

# AMENDED REPORT

13 June 2012  
To the Ordinary Council Meeting

Director's Report  
Infrastructure Management  
Department

## 3.4 Works on Private Land - 370 and 380 Bruce Crescent, Wallarah

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TRIM REFERENCE: F2010/02141 - D03018239

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### SUMMARY

Council has been in receipt of ongoing representations from a resident of 380 Bruce Crescent, Wallarah requesting Council undertake stream bank stabilisation works along a section of stream bank located within 370 and 380 Bruce Crescent. The resident believes Council has a responsibility to undertake the works on the basis that an existing upstream road culvert is contributing to the erosion. Section 67 of the Local Government Act 1993 (LGA) requires Council approval for works to be undertaken on private property.

### RECOMMENDATION

***That Council approve the undertaking of stream bank stabilisation works in the vicinity of the road culvert at 370 & 380 Bruce Crescent subject to landowner agreement with Councils design, the project budget being capped at \$50,000, the landowners making a 50% contribution towards the works, and the landowners entering into an agreement to commit to the ongoing maintenance of the work site and exclusion of stock from the riparian zones of the properties.***

### BACKGROUND

Council has been in receipt of representations from the owners of 380 Bruce Crescent, Wallarah requesting Council undertake stream bank stabilisation works within a watercourse located within both 370 and 380 Bruce Crescent. The landowners concerns are that progressive erosion of the stream bank was reducing the available land area of their property and had the potential to impact on the abutments of an existing deteriorated downstream bridge which represented the sole access to the residence on the property.

The watercourse is a small unnamed intermittent tributary of Spring Creek and ultimately flows into the Tuggerah Lakes system. The upstream catchment comprises of rural lands before flowing through a road culvert under Bruce Crescent and into 370 & 380 Bruce Crescent, Wallarah. It is not known when the culvert was constructed however it is believed to have been built at the time of the original subdivision of the area and well before the purchase of the property by the current owners.

Council is within its legal rights under the Roads Act 1993 to maintain the culvert within the road reserve for the purposes of conveying flows from the natural watercourse under the road. The subject culvert is similar to various others located throughout the Shire. It is accepted that the design of the culvert would have incorporated some improved energy dissipation measures had it been designed and constructed to current standards. At the time of construction though no energy dissipation was incorporated into the design.

Staff have previously written to the owner advising that the "Spring and Wallarah Creeks Stream Bank Condition and Conservation Report" did not identify this location as a priority for stream bank works under Council's Estuary Management Plan and it was thereby the owner's responsibility to undertake appropriate riparian zone management.

Since this time there have been ongoing representations from the resident and resulting communications and onsite meetings between various engineering and Estuary Management Staff and some Councillors. It has been further conveyed that the stream bank works are unable to be completed under the Estuary Management Plan on the basis the site does not meet the criteria for stream bank rehabilitation works. Issues include the lesser extent of erosion relative to other priority locations, resident's non acceptance towards Estuary Management Plan stream bank rehabilitation techniques involving the battering back of the bank and planting plants, and non commitment to controlling the access of goats away from the stream bank throughout the property.

At the ordinary meeting of Council on the 8<sup>th</sup> February 2012 Councillor Eaton asked the following Question Without Notice:

*"Could staff confirm:*

- a) That Council previously gave a written undertaking to Ms Kylie Albanese of Bruce Crescent, Wallarah to rock stabilise the creek from Council's road culvert at the front of her property for some 30 metres.*
- b) That this work would be performed in the 2011/12 financial year.*
- c) That this work has not been performed, and can I be advised when this work will be performed?"*

Staff reported at the Ordinary Meeting of Council on the 28<sup>th</sup> March 2011 that there was no formal agreement to complete works, any such capital works were yet to be approved by Council and programmed for inclusion in a future years capital works program and approval was required from Council under S. 67 of the Local Government Act 1993.

Various written communications with the resident of 380 Bruce Crescent between 2008 and 2010 clearly declined any offer of assistance stream bank works at the subject location. In 2011 following an onsite meeting, a survey of the location was completed which identified that the culvert outlet was actually in 370 Bruce Crescent and following further communications a concept drawing was completed by Councils student engineer and issued to the residents for comment. Although there was no written undertaking to do the works, correspondence issued in early 2011 implied the works could commence the following financial year, as part of the future 2011/2012 works program.

Since this time staff have further met with the resident and a Councillor and advised that if Council were to fund future works using its own revenue funding, this would be subject to Council determination attaining the necessary approval under S.67 of the Local Government Act to complete works on private property. Should that approval be received then staff would then be in a position to complete detailed engineering designs, attain resident's agreement to the design, attain the necessary environmental approvals and complete the works.

## **CURRENT STATUS**

High stream flows over the past 12 months have accelerated the extent of bank erosion. The soils of the area are highly erosive and due to the loss of native vegetation in the area the bank continues to be undermined and collapse. There has also been the formation of a scour hole downstream near the bridge which is increasing in size and in time may compromise the abutments of the existing deteriorated timber bridge.

Council has undertaken a full survey of the location and completed some preliminary drawings involving the lining of the watercourse with rough rock and the construction of a rock wall. The option of battering the creek bank back and planting has also been investigated however this has not to date been accepted by the landowner.

Funding for the project has been incorporated into the 2012/2013 drainage capital works budget. Completion of the works will be subject to Councils approval under s.67 of the Local Government Act 1993 and subsequent approval between landowners and Council over a design.

## **THE PROPOSAL**

### **Works on Private Property**

Section 67 of the LGA relates to Council undertaking works on private property. This section outlines procedures for circumstances where Council expends public money to undertake works on private lands, and those works improve the land/provide the private landowner with a benefit (compared to where Council expends public moneys on public infrastructure/public benefit).

Where Council is undertaking these types of works on private property and does not have an approved fee, or is charging less than an approved fee, Council must, by resolution, approve the works before they are carried out.

Where it is proposed to undertake works on private property, an agreement will need to be entered into with the property owner relating to ongoing maintenance, future asset renewal or circumstances where a major flood event occurs that results in damage.

The proposed works would likely consist of excavation and bank stabilisation using rock or soft engineering works as applicable.

## **OPTIONS**

### **1 Do nothing**

This will result in continuing stream bank erosion downstream of the road and culvert located within a rural area resulting in a widening of the channel and increased sediment transport downstream. The resident is also likely to have to undertake their own works to stabilise their private bridge abutments.

**2 Undertake stream bank works**

Undertake a combination of rough rock placement within the channel of the watercourse to reduce velocities and rock lining the embankments for a distance of approximately 20-25 metres. Some battering back of the stream banks should also be completed to allow for plantings. The site should then be fenced and stock excluded from the site. The estimated cost of these works is \$50,000.

**3 Council undertake works in road reserve only**

There is a limited road reserve width of approximately 4 metres between the culvert and private property. An existing concrete apron extends from the culvert into private property and is underlain by utility services. It is not feasible to undertake beneficial works solely within the road reserve.

**4 Council undertakes streambank work but owner contributes**

The undertaking of the works will derive a benefit to the landowner through both a reduction in the future loss of land from erosion of the stream bank and facilitate a future access around or across the streambank. The owner has also requested some additional rock be placed approximately 30 metres downstream at the bridge abutments to reduce scour. Another option under consideration of the landowner is to construct a new access road to the west of the drainage channel thereby negating the need to rehabilitate or replace the existing bridge. These works would only become viable if the embankment of the stream is retained as a result of Council's works.

It is considered reasonable that the landowner contribute to the funding of works for which they derive a direct benefit. The scope of works will require further negotiation between staff and the landowner as part of the design and deed of agreement process.

**PROPOSED WORKS**

Council has allocated a budget to complete the works as part of the 2012/13 Roads and Drainage capital works program in the event Council resolves to undertake this work. These works will provide environmental and social benefits by stabilising areas identified as having erosion risk.

**STRATEGIC LINKS**

**Wyong Shire Council Strategic/ Annual Plan**

Principal Activity	Service	Key Action and Objectives	Funding Source and Description	Impact on Key Performance Indicators/ Service Performance Indicators
Environment and Land Use	6.4 - EPS Major Projects Mgt	<ul style="list-style-type: none"> <li>Implement Stream bank, stormwater and wetland works to ensure that the quality of water meet the needs of the community and lakes and rivers.</li> <li>Ensure social and economic needs of the community are met while protecting the environment of the coastal zone.</li> </ul>	The works are not considered to meet the criteria for Caring for our Country funding as part of the implementation of the Tuggerah Lakes Estuary Management Plan. Funding would need to come from Councils revenue funding.	

**Contribution of Proposal to the Principal Activity**

The works will provide ongoing improvements to water quality in the affected stream and for water entering Tuggerah Lakes.

**Link to Community Strategic Plan (2030)**

Priority Objective	<i>How the proposal contributes or links to the Priority Objectives in Shire Strategic Vision and Annual Plan</i>
<b>Natural Areas</b> - Areas of natural value in public and private ownership will be enhanced and retained to a high level in the context of ongoing development.	The health of the Shire’s waterways and natural areas will be enhanced by the restoration of the eroded stream bank.

**Financial Implications**

The works would be fully or partially funded from Councils revenue funding and provision has been made as part of the 2012/2013 Roads & Stormwater capital works program.

**Principles of Sustainability**

The works, when established, will provide a long term solution to localised stream degradation and erosion issues.

**Long term Financial Strategy**

Nil impact.

**Asset Management Strategy**

Nil impact.

**Workforce Management Strategy**

Nil impact.

**Link to Community Strategic Plan (2030)**

Nil impact.

**Budget Impact**

Nil impact.

**CONSULTATION**

Where rehabilitation works are proposed to be undertaken on private land, extensive discussions will need to be held with owners to obtain their permission to undertake the defined scope of works and agreement to ongoing maintenance and future renewal responsibilities. This is a requirement under Section 67 of the LGA, together with consideration of possible cost sharing arrangements.

Consultation has occurred with the relevant landholders over appropriate stream bank rehabilitation options at the subject location. In principle agreement to enter the property and undertake the works has been given subject to landowner agreement with the final design.

**GOVERNANCE AND POLICY IMPLICATIONS**

There are large numbers of existing culvert and pipe crossings located within natural water courses under the Shire's roads which legally direct water through private property in accord with the natural topography of the land.

Many of these will be characterised as having minor erosion at the device outlets. Undertaking the subject works could expose Council to further requests to undertake similar works on other private properties.

**CORPORATE RISKS**

<b>Risk</b>	<b>Possible Outcome</b>	<b>Mitigation Method</b>
Risk of non-compliance with Section 67 of Local Government Act	Loss of Council reputation. Penalties from non-compliance	Obtain Council approval prior to expenditure of funds
Fraud and corruption allegations from favouring certain land-owners	Loss of Council reputation. Investigations into Council practices and possible penalties	Obtain Council approval prior to expenditure of funds

**MATERIAL RISKS AND ISSUES**

Nil impact.

**CONCLUSION**

It is proposed to undertake the described stream bank rehabilitation works on private property subject to agreement on a design and entering into a deed of agreement for the landowners to fund 50% of the works to an upper limit of \$25,000 and commit to any long term maintenance responsibilities within private property. The works are in response to an existing road culvert being contributory factor towards the stream bank erosion immediately downstream combined with previous communications which imply Council would undertake some form of works to mitigate the problem.

**ATTACHMENTS**

- 1 Previous correspondence concerning this matter - Confidential Attachment (to be distributed under separate cover)