financial markets, and this has meant that Council has been able to shift investments into the banking sector when possible and practical.

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

Council made no provision for capital losses in the original budget for 2008-2009 but has now incurred realised losses of \$0.46m. For the majority of Council's managed fund investments it is expected that investments that have suffered losses will recover most of their value in the months and years to follow.

The market value of Council's 2008-2009 opening investment balance of \$115.41 million suffered a \$3.98m reduction which includes the *realised* capital losses of \$0.46m and unrealised losses of \$3.52m.

In June 2009, the total net return was \$0.70m consisting of interest earnings \$0.22m and capital gains \$0.48m.

8.2 Investments for June 2009 (contd)

Council's total investments as at June 2009 (Table 1) are as follows:

Table 1 Investment Portfolio by Risk Category

	June 2009	Year-to-Date Total Returns	Year-to-Date Returns Interest Only	Year-to-Date Returns Interest Only
	\$ '000	%	%	\$ '000
Cash at Call	20,535	5.49	5.49	1,048
Term Deposits	28,699	5.15	5.15	1,049
Cash Plus Funds	11,974	-3.03	2.38	628
Cash Management Funds	25,117	2.37	5.46	1,496
Enhanced Income Funds	12,893	-8.22	2.74	525
Total Investments	99,218	0.55	4.38	4,746

Investment transactions and earnings during June 2009 are shown in the following table:

Table 2 Portfolio Performance

	Oct to Dec 2008	Jan to Mar 2009	Apr 2009	May 2009	June 2009	Year to Date 2008/09
	\$m	\$m	\$m	\$m	\$m	\$m
<i>Movement in Assets</i>						
Opening Balance	104.79	111.83	103.04	95.00	97.64	115.41
Capital Gain/Loss – (see below)	(2.64)	(1.97)	0.77	0.78	0.48	(3.98)
Net Cash/Investments(Withdrawals)	9.68	(6.82)	(8.81)	1.86	1.10	(12.21)
Closing Balance	111.83	103.04	95.00	97.64	99.22	99.22
<i>Trading Position</i>						
Capital Gain/(Loss) Realised	(0.46)	-	-	-	-	(0.46)
Capital Gain/(Loss) Unrealised	(2.18)	(1.97)	0.77	0.78	0.48	(3.52)
Interest Earnings	1.34	1.26	0.26	0.50	0.22	4.75
Total Return for Period	(1.30)	(0.71)	1.03	1.28	0.70	0.77

The reduction Council has suffered in the value of its existing investments will only affect cash flows if Council were to realise investments whose capital values have fallen. According to Council's investment strategy Council will seek to minimise realisation of losses with investments to remain in place until favourable market conditions return or where a risk/return assessment results in a need to realise.

Table 3 Interest Only Performance

Investment Source	YTD Budget \$ '000	YTD June \$ '000	Var. \$ '000
General Funds	2,857	2,912	55
Water (all)	806	811	5
Sewerage (all)	1,049	1,023	(26)
Total	4,712	4,746	34

Black Rock Care and Maintenance Fund

This is a closed fund which allows investors in the former Black Rock Diversified Credit Fund to hold an equity in fund assets until maturity, to avoid 'fire sale' capital losses. WSC's total current investment locked into this fund is \$0.0m.

By March end 2009 the unrealised capital value of Council's investment had deteriorated by \$3.49m since July 2008 however, Council's "retain and hold till market parity" strategy has shown it's value through the fund recovery of \$1.21M in the three months to June 09. The unrealised deterioration has now reduced to \$2.28m.

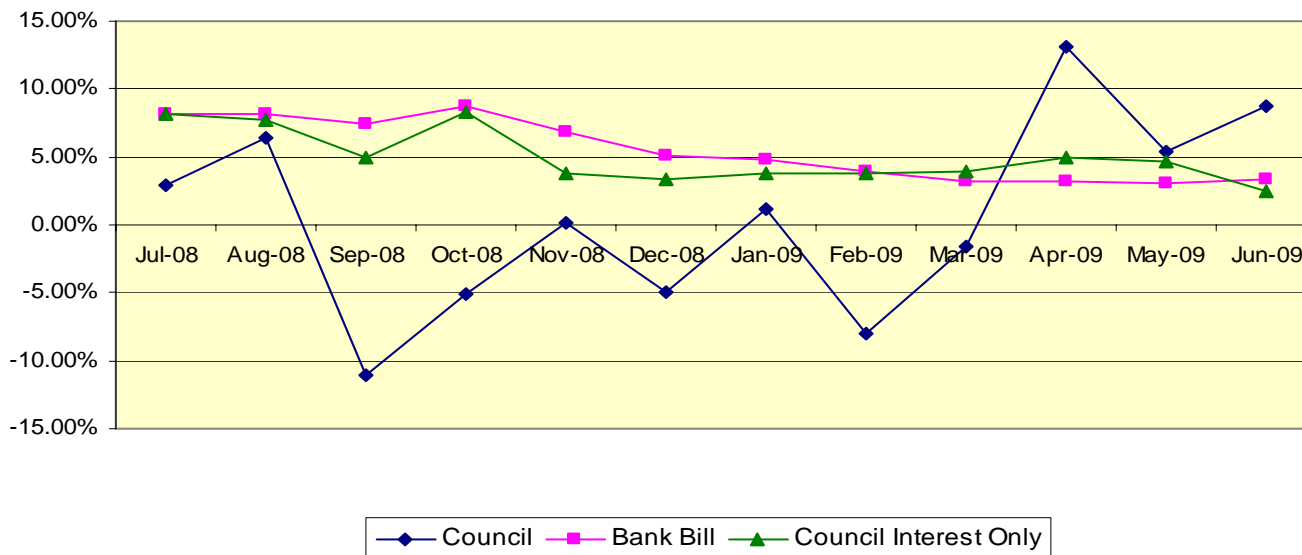
Regularly close monitoring of the status of this investment continues.

Monthly Annualised Returns

Council's overall investment return is compared to the UBSA (Union Bank of Switzerland Australia) Bank Bill Index. This index is in common use among councils and is a measure of the top rated reliable cash rates. Using the index for Council establishes a minimum performance comparison.

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

**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 Reference Rate
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 30 June 2009 have been made in accordance with the Act, the Regulations and Council's Investment Policies.

CONCLUSION

Council's trading position continues to show an accumulated unrealised loss of capital value but the portfolio's ability to "ride-out" market volatility remains strong due to a diversified, low risk management approach. Continuing in this direction is essential for minimising long term capital loss and loss of interest income.

ATTACHMENTS

Nil.

8.3 Mardi to Mangrove Link Project Status

TRIM REFERENCE: F2007/01120 - D01971560

AUTHOR: CF

SUMMARY

Report on status of Mardi to Mangrove Link Project.

RECOMMENDATION

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

BACKGROUND

Council at its meeting held on 8 July 2009, resolved unanimously on the motion of Councillor BEST and seconded by Councillor WYNN:

- “1 *That Council seek to improve the transparent and timely dissemination of emerging information through receiving, as a standing agenda item on all future business papers, a project status report outlining key engineering, financial, contractual and compliance issues.*
- 2 *That Council provide opportunity to the Project Director Mr Greg McDonald to address Council in chambers on the updated reports to further assist this critical information flow.”*

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

AGAINST: NIL.

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

\$18.1m

Project Estimate

\$125m - \$170m

DRAFT

Design Status

	Investigation & Preliminary Design	Concept Design	Detailed Design
Wyong River Off-take Structure & Pumping Station (Work Package (WP) 1, WP2)	100%	100%	80%
Wyong-Mardi Rising Main & Inlet (WP3)	100%	100%	70%
Wyong-Mardi Inlet (WP4)	100%	90%	50%
Mardi-Mangrove Transfer Pumping Station (WP6)	100%	100%	75%
Mardi-Mangrove Transfer Main (WP7, WP8)	100%	80%	75%
TOTAL	100%	94%	70%

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 Approval granted	14 October 2009		<input type="checkbox"/>
Issue Request for Tenders (RFT)	15 October 2009		<input type="checkbox"/>
Award Construction Contract	December 2009		<input type="checkbox"/>
Project Completion	June 2011		<input type="checkbox"/>

Land Matters

55 privately owned properties require easements.

	Properties	% Complete	Previous Report
Surveys completed	55	100%	-
Valuations completed	54	98%	-
Agreements signed	29	53%	-

Stakeholder Liaison

	June - July
Community	<ul style="list-style-type: none"> • 4 media releases & follow-up activities on general progress, REF, EOI, investigative drilling • REF on public exhibition • Information issued to industry publications on EOI process • Information provided for WSC and GCC community newsletters • Information provided for GCC and WSC staff
Landholder	<ul style="list-style-type: none"> • Mailout notification by Shire Planning for REF exhibition period • Mailout from Project Office re EOI process, REF process, general progress and Yarralong Rd investigation works

- | | |
|------------|---|
| Government | <ul style="list-style-type: none"> • 11 items correspondence received. Responses up to date. • Letters to local State and Federal MPs, Community Environment Network (CEN), Department of Environment, Water and the Arts (DEWHA) on REF and EOI • Information to emergency services, Roads and Traffic Authority (RTA), bus companies regarding potential traffic delays during investigative work • Liaising with Department of Water and Energy (DWE) & Department of Premier and Cabinet (DPC) on outcome of water licences upgrade applications • Detailed project information sent to more than 10 NSW Government agencies |
|------------|---|

Risk Profile

A Risk Allocation Workshop was held on 22 July. The Draft Risk Allocation Register will be issued to prospective tenderers in August.

A Risk Workshop for the overall Project is scheduled for early September to update the Mardi to Mangrove Link Project Risk Register.

Major Achievements / Issues

The REF has been submitted to Council for assessment and two media releases have been issued in regard to the lodgement of the REF and the call for EOIs. These were also both formally advertised and relevant stakeholders informed. The public exhibition period for the REF closed on 31 July.

A number of news stories ran on the REF public exhibition and the EOI process, as well as general project updates. Update information was also issued to local MPs and relevant government agencies.

ATTACHMENTS

Nil.

8.4 Precinct Support Program

TRIM REFERENCE: F2004/06474 - D01978962

AUTHOR: BD

SUMMARY

Report on support for Precinct Committees following the workshop held on 26 May 2009.

RECOMMENDATION

That Council receive the report on Precinct Support Program.

BACKGROUND

Council at its meeting of 13 May 2009 resolved unanimously on the motion of Councillor EATON and seconded by Councillor VINCENT as follows:

- 1 *That Council receive the report on support for precinct committees.*
- 2 *That Council receive a further report from staff following the Community Precinct Committee workshop scheduled for 26 May 2009.*

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

AGAINST: NIL.

At the Community Precinct Forum held on 1 April 2009 a number of Precinct Committees requested Council provide them with a single point of contact. The General Manager advised the Precinct Executive that the supply of a Council contact list was a more efficient and effective way of supplying support and responding to enquiries. This issue was raised again at the workshop and the then, Acting Manager Governance and Administration offered his office as a single point of contact if issues could not be resolved through the contact list.

A discussion was held regarding the number of attendees at a meeting to comprise a quorum. A request was made for the quorum to be changed from the current 12 to seven members consisting of one Office Bearer, three Executive members and three members. Suggestions were raised regarding a youth section of the Precinct Committee, a change of name from Precinct Committee to Precinct, a greater flexibility in the Guidelines with some amendments and a clear definition of an outlying suburb.

Council's Communications Manager, Martine Brieger discussed ways the Precinct Committees could use Council's Communications section and gave advice on websites, design of flyers and using local media outlets.

A query was raised as to the reasons Councillors had to be invited to their meetings. This was addressed by Cr Symington, Cr Vincent and Cr Wynn explaining the many duties of Councillors, time factors and conflicting meetings.

8.4 Precinct Support Program (contd)

The Acting Manager Governance and Administration explained the funding available to each Precinct and the process for the application of additional funding for specific projects.

The workshop was addressed by Robert Regnis and an invitation extended to all to attend the inaugural meeting of the Mannering Park Precinct Committee on 7 July 2009.

ATTACHMENTS

Nil.

8.5 Outstanding Questions Without Notice and Notices of Motion

TRIM REFERENCE: F2009/00008 - D01969314

AUTHOR: SG

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
Q043 – Impact of Proposed Federal Carbon Tax <i>Could Council advise whether Buttonderry Tip is affected by the Federal Government's proposed carbon tax and if so the financial impact of this impost?</i>	Shire Services	8 July 2009 Cr Eaton	A response will be submitted to Council's meeting of 26 August 2009.
Q044 – Wyong Chamber of Commerce Levy Increase <i>Could Council advise Wyong Chamber of Commerce why its total levy has only increased by some \$500 this year despite a significant general rate rise?</i>	Corporate Services	22 July 2009 Cr Eaton	A response will be submitted to Council's meeting of 23 September 2009.
Q045 – Cabbage Tree Harbour Surveillance <i>Council staff advise the cost to date of maintaining surveillance/security at Cabbage Tree Harbour and when this surveillance is expected to conclude?</i>	Shire Planning	22 July 2009 Cr Eaton	A response will be submitted to Council's meeting of 9 September 2009.

Notice of Motion	Department	Meeting Resolved	Status
326 - National Natural Disaster Funding 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> 2 <i>That the Local Government Association via its annual conference be invited to support this initiative</i>	Shire Planning	8 August 2007 Cr Eaton / Cr Best	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.

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

Notice of Motion	Department	Meeting Resolved	Status
<p>326 - National Natural Disaster Funding (contd)</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>			A report will be submitted to Council once the project plan for the Coastline Management Plan has been finalised.
<p>231 – Poll on Popularly Elected Mayor and Electricity Privatisation</p> <p><i>A further report be reported to Council at a briefing session outlining the ramifications of a popularly elected Mayor detailing exactly how the numbers equate in three wards concerned.</i></p>	Corporate Services	28 May 2008 former Cr Stewart / Cr Graham	A report will be subject to future briefing session for Council. The report will provide an outline of possible ward boundaries.
<p>295 – Wyong Pool Maintenance Policy</p> <p>1 <i>That Council defer any further decisions regarding Wyong Pool pending discussions with the Wyong Tennis Club Administrator.</i></p> <p>2 <i>That the Mayor and General Manager report to Council on discussions.</i></p>	General Manager's Unit	25 June 2008 former Cr Pavier / Cr Graham	Discussions continuing with Administrator.
<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	To be given further consideration following the adoption of the Draft Entrance Peninsula Planning Strategy. (The TEPPS encourages this type of potential development).
<p>9.1 – Motor Sports Facility</p> <p>1 <i>That Council recognise in principle the need to establish a regional motor sport and driver education facility with a view to catering for a broad range of activities including driver education and training opportunities.</i></p> <p>2 <i>That Council determine, in partnership with the relevant Government Departments and various peak motor sport organisations, the level of industry support for the establishment of such a regional community facility.</i></p>	Shire Planning	25 February 2009 Cr McNamara / Cr Vincent	Expressions of Interest (EOI) have been called and advertised in the local newspaper and on Council's Website on 1 July and 8 July 2009. EOI close 17 July 2009. Investigations into possible locations for a motor sport and driver education facility are underway.

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

Notice of Motion	Department	Meeting Resolved	Status
<p>9.1 – Motor Sports Facility (contd)</p> <p>3 <i>That Council seek Expressions of Interest from potential user groups to provide User Group requirements including their potential usage level of such a facility and indicative list of potential events which may be attracted including races showcasing vehicles using alternative technologies.</i></p> <p>4 <i>That Council investigates possible locations for a motor sport and driver education facility based on user group requirements.</i></p> <p>5 <i>That Council seek Expressions of Interest to build, operate and manage the facility including any alternate Financial Models including any benefits and revenue to the community and Council. Responses should include how they intend to offset green house gas emissions to make the motor sport carbon neutral.</i></p>			

8.5 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> <ol style="list-style-type: none"> 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> 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> 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> 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> 5 <i>That Council embark on a public awareness campaign focusing on responsible pet ownership.</i> 	Shire Planning	25 February 2009 Cr Best / Cr Matthews	A report will be submitted to Council following completion of the RSPCA Strategic Review.
<p>10.5 – Local Preference Policy</p> <ol style="list-style-type: none"> 1 <i>That Council adopt a local preference policy to be included in the evaluation of tenders, quotations and Council procurement.</i> 2 <i>That the potential impact of this criteria on stimulating the local economy and creating local jobs be evaluated.</i> 3 <i>That a policy be prepared and submitted to Council for consideration.</i> 	Shire Services/Corporate Services	27 May 2009 Cr McBride / Cr Eaton	A report on this matter will be submitted to Council’s meeting of 23 September 2009.

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

Notice of Motion	Department	Meeting Resolved	Status
<p>11.1 – Notice of Motion – Review of the Code of Meeting Practice</p> <p>1 <i>That a comprehensive review of the Code of Meeting Practice be undertaken, including a briefing and a subsequent report provided to Council.</i></p> <p>2 <i>That Council offer an orientation to the Council Chamber and familiarisation with the Code of Meeting Practice/Meeting Procedure including mock debate to new Councillors.</i></p>	Corporate Services	10 June 2009 Cr McBride /Cr Best	Briefing scheduled for 26 August 2009
<p>11.3 – Notice of Motion – Toukley Gathering of the Clans</p> <p>1 <i>That Council note the offer by “Brackets and Jam” to host and facilitate the 2009 Toukley Gathering of the Clans and that Council support their initiative.</i></p> <p>2 <i>That Council’s Grants Committee consider an allocation of funds for the 2009 Toukley Gathering of the Clans at an extraordinary meeting to be held on 17 June 2009.</i></p> <p>3 <i>That Council consider a report on the cost benefits of appointing a Shire wide events co-ordinator.</i></p>	Corporate Services	10 June 2009 Cr Best/Cr Vincent	Items 1 and 2 were considered at the extraordinary meeting of Council’s Grants Committee held on 17 June 2009. A report on item 3 will be submitted to Council’s meeting of 26 August 2009
<p>10.1 – Notice of Motion - E - Waste</p> <p>1 <i>That Council provide a report on the estimated annual cost per ratepayer for a bi-annual kerbside collection of e-waste, transport and disposal at a recycling processing plant.</i></p> <p>2 <i>That Council report on the current amount Council pays for “e” waste in the waste levy to the NSW State Government and the effects of e-waste on the environment.</i></p> <p>3 <i>That Council conduct a six month trial for e-waste drop off once the upgrade works at Buttonderry are completed and at the end of the trial, an information report on the quantity collected and cost of collection be submitted to Council.</i></p> <p>4. <i>That Council identify and link in with existing e waste programs currently operating for example Cartridges for Planet Ark, Council’s Chemical Cleanup and Mobile Muster.</i></p>	Shire Services	8 July 2009 Cr Wynn / Cr McBride	Report to be provided for Council’s meeting of 9 September 2009.

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

Notice of Motion	Department	Meeting Resolved	Status
<p>10.3 – Notice of Motion – Joint Regional Planning Panels</p> <p>1 <i>That Council raise its grave concerns about the recent statement to Parliament by the Minister for Planning flagging the likely extension of powers of the Joint Regional Planning Panels to prepare and determine Local Environmental Plans, Development Control Plans and Section 94 Developer Contribution Plans on the basis of the serious implications on our local community due to this further loss of local decision making.</i></p> <p>2 <i>That Council forward details of its concerns to all local members, the Local Government and Shires Associations and the Minister for Planning.</i></p> <p>3 <i>That Council undertake a media campaign to raise awareness within the community of the potential implications of this further reduction in local decision making and the further reduction in the community's ability to influence its own future.</i></p>	Shire Planning	8 July 2009 Cr Graham / Cr Wynn	Letter issued to the Director Policy, Planning Systems and Reform. Further correspondence prepared. Media campaign underway.
<p>10.5 – Notice of Motion – Code of Meeting Practice</p> <p>1 <i>That Council incorporate into the proposed review of its Code of Meeting Practice an amendment to enable a Councillor to request a development application under Part 4 or an assessment under Part 5 be reported to a meeting of Council for determination.</i></p> <p>2 <i>That Council determine the above provisions following a review of the relevant provisions currently in place at adjoining Councils.</i></p> <p>3 <i>That this proposal require the application be made by a minimum of two Councillors.</i></p> <p>4 <i>That the review consider the number of submissions required to automatically trigger a report to Council.</i></p>	Corporate Services	8 July 2009 Cr Symington / Cr McBride	To be included in Briefing already scheduled for 26 August 2009.

8.5 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 Services</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>

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

Notice of Motion	Department	Meeting Resolved	Status
<p>9.4 – Notice of Motion – Youth Employment Target</p> <ol style="list-style-type: none"> 1 <i>That Council adopt in principle, a long term youth employment target of 15% of its workforce in recognition of the appalling local youth unemployment rate of some 38.7%.</i> 2 <i>That Council provide a report on:</i> <ol style="list-style-type: none"> a <i>implementation strategies to achieve this target in compliance with the Anti-Discrimination Act, Equal Employment Principles and;</i> b <i>current youth employment levels, job profiles filled and availability by young employees.</i> 3 <i>That Council include in the annual Equal Employment Opportunity (EEO) report a section on youth employment and movement towards the target and that this report be an information report to a formal Council Meeting.</i> 4 <i>That Council forward this motion to the Local Government Association Conference for consideration by all Councils for adoption and also for the Conference to consider a resolution to the State Government seeking an amendment to the Anti-Discrimination Act requiring Councils to also report in their EEO report on youth employment levels.</i> 5 <i>That Council make a submission to the Keep Australia Working Forum regarding our region's Youth Employment Problem.</i> 	<p>Corporate Services</p>	<p>22 July 2009 Cr Eaton / Cr McNamara</p>	<p>A report will be provided once clarification of the requirements of EEO Legislation has been obtained.</p>

8.5 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
<p>Q068 - Education Program into Toddler Drowning <i>It would appear that my Notice of Motion 297 Education Program into Toddler Drowning unanimously endorsed by Council on 25 June 2008 has fallen off the radar and is currently not listed in report 536 Outstanding Questions without Notice and Notices of Motion on this business paper. It has been some six months since the motion attached was moved. Having regard to the recent backyard pool tragedies experienced in Gosford, when will staff report on this critical community issue?</i></p> <p>541- Extended Safety of Surf patrol Beaches</p> <p>1 <i>That having regard to the increasing incidence of unseasonably warm weather associated with global warming and the resultant high beach usage outside current patrol hours Council take a proactive approach with a view to providing our residents and ratepayers with greater coverage of patrolled surf beaches.</i></p> <p>2 <i>That Council receive a briefing on current coverage and resources required to patrol our Shire's beaches including any recommendation for Council to consider a more flexible approach to beach patrol timetables.</i></p>	<p>26 June 2008</p> <p>26 November 2008</p>	<p>A combined response is included in this business paper.</p>
<p>Q036 – The Entrance Town Centre Accounts <i>Question Without Notice asked in Confidential Session.</i></p>	<p>27 May 2009</p>	<p>A response is included in this business paper.</p>
<p>Q037 – Purchase of Crown Land</p>	<p>10 June 2009</p>	<p>A response is included in this business paper.</p>
<p>Q042 – Infrastructure Contributions on Subdivisions <i>Could Council confirm that Hunter Water and Sydney Water no longer charge infrastructure contributions on land subdivision with a consequential reduction in Land subdivision and housing costs?</i></p>	<p>8 July 2009</p>	<p>A response is included in this business paper.</p>
<p>10.2 – Notice of Motion – Container Deposit Scheme</p> <p>1 <i>That Council acknowledge the significant environmental, economic and social benefits to ratepayers of adopting a Container Deposit Scheme (CDS) in NSW.</i></p> <p>2 <i>That Council support the “Community Attitudes Survey” to be conducted by the Environment Protection and Heritage Council and further investigations of CDS at a State Government level in terms of the logistical and financial implications on local government. This should be achieved through conducting on-ground trials and providing more detailed analysis which is directly relevant to NSW Councils.</i></p> <p>3 <i>That Council write to the NSW Premier, the Hon Nathan Rees, and the NSW Minister for Climate Change and the Environment, the Hon Carmel Tebbutt, to urge the NSW Government to initiate or support legislation, after further investigation, to establish such a scheme in NSW in line with points 1 and 2.</i></p>	<p>8 July 2009</p>	<p>Letters issued</p>

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

Question without Notice / Notice of Motion	Date Asked / Resolved	Outcome
10.4 – Notice of Motion – Improved Mardi-Mangrove Information Flow	8 July 2009	An initial report included in this paper and thereafter to all future meetings. The Project Director will be in attendance at these meetings.

ATTACHMENTS

Nil.

9.1 Answers to Question Without Notice

TRIM REFERENCE: F2008/00979 - D01970580 AUTHOR:DJ

9.1 Q036 - The Entrance Town Centre Accounts (in confidential enclosure)

The above question was asked by Councillor Matthews at the Ordinary Meeting on 27 May 2009:

See confidential enclosure.

ATTACHMENTS

Nil

9.2 Answers to Question Without Notice

TRIM REFERENCE: F2008/02109 - D01935106 AUTHOR: PF

9.2 Q037 - Purchase of Crown Land

The following question was asked by Councillor Eaton at the Ordinary Meeting on 10 June 2009:

“Could Council advise on the feasibility of purchasing Crown Land on which its caravan parks are located given the advice ostensibly given to Tuggerah Lakes Golf Course that it could buy Crown Land golf course for its clubhouse?”

Tuggerah Lakes Golf Club clubhouse site, being Lot 367 DP 755263, is held by the Club as an Incomplete Purchase of Crown Land and is subject to the Crown Land (Continued Tenures) Act 1989. This allows the Club to have a tenure on the land without ownership. The Club can purchase the land upon application to the Crown for a purchase price determined by the Crown and any other conditions that may be imposed by the Crown. The Club has not applied to the Crown to complete the purchase.

The golf clubhouse site is not part of the Crown Reserve land system of land, that Council Tourist Parks are situated on and is not subject to the same regulation or Departmental policies that are in place in respect of Crown Reserve land.

The Department of Lands policy is not to support alienation of Crown Reserve land by way of sale or transfer from the Crown.

ATTACHMENTS

Nil.

9.3 Answers to Question Without Notice

TRIM REFERENCE: F2004/12201 - D01962900 AUTHOR: PB

9.3 Q042 - Infrastructure Contributions on Subdivisions

The following question was asked by Councillor Eaton at the Ordinary Meeting held on 8th July 2009 :

“Could Council confirm that Hunter Water and Sydney Water no longer charge infrastructure contributions on land subdivision with a consequential reduction in Land subdivision and housing costs?”.

On 17 December 2008, the Premier of New South Wales announced a package of reforms to infrastructure levies. One of the items in this package was “the immediate cessation of water infrastructure charges imposed by Sydney Water and Hunter Water”. These are now recouped through increased user charges.

On 23 December 2008, the Department of Planning (DOP) released a Planning Circular relating to this announcement which stated “*it should also be noted that the changes to water infrastructure levies only apply to Sydney Water and Hunter Water charges, and not where Councils are the water supply authority*”. The Circular did not provide any review period for these changes and it is therefore assumed that they will remain in place indefinitely.

The implications of this decision by the Premier are that subdivision costs will be reduced. From reading of the Circular, it is clear that the purpose of this change is to provide encouragement for developers to bring vacant land onto the residential market, thereby increasing the supply of land for housing.

The motivation for the developer is in the reduced subdivision costs and there is no indication that this saving is intended to be passed on to the purchaser. Whilst it may be suggested that the Government's action will assist in reducing the overall cost of housing, this would clearly be dependent on the savings being passed on to the eventual purchaser.

In addition, even if this was the case, the purchaser will still be required to fund the infrastructure costs by way of increased user charges, ie in their annual rates.

It is likely that the existing landowners will, over the longer term, be subsidising new development.

ATTACHMENTS

Nil.

10.1 Notice of Motion - Proposal to Register Council with the Mayors for Peace Program

TRIM REFERENCE: f2004/06939 - D01972648

AUTHOR: BG

Councillors B Graham and S Wynn have given notice that at the Ordinary Meeting to be held on 12 August they will move the following Motion:

- “1 That Council join the Mayors from Peace Program in order to promote the total abolition of Nuclear Weapons.
- 2 That Council authorise the Mayor to sign and submit the necessary registration documentation.”

COUNCILLOR'S NOTE

In August 1945, atomic bombs instantaneously reduced the cities of Hiroshima and Nagasaki to rubble, taking hundreds of thousands of precious lives. Today, more than sixty years after the war, thousands of citizens still suffer the devastating after-effects of radiation and unfathomable emotional pain. To prevent any repetition of the A-bomb tragedy, the cities of Hiroshima and Nagasaki have continually sought to tell the world about the inhumane cruelty of nuclear weapons and have consistently urged that nuclear weapons be abolished.

On June 24, 1982, at the 2nd UN Special Session on Disarmament held at UN Headquarters in New York, then Mayor Takeshi Araki of Hiroshima proposed a new Program to Promote the Solidarity of Cities toward the Total Abolition of Nuclear Weapons. This proposal offered cities a way to transcend national borders and work together to press for nuclear abolition. Subsequently, the mayors of Hiroshima and Nagasaki called on mayors around the world to support this program.

The Mayors for Peace is composed of cities around the world that have formally expressed support for the program Mayor Araki announced in 1982. As of July 1, 2009, membership stood at 2,963 cities in 134 countries and regions. In March 1990, the Mayors Conference was officially registered as a UN NGO related to the Department of Public Information. In May 1991, it became a Category II NGO (currently called a NGO in "Special Consultative Status") registered with the Economic and Social Council.

The Mayors for Peace, through close cooperation among the cities, strives to raise international public awareness regarding the need to abolish nuclear weapons and contributes to the realization of genuine and lasting world peace by working to eliminate starvation and poverty, assist refugees fleeing local conflict, support human rights, protect the environment, and solve the other problems that threaten peaceful coexistence within the human family.

Membership in the Mayors of Peace involves no annual dues or any other financial obligation.

10.2 Notice of Motion - Review of Fees for Home Buyers

TRIM REFERENCE: F2004/09609 - D01972782

AUTHOR: EM

Councillors McBride and Matthews have given notice that at the Ordinary Meeting to be held on 12 August 2009 they will move the following Motion:

- "1 That Council review any fees charged by Council to home buyers with a view to minimising the impact on first home buyers.*
- 2 That a report be provided to Council.*
- 3 That Council work with the State and Federal Governments to ensure affordable housing for first home buyers. "*

GENERAL MANAGER'S COMMENT

Council does not charge fees to first home buyers or any home buyers when they are purchasing a property. When a property changes hands, there is a requirement that the contract for sale includes a Section 149 Zoning Certificate. The cost of the Certificate, which is \$40 for a basic Certificate or \$100 for a more detailed Certificate, is borne by the person selling the land, not the purchaser. Council can provide other Certificates including a Certificate issued under Section 603 of the Local Government Act which provides advice on any outstanding charges on the property or a Section 121ZP Certificate which details any outstanding Notices or Orders on the property.

Whilst anyone can obtain the above Certificates subject to the payment of the applicable fee, the general practice is that these Certificates are provided by the vendor as part of the Contract for Sale.

Any applicable Section 94 levy, which is a contribution to be spent on community infrastructure and facilities, rather than a fee, is paid by the developer or subdivider prior to the subdivision being forwarded to the Land Titles Office for registration.

Therefore, the only fees payable by home buyers are those required by the State Government, such as Stamp Duty.

10.3 Notice of Motion - Aged housing Strategic Planning

TRIM REFERENCE: F2005/02122 - D01972923

AUTHOR: DE

Councillor Eaton has given notice that at the Ordinary Meeting to be held on 12 August 2009 he will move the following Motion:

- "1 That Council recognise the domination of aged housing in its "Greenfield" urban release areas as reported in Question Without Notice No 038.*
- 2 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.*
- 3 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 "*

10.4 Notice of Motion - Budgewoi Beach Rezoning

TRIM REFERENCE: C2009/05413 - D01973807

AUTHOR: DV

Councillor Vincent has given notice that at the Ordinary Meeting to be held on 12 August 2009 he will move the following Motion:

"That Council rezone the Budgewoi Beach coastal zone, extending from the Munmorah State Recreation Area in the north to Wirrabee Street Noraville in the south, from existing 6A - reserve open space & recreation to E2 - Environmental conservation as part of the Comprehensive LEP."

COUNCILLOR'S NOTE

The intention of this motion is to ensure that the re-zoning reflects the current environmental management of the site and preserves the natural integrity of the environment and bush area that has been regenerated by the Budgewoi and Noraville Dunecare Groups over the past 14 years.

The major thrust of the works carried out by the Dunecare Groups has focused on beach access and stabilisation of the dune structure through rehabilitation. Unfortunately recreational activities within this area (excluding the beachfront and access ways) are counter productive to the stabilisation of the natural ecosystems as the area is extremely sensitive to human recreation.

As a result of the rezoning, access areas would not be restricted and the use of the beach as an area of recreation would not change

Community Groups supporting the rezoning application are:

- Budgewoi, Buff Point and Halekulani Precinct Committee (unanimously endorsed on 16 July 2009)
- Wycare Incorporated
- Budgewoi Dunecare
- Budgewoi East Sustainability Street
- Noraville Dunecare
- Norah Head Rate Payers Association
- Coast Care Ten, and
- Bateau Bay Bush Care.

Extract from the current Budgewoi Beach Action Plan:

"Current Land Tenure:

Presently the majority of the site is Crown Land under care and control of Wyong Shire Council. The Council has designated the site 6A reserve open space and recreation. This status was implemented after mining, sand extraction degraded the entire land form and rehabilitation had not commenced.

Action:

Budgewoi Dunecare's aim is to have their works recognised by having the appropriate rehabilitated sections of the site designated by the State Government as Coastal Wetlands SEPP 14 and Littoral Rainforests SEPP 26. With the entire site being graded to conservation status under local government provisions. (zoning)."

GENERAL MANAGER'S NOTE

The proposed action to rezone the coastal zone to an environmental protection or conservation zone is supported, subject to the following:

- As referred to in the Notice of Motion, if the new template zone of E2 is to be utilised, the zoning cannot happen except in conjunction with the Comprehensive LEP as the zone is not yet in existence within Wyong Shire.
- The E2 zone is intentionally constrained in its permissible uses. Whilst this is entirely appropriate for the majority of the area delineated in the Notice of Motion, identifying the entire area now prior to full investigation by staff may be premature. This is because Council may wish to exclude certain parts of the land.
- It would also be appropriate for staff to consider whether there are any similar coastal areas within the remainder of the Shire that should also be given an E2 zone and that this investigation should be carried out concurrently with the Comprehensive LEP process.

10.5 Notice of Motion - Animal Care Facilities (Pound)

TRIM REFERENCE: F2006/01779 - D01980661

AUTHOR: GB

Councillor Best has given notice that at the Ordinary Meeting to be held on 12 August 2009 he will move the following Motion:

- "1 That Council recognise the overall operational improvements in Council's Animal Care Facility (ACF) and note the encouraging community feedback regarding the professionalism of facility staff.*
- 2 That Council also note the significant variations to overall costs associated with the operation of Council's ACF i.e. 150% increase in dog surrender charges now \$219.65 each.*
- 3 That Council, having regard to the new fee structures contained Council's 09/10 adopted budget, report on the rationale and logic arrived at to support their Management Plan recommendations particularly taking into account issues such as possible escalation of illegal dog dumping and associated ranger resources, public safety and likely impacts on wildlife.*
- 4 That Staff provide a quarterly trend analysis and operational activities report to Council."*

10.6 Notice of Motion - Japanese Sister City

TRIM REFERENCE: F2004/07111 - D01980694

AUTHOR: GB

Councillor Best has given notice that at the Ordinary Meeting to be held on 12 August 2009 he will move the following Motion:

- "1 That Council thank the Mayor of Tanabe and his community for their support of our Sister City Program.*
- 2 That as Council now believes such programs funded by the ratepayer purse are not being recognised by the broader community as core to Council's service provision in particularly difficult economic times, therefore Council now officially withdraw its support of the Tanabe Sister City Program.*
- 3 That as this initiative has cost our ratepayers hundreds of thousands of dollars over the life of the program it is envisaged that in the event any future partnerships are established they must demonstrate a tangible benefit to our ratepayers in economic and employment terms "*

10.7 Notice of Motion - Activities of the Rural Fire Service RFS

TRIM REFERENCE: F2004/07102 - D01980752

AUTHOR: GB

Councillor Best has given notice that at the Ordinary Meeting to be held on 12 August 2009 he will move the following Motion:

- "1 That Council recognise and thank the some 500 Rural Fire Service (RFS) volunteers for their outstanding contribution to our community.*
- 2 That, with the fire season nearing, Council receive a report on the broader operational activities of the RFS and their preparedness to respond to what may be a most challenging bush fire season."*