



The Mardi-Mangrove Link project reached a major milestone recently as the first sod was turned marking the start of construction. Pictured is (left to right) Federal Member for Dobell Craig Thomson (on behalf of the Hon Dr Mike Kelly, Federal Parliamentary Secretary for Water), Project Director Greg McDonald, Mayor Bob Graham, Federal Member for Robertson Belinda Neal and Gosford City Mayor Chris Holstein.

# Business Paper

ORDINARY MEETING

14 April 2010



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# MEETING NOTICE

The **ORDINARY MEETING**  
of **Wyong Shire Council**  
will be held in the **Council Chamber**,  
**Wyong Civic Centre, Hely Street, Wyong** on  
**WEDNESDAY 14 APRIL 2010** at **5.00 pm**,  
for the transaction of the business listed below:

## OPENING PRAYER

## ACKNOWLEDGEMENT OF COUNTRY

## RECEIPT OF APOLOGIES

### 1 PROCEDURAL ITEMS

1.1	Proposed Inspections .....	5
1.2	Address By Invited Speakers .....	6
1.3	Confirmation of Minutes of Previous Meeting.....	7

### 2 KEY ISSUES

2.1	Cabbage Tree Harbour Update .....	26
-----	-----------------------------------	----

### 3 PLANNING REPORTS

3.1	DA/1482/2009 - Two Storey Dwelling - 4 Manly Parade, The Entrance North .....	33
3.2	DA/1201/2009 - Proposed Single Storey Dwelling 34 Jane Ellen Crescent, Chittaway Bay.....	52
3.3	DA/1153/2009/A - Modification to an approved Dwelling 2 Marina Street, Budgewoi.....	67
3.4	Rezoning Requests - RZ/18/2009 - 1 London Drive, North Wyong, RZ/19/2009 - 13-15 Hereford Street, Berkeley Vale and RZ/20/2009 - 1 Bryant Drive, Tuggerah .....	84

### 4 CONTRACT REPORTS

4.1	Contract CPA/137900 - Provision of Security Services at Various Council Facilities.....	96
4.2	Contract CPA/172612 - Construction of Hamlyn Terrace Community Centre & Sporting Facility .....	99

### 5 GENERAL REPORTS

5.1	Deductible Gift Recipient status for Wyong Shire Library Service .....	110
5.2	Extension of Alcohol Free Zone - Wyong.....	115
5.3	Conference attendance - 2010 National General Assembly of Local Government, Canberra. ....	119
5.4	Exhibition of Draft 2010-11 Management Plan.....	122
5.5	Proposed Councillors' Community Improvement Grants .....	137
5.6	Establishment of an Environment Committee .....	140
5.7	Minutes of the Senior Citizens' Council Meeting - 19 March 2010.....	154

**6 INFORMATION REPORTS**

6.1	Information Reports .....	160
6.2	Investments for February 2010.....	161
6.3	Bus Servicing Review.....	166
6.4	Disclosures of Interest - 1 January to 31 March 2010.....	179
6.5	Mardi to Mangrove Link Project Status .....	181
6.6	Emergency Access from Freeway to Hue Hue Road.....	184
6.7	Outstanding Questions Without Notice and Notices of Motion .....	187

**7 ANSWERS TO QUESTIONS WITHOUT NOTICE**

7.1	Q70/10 - Commencement of Trial of Road Blisters on Woodbury Park Drive and Coachwood Drive .....	197
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**8 NOTICES OF MOTION**

8.1	Notice of Motion - Bike Racks on buses.....	198
8.2	Notice of Motion - Access to Council Information - Anywhere, Anyhow, Anytime .....	199
8.3	Notice of Motion - Deferment of Determination of Development Applications affected by Sea Level Rise.....	200
8.4	Notice of Motion - Public Access to Coast via Tuggerah Lakes Golf Course .....	201

**9 RESCISSION MOTIONS**

9.1	Rescission Motion - Sale of Land - Moala Parade, Charmhaven .....	202
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**10 QUESTIONS WITHOUT NOTICE ASKED**

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

Kerry Yates  
**GENERAL MANAGER**

## 1.1 Inspections

TRIM REFERENCE: F2010/00009 - D02191921

AUTHOR: SW

### SUMMARY

Inspections held on 7 April 2010 are listed as follows:

<b><i>Date of Inspection</i></b>	<b><i>Location</i></b>	<b><i>Requested By</i></b>
7 April 2010	Primo Distribution Centre, Warnervale	Mayor
7 April 2010	DA 1396/2009 - Hospital including Consulting Rooms 85-97 Sparks Road, Woongarra	Director Shire Planning
7 April 2010	Woolworths Rezoning – Corner Tall Timbers Road and Pacific Highway, Lake Munmorah	Director Shire Planning
7 April 2010	DA 1482/2009 (Dwelling) 4 Manly Parade, North Entrance	Director Shire Planning
7 April 2010	Illegal BMX Track – Corner Thomas Mitchell Road and Pendant Street, Killarney Vale	Director Shire Services
7 April 2010	DA 1201/2009 – Dwelling 34 Jane Ellen Close, Chittaway Bay	Director Shire Planning

### RECOMMENDATION

***That Council receive the report on Inspections.***

## **1.2 Address By Invited Speakers**

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TRIM REFERENCE: F2010/00009 - D02191958

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 meeting practice be varied to allow reports from Directors and/or the General Manager to be dealt with following an Invited Speaker's address.*

### **1.3 Confirmation of Minutes of Previous Meeting**

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TRIM REFERENCE: F2010/00009 - D02191980

AUTHOR: MR

#### **SUMMARY**

Confirmation of minutes of the previous Extraordinary Meeting of Council held on 18 March 2010 and the Ordinary Meeting of Council held on 24 March 2010.

#### **RECOMMENDATION**

***That Council confirm the minutes of the previous Extraordinary Meeting of Council held on 18 March 2010 and the Ordinary Meeting of Council held on 24 March 2010.***

#### **ATTACHMENTS**

- |   |   |           |
|---|---|-----------|
| 1 | Minutes - Extraordinary Meeting - 18 March 2010 | D02190039 |
| 2 | Minutes - Ordinary Meeting - 24 March 2010      | D02193058 |

**WYONG SHIRE COUNCIL**

**MINUTES OF THE  
EXTRAORDINARY MEETING OF COUNCIL  
HELD IN THE COUNCIL CHAMBER  
WYONG CIVIC CENTRE, HELY STREET, WYONG  
ON 18 MARCH 2010  
COMMENCING AT 7:25:00 PM**

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**PRESENT**

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

**IN ATTENDANCE**

General Manager, Director Shire Services, Director Corporate Services and Project Director Mardi to Mangrove Project and two administration staff.

The Mayor, Councillor Graham, declared the meeting open at 7.25 pm and advised in accordance with the Code Of Meeting Practice that the meeting is being recorded.

Mr John Hardwick read an acknowledgment of country statement and delivered the opening prayer.

**APOLOGY**

An apology for the inability to attend the meeting was received on behalf of Councillor Webster.

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

***That Council accept the apology and grant leave of absence from the meeting.***

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

AGAINST: NIL



**1.1 Disclosures of Interest**

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

***That Council receive the report on Disclosure of Interest and the fact that no disclosure was made be noted.***

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

AGAINST: NIL

**2.1 Amendments to the Central Coast Water Corporation Act 2006; Signing of a Memorandum of Understanding Between the Two Councils and the Minister for Water (IR 6829499)**

Councillor Vincent left the meeting at 07:32 pm and returned to the meeting at 07:34 pm during consideration of this item.

Councillor McNamara left the meeting at 07:36 pm and returned to the meeting at 07:37 pm during consideration of this item.

Councillor Symington left the meeting at 07:56 pm and returned to the meeting at 07:57 pm during consideration of this item.

*It was MOVED on the motion of Councillor GRAHAM and seconded by Councillor MATTHEWS:*

*That Council authorise the Mayor to sign the Memorandum of Understanding, with a new consideration in clause 2.4 – the implications for the community involving community consultation.*

*An AMENDMENT was MOVED by Councillor EATON and SECONDED by Councillor BEST:*

- 1 That Council advise the Minister of its general support for the amended Memorandum of Understanding (amendment to clause 2.4 community consultation).*
- 2 That Council advise the Minister that its support is conditional upon appropriate public consultation.*
- 3 That Council conduct an internal cost benefit analysis to Council and the community to form the base line information for community consultation.*

***The AMENDMENT was put to the VOTE and declared LOST.***

FOR: COUNCILLORS BEST AND EATON

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

**RESOLVED on the motion of Councillor GRAHAM and seconded by Councillor MATTHEWS:**

***That Council authorise the Mayor to sign the Memorandum of Understanding, with a new consideration in clause 2.4 – the implications for the community involving community consultation.***

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

AGAINST: COUNCILLORS BEST AND EATON

## **2.2 Future of the Central Coast Regional Organisation of Councils**

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

***That Council agree to amend the constitution of the Central Coast Regional Organisation of Councils as outlined in the body of the report, with the following additions:***

- a the two General Managers being included in the membership of the Central Coast Regional Organisational of Councils.***
- b another Councillor from each Council on the Executive Group.***

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

AGAINST: NIL

**THE MEETING** closed at 8.04 pm.

**WYONG SHIRE COUNCIL**

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

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**PRESENT**

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

**IN ATTENDANCE**

General Manager, Director Shire Planning, Director Shire Services, Acting Director Corporate Services, Acting Manager Future Planning, Acting Manager Development Assessment and Project Director Mardi to Mangrove Project.

Executive Manager Shire Services, Manager Governance and Administration, Tree Assessment Officer and two administration staff.

The Mayor, Councillor Graham, declared the meeting open at 5.02 pm and advised in accordance with the Code Of Meeting Practice that the meeting is being recorded.

- \* Councillor Vincent presented to Council a Certificate of Appreciation on behalf of the Warnervale Annual Fair for its support and assistance in holding this event.

Mr John Hardwick read an acknowledgment of country statement and delivered the opening prayer.

**APOLOGIES**

There were no apologies.

At the commencement of the ordinary meeting report nos 1.1, 1.2, 1.3, 1.4, 3.1 and 2.1, were dealt with first then the remaining reports in order. However for the sake of clarity the reports are recorded in their correct agenda sequence.

## 1.1 Disclosure of Interest

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### 1.2 Proposed Inspections

Councillor Eaton declared a non-pecuniary significant conflict of interest in the matter for the reason that he is a member of the Joint Regional Planning Panel (JRPP) which will determine DA 1396/2009 left the chamber at 5.06 pm, took no part in discussion, did not vote and returned to the chamber at 5.07 pm.

### 5.4 Proposed Councillors' Community Improvement Grants

Councillor Graham declared a non-pecuniary insignificant conflict of interest in the matter for the reason that he is a member of the Berkeley Vale School Council and participated in consideration of this matter.

Councillor Graham stated:

*"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because the school council has no association with the disabled children's program that the school is seeking funding for."*

### 6.1 Minutes – Wyong Shire Grants Committee Meeting – 17 March 2010

Councillor Graham declared a non-pecuniary insignificant conflict of interest in the matter for the reason that he is a member of the Berkeley Vale School Council and participated in consideration of this matter.

Councillor Graham 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."*

### 6.1 Minutes – Wyong Shire Grants Committee Meeting – 17 March 2010

Councillor Matthews declared a non-pecuniary insignificant conflict of interest in the matter for the reason that her children attend Wyong Christian Community School and participated in consideration of this matter.

Councillor Matthews stated:

*"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because I hold no position at the school committee level or community."*

### 6.1 Minutes – Wyong Shire Grants Committee Meeting – 17 March 2010

Councillor Vincent declared a non-pecuniary insignificant conflict of interest in the matter for the reason that his daughter attends Budgewoi Girl Guides and participated in consideration of this matter.

Councillor Vincent stated:

*"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because I am not a member of the Budgewoi Girl Guides Committee."*

### 6.1 Minutes – Wyong Shire Grants Committee Meeting – 17 March 2010

Councillor Webster declared a non-pecuniary insignificant conflict of interest in the matter for the reason that her grandchildren attend St John Fisher School and participated in

consideration of this matter.

Councillor Webster stated:

*"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty."*

### **6.1 Minutes – Wyong Shire Grants Committee Meeting – 17 March 2010**

The Acting Director Corporate Services, Mr Greg Ashe declared a non-pecuniary insignificant conflict of interest in the matter as he is president of Mingara Athletic Club, one of the beneficiaries of the proposed sporting grants, and remained in the chamber but did not participate in consideration of this matter.

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

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

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

AGAINST: NIL

### **1.2 Proposed Inspections**

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Councillor Eaton declared a non-pecuniary significant conflict of interest in the matter for the reason that he is a member of the Joint Regional Planning Panel (JRPP) which will determine DA 1396/2009 left the chamber at 5.06 pm, took no part in discussion, did not vote and returned to the chamber at 5.07 pm.

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

***That Council receive the report on Proposed Inspections.***

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

AGAINST: NIL

### **1.3 Address By Invited Speakers**

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

***1 That Council receive the amended report on Invited Speakers.***

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

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

AGAINST: NIL

## **1.4 Confirmation of Minutes of Previous Meeting**

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COUNCILLOR SYMINGTON LEFT THE CHAMBER AT 05:07 PM AND RETURNED TO THE CHAMBER AT 05:09 PM AND AS A RESULT TOOK NO PART IN VOTING.

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

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

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

AGAINST: NIL

## **Business Arising**

There was no business arising.

## **2.1 TA/386/2009 - Section 82A for Removal of One Tree at Cams Boulevard, Summerland Point**

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COUNCILLOR VINCENT LEFT THE CHAMBER AT 06:42 PM AND RETURNED TO THE CHAMBER AT 06:47 PM DURING CONSIDERATION OF THIS ITEM.

COUNCILLOR EATON LEFT THE CHAMBER AT 06:42 PM AND RETURNED TO THE CHAMBER AT 06:43 PM DURING CONSIDERATION OF THIS ITEM.

COUNCILLOR MCBRIDE LEFT THE MEETING AT 06:53 PM AND RETURNED TO THE MEETING AT 06:54 PM DURING CONSIDERATION OF THIS ITEM.

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

***That Council, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues, approve the application subject to the following conditions:***

- 1 Remove to ground level one Angophora Costata located at the above property, as marked in red on the stamped approved plan (attached).***
- 2 Replant two Angophora Costata of 25 litre pot size within 30 days of completion of works. The Confirmation of Tree Replanting form is to be completed and returned to Council.***
- 3 The removal of trees is to avoid damage to existing trees on site, including damage by bark stripping, machinery impact or falling tree impact.***
- 4 Trees removed are to be disposed of by chipping, recycling, or at an approved Council disposal site only.***
- 5 Plantings must be maintained in a mulched area. Trees that decline or die are to be replaced immediately. Council's Tree Assessment Officer is to be notified upon completion of plantings.***

- 6 A Tree Permit must be displayed in a location clearly visible from the street for the duration of the works. This permit MUST be sighted by the contractor/works prior to works commencing.**

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

AGAINST: COUNCILLOR WYNN

### **3.1 Sale of Land at Charmhaven**

MR ANDREW TOWN, COMMUNITY REPRESENTATIVE, ADDRESSED THE MEETING AT 5.07 PM, ANSWERED QUESTIONS AND RETIRED AT 5.22 PM.

COUNCILLOR SYMINGTON LEFT THE CHAMBER AT 5.07 PM AND RETURNED TO THE CHAMBER AT 5.09 PM DURING CONSIDERATION OF THIS ITEM.

COUNCILLOR MATTHEWS LEFT THE CHAMBER AT 6.02 PM AND RETURNED TO THE CHAMBER AT 6.03 PM DURING CONSIDERATION OF THIS ITEM.

*It was MOVED by Councillor GRAHAM and SECONDED by Councillor MCNAMARA:*

- 1 *That Council receive the report and note the information.*
- 2 *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.*
- 3 *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.*
- 4 *That Council authorise the Mayor and the General Manager to execute all documents.*

*An AMENDMENT was MOVED by Councillor VINCENT and SECONDED by Councillor SYMINGTON:*

- 1 *That Council receive the report.*
- 2 *That Council defer the sale of Lot 83 DP27286 Charmhaven Avenue, Charmhaven and Lot 94 Section 1 DP 11824 Moala Parade, Charmhaven pending consideration of the development of the land as a pedestrian pathway and community garden.*

COUNCILLOR BEST GAVE NOTICE OF A FORESHADOWED AMENDMENT.

***The AMENDMENT was LOST on the casting vote of the Mayor.***

FOR: COUNCILLORS MATTHEWS, MCBRIDE, SYMINGTON, VINCENT AND WYNN

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

An AMENDMENT was MOVED by Councillor BEST and SECONDED by Councillor EATON:

- 1 That Council receive the report and note the information.
- 2 That Council recognise the need to provide a community accessway over Lot 94 Moala Parade and Lot 83 Charmhaven Avenue through forming a standard accessway/public space over the above lots.
- 3 That Council appropriately dispose of the residual land for an amount not less than market value for each parcel as determined by an independent registered valuer and the funds be returned to Council's General Revenue.
- 4 That Council as with other shared pathways seek joint funding.
- 5 That Council in partnership with the local community and precinct committee gauge the level of support for the establishment of a community native gardens on various Council owned lands within close proximity to the proposed walkway .
- 6 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.
- 7 That Council authorise the Mayor and the General Manager to execute all documents.

**The AMENDMENT was LOST on the casting vote of the Mayor.**

FOR: COUNCILLORS BEST, MATTHEWS, MCBRIDE, VINCENT AND WYNN

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

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

- 1 That Council receive the report and note the information.
- 2 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.
- 3 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.
- 4 That Council authorise the Mayor and the General Manager to execute all documents.

**The MOTION was CARRIED on the casting vote of the Mayor.**

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

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



### 3.2 Proposed Acquisition of Lot 228 DP 1105837 Orchid Way, Wadalba for Environmental Corridor

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

- 1 That Council accept the transfer of Lot 228 DP 1105837 Orchid Way, Wadalba as community land.
- 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 property owner.
- 3 That Council authorise the Mayor and the General Manager to execute all documents.
- 4 That Council classify Lot 228 DP 1105837 as Community Land.

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

AGAINST: NIL

### 4.1 Contract Variations and Finalisation - February 2010

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

- 1 That Council note the variations to contracts in Attachment 1 of the Contract Variations and Finalisation February 2010 report.
- 2 That Council approve expenditure above contract estimates but within approved programme budgets for the following contracts:

2a	Rehabilitation Saltwater Creek – Reach 4	CPA/144337	6,000.00
2b	Supply & Delivery Gravel – Bateau Bay Landfill	CPA/160553	93,000.00

- 3 That Council note the contracts that reached a finalised status in Attachment 2 of the Contract Variations and Finalisation – February 2010 report.

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

AGAINST: NIL

**4.2 Contract CPA172849 - Manufacture, Supply and Delivery of Bulk Liquid Chlorine to Mardi Water Treatment Plant**

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

**That Council accept the schedule of rates tender from Orica Australia Pty Ltd at the rate of \$2,200 per tonne (exc GST) with an estimated lump sum of \$396,000 for Contract CPA/172849 - Manufacture, Supply and Deliver to Mardi Water Treatment Plant Bulk Liquid Chlorine for a period of three years.**

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

AGAINST: NIL

**5.1 Minutes - Wyong Shire Senior Citizens' Council Meeting - 25 February 2010**

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

**1 That Council receive the report on Minutes - Wyong Shire Senior Citizens' Council Meeting - 25 February 2010.**

**2 That Council place a quick reference list of available community services at all libraries and the Civic Centre Reception.**

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

AGAINST: NIL

**5.2 Council's Animal Care Facility Review**

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

**That Council endorse the expenditure to a maximum of \$150k, as incorporated in Council's 2009-2010 Management Plan, for the upgrading works required to Council's Animal Care Facility.**

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

AGAINST: NIL

### 5.3 **Pilot Program for Construction of Local Footpaths by Work for the Dole Recipients**

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COUNCILLOR VINCENT LEFT THE MEETING AT 07:24 PM AND RETURNED TO THE MEETING AT 07:25 PM DURING CONSIDERATION OF THIS ITEM.

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

- 1 ***That Council receive the report on the undertaking of a pilot program for the construction of footpaths using work for the dole recipients.***
- 2 ***That a working group be formed to pursue the implementation of this pilot project.***
- 3 ***That the working group include appropriate staff, at least two Councillors and a representative from the United Services Union.***
- 4 ***That the working group also consider other projects such as removal of graffiti etc.***
- 5 ***That the working group ensure that any proposed projects not displace any existing employees or work.***

FOR: COUNCILLORS BEST, EATON, MCNAMARA, SYMINGTON, VINCENT, WEBSTER AND WYNN

AGAINST: COUNCILLORS GRAHAM, MATTHEWS AND MCBRIDE

### 5.4 **Proposed Councillors' Community Improvement Grants**

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Councillor Graham declared a non-pecuniary insignificant conflict of interest in the matter for the reason that he is a member of the Berkeley Vale School Council and participated in consideration of this matter.

Councillor Graham stated:

*"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because the school council has no association with the disabled children's program that the school is seeking funding for."*

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

***That Council allocate an amount of \$5,310.00 from the 2009-10 Councillors' Community Improvement Grants as outlined in the report.***

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

AGAINST: NIL

**6.1 Minutes - Wyong Shire Grants Committee Meeting - 17 March 2010**

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Councillor Graham declared a non-pecuniary insignificant conflict of interest in the matter for the reason that he is a member of the Berkeley Vale School Council and participated in consideration of this matter.

Councillor Graham 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."*

Councillor Matthews declared a non-pecuniary insignificant conflict of interest in the matter for the reason that her children attend Wyong Christian Community School and participated in consideration of this matter.

Councillor Matthews stated:

*"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because I hold no position at the school committee level or community."*

Councillor Vincent declared a non-pecuniary insignificant conflict of interest in the matter for the reason that his daughter attends Budgewoi Girl Guides and participated in consideration of this matter.

Councillor Vincent stated:

*"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because I am not a member of the Budgewoi Girl Guides Committee."*

Councillor Webster declared a non-pecuniary insignificant conflict of interest in the matter for the reason that her grandchildren attend St John Fisher School and participated in consideration of this matter.

Councillor Webster stated:

*"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty."*

The Acting Director Corporate Services, Mr Greg Ashe declared a non-pecuniary insignificant conflict of interest in the matter as he is president of Mingara Athletic Club, one of the beneficiaries of the proposed sporting grants, and remained in the chamber but did not participate in consideration of this matter.

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

**That Council receive the minutes of the Wyong Shire Grants Committee Meeting held on 17 March 2010 and adopt the recommendations contained therein.**

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

### **7.1 Information Reports**

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

**That with the exception of report numbers 7.2 and 7.5 Council receive the information reports and adopt the recommendations.**

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

### **7.2 Activities of the Development Assessment Unit**

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COUNCILLOR WYNN LEFT THE CHAMBER AT 07:38 PM AND RETURNED TO THE CHAMBER AT 07:40 PM AND AS A RESULT TOOK NO PART IN VOTING.

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

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

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

### **7.3 Audit for Best Practice Management Guidelines for Water Supply and Sewerage**

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

**That Council receive the report on Audit for Best Practice Management Guidelines for Water Supply and Sewerage.**

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

**7.4 Mardi to Mangrove Link Project Status**

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

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

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

AGAINST: NIL

**7.5 General Works in Progress**

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COUNCILLOR WYNN LEFT THE CHAMBER AT 07:38 PM AND RETURNED TO THE CHAMBER AT 07:40 PM DURING CONSIDERATION OF THIS ITEM.

COUNCILLOR BEST LEFT THE MEETING AT 07:46 PM AND RETURNED TO THE MEETING AT 07:47 PM DURING CONSIDERATION OF THIS ITEM.

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

***That Council receive the report on General Works in Progress.***

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

AGAINST: NIL

**7.6 Water and Sewerage - Works in Progress**

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**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 BEST, EATON, GRAHAM, MATTHEWS, MCBRIDE, MCNAMARA, SYMINGTON, VINCENT, WEBSTER AND WYNN

AGAINST: NIL

**7.7 Outstanding Questions Without Notice and Notices of Motion**

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

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

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

AGAINST: NIL

**9.1 Notice of Motion - Tsunami Warning Effectiveness**

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

- 1 That Council recognise the importance of a coordinated tsunami action plan having regard to the vulnerability of our Coastal communities such as Cabbage Tree Bay, Budgewoi, North Entrance and various lakeside suburbs, that may be devastated in the wake of a tsunami.
- 2 That Council refer this matter to the State Emergency Services (SES) with a request for them to brief Councillors in regard to tsunamis at a future scheduled briefing.

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

AGAINST: NIL

**9.2 Notice of Motion - Warnervale Town Centre Viability**

COUNCILLOR WEBSTER LEFT THE MEETING AT 08:00 PM AND RETURNED TO THE MEETING AT 08:02 PM DURING CONSIDERATION OF THIS ITEM.

*It was MOVED on the motion of Councillor EATON and seconded by Councillor BEST:*

- 1 That Council recognise that costs of development are such that development in the Warnervale Town Centre is presently uneconomic in the current market.
- 2 That Council in principle agree to a temporary significant reduction in the Warnervale S94 contributions as a kick start incentive to Town Centre development provided that the State Government agrees to a similar reduction in its State Infrastructure Contribution (SIC) tax per lot.
- 3 That Council convey this offer to Mr David Harris, Parliamentary Secretary for the Central Coast and Member for Wyong and ask for his urgent response.

FOR: COUNCILLORS BEST, EATON, MCNAMARA AND WEBSTER

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

**9.3 Notice of Motion - Warnervale GP Super Clinic**

**RESOLVED on the motion of Councillor EATON and seconded by Councillor BEST:**

***That Council urgently investigate and report on other potential sites for the Warnervale GP Super Clinic that are correctly zoned and in the correct geographic area and particularly include the site on Louisiana Road that reportedly is DA approved for a large medical centre.***

FOR: COUNCILLORS BEST, EATON, MCNAMARA, SYMINGTON, WEBSTER AND WYNN

AGAINST: COUNCILLORS GRAHAM, MATTHEWS, MCBRIDE AND VINCENT

**9.4 Notice of Motion - Costs of the Survey and Preliminary Design to the Entry Road and Intersection at Warnervale Town Centre**

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

- 1 That in order to facilitate the development of the Warnervale Town Centre, Council endorse the commitment by staff to meet one third of the cost of the survey and preliminary design of the entry road into the centre from Sparks Road and the intersection on Sparks Road.**
- 2 That the Mayor and Deputy Mayor in conjunction with Council staff urgently pursue discussions with the State Government, Landcom (State owned corporation) and Woolworths in order to reach agreement on the sharing of the construction costs of the road and intersection in such a way that the ratepayers of the Wyong Shire are not unduly penalised.**

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

AGAINST: NIL

**QUESTIONS WITHOUT NOTICE****Q71/10 NSW Fees and Charges Collected by Wyong Shire Council**

**Councillor McNamara**

F2004/06596

*“Please provide the details of the annual total fees and charges collected by Wyong Shire Council on behalf of the NSW State Government?”*

**Q72/10 Cost to Wyong Shire Council for Providing NSW State Government Services**

**Councillor McNamara**

F2004/06596

*“Please provide the total cost to ratepayers of shifting of services from NSW State Government to Wyong Shire Council?”*

**Q73/10 Viability of Providing Solar Panels to Council Buildings**

**Councillor Eaton**

F2009/01592

*“ Could Council staff advise on process and viability of installing solar panels for electricity generation on Council buildings including Surf Clubs and Senior Citizens Centres?”*



**Q74/10 Provision of Additional Parking at Lake Munmorah Senior Citizens**

**Councillor Eaton**

C2010/05301

*“Could Council investigate creating additional parking at Lake Munmorah Senior Citizen Centre by utilising the space occupied by the former demolished Northern Lakes Family Centre?”*

**THE MEETING** closed at 9.02 pm.

## 2.1 Cabbage Tree Harbour Update

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TRIM REFERENCE: F2004/07782 - D02149208

AUTHOR: GW

### SUMMARY

This report is in response to Council's resolution of the 24 February 2010, requiring staff to report on the status of works and funding attached to the proposed Toe-Drainage Structure at Cabbage Tree Harbour and including an analysis of the recent Court proceedings regarding Byron Bay Council and a resident at Belongil Beach.

### RECOMMENDATION

- 1 ***That Council prepare final detailed designs, final cost estimates and obtain necessary approvals for the lower life-cycle cost option for a Toe-Drainage Structure at Cabbage Tree Harbour at an estimated total cost of \$1,954,000.***
- 2 ***That Council request the NSW Department of Environment, Climate Change and Water to provide additional grant funding of \$367,000, to cover the cost of the structure on a 50-50 basis.***
- 3 ***That subject to the final detailed design being costed at a maximum total of \$1,954,000 and upon receipt of approval of funding from NSW Department of Environment, Climate Change and Water, Council proceed to the construction phase.***
- 4 ***That Council, in considering its Management Plan for 2010/11, allocate additional funds of \$135,000 to the 2010-2011 financial year to match the Department of Environment, Climate Change and Water's grant augmentation.***
- 5 ***That due to the benefits of managing project risks, Council undertake construction of the Toe Drainage Structure by day labour with quality assurance provided by the designing engineers.***
- 6 ***That Council, in considering its Long Term Financial Strategy and financial model incorporate funds of \$500,000 for maintenance and removal of the structure over the design life of 15 years.***
- 7 ***That Council, taking into account the risk assessment undertaken by Shirley Consulting Engineers and State Wide Mutual in respect to the slope stability and site safety at Cabbage Tree Harbour, confirm that staff surveillance of the beach can now be discontinued.***

## BACKGROUND

Council at its meeting held on 24 February 2010;

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

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

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

AGAINST: NIL”

At its meeting held on 25 November 2009 Council considered a report on the status of the Cabbage Tree Harbour Toe-Drainage Structure in relation to costs and construction (copy attached). Due to the significant increase in costs associated with construction of the proposed works, a decision on the recommendation was deferred pending a Councillor Briefing.

A Councillor Briefing was held on 27 January 2010, attended by Council’s Solicitor, Mr Jeff Reilly from HWL Ebsworth and Mr Ron Barnes, General Manager of Council’s Insurer Statewide Mutual. Discussion centred around Council’s potential liability and its insurance cover on proceeding or not proceeding with construction. The issue of the public’s perception was also discussed in that there had been clear indications that Council would proceed with construction.

### **Current Status of Works and Funding for Cabbage Tree Harbour**

The status and cost estimates for the current full cost design of the Cabbage Tree Harbour Toe Drainage Structure have been provided in previous reports to Council at its Ordinary Meeting held on 25 November 2009 (see attached). The current detailed design which has a design life of at least 50 years has been completed and all approvals necessary have been obtained to enable construction to be commenced. The total project cost is estimated at \$2.9 million if constructed by Council’s Roads and Drainage Unit with quality assurance provided by Shirley Consulting Engineers. The status and cost estimates for this 50 year design have not changed since these last reports. However, in recent months staff have continued negotiations with the State Government with the purpose of acquiring the required additional funding on a 50:50 basis.

### **Additional State Government Funding**

A request for grant augmentation under the NSW Department of Environment, Climate Change and Water's (DECCW) Coasts and Estuaries Program was made in October 2009 in relation to the increased costs of the proposed structure. The Department indicated in a letter dated 15 March 2010 that it would not provide Council with a grant augmentation under this program as it is contrary to the grant funding guidelines and would create an unwanted precedent if the Minister were to agree. However, it also provided an interim indication on the potential availability of additional funds in the 2010/2011 financial year.

Advice has been received that The NSW Government intends to make additional funds available for the 50 year design of the Cabbage Tree Harbour Toe-Drainage Structure up to the required sum of \$823,819 if available. However, Council has also been advised that given the significant projected increase in cost funding would need to be made available over two financial years as the total amount is likely to significantly impact on the availability of grants to other Councils. The State Government has also been made aware that Council is considering the option of a lower cost structure at its meeting of the 14 April 2010. At present DECCW has provided an indication the additional funds may be available and have sought a written request for a variation from Council upon its consideration of the lower cost option.

### **Lower Cost Options**

The proposed Toe-Drainage Structure in its current form has been designed as an interim solution to withstand a 1 in 50 year coastal storm. In reality the current design is likely to last at least 50 years and possibly up to 100 years due to the conservative nature of designing structures in a high energy coastal beach environment. Similarly, the design review process through Manly Hydraulics Laboratory (MHL) resulted in the structure becoming larger with the net result of more than doubling the original cost estimate.

The real issue is the risk of failure or damage to the structure during a coastal storm event where the lower the return period of the storm (say a 1 in 2 year event) the lower the risk of damage. Similarly, the higher the return period or the greater the storm (say a 1 in 100 year event) the more likely the structure will be damaged. This can be compensated by making the structure more robust and able to withstand the forces imposed during more severe storms, i.e. designing the structure to withstand up to a 1 in 50 or even a 1 in 100 year storm event.

Designing a structure to a 1 in 50 year event (as for the current design of the Toe-Drainage Structure) is a very conservative approach and results in a very robust structure with a high capital cost up front, however potentially lower maintenance costs over the life of the structure. A structure designed to withstand a smaller storm return period (say a 1 in 10 year event) would cost considerably less for initial construction but maintenance costs could be expected to be higher.

Shirley Consulting Engineers (SCE) was engaged to examine the feasibility of potentially lower cost options by designing the Toe-Drainage Structure to a lower storm return period. As part of the report SCE also considered alternatives such as geotextile sand bags and a proposal voluntarily put forward by one of the residents at the top of the slope for the erection of a drop board structure. This proposal consisted of a number of "H" beams embedded into the underlying bedrock with boards dropped into the open sections of the "H" up to the required height. SCE's report has indicated that:

## 2.1 Cabbage Tree Harbour Update (contd)

- It is technically feasible to construct a temporary gabion (wire basket filled with rocks) structure with a design life of 15 to 20 years at a construction cost of approximately \$1.2 million. The removal of the armourstones from the original proposal and a reduction in height of the current design will significantly lower the cost of construction compared to the current design but will reduce the long term effectiveness of the structure in protecting the toe of the slope from erosion. The structure is proposed to be fixed to bedrock via the existing and supplementary poles used to support the collection pipe of the existing sub-horizontal drainage.
- Alternatives, such as using geotextile bags are unlikely to have a service life in excess of 10 years without extensive maintenance. Similarly, the alternative of a drop board structure would not address the issue of replacing the current drainage mechanism and would also result in almost permanent and immediate loss of the sand from the beach.
- Maintenance requirements will be higher than the larger current design and estimated at some \$500,000 over the life of the structure. This figure includes the removal of the gabions at the end of the design life at 15 years.

### **Summary of Estimated Project Costs**

Total estimated project cost is given below:

	Existing Expenditure	Estimated Design and Approval Costs	Construction Costs	Total Costs
Works constructed by Day Labour	\$453,638	\$300,000	\$1,200,000	\$1,953,638 rounded to \$1,954,000

### **Funding Shortfall**

As discussed in the previous report to Council, it is considered more appropriate to undertake the works using day labour as this would provide not only cost savings but represent the most efficient method to manage construction risks associated with a difficult site. The funding shortfall for the day labour option is given in the table below. It should be noted that the difference in funding augmentation between Council and DECCW is due to the fact that Council has already budgeted for a contingency of \$231,500 in this financial year.

	Total Cost	50/50 contribution	Existing Council funds allocated	Existing DECCW grants	Council additional funds required to meet 50/50 contribution	DECCW additional funds sought to meet 50/50 contribution
Works constructed by Day Labour	\$1,954,000	\$977,000	\$842,000	\$610,500	\$135,000	\$367,000

Council has previously resolved to fund the Cabbage Tree Harbour Toe Drainage Structure on a 50-50 basis. It is considered that the optimal time for construction of the works is July 2010. Whilst the State Government has met its share of the cost to date, Council should now indicate to the State Government its requirement for a contribution to the shortfall on a similar 50-50 basis. This additional cost is now estimated at \$367,000.

### **Feasibility of the Low Cost option**

The option to construct a toe drainage structure to meet a lower storm return period as an interim measure for approximately 10 to 15 years at a cost of \$1.2 million (plus design and approval costs) is considered reasonable and is consistent with legal advice. This option is consistent with the latest geotechnical advice, still addresses the issues of drainage and erosion at the toe of the slope and is what a reasonable Council would be expected to do under the circumstances. Legal advice indicates that a cheaper option that may be chosen does not, in itself, impact on liability, provided the cheaper option will meet the protection and stabilisation issues that need to be addressed; and this is indicated to be the case.

The toe of the slope at Cabbage Tree Harbour is eroding at a significant rate. The proposed works are required in the near future but the lower cost option still requires detailed design and approvals prior to implementation. Should the rate of erosion increase, the work may need to be carried out as a matter of urgency or as an emergency measure.

### **Beach Surveillance**

Shirley Consulting Engineers have also been engaged to examine the slope stability at Cabbage Tree Harbour in relation to continuing the surveillance to maintain a level of safety at the beach. The Consultants have indicated that the works carried out by the residents in complying with the Council Orders has resulted in a reduction of the risk to slope failure at the top of the slope. However, the Consultant was of the opinion that there remained significant safety issues with debris at the toe of the slope and potential continuing erosion and slumping at the toe of the slope. In this regard a site cleanup was carried out by Council staff to remove all sharp objects and debris that posed any risk to the public in anticipation that the beach will be re-opened.

Subsequently, a risk assessment for site safety was carried out by a representative from Council's insurer (Statewide Mutual) and Council's Insurance Controller. The outcome of the inspection was a recommendation that taking into account the site cleanup and with the addition of appropriate signage and community notification, that the surveillance is no longer required to address the current risks.

### **Land and Environment Court - Case between Byron Shire Council and Belongil Resident.**

The media have reported with interest on this case in recent weeks with varying often conflicting stories and quotes from those involved. Media reports have also indicated the possible implications for other coastal Council's on a range of issues such as planned retreat and climate change. Whilst at the time of writing this report the Land and Environment Court (LEC) Notes on this aspect of the case have not been released there is enough information to provide the following comments.

The case before the LEC arose out of disagreement between Byron Shire Council and a landholder over stabilisation works along Belongil Beach in May 2009. At this time the Byron coastline was subject to severe storms and there was substantial erosion of Belongil Beach including about 10 metres of the landholder's beachfront property. The owner threatened to dump rock along the beach to help protect his property but without a development consent. Subsequently, the LEC awarded Byron Council an injunction to stop the property owner from undertaking such action.

The property owner immediately responded requesting the Court consider a mandatory injunction that Byron Council maintain the temporary geotextile bag wall that it had constructed along the front of his property as per the Council's consent conditions.

Earlier, in 2002 Byron Shire Council constructed a temporary geotextile bag retaining wall along the beachfront to protect public access and beach amenity. However, the Council extended this wall to encompass the frontage of the above mentioned property so as to avoid erosion around the edge of the wall and subsequent increased erosion of the property. The geotextile bag wall was granted development approval by Council and was intended as an interim work prior to the Council's Coastal Zone Management Plan being implemented (currently being considered by Byron Shire Council). During the storm the wall failed and was severely damaged hence the intended action of dumping rocks by the resident.

The agreement reached as the outcome of the LEC action between Council and the property owner confirmed that Byron Council remains responsible to monitor, maintain and repair the interim beach stabilisation works on public property until the long term management strategy (i.e.: the Coastal Zone Management Plan) is adopted. The agreement also confirms that maintenance and repair of the interim protection works originally constructed by Council are permissible to be undertaken by the property owner on their Belongil property under Council's existing Development Consent.

The implications of this court action as they apply to the proposed works at Cabbage Tree Harbour and Council's Coastline Management Plan are currently assessed as follows:

- This recent court action supports Council's acknowledgment that it has a responsibility to proceed with the proposed works at Cabbage Tree Harbour on the basis that Council has a responsibility to maintain works that it constructed previously, even if as an interim measure.
- However, the agreement reached between the parties is not a judgment of the Court and is therefore not directly relevant to other parties or situations.
- The agreement was based on a particular development consent condition that applied to Byron Council's geotextile bag wall and as such is specific and confined to that consent.
- The agreement is also confined to a small parcel of land and does not extend beyond that specific parcel. As such it cannot create a precedent that applies outside of the particular parcel of land.
- The agreement does not impact Byron Shire Council's Coastal Zone Management Plan or its existing adopted policy for Planned Retreat. Consequently it does not affect or impact on Wyong Council's Coastline Management Plan.

- The agreement does not impact Byron Shire Council's LEP and DCP that currently contain their planned retreat provisions.
- The agreement is not related to climate change as it concerns a current coastal erosion problem. However, Climate Change has the potential to make the situation worse in the future.
- The failure of the geotextile bag wall supports the advice previously given to this Council that geotextile bag walls are not suitable for open coastal environments.
- It is also worthy to note that Byron Shire Council has been indemnified by its insurers (Statewide Mutual) for all costs associated with this case and any pursuant case that may arise.

**ATTACHMENTS**

- 1 Previous Council Report dated 25 November 2009 Enclosure D02072359



### 3.1 DA/1482/2009 - Two Storey Dwelling - 4 Manly Parade, The Entrance North

TRIM REFERENCE: Da/1482/2009 - D02188531

AUTHOR: AJD

#### SUMMARY

An application as been received for the erection of a two storey dwelling at 4 Manly Parade, The Entrance North. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment Act (EP& A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report. The application is reported to Council in accordance with Council's resolution of 10 March 2010 regarding applications affected by the State Government's Sea Level Rise Policy.

<b>Applicant</b>	Westminster Building Co. Pty. Ltd.
<b>Owner</b>	Dean Bradley Miller
<b>Application No</b>	DA/1482/2009
<b>Description of Land</b>	Lot 165, DP 18958 (4) Manly Parade, The Entrance North
<b>Proposed Development</b>	Two Storey Dwelling
<b>Site Area</b>	580.6m <sup>2</sup>
<b>Zoning</b>	2(b) Residential
<b>Existing Use</b>	Vacant Land
<b>Employment Generation</b>	No
<b>Estimated Value</b>	\$274,000

#### 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 refuse Development Application 1482/2009 for the following reasons:***

- a Pursuant to Section 79C (1)(c) of the Environmental Planning and Assessment Act 1979 the site is not considered to be suitable for the proposed development having regard to Council's Flood Prone Land Development Policy and Floodplain Development Manual.***
- b Pursuant to Section 79C (1)(c) of the Environmental Planning and Assessment Act 1979 the site is not considered to be suitable for the proposed development having regard to NSW Government Sea Level Rise Policy Statement..***
- c Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 the proposal is not considered to be in the public interest given it does not adequately consider the impacts of climate change, in particular sea level rise, on the development.***
- d Pursuant to Section 79C (1)(e) of the Environmental Planning and Assessment Act 1979 it would not be in the public interest to approve the proposal given its departure from Council's Flood Prone Land Policy which will set an undesirable precedent.***

## PRECIS

- The application seeks approval for the erection of a two (2) storey dwelling.
- The site is zoned Zone No 2 (b) (Multiple Dwelling Residential Zone) under the provisions of Wyong Local Environmental Plan 1991 (WLEP). A single dwelling is permissible with consent.
- The site is wholly flood affected.
- The Department of Environment, Climate Change and Water's (DECCW'S) *NSW Sea Level Rise Policy Statement* applies to the development.
- The 1% Annual Exceedence Probability (AEP) flood level at the subject property is 2.2m AHD (average flood depth 1.0m over the site). Application of DECCW's sea level planning benchmarks raises the 1% AEP to 3.1m AHD (average flood depth increases to 1.9m over the site) and the addition of a 0.5m free board results in a finished floor level (FFL) for habitable rooms set at 3.60m AHD. The proposed development does not meet this standard.
- A FFL of 3.6 metres AHD would result in the habitable rooms being approximately 2.5m above natural ground level.
- The proposed floor level of the habitable games room is 1.355 metres AHD which does not comply with the 2.7 metre AHD Flood Planning Level for the site under Council's existing Flood Prone Land Development Policy.
- Prior to the lodgement of the development application, the property owner made enquiries about the flood planning levels for the property. Council staff corresponded with the applicant advising that the proposal must comply with Council's Flood Prone Land Development Policy, the NSW Floodplain Development Manual and the NSW adopted Sea Level Rise Policy Statement (October 2009).
- The applicant has been given the opportunity to amend the proposal to comply with the above legislative requirements, has declined to amend the application and has requested the application be determined in its current form.
- Options Table

Option	Implications
Approve Development Application as proposed by applicant.	<ul style="list-style-type: none"> <li>• The development will not comply with Council's Flood Prone Land Development Policy.</li> <li>• The development will not comply with the DECCW's <i>NSW Sea Level Rise Policy Statement</i>.</li> <li>• Will set an undesirable precedent.</li> <li>• Could result in legal issues for Council.</li> </ul>

Option	Implications
Approve Development Application with a habitable floor level of 2.7 metres AHD	<ul style="list-style-type: none"> <li>• The development will not comply with the DECCW's <i>NSW Sea Level Rise Policy Statement</i>.</li> <li>• Will set an undesirable precedent.</li> <li>• Could result in legal issues for Council.</li> </ul>
Approve Development Application with a habitable floor level of 3.6 metres AHD.	<ul style="list-style-type: none"> <li>• Dwelling will breach maximum 7 metre ceiling height requirement of Wyong DCP 2005 Chapter 100 giving rise to bulk and scale issues.</li> <li>• Will result in unacceptable privacy, amenity and design impacts.</li> </ul>
Refuse Development Application as recommended	<ul style="list-style-type: none"> <li>• This is considered to be the most appropriate course of action.</li> <li>• The determination will be in accordance with Council's statutory obligations.</li> </ul>

## INTRODUCTION

### The Site

The subject site, known as No 4 Manly Parade, The Entrance North is located on the northern side of Manly Parade. It has an area of 580.6m<sup>2</sup>, is generally level, currently vacant and is located approximately 75m east of Tuggerah Lake. Existing development in the surrounding area comprises a mix of single and two storey dwellings, dual occupancies and multiple unit developments. The subject site and surrounding land at The Entrance North are low lying, with most of the area being flood affected.



4 Manly Parade, North Entrance

### The Proposed Development

The proposal is for the erection of a two (2) storey dwelling comprising, at ground floor level a lounge room, family room, dining room, study, games room, laundry, kitchen and study and at first floor level 4 bedrooms, rumpus room, bathroom and an ensuite.

The major issue for consideration relates to flooding and the application of the sea level benchmarks contained in the *NSW Sea Level Rise Policy Statement* (Policy Statement). The Policy Statement requires 0.9 m to be added to the existing flood planning level (FPL) which requires the finished floor level (FFL) of habitable rooms within the dwelling to be set a minimum of 3.60m AHD, being 0.785m – 2.245m higher than the development proposed by the applicant.

### VARIATIONS TO POLICIES

Standard	0.9m sea level benchmark
Policy	NSW Sea Level Rise Policy Statement
Departure basis	Not supported

### HISTORY

The land is vacant and no previous development applications have been lodged for the site.

### PERMISSIBILITY

The subject site is zoned 2 (b) (Multiple Dwelling Residential Zone) under the WLEP 1991. In accordance with Clause 13, a dwelling-house is permissible with consent.

### RELEVANT STATE/COUNCIL POLICIES AND PLANS

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

- State Environmental Planning Policy 71 (Coastal Protection)
- NSW Sea Level Rise Policy Statement, DECCW
- Development Control Plan 2005, Chapter 100 (Quality Housing)
- Development Control Plan 2005, Chapter 67 (Engineering Requirements)
- Development Control Plan 2005, Chapter 69 (Waste Management)
- Flood Prone Land Development Policy F5

### ECOLOGICALLY SUSTAINABLE PRINCIPLES

The proposal has been assessed having regard to ecologically sustainable development (ESD) principles and is considered to be inconsistent with the principles.

The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments. However, consideration of the potential impacts of climate change on the proposed development reveals that the proposal is not suitable for the subject site. The development, if approved, would not be sustainable and is not consistent with the overall objective of ESD, in particular:

- Inter-generational equity – the proposal does not have regard for maintaining the quality of the environment for future generations. The proposal would be highly vulnerable to risk of flooding which would potentially result in damage to the built environment and environs.

## ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the EP & A Act 1979, other statutory requirements and, Council's policies, the assessment has identified the following key issues, which are elaborated upon for Council's information.

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

#### Climate Change

##### NSW Government Policy

DECCW published the *NSW Sea Level Rise Policy Statement* (Policy Statement) in 2009, which sets benchmarks for sea level rise. The planning benchmarks have been derived from credible national and international projections of sea level rise, as explained in the technical note that accompanies the Policy Statement.

The Policy Statement is intended to be used by Council's to assist in assessing the influence of sea level rise on new development.

The Policy Statement provides:

*The goal is to ensure that (development of land that is projected to be affected by sea level rise) recognises and can appropriately accommodate the projected impacts of sea level rise on coastal hazards and flooding over time, through appropriate site planning, design and development control.*

The subject site is recognised as being fully flood affected, and this is identified on the Section 149 Planning Certificate for the property. The current designated flood level (1% AEP) for the site is 2.2 metres AHD, with a Flood Planning Level of 2.7metres AHD.

Incorporating the sea level rise benchmark of 0.9m for the proposed development, the flood level increases to 3.1 metres AHD; with a Flood Planning Level of 3.60 metres AHD.

The survey plan accompanying the application indicates natural ground levels ranging from 0.92 metres AHD in the northern western (rear) corner of the property up to 1.24 metres AHD at the southern eastern (front) corner of the property. In order to design the development to comply with the flood planning level incorporating sea level rise, the floor levels of habitable rooms in the development would be approximately 2.40 to 2.55 metres above the natural and surrounding ground levels.

Legal advice was presented to Council on 27 January 2010 by Tim Robertson S.C. In summary the issues outlined by Tim Robertson were:

- Council is legally required to apply the sea level rise benchmarks in the Policy Statement which was released in October 2009.
- Should Council fail to take into account the climate change considerations contained within the NSW Flood Plain Development Manual or the Coastline Management Manual, both which consider climate change, it will be unable to establish “good faith” in accordance with the defences provided by the *Local Government Act, 1993*. Council would also lose its protection under the *Civil Liability Act*.

A summary of the legal advice and a chronology of informed advice are provided at Attachment 1.

#### NSW Flood Plain Development Manual

The subject site is located within an existing high hazard flood area and the NSW Floodplain Development Manual requires that a safe (i.e. low hazard flooding) escape route be available for the residents. Given the location of the site and surrounding topography, there is no opportunity to provide an escape route during a flood event. It is considered that the first floor level, or preferably a ground floor level with an RL of 3.60m AHD would provide safe harbour and sufficient opportunity for residents to remain in the dwelling during a flood event or alternatively, to enable rescue. However, this safe harbourage may potentially be for longer periods than currently experienced and residents would be without power or sewerage servicing during this time.

#### Development Control Plan 2005, Chapter 100 (Quality Housing)

Section 3.63 (c) of Quality Housing provides that:-

*“A maximum height of 7 metres from natural ground level applies to the ceiling of the uppermost storey; and*

*A maximum height of 11 metres from natural ground level applies to the peak of the roof”*

The development as proposed complies with the maximum ceiling and ridge height controls. However applying the flood planning level of 3.60m AHD would result in the ceiling level of the dwelling exceeding the maximum permitted by 0.67m giving rise to unacceptable bulk and scale impacts.

**3.1 DA/1482/2009 - Two Storey Dwelling - 4 Manly Parade, The Entrance North (contd)**

The tables below summarise the above.

**Proposed Dwelling (RL 1.355 – 2.815)**

	<b>RL</b>	<b>DCP 100</b>	<b>Complies</b>
<b>First floor ceiling</b>	7.915	Max RL 8.03 being 7m above NGL (NGL 1.03)	Yes
<b>Ridge</b>	9.682	Max RL 12.12 being 11m above NGL (NGL 1.12)	Yes

**Dwelling with *NSW Sea Level Rise Policy Statement (Policy Statement)* with Sea Level Benchmarks Applied (RL 3.60)**

	<b>RL</b>	<b>DCP 100</b>	<b>Complies</b>
<b>First floor ceiling</b>	8.70	Max RL 8.03 being 7m above NGL (NGL 1.03)	No. The ceiling exceeds maximum height limit by 0.67m. It is acknowledged that this non compliance could be resolved through re-design of the dwelling.
<b>Ridge</b>	10.467	Max RL 12.12 being 11m above NGL (NGL 1.12)	Yes

In this regard, the applicant has been extended the opportunity to amend the proposal to comply with both the *NSW Sea Level Rise Policy Statement (Policy Statement)* and *Development Control Plan 2005, Chapter 100 (Quality Housing)*.

However, the applicant has requested that the application be determined in its current form.

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

*The relationship to the regional and local **context and setting**.*

The proposed development is considered acceptable in its appearance and in relation to the scale and massing of existing built structures in the immediate area. The development is domestic in scale and the proposed external materials and finishes are acceptable.

However the proposal does not meet the required Flood Planning Level of 3.6 metres AHD. If floor levels were raised to comply with this level the development would sit approximately 2.40 – 2.55 metres above natural ground level introducing privacy, amenity and design concerns.

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

No issues to report.

*The impact on the public domain (recreation, public open space, pedestrian links).*

No issues to report.

*The impact on utilities supply.*

No issues to report.

*The effect on heritage significance.*

No issues to report.

*Any effect on other land resources.*

No issues to report.

*Any impact on the conservation of water.*

No issues to report.

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

The site is identified as having Class 2 soils according to the Acid Sulphate Soils Planning Map. In accordance with Wyong LEP Clause 15, a preliminary site investigation is justified where works are proposed which are likely to lower the water table. This is not applicable to the proposed development.

*Any effect on quality of air and microclimate conditions.*

No issues to report.

*Any effect on the flora and fauna.*

No issues to report.

*The provision of waste facilities.*

No issues to report.

*Whether the development will be energy efficient.*

No issues to report.

*Whether the development will cause noise and vibration.*

No issues to report.



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

Flooding & Sea Level Rise

Council's Flood Prone Land Policy prohibits "new development" in high hazard flood areas. The proposed development is not considered "new development" and as such is not prohibited.

As discussed earlier in the report, the Flood Planning Level for the site under Council's Flood Prone Land Development Policy is set at 2.7 metres AHD. The development proposes ground floor habitable floor levels of 1.355 metres AHD for the games room and 2.815 metres AHD for the remainder of the ground floor area.

The nominated floor level of the games room set at RL 1.355 metres AHD does not comply with Council's existing Flood Prone Land Development Policy.

Incorporating the sea level rise benchmark of 0.9m for the proposed development, raises the Flood Planning Level to 3.60 metres AHD.

All ground floor habitable rooms in the proposed dwelling fail to achieve the Policy Statement's minimum flood planning level.

In addition to the sea level rise affect on the designated flood level there is also the prospect that the property will be regularly inundated by lake water.

A statistical analysis was undertaken on the Tuggerah Lakes water levels between 1984 and 1989. This statistical analysis determined that once every twenty hours the lake level may be as high as RL 0.55m AHD. When the predicted sea level rise is added this means that by 2050 this level could increase up to RL 0.95m AHD and by 2100 up to RL 1.45m AHD.

Based on the survey levels provided with the application together with the projected sea level rises by 2050 the road adjacent to the site starts to be inundated and by 2100 up to 100% of the site will be inundated once every 20 hours.

During a flood event the Electricity Authority immediately shuts down the network in the flooded area resulting in the sewer system no longer functioning and the surcharging of raw sewage into the lake system. This situation occurred during the June 2007 flood event which correlated to a 1:10 year flood being up to RL1.5m AHD. This is approximately the same as the potential daily inundation level.

The NSW Department of Health consider all flood waters as potentially contaminated and containing untreated sewage. They advise that all unnecessary contact with flood waters should be avoided and in particular children should be kept away from flood waters. This is pertinent to the safe evacuation of residents in deeper flood waters.

The applicant has been given the opportunity to amend the proposal to comply with the above legislative requirements, however, has requested that the application be determined in its current form.

Council has a statutory obligation to apply the sea level rise benchmarks outlined in the NSW Sea Level Rise Policy Statement to consider flood planning levels in accordance with the Floodplain Development Manual and Council's Flood Prone Land Development Policy.

Approval of this development application in its current form would give rise to negative social and economic impacts, set an undesirable precedent and possibly result in liability issues for Council.

*Any risks from technological hazards.*

No issues to report.

*Whether the development provides safety, security and crime prevention.*

No issues to report.

*Any social impact in the locality.*

The proposed development is considered likely to have negative social impacts if it were to be approved by Council by placing both people and property vulnerable to flooding events.

*Any economic impact in the locality.*

The proposed development is considered likely to have negative economic impacts if it were to be approved by Council, as a result of reliance on emergency services personnel to assist occupants in the event of a flood, in rectifying flood damaged property, and placing greater demands on surrounding services and infrastructure in this locality in order to sustain the development in its vulnerable location.

*Any impact of site design and internal design.*

The site design is not considered appropriate in terms of the finished floor levels for habitable rooms. The games room is below Council's Flood Planning Level and the ground floor habitable rooms in the proposed dwelling fail to achieve the Policy Statement's minimum flood planning level.

*Any impacts of construction activities (construction site management, protection measures).*

No issues to report.

*Any cumulative impacts.*

Allowing the proposed development contrary to the DECCW NSW Sea Level Rise Policy Statement sea level rise planning benchmarks would contravene Council's obligation to consider certain matters as specified in Section 79C of the Act, including the likely impacts of the development, ecologically sustainable development and the public interest.

This would not only place Council in a position vulnerable to litigation, but may also encourage further development proposals that threaten to compromise the safety of occupants and be contrary to the public interest.

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

*Whether the proposal fits in the locality.*

As outlined earlier in this report, the proposed development is not considered suitable for the site given that the floor level does not adequately address sea level rise and the development would potentially result in adverse privacy, amenity and streetscape impacts if the floor levels were raised to incorporate the 2100 sea level rise planning benchmark.

**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 and no submissions were received.

*Any submission from public authorities.*

No issues to report.

**THE PUBLIC INTEREST (s79C(1)(e)):**

Any Federal, State and Local Government interests and community interests.

The information currently available to Council indicates that the site will likely be inundated if a designated flood event (1%AEP) occurs during the life of the proposed development. The information relied upon to make this prediction includes Council's flood studies DECCW'S *NSW Sea Level Rise Policy Statement*. Having assessed the proposal in accordance with Council's Flood Prone Land Development Policy, the NSW Floodplain Development Manual and the projected sea level rise of 900mm by 2100; the development is not considered suitable for the site. To permit the development on the basis of a lack of full scientific certainty with respect to sea level rise, may result in lives and property being placed under threat.

**CONCLUSION**

The proposal has been assessed having regard to Section 79C of the EP&A Act, WLEP 1991, SEPP 71, NSW Sea Level Rise Policy Statement, DCP 2005, Chapter 100 (Quality Housing), DCP 2005, Chapter 67 (Engineering Requirements), DCP 2005, Chapter 69 (Waste Management) and Flood Prone Land Development Policy and is considered unsatisfactory.

The proposal is unacceptable in terms of the proposed reduced levels of the ground floor habitable room levels. The proposed development has not been designed having sufficient regard to the impacts of flooding and sea level rise and would, if approved, unacceptably contribute to social disruption, economic costs and environmental impacts during a 1% AEP flood event up to the year 2100.

**3.1 DA/1482/2009 - Two Storey Dwelling - 4 Manly Parade, The Entrance North (contd)**

Approval of the development application would also set an undesirable precedent and could result in liability issues for Council.

It is therefore recommended that the application be refused.

**Locality Plan**



**ATTACHMENTS**

- 1 Summary of Legal Opinion D02181887
- 2 Development Plans D02195887

## Summary of Legal Opinion & Chronology of Informed Advice

### DERIVED LEGAL COMMENTS – SENIOR COUNSEL – TIM ROBERTSON WYONG COUNCILLOR BRIEFING SESSION - 27 JANUARY 2010

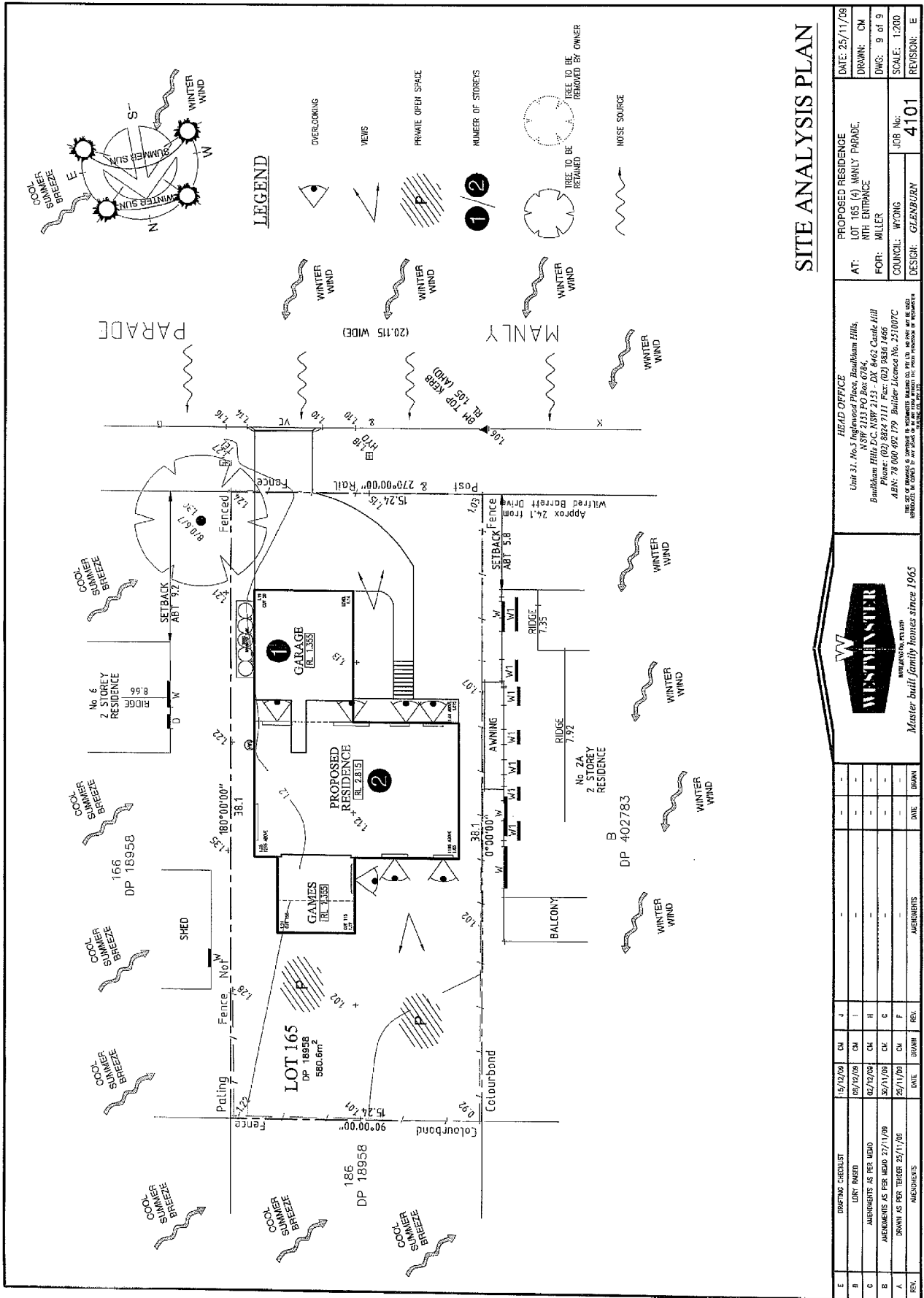
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- There are two separate aspects to climate change – mitigation and adaptation.
- Mitigation – issue for Federal Government – Emissions Trading Scheme.
- Adaptation – how to adapt to what is projected to occur.
- Local government leadership is required as guidance and advice.
- “Taking into account climate change” Council has done so since 1990, ie. Floodplain Development Manual - 1990.
- Failure to consider the Floodplain Development Manual, Council can’t establish “good faith” under the defences to an action - *Local Government Act 1993*. *Civil Liability Act*.
- Council need to have regard to climate change in making decisions. In doing that, you need to use the most recent information.
- The Floodplain Manual is knowledge that a public authority would take into account.
- The Standard Instrument – LEP provides at clause 5.5 that Council as consent authority must take into account impacts on coastal processes, which includes sea level rises.
- SEPP 71 – clause 8 – which requires Council as consent authority to consider changes that occur in the coastal zone, which again includes sea level rise.
- Legally, Council needs to apply the precautionary principle - Council's current obligation.
- The *Environmental Planning and Assessment Regulation* requires Council to consider the coastal policy. Council is explicitly required to look at sea level rises.
- Section 79C of the EP&A Act, and the Ministerial Directions to Council under section 117 of that Act require Council to look at climate change.
- The *Civil Liability Act* Council follows lawful process in administrative law/public law.
- Council should have a policy on climate change – Council should continue then to apply the most up to date knowledge.
- When Council knew about climate change, to reject applying it there is class action.
- Council’s DCPs should aim to set out other options.
- Where the policy or law has changed before determination as climate change is now being considered during this hiatus period there will invariably be conjecture and consternation which Council is obliged to manage. Hence the imperative for a consistently applied policy.

**Wyong Shire Council**  
**Coastal Management Plan**  
**Chronology of Informed Advice – 2 March 2010**

F2009/01385

- August 2009 Land & Environment Court Paper - Chief Judge Brian Preston on *"Climate Change Litigation"*
- September 2009 Land and Environment Paper Court - Justice Perter Biscoe on *"Climate Change, Stormwater and the Law"*
- September 2009 International Urban Design Conference *"Survival"*
- October 2009 Australian House of Representatives *"Climate Change and Environmental Impacts on Coastal Communities"*
- October 2009 *"NSW Government Sea Level Rise Policy"*
- October 2009 NSW Department of Environmental and Climate Change *"Practical Consideration of Climate Change"*
- October 2009 NSW Department of Climate Change and Water *"Draft Coastal Risk Management Guide"*
- October 2009 NSW Department of Environment Climate Change and Water *"Draft Flood Risk Management Guide"*
- November 2009 NSW Government Media Release *"Planning for Sea Level Rise"*
- November 2009 Planning Institute of Australia *"National Climate Change Adaptation Research Facility"*
- November 2009 Australian Government – Department of Climate Change *"Climate Change Risks to Australia's Coast"*
- November 2009 Wyong Shire Council *"Coastline Management Plan – Workshop 17/11/09"*
- December 2009 Wyong Shire Council *"Draft Climate Change Policy"* - on exhibition
- January 2010 Wyong Shire Council *"Draft Climate Change Policy"* – update
- January 2010 Legal Advice - Senior Counsel – Tim Robertson *"Address to Councillors – Litigation"*
- February 2010 Wyong Shire Council *"Draft Climate Change Policy"* – update
- February 2010 Gosford City Council *"50<sup>th</sup> Annual Floodplain Management Authority's Conference"*
- March 2010 Coast and Climate Change Council *"Coastal Climate Change Forum"*



**SITE ANALYSIS PLAN**

PROPOSED RESIDENCE	AT: LOT 165 (4) MANLY PARADE, WITH ENTRANCE	DATE: 25/11/08	DRWN: CN
FOR: MILLER	COUNCIL: WYONG	JOB No: 4101	SCALE: 1:200
DESIGN: GZENBURY	REVISION: E		

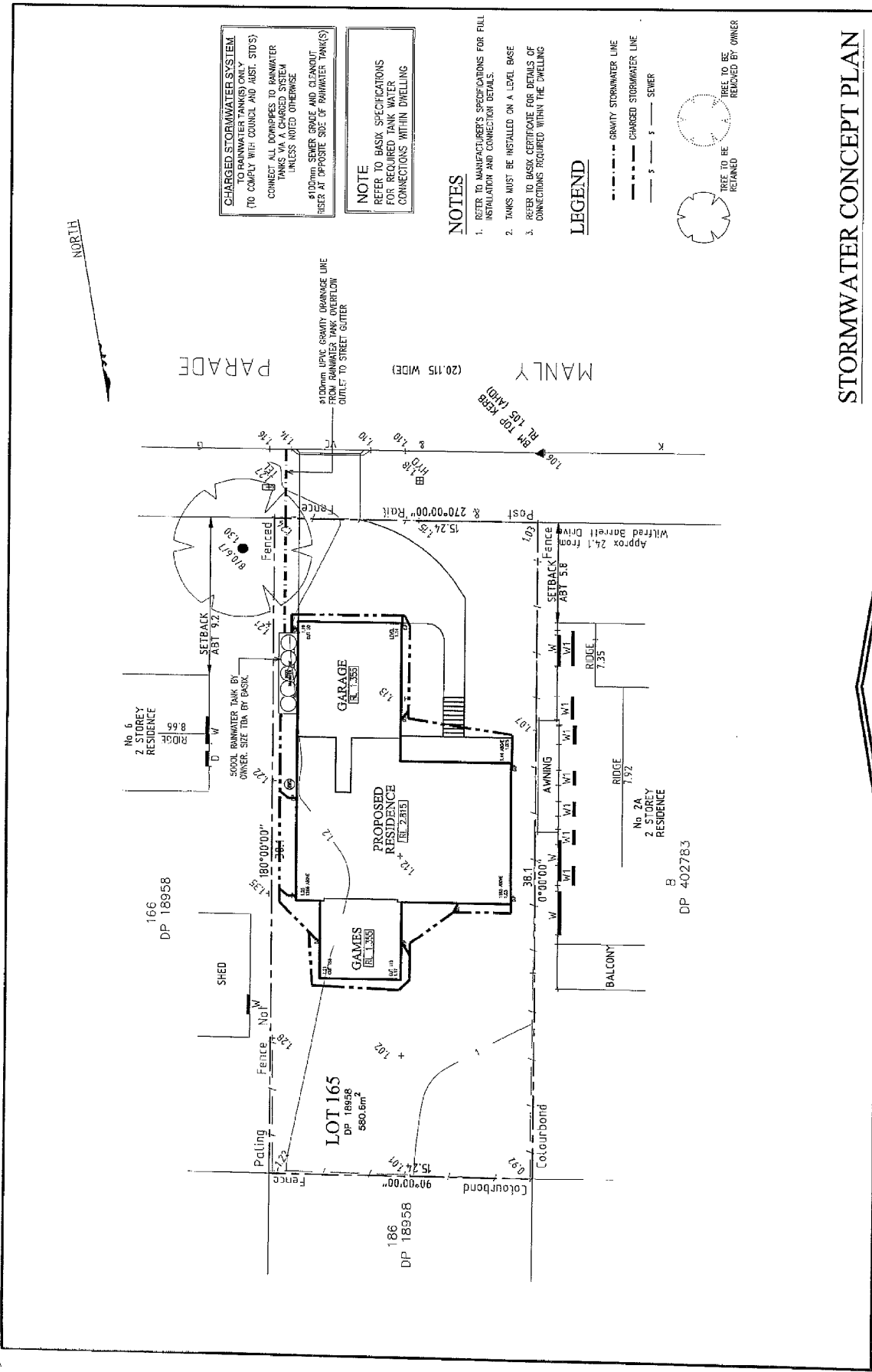
HEAD OFFICE	Unit 31, No 3 Impressed Place, Baulkham Hills, NSW 2153 PO Box 6784
BRANDHAM HILLS P.C. NSRP 2153 - DX 8462 Casile Hill	Phone: (02) 8824 7111 Fax: (02) 9834 1466
ABN: 78 000 492 779	Builder Licence No. 251007C
<p>WE, GZ, &amp; PARTNERS &amp; SERVICES TO ARCHITECTS, ENGINEERS, PLANNERS, SURVEYORS, LANDSCAPE ARCHITECTS, INTERIORS DESIGNERS &amp; CONTRACTORS.</p>	

REV.	DESCRIPTION	DATE	BY	CHKD
E	DRAFTING CHECKLIST	15/12/08	CM	J
D	LIFT RISED	02/12/08	CM	H
C	AMENDMENTS AS PER MEMO	02/12/08	CM	H
B	AMENDMENTS AS PER MEMO 27/11/08	30/11/08	CM	C
A	DRAWN AS PER THESE 25/11/08	26/11/08	CM	F

Master built family homes since 1965	WESTWINSTER
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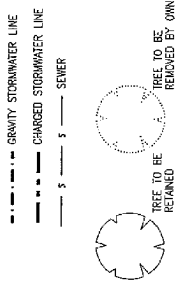


**CHARGED STORMWATER SYSTEM TO RAINWATER TANKS ONLY**  
 (TO COMPLY WITH COUNCIL AND ABST. STD'S)  
 CONNECT ALL DOWNPIPES TO RAINWATER TANKS VIA CHARGED SYSTEM UNLESS NOTED OTHERWISE  
 810mm SEWER GRADE AND CLEANOUT RISER AT OPPOSITE SIDE OF RAINWATER TANKS

**NOTE**  
 REFER TO BASIX SPECIFICATIONS FOR REQUIRED TANK WATER CONNECTIONS WITHIN DWELLING

- NOTES**
1. REFER TO MANUFACTURER'S SPECIFICATIONS FOR FULL INSTALLATION AND CONNECTION DETAILS.
  2. TANKS MUST BE INSTALLED ON A LEVEL BASE
  3. REFER TO BASIX CERTIFICATE FOR DETAILS OF CONNECTIONS REQUIRED WITHIN THE DWELLING

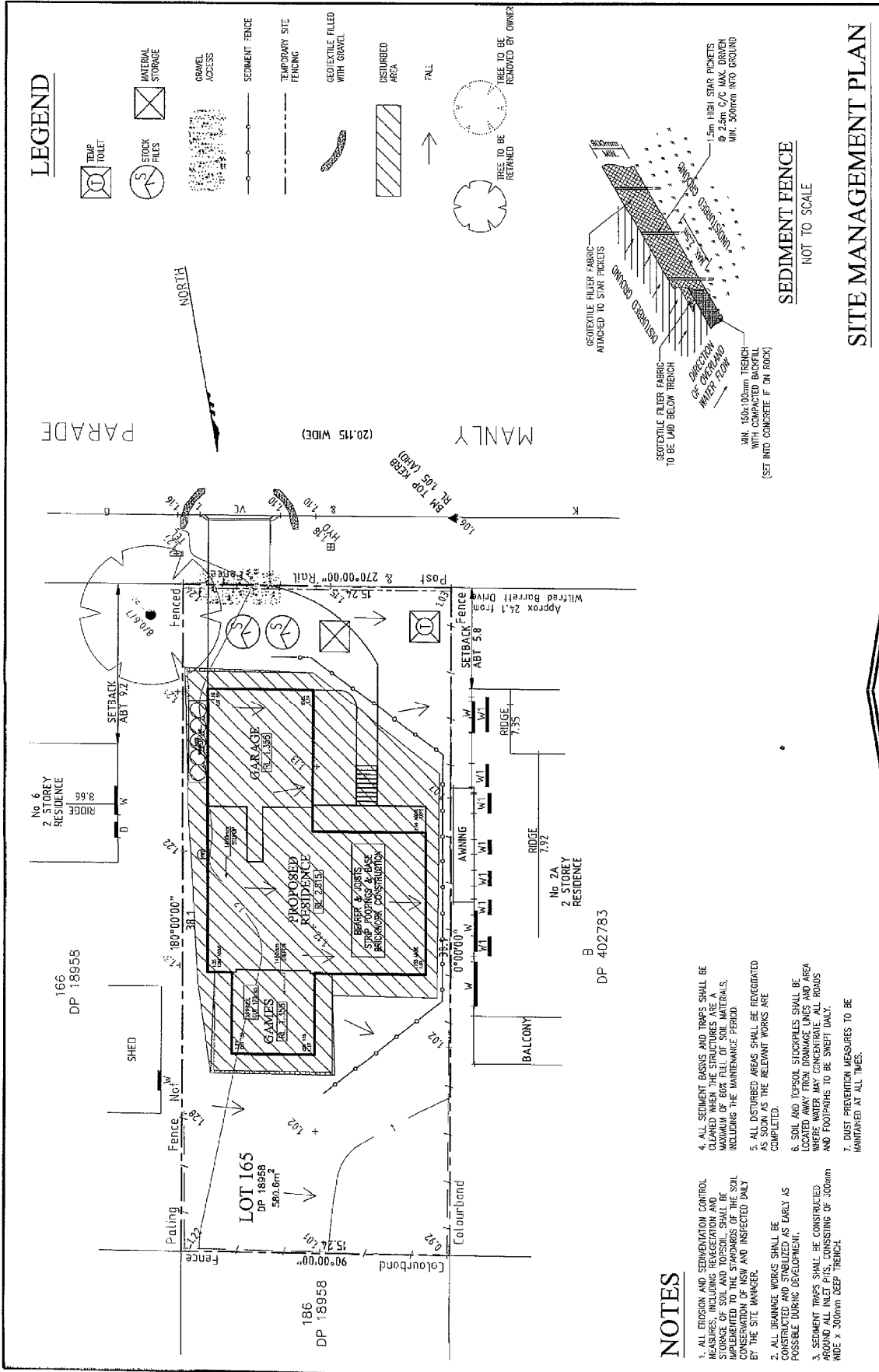
**LEGEND**



**STORMWATER CONCEPT PLAN**

<p>HEAD OFFICE                  Unit 31 No.3 Englewood Place, Baulkham Hills,                  NSW 2153 PO Box 6784,                  Baulkham Hills DC NSW 2153 - DX 8462 Castle Hill                  Phone: (02) 8834 7111 Fax: (02) 8834 1466                  ABN: 78 000 492 179 Builder Licence No. 231007C  <small>NO. 23 OF 2005 IS APPLICABLE TO WORKS COMMENCED ON OR AFTER 10 JUNE 2005 AND                  APPLICABLE TO WORKS COMMENCED ON OR AFTER 1 JULY 2005</small></p>		<p>PROPOSED RESIDENCE                  AT: LOT 165 (4) MANLY PARADE,                  RIFB ENTRANCE                  FOR: MILLER                  COUNCIL: WYONG                  DESIGN: CZEZBUBZAN</p>	<p>DATE: 25/11/08                  DRAWN: CM                  DIMS: 7 of 9                  SCALE: 1:200                  REVISION: E</p>																																										
<p>Master built family homes since 1965                  www.westminster.com.au  <b>WESTMINSTER</b>                  W</p>		<table border="1"> <thead> <tr> <th>REV.</th> <th>DATE</th> <th>BY</th> <th>CHK</th> <th>DATE</th> <th>BY</th> <th>CHK</th> </tr> </thead> <tbody> <tr> <td>E</td> <td>15/12/08</td> <td>CM</td> <td>J</td> <td>-</td> <td>-</td> <td>-</td> </tr> <tr> <td>D</td> <td>08/12/08</td> <td>CM</td> <td>I</td> <td>-</td> <td>-</td> <td>-</td> </tr> <tr> <td>C</td> <td>02/12/08</td> <td>CM</td> <td>H</td> <td>-</td> <td>-</td> <td>-</td> </tr> <tr> <td>B</td> <td>30/11/08</td> <td>CM</td> <td>G</td> <td>-</td> <td>-</td> <td>-</td> </tr> <tr> <td>A</td> <td>25/11/08</td> <td>CM</td> <td>F</td> <td>-</td> <td>-</td> <td>-</td> </tr> </tbody> </table>		REV.	DATE	BY	CHK	DATE	BY	CHK	E	15/12/08	CM	J	-	-	-	D	08/12/08	CM	I	-	-	-	C	02/12/08	CM	H	-	-	-	B	30/11/08	CM	G	-	-	-	A	25/11/08	CM	F	-	-	-
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REV.	DESCRIPTION	DATE	DRAWN	REV.	DATE	DESCRIPTION
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D	LAYOUT	09/12/09	CM	I	-	-
C	MEASUREMENTS AS PER MEMO	02/12/09	CM	H	-	-
B	MEASUREMENTS AS PER MEMO	30/11/09	CM	G	-	-
A	DRAWING AS PER TENDER	25/11/09	CM	F	-	-
REV.	DESCRIPTION	DATE	DRAWN	REV.	DATE	DESCRIPTION

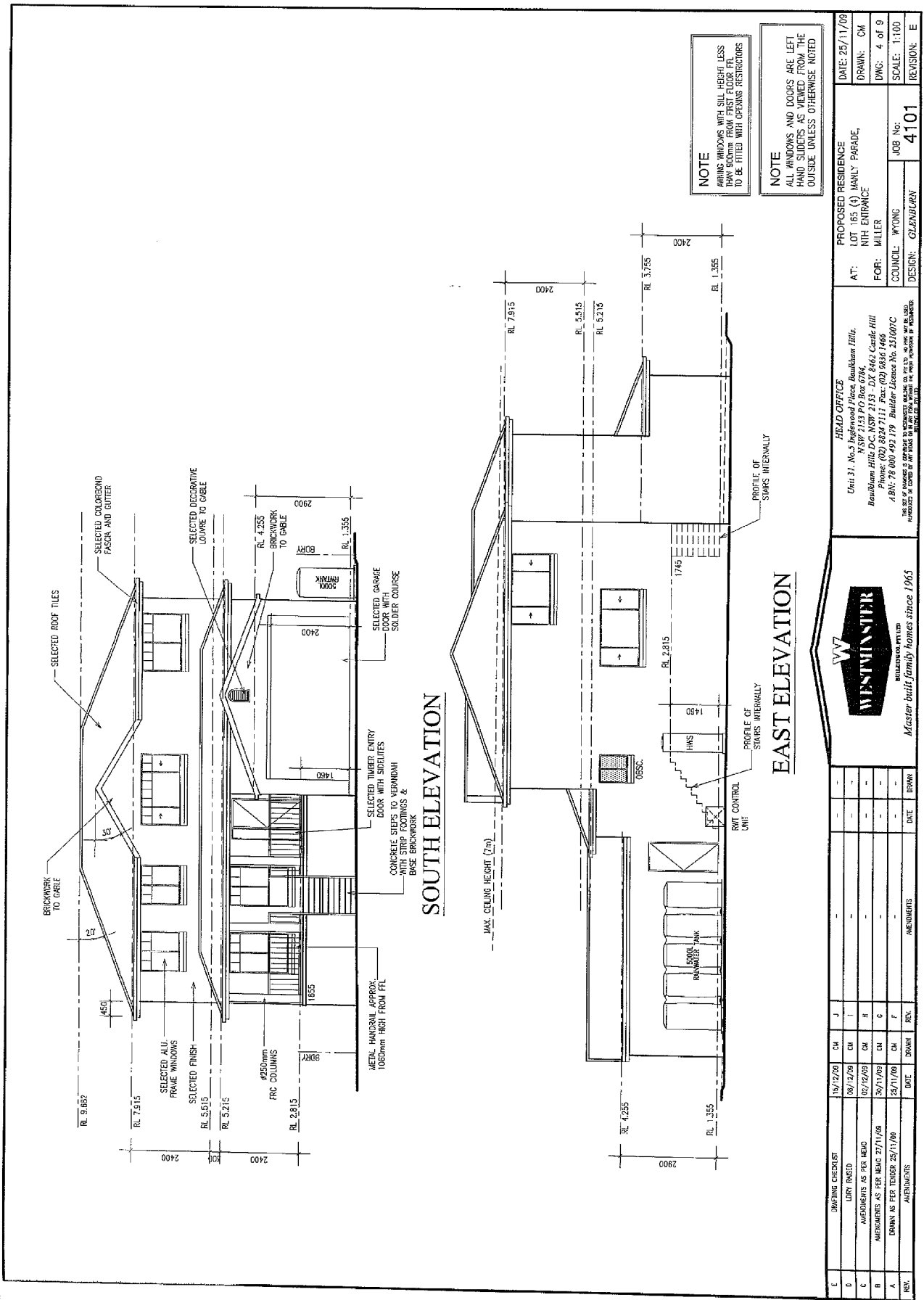
  

PROPOSED RESIDENCE	LOT 165 (4) MAINLY PARADE,
AT:	NIH ENTRANCE
FOR:	MULLER
COUNCIL:	WYONG
DESIGN:	GJZ/BNZ/JZY
JOB No:	4101
DATE:	25/11/09
DRAWN:	CM
DWG:	8 of 9
SCALE:	1:200
REVISION:	E

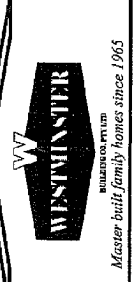
Master built family homes since 1965

**FIELD OFFICE**  
 Unit 31, No 5 Ingham Place, Bankham Hills,  
 NSW 2153 PO Box 628  
 Bankham Hills DC NSW 2153 - DX 8485 Castle Hill  
 Phone: (02) 8824 7111 Fax: (02) 8826 1466  
 ABN: 78 000 492 179 Builder License No. 231007C  
1% GST on services is included in the contract price. The 10% GST on the supply of materials is included in the contract price.

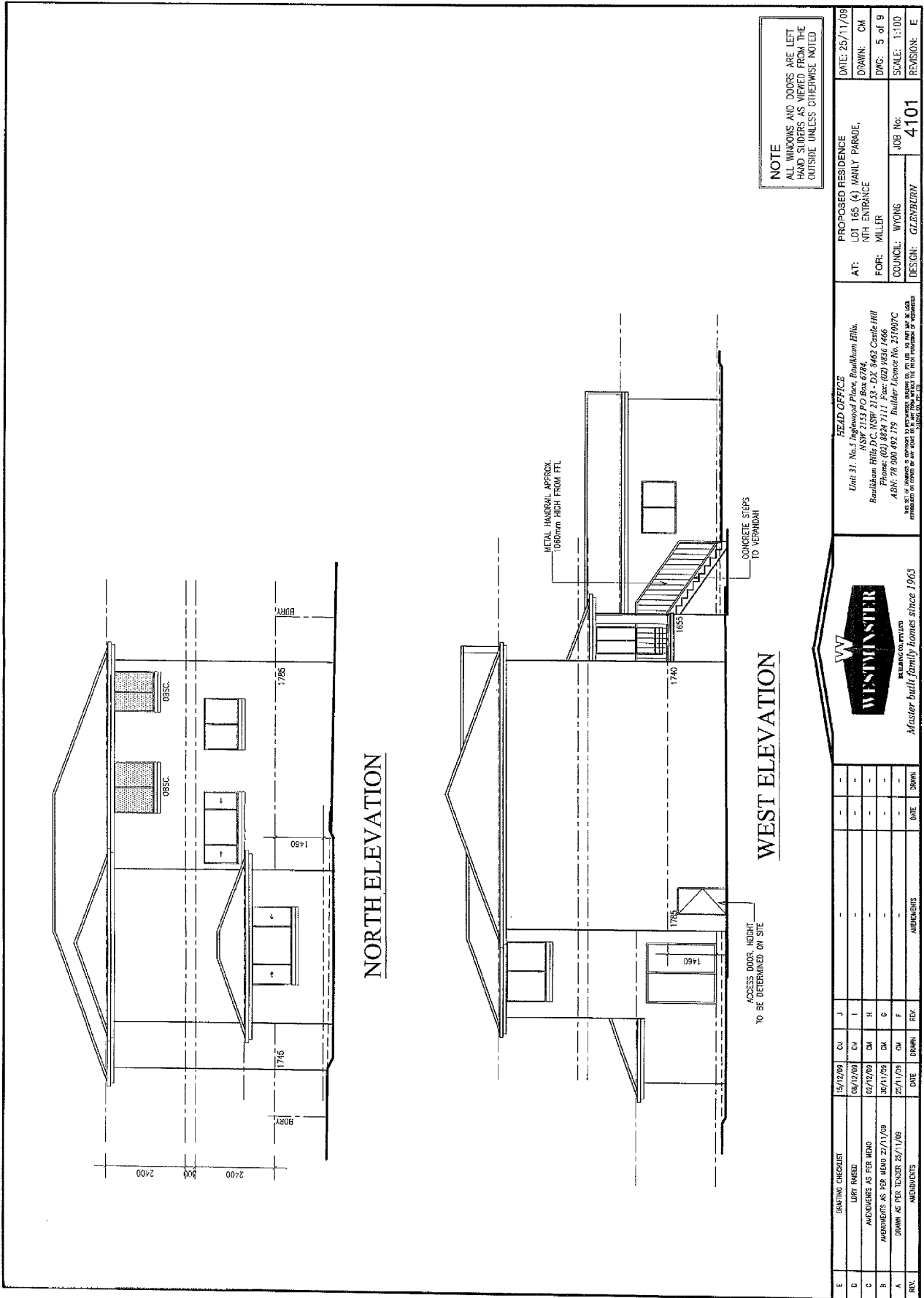


DATE: 25/11/09
PROPOSED RESIDENCE
LOT 105 (4) 'JANLY' PARADE,
WITH ENTRANCE
AT:
FOR: MILLER
COUNCIL: WYONG
DESIGN: GLANZMANN
JOB No: 4101
SCALE: 1:100
REVISION: E

HEAD OFFICE  
 Unit 31, No. 5 Inwood Place, Bankstown Hills,  
 NSW 2153 PO Box 6794,  
 Bankstown Hills, D.C. NSW 2153 - DX 8463 Castle Hill  
 Phone: (02) 8824 7111 Fax: (02) 9836 1466  
 A.B.N.: 78 000 492 119 Builder Licence No. 251007C  
THIS SET OF DRAWINGS IS PREPARED IN ACCORDANCE WITH THE NSW BUILDING REGULATIONS AND THE NSW BUILDING ACT 1993. THE USER OF THESE DRAWINGS SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.



REV.	DATE	BY	CHK.	DATE	BY	CHK.
E	15/12/09	CM	J			
D	08/12/09	CM	I			
C	02/12/09	CM	II			
B	26/11/09	CM	G			
A	25/11/09	CM	F			
REV.	DATE	DRAWN	CHK.	DATE	BY	CHK.



### 3.2 DA/1201/2009 - Proposed Single Storey Dwelling 34 Jane Ellen Crescent, Chittaway Bay

TRIM REFERENCE: da/1201/2009 - D02188581

AUTHOR: AJD

#### SUMMARY

An application as been received for the erection of a single storey dwelling at 34 Jane Ellen Crescent, Chittaway Bay. 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 in accordance with Council's resolution of 10 March 2010 regarding applications affected by the State Government's Sea Level Rise Policy.

<b>Applicant</b>	Newcastle Quality Constructions Pty Ltd
<b>Owner</b>	Mr D & Ms R Hamill
<b>Application No</b>	DA/1201/2009
<b>Description of Land</b>	Lot 4, DP 1103066 (34) Jane Ellen Crescent, Chittaway Bay
<b>Proposed Development</b>	Single Storey Dwelling
<b>Site Area</b>	585.4m <sup>2</sup>
<b>Zoning</b>	2(a) Residential
<b>Existing Use</b>	Vacant Land
<b>Employment Generation</b>	No
<b>Estimated Value</b>	\$179,060

#### 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, refuse Development Application No 1201/2009 for the following reasons:***

- a Pursuant to Section 79C (1)(c) of the Environmental Planning and Assessment Act 1979 the site is not considered to be suitable for the proposed development having regard to the NSW Floodplain Development Manual.***
- b Pursuant to Section 79C (1)(c) of the Environmental Planning and Assessment Act 1979 the site is not considered to be suitable for the proposed development having regard to NSW Government Sea Level Rise Policy Statement.***
- c Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 the proposal is not considered to be in the public interest given it does not adequately consider the impacts of climate change, in particular sea level rise, on the development.***
- d Pursuant to Section 79C (1)(e) of the Environmental Planning and Assessment Act 1979 it would not be in the public interest to approve the proposal given its departure from NSW Government Sea Level Rise Policy Statement which will set an undesirable precedent.***

**PRECIS**

- The application seeks approval for the erection of a new single storey dwelling.
- The site is zoned Zone No 2 (a) (Residential Zone) under the provisions of Wyong Local Environmental Plan 1991 (WLEP). A single dwelling is permissible with consent.
- The Department of Environment, Climate Change and Water's (DECCW'S) *NSW Sea Level Rise Policy Statement* applies to the development.
- The 1% Annual Exceedence Probability (AEP) flood level at the subject property is 2.2m AHD. Application of the DECCW's sea level planning benchmarks raises the 1% AEP to 3.1m AHD and the addition of a 0.5m free board of results in a finished floor level (FFL) for habitable rooms set at 3.60m AHD. The proposed development does not meet this standard.
- Prior to the lodgement of the development application the applicant made enquiries regarding the flood planning levels for the property. Council staff corresponded with McDonald Jones Homes advising that the proposal must comply with Council's Flood Prone Land Development Policy and that climate change and potential sea level rise may affect the 1% AEP flood level for the subject property.
- The applicant has been given the opportunity to amend the proposal to comply with the NSW Sea Level Rise Policy Statement, has declined to amend the application and has requested that the application be determined in its current form.
- Options Table

<b>Option</b>	<b>Implications</b>
Approve Development Application as proposed by applicant.	<ul style="list-style-type: none"> <li>• The development will not comply with the DECCW's <i>NSW Sea Level Rise Policy Statement</i>.</li> <li>• Will set an undesirable precedent.</li> <li>• Could result in legal issues for Council.</li> </ul>
Approve Development Application with a habitable floor level of 3.6 metres AHD.	<ul style="list-style-type: none"> <li>• This is a possible course of action for Council, however the applicant has advised they would not be satisfied with a determination resulting in a FFL set at 3.6m AHD.</li> <li>• The determination will be in accordance with Council's statutory obligations.</li> </ul>
Refuse the Development Application as recommended	<ul style="list-style-type: none"> <li>• This is considered to be the most appropriate course of action.</li> <li>• The determination will be in accordance with Council's statutory obligations.</li> </ul>

## INTRODUCTION

### The Site

The subject site, known as No 34 Jane Ellen Crescent, Chittaway Bay is located on the southern side of Jane Ellen Crescent. It has an area of 585.4m<sup>2</sup>, is generally level, is currently vacant and is located approximately 300m north west of Tuggerah Lake and 175 metres south of Chittaway Creek. Existing development in the surrounding area comprises single storey dwellings.



34 Jane Ellen Crescent, Chittaway Bay

### The Proposed Development

The proposal is for the erection of a single storey dwelling comprising 4 bedrooms, living room, dining room, kitchen, media room, 2 bathrooms and a 2 car garage.

The major issue for consideration relates to flooding and the application of the sea level benchmarks contained in the *NSW Sea Level Rise Policy Statement* (Policy Statement). The Policy Statement requires 0.9m to be added to the existing flood planning level (FPL) which requires the finished floor level (FFL) of habitable rooms within the dwelling to be set at 3.60m AHD, being 0.75m higher than the FFL proposed by the applicant.

### VARIATIONS TO POLICIES

Standard	0.9m sea level benchmark
Policy	NSW Sea Level Rise Policy Statement
Departure basis	Not supported

### HISTORY

The land is vacant and no previous development applications have been lodged for the site.

### PERMISSIBILITY

The subject site is zoned 2 (a) (Residential Zone) under the WLEP 1991. In accordance with Clause 13, a dwelling-house is permissible with consent.

### RELEVANT STATE/COUNCIL POLICIES AND PLANS

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

- Wyong Local Environmental Plan 1991
- State Environmental Planning Policy 71 (Coastal Protection)
- NSW Sea Level Rise Policy Statement, DECCW
- Development Control Plan 2005, Chapter 100 (Quality Housing)
- Development Control Plan 2005, Chapter 67 (Engineering Requirements)
- Development Control Plan 2005, Chapter 69 (Waste Management)
- Flood Prone Land Development Policy F5

### ECOLOGICALLY SUSTAINABLE PRINCIPLES

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

The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments. However, consideration of the potential impacts of climate change on the proposed development reveals that the proposal is not suitable for the subject site. The development, if approved, would not be sustainable and is not consistent with the overall objective of ESD; in particular:

- Inter-generational equity – the proposal does not have regard for maintaining the quality of the environment for future generations. The proposal would be highly vulnerable to risk of flooding which would potentially result in damage to the built environment and environs.

## ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the EP&A Act 1979, other statutory requirements and Council's policies, 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):

#### Climate Change

##### NSW Government Policy

DECCW published the *NSW Sea Level Rise Policy Statement* (Policy Statement) in 2009, which sets benchmarks for sea level rise. The planning benchmarks have been derived from credible national and international projections of sea level rise, as explained in the technical note that accompanies the Policy Statement.

The Policy Statement is intended to be used by Council's to assist in assessing the influence of sea level rise on new development.

The Policy Statement provides:

*The goal is to ensure that (development of land that is projected to be affected by sea level rise) recognises and can appropriately accommodate the projected impacts of sea level rise on coastal hazards and flooding over time, through appropriate site planning, design and development control.*

The current designated flood level (1% AEP) for the site is 2.2 metres AHD, with a Flood Planning Level of 2.7metres AHD.

Incorporating the sea level rise benchmark of 0.9m for the proposed development, the designated flood level increases to 3.1 metres AHD; with a Flood Planning Level of 3.60 metres AHD.

In order to design the development to comply with the flood planning level incorporating sea level rise, the floor levels of habitable rooms in the development would be approximately 1.1 metres above the natural and surrounding ground levels.

Legal advice was presented to Council on 27 January 2010 by Tim Robertson S.C. In summary the issues outlined by Tim Robertson were:

- Council is legally required to apply the sea level rise benchmarks in the Policy Statement which was released in October 2009.
- Should Council fail to take into account the climate change considerations contained within the NSW Flood Plain Development Manual or the Coastline Management Manual, both which consider climate change, it will be unable to establish "good faith" in accordance with the defences provided by the *Local Government Act, 1993*. Council would also lose its protection under the *Civil Liability Act*.



A summary of the legal advice and a chronology of informed advice are provided at Attachment 1.

#### NSW Flood Plain Development Manual

The subject site is located within a high hazard flood area, and the NSW Flood Plain Development Manual requires that a safe (i.e. low hazard flooding) escape route be available for the residents. Given the location of the site and surrounding topography there is no opportunity to provide an escape route during a flood event. It is considered that a habitable floor level with an RL of 3.60m AHD would provide safe harbour and sufficient opportunity for residents to remain in the dwelling during a flood event or alternatively to enable rescue.

It is worthwhile noting that the applicant has been given the opportunity to amend the proposal to comply with both the *NSW Sea Level Rise Policy Statement*, however, the applicant has requested that the application be determined in its current form.

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

##### *The relationship to the regional and local context and setting.*

Irrespective of the finished floor level, the development is considered acceptable in its appearance and in relation to the scale and massing of existing built structures in the immediate area. The development is domestic in scale and the proposed external materials and finishes are acceptable.

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

No issues to report.

##### *The impact on the public domain (recreation, public open space, pedestrian links).*

No issues to report.

##### *The impact on utilities supply.*

No issues to report.

##### *The effect on heritage significance.*

No issues to report.

##### *Any effect on other land resources.*

No issues to report.

##### *Any impact on the conservation of water.*

No issues to report.

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

The site is identified as having Class 3 soils according to the Acid Sulphate Soils Planning Map. In accordance with Wyong LEP Clause 15, a preliminary site investigation is justified where works are proposed which are likely to lower the water table. This is not applicable to the proposed development.

*Any effect on quality of air and microclimate conditions.*

No issues to report.

*Any effect on the flora and fauna.*

No issues to report.

*The provision of waste facilities.*

No issues to report.

*Whether the development will be energy efficient.*

No issues to report.

*Whether the development will cause noise and vibration.*

No issues to report.

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

#### Flooding & Sea Level Rise

Council's flood policy prohibits "new development" in high hazard flood areas. The proposed development is not considered "new development" and as such is not prohibited.

As discussed earlier in the report, the Flood Planning Level for the site under Council's Flood Prone Land Development Policy is set at 2.7 metres AHD. The development proposes a ground floor habitable floor level set at 2.85 metres AHD.

It should be noted that over time the return period for flooding events will be reduced by the affects of climate change. That is a 1:100 year flood event over time will have a return period of 1:17 years. This will potentially increase the frequency of inundation of the property.

During a flood event the Electricity Authority immediately shuts down the network in the flooded area resulting in the sewer system no longer functioning and the surcharging of raw sewage into the lake system. This situation occurred during the June 2007 flood event which correlated to a 1:10 year flood being up to RL1.5m AHD. This is approximately the same as the potential daily inundation level.

The NSW Department of Health consider all flood waters as potentially contaminated and containing untreated sewage. They advise that all unnecessary contact with flood waters should be avoided and in particular that children should be kept away from flood waters. This is pertinent to the safe evacuation of residents in deeper flood waters.

Incorporating the sea level rise benchmark of 0.9m for the proposed development, raises the Flood Planning Level to 3.60 metres AHD.

All ground floor habitable rooms in the proposed dwelling fail to achieve the Policy Statement's minimum flood planning level.

The applicant has been given the opportunity to amend the proposal to comply with the above legislative requirements, however, has requested that the application be determined in its current form.

Council has a statutory obligation to apply the sea level rise benchmarks outlined in the NSW Sea Level Rise Policy Statement and to consider flood planning levels in accordance with the Floodplain Development Manual and Council's Flood Prone Land Development Policy.

Approval of this development application in its current form would give rise to negative social and economic impacts, set an undesirable precedent and possibly result in liability issues for Council.

*Any risks from technological hazards.*

No issues to report.

*Whether the development provides safety, security and crime prevention.*

No issues to report.

*Any social impact in the locality.*

The proposed development is considered likely to have negative social impacts if it were to be approved by Council, by placing both people and property vulnerable to flooding events.

*Any economic impact in the locality.*

The proposed development is considered likely to have negative economic impacts if it were to be approved by Council, as a result of reliance on emergency services personnel to assist occupants in the event of a flood, in rectifying flood damaged property, and placing greater demands on surrounding services and infrastructure in this locality in order to sustain the development in its vulnerable location.

*Any impact of site design and internal design.*

The site design is not considered appropriate in terms of the finished floor levels for habitable rooms as they fail to achieve the Policy Statement's minimum flood planning level.

*Any impacts of construction activities (construction site management, protection measures).*

No issues to report.

*Any cumulative impacts.*

Allowing the proposed development contrary to the DECCW's *NSW Sea Level Rise Policy Statement* sea level rise planning benchmarks would contravene Council's obligation to consider certain matters as specified in Section 79C of the Act, including the likely impacts of the development, ecologically sustainable development and the public interest.

This would not only place Council in a position vulnerable to litigation, but may also encourage further development proposals that threaten to compromise the safety of occupants and be contrary to the public interest.

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

*Whether the proposal fits in the locality.*

As outlined earlier in this report, the proposed development is not considered suitable for the site given that the floor level does not adequately address sea level rise and the development would potentially result in adverse privacy, amenity and streetscape impacts if the floor levels were raised to incorporate the 2100 sea level rise planning benchmark.

**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 and no submissions were received.

*Any submission from public authorities.*

No issues to report.

**THE PUBLIC INTEREST (s79C(1)(e)):**

Any Federal, State and Local Government interests and community interests.

The information currently available to Council indicates that the site will likely be inundated if a designated flood event (1%AEP) occurs during the life of the proposed development. The information relied upon to make this prediction includes Council's flood studies and DECCW's *NSW Sea Level Rise Policy Statement*. Having assessed the proposal in accordance with Council's Flood Prone Land Development Policy, NSW Floodplain Development Manual and the projected sea level rise of 900mm by 2100, the development is not considered suitable for the site. To permit the development on the basis of a lack of full scientific certainty with respect to sea level rise, may result in lives and property being placed under threat.

**CONCLUSION**

The proposal has been assessed having regard to Section 79C of the EP&A Act1979, WLEP 1991, SEPP 71, NSW Sea Level Rise Policy Statement, Wyong DCP 2005, Chapter 100 (Quality Housing), DCP 2005, Chapter 67 (Engineering Requirements), DCP 2005 Chapter 69 (Waste Management) and Flood Prone Land Development Policy and is considered unsatisfactory.

The proposal is unacceptable in terms of the proposed reduced levels of the habitable floor room levels. The proposed development has not been designed having sufficient regard to the impacts of flooding and sea level rise and would, if approved, unacceptably contribute to social disruption, economic costs and environmental impacts during a 1% AEP flood event up to the year 2100.

Approval of the development application would also set an undesirable precedent and could result in liability issues for Council.

It is therefore recommended that the application be refused.

**Locality Plan**



**ATTACHMENTS**

- 1 Summary of Legal Opinion D02183843
- 2 Development Plans D02199524

**Summary of Legal Opinion & Chronology of Informed Advice****DERIVED LEGAL COMMENTS – SENIOR COUNSEL – TIM ROBERTSON  
WYONG COUNCILLOR BRIEFING SESSION - 27 JANUARY 2010**

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- There are two separate aspects to climate change – mitigation and adaptation.
- Mitigation – issue for Federal Government – Emissions Trading Scheme.
- Adaptation – how to adapt to what is projected to occur.
- Local government leadership is required as guidance and advice.
- “Taking into account climate change” Council has done so since 1990, ie. Floodplain Development Manual - 1990.
- Failure to consider the Floodplain Development Manual, Council can’t establish “good faith” under the defences to an action - *Local Government Act 1993*. *Civil Liability Act*.
- Council need to have regard to climate change in making decisions. In doing that, you need to use the most recent information.
- The Floodplain Manual is knowledge that a public authority would take into account.
- The Standard Instrument – LEP provides at clause 5.5 that Council as consent authority must take into account impacts on coastal processes, which includes sea level rises.
- SEPP 71 – clause 8 – which requires Council as consent authority to consider changes that occur in the coastal zone, which again includes sea level rise.
- Legally, Council needs to apply the precautionary principle - Council’s current obligation.
- The *Environmental Planning and Assessment Regulation* requires Council to consider the coastal policy. Council is explicitly required to look at sea level rises.
- Section 79C of the EP&A Act, and the Ministerial Directions to Council under section 117 of that Act require Council to look at climate change.
- The *Civil Liability Act* Council follows lawful process in administrative law/public law.
- Council should have a policy on climate change – Council should continue then to apply the most up to date knowledge.
- When Council knew about climate change, to reject applying it there is class action.
- Council’s DCPs should aim to set out other options.
- Where the policy or law has changed before determination as climate change is now being considered during this hiatus period there will invariably be conjecture and consternation which Council is obliged to manage. Hence the imperative for a consistently applied policy.

**Wyong Shire Council  
Coastal Management Plan  
Chronology of Informed Advice – 2 March 2010**

















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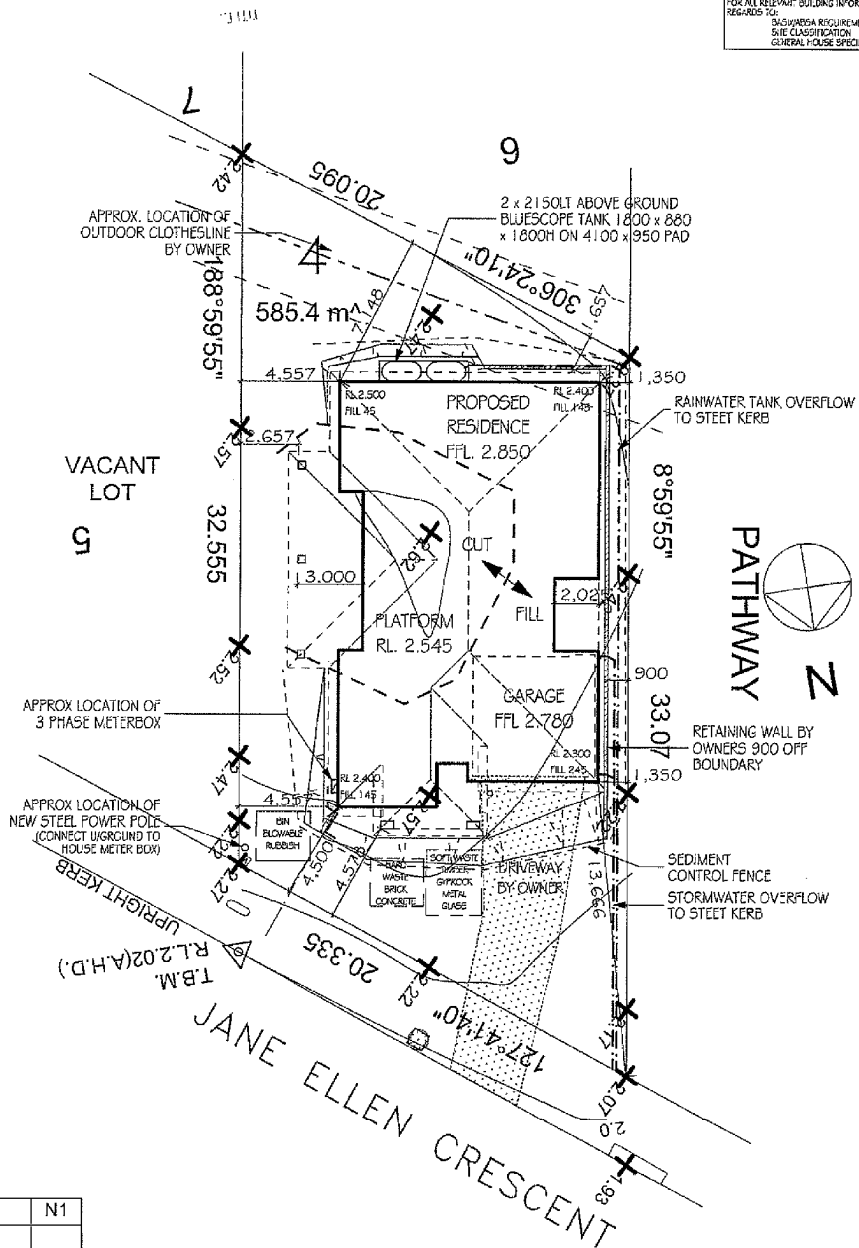
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- August 2009 Land & Environment Court Paper - Chief Judge Brian Preston on *"Climate Change Litigation"*
- September 2009 Land and Environment Paper Court - Justice Perter Biscoe on *"Climate Change, Stormwater and the Law"*
- September 2009 International Urban Design Conference *"Survival"*
- October 2009 Australian House of Representatives *"Climate Change and Environmental Impacts on Coastal Communities"*
- October 2009 *"NSW Government Sea Level Rise Policy"*
- October 2009 NSW Department of Environmental and Climate Change *"Practical Consideration of Climate Change"*
- October 2009 NSW Department of Climate Change and Water *"Draft Coastal Risk Management Guide"*
- October 2009 NSW Department of Environment Climate Change and Water *"Draft Flood Risk Management Guide"*
- November 2009 NSW Government Media Release *"Planning for Sea Level Rise"*
- November 2009 Planning Institute of Australia *"National Climate Change Adaptation Research Facility"*
- November 2009 Australian Government – Department of Climate Change *"Climate Change Risks to Australia's Coast"*
- November 2009 Wyong Shire Council *"Coastline Management Plan – Workshop 17/11/09"*
- December 2009 Wyong Shire Council *"Draft Climate Change Policy" - on exhibition*
- January 2010 Wyong Shire Council *"Draft Climate Change Policy" – update*
- January 2010 Legal Advice - Senior Counsel – Tim Robertson *"Address to Councillors – Litigation"*
- February 2010 Wyong Shire Council *"Draft Climate Change Policy" – update*
- February 2010 Gosford City Council *"50<sup>th</sup> Annual Floodplain Management Authority's Conference"*
- March 2010 Coast and Climate Change Council *"Coastal Climate Change Forum"*

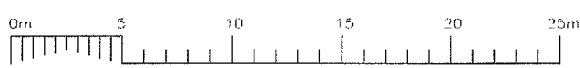
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REFER TO DATAPAGE (SHEET 2) OF DRAWING SET  
FOR ALL RELEVANT BUILDING INFORMATION WITH  
REGARDS TO:  
BUSHFIRE REQUIREMENTS  
SITE CLASSIFICATION  
GENERAL HOUSE SPECIFICATIONS


**LEGEND**

-  STREET TREE
-  WATER STOP VALVE
-  WATER HYDRANT
-  TELSTRA PIT
-  ELECTRICITY FUSE PILLAR
-  CONCRETE HEAD WALL
-  SEWER ACCESS CHAMBER
-  STORMWATER DRAINAGE PIT
-  TAP
-  WATER METER
-  LP LIGHT POLE
-  SIPT SEWER INSPECTION POINT
-  TOP CONCRETE KERB
-  DRIVE CROSSING
-  TOP CONCRETE KERB
-  KERB INLET PIT



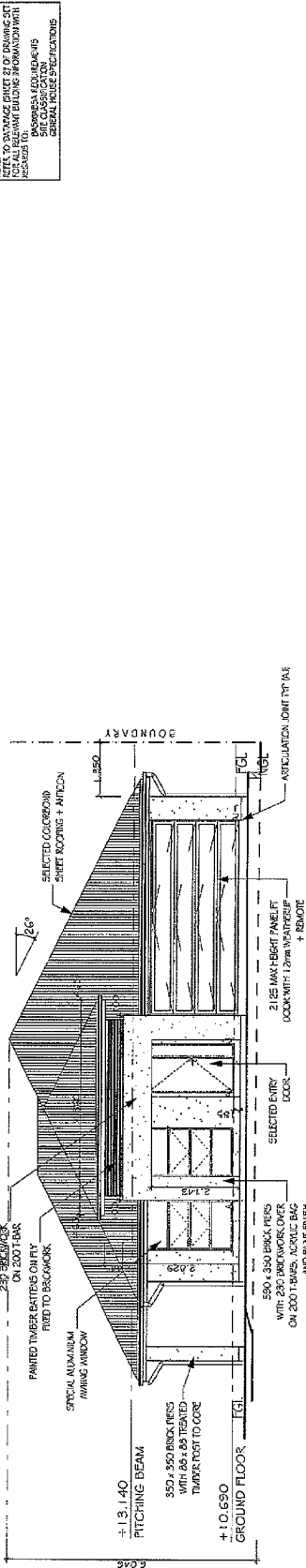
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WITHIN 1 KM. OF BREAKING SALT WATER	NO
WITHIN 100 M. OF SALT WATER	NO



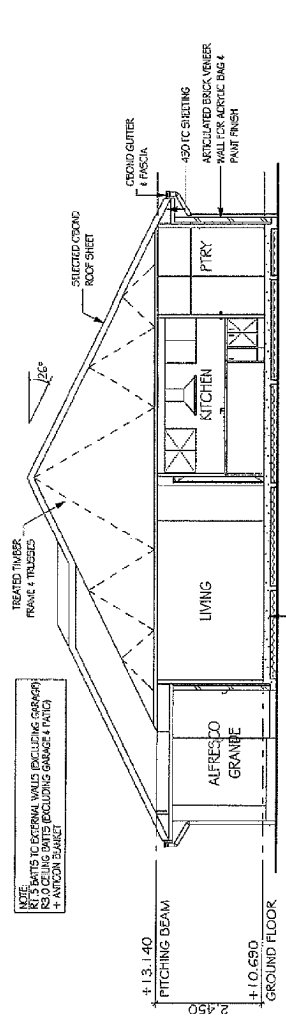
	 <p><b>McDONALD JONES</b> YOUR HOME YOUR DREAM</p> <p>PH: (02) 49 333400 FAX: (02) 49 335668</p>	<p><b>PROPOSED RESIDENCE AT</b> Lot 4 # 34 Jane Ellen Dr Chittaway Bay, NSW, 2261 FOR Dean &amp; Rebecca Hamill</p>	<p>C.P. NUMBER: 1103086</p> <p>Newhaven Balinese Tropicana Facade ISSUED DATE: NHACLAS8400 DRAWN: LBE ISSUE: CONTRACT CHECKED: SCA DATE: 27.10.09</p>	<p><b>SITE PLAN</b></p> <p>SHEET 3 of 9 SCALE: 1:200</p> <p>PACADE CODE: NHACLAS8400 CONTRACT No.: 201183</p>
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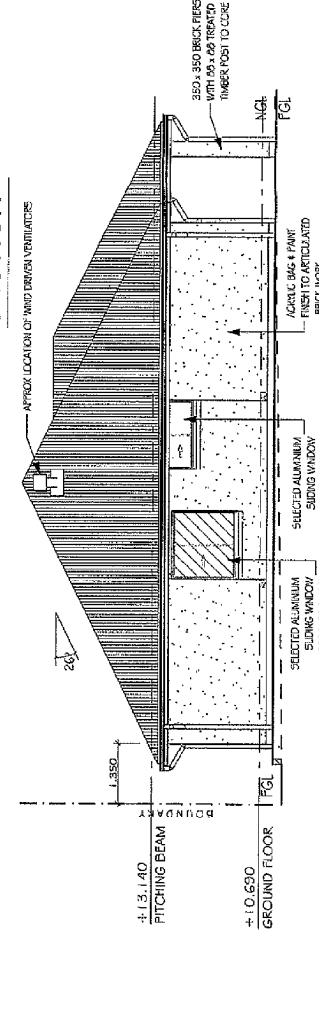
NOTE: TO PACKAGE SHEET 21 OF DRAWING SET FOR ALL RELEVANT BUILDING INFORMATION WITH REGARDS TO:  
 DIMENSIONS & LOCATIONS  
 SITE CLASSIFICATION  
 SPECIAL REQUIREMENTS



FRONT ELEVATION



SECTION

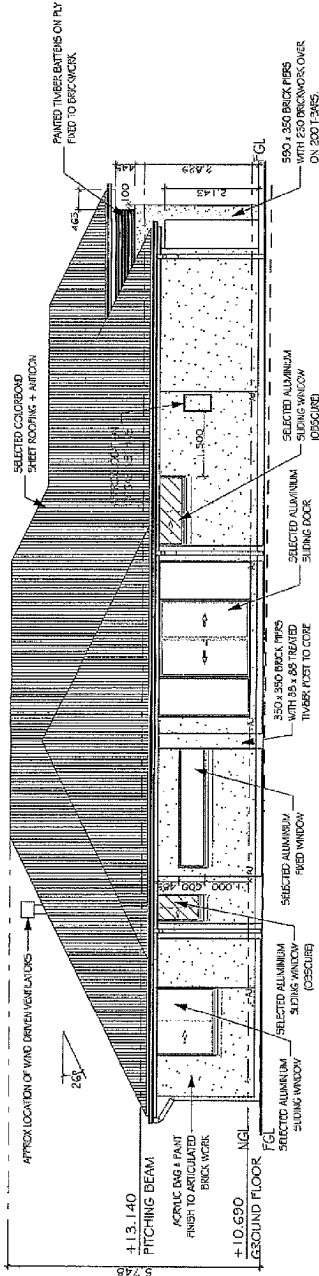


REAR ELEVATION

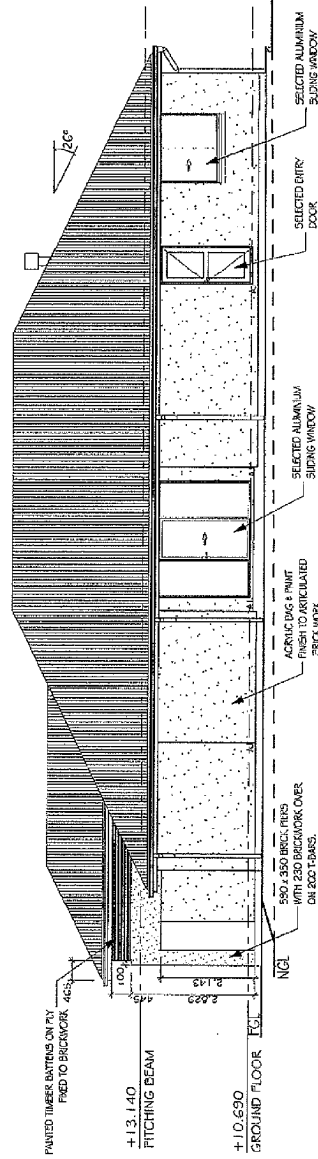
Newhaven Balinese Tropicana Fa  
 \*NOTE: ALL CUT/FILL BATTERS ARE 1:4 MAX GRADIENT

<p>PROPOSED RESIDENCE AT                  Lot 4 # 34 Jane Ellen Dr                  Chittaway Bay, NSW, 2261                  FOR Dean &amp; Rebecca Hamill</p>		<p>DEVELOPER:                  Newhaven                  Balinese Tropicana Facade</p>	<p>PROJECT NO:                  NHACLAS6400</p>	<p>DATE:                  21/08/20</p>	<p>CONTRACT NO:                  201183</p>
<p>PROJECT NO:                  1103086</p>		<p>SECTION</p>		<p>DATE:                  21/08/20</p>	<p>SCALE:                  1:100</p>
<p>RESOURCES:                  NHACLAS6400</p>		<p>PROJECT CODE:                  NHACLAS6400</p>		<p>DATE:                  21/08/20</p>	
<p>PH: (02) 49 335400 FAX: (02) 49 330866</p>		<p>McDONALD JONES                  YOUR HOME YOUR DREAM</p>		<p>AMENDMENTS</p>	
21/08/20	SKA	AMENDED SITE CLASSIFICATION			
21/08/20	SKA	CONTRACT PLANS			
18/08/20	SKA	NOI SUBMITTED WITH PERMITS			
DATE	BY	DESCRIPTION			
<p>© 2020</p>		<p>AMENDMENTS</p>			

NOTE: TO BE DRAWN ON THE BASIS OF THE SITE  
FOR ALL RELEVANT BUILDING INFORMATION WITH  
REGARDS TO ANY RELEVANT BUILDING INFORMATION  
SPECIFICATIONS TO THE DRAWINGS & REQUIREMENTS  
SHEE CLASSIFICATION  
GENERAL NOTES SPECIFICATIONS



SIDE ELEVATION 1 (East)



SIDE ELEVATION 1(West)

**ELEVATIONS**  
 OF NUMBER: 1103066  
 SHEET: 7 of 9  
 SCALE: 1:100

PROPOSED RESIDENCE AT  
 Lot 4 # 34 Jane Ellen Dr  
 Chittaway Bay , NSW, 2261  
 FOR Dean & Rebecca Hamill

**MCDONALD JONES**  
 Your Home Your Dream  
 PHONE: (02) 45 322400 FAX: (02) 49 336966

APPROVED SITE CLASSIFICATION  
 CONTRACT PLAN  
 HAS BEEN VERIFIED BY NS  
 DATE 14/04/18 VALIDITY AND DESCRIPTION

DATE	14/04/18	APPROVED BY	[Signature]
DATE	14/04/18	APPROVED BY	[Signature]
DATE	14/04/18	APPROVED BY	[Signature]
DATE	14/04/18	APPROVED BY	[Signature]

NEWHAVEN BALINESE TROPICANA Fa  
 \*NOTE: ALL CUT/FILL BATTERS ARE 1:4 MAX GRADIENT  
 PACKAGE CODE: NHACLAS8400  
 ISSUE: CONTRACT  
 CONTRACT No.: 201183  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 PROJECT NO.: 1103066  
 SHEET: 7 of 9  
 SCALE: 1:100

### **3.3 DA/1153/2009/A - Modification to an approved Dwelling 2 Marina Street, Budgewoi**

TRIM REFERENCE: da/1153/2009/A - D02188641

AUTHOR: AJD

#### **SUMMARY**

A Section 96(1A) application has been received to modify Development Consent No. 1153/2009 for the erection of a Dwelling at 2 Marina Parade, Budgewoi. The modification requests the deletion of condition 4 which sets the habitable floor level of the dwelling at 3.4 metres AHD. In addition, the setback of the garage was required to be increased from 5.5 metres to 6 metres from the front boundary. The application has been examined having regard to sections 96 and 79C of the Environmental Planning and Assessment Act (EP& A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report. The application is reported to Council in accordance with Council's resolution of 10 March 2010 regarding applications affected by the State Government's Sea Level Rise Policy.

<b>Applicant</b>	John and Carol Hannaford
<b>Owner</b>	John and Carol Hannaford
<b>Application No</b>	DA/1153/2009/A
<b>Description of Land</b>	Lot 2189 DP 30673, 2 Marina Street, Budgewoi
<b>Proposed Development</b>	Section 96(1A) Modification to an Approved Dwelling
<b>Site Area</b>	580.6m <sup>2</sup>
<b>Zoning</b>	2(b) Residential
<b>Existing Use</b>	Vacant Land
<b>Employment Generation</b>	No
<b>Estimated Value</b>	\$211,784

#### **RECOMMENDATION**

***That Council, having regard to the matters for consideration detailed under Section 96(1A) and Section 79C of the Environmental Planning and Assessment Act 1979, modify Development Consent No 1153/2009 issued on 26 November 2009 as follows:***

- 1 That the reference to the finished floor level within conditions 4 and 6 be amended to read RL 3.6m AHD.***

#### **PRECIS**

- The Section 96 (1A) application seeks the deletion of condition 4 of Development Consent No. 1153/2009 which requires a habitable floor level of 3.4 metres Australian Height Datum (AHD) and the garage to be setback 6 metres from the front boundary.

- Condition 4 was imposed in accordance with Council's then Draft Climate Change Policy which permitted the habitable floor level to be determined based on a building life expectancy of 70 years and the garage setback requirements of Wyong DCP 2005 – Chapter 99.
- The subject Section 96(1A) application was made following Council's decision to rescind its Draft Climate Change Policy.
- The Department of Environment, Climate Change and Water's (DECCW) *NSW Sea Level Rise Policy Statement* applies to the development.
- The 1% Annual Exceedence Probability (AEP) flood level at the subject property is 2.2m AHD with a flood planning level of 2.7 metres AHD. Application of the DECCW's sea level planning benchmarks raises the 1% AEP to 3.1m AHD and within the addition of a 0.5m free board results in a finished floor level (FFL) for habitable rooms of 3.6 metres AHD. This level is 0.2m higher than that approved in the original consent.
- Determination of the Section 96(1A) by way of refusal is not considered a preferred option as this would result in the current condition 4 remaining unchanged, effectively requiring a habitable FFL of 3.4 metres AHD which is below the 3.6 metres AHD required by the *NSW Sea Level Rise Policy Statement*.
- It is recommended that Development Consent No. 1153/2009 be modified to require the habitable floor level be increased to 3.6 metres AHD in accordance with DECCW NSW Sea Level Rise Policy Statement and Council's Flood Prone Land Development Policy.
- Prior to the lodgement of the development application Council staff provided advice that the proposal must comply with Council's Flood Prone Land Development Policy and that climate change and potential sea level rise may affect the 1% AEP flood level for the subject property.

#### Options Table

Option	Implications
<p>Approve Section 96 application, i.e. delete the requirement for a habitable floor level of 3.4 metres AHD and a garage front setback of 6 metres.</p>	<ul style="list-style-type: none"> <li>• The habitable floor level will be reduced to 2.75 metres AHD and the garage front setback to 5.5 metres</li> <li>• The development will not comply with the DECCW's <i>NSW Sea Level Rise Policy Statement</i>.</li> <li>• The garage front setback will not comply with Council's Wyong DCP 2005 – Chapter 99 Building Lines.</li> <li>• Will set an undesirable precedent.</li> <li>• Could result in legal issues for Council.</li> </ul>

Option	Implications
Refuse S96 i.e. retain the requirement for a habitable floor level of 3.4 metres AHD and a garage front setback of 6 metres.	<ul style="list-style-type: none"> <li>• The development will not comply with the DECCW's <i>NSW Sea Level Rise Policy Statement</i>.</li> <li>• Will set an undesirable precedent.</li> <li>• Could result in legal issues for Council.</li> </ul>
Modify approval as recommended.	<ul style="list-style-type: none"> <li>• This is considered to be the most appropriate course of action.</li> <li>• The determination will be in accordance with Council's statutory obligations.</li> <li>• The dwelling will comply with the NSW Sea Level Rise Policy Statement and Council's Flood Prone Land Development Policy.</li> </ul>

## INTRODUCTION

### The Site

The subject site, known as No 2 Marina Street, Budgewoi is located on the eastern side of Marina Street. It has an area of 580.6m<sup>2</sup>, is generally level, currently vacant and located approximately 180m south of Lake Munmorah. Existing development in the surrounding area comprises a mix of single and two storey dwellings, dual occupancies and multiple unit developments. Immediately opposite the site is the Halekulani Bowling Club. The subject site and surrounding lands are low lying, with most of the area being flood affected.



No. 2 Marina Street, Budgewoi

### The Proposal

The proposal is for the modification of Development Consent No. 1153/2009 for a Dwelling at 2 Marina Parade, Budgewoi. The modification requests the deletion of condition 4 which requires the habitable floor level of the dwelling to be set at 3.4 metres AHD and the garage to be increased from a 5.5 metre setback to a 6 metre setback from the front boundary. No further plans or details accompany the application.

Condition 4 states:

*“The old floor level for this development was 2.2m above AHD resulting in a minimum habitable floor level of 2.7m AHD. However under the new Climate Change Policy the flood level for this development is 2.9m above AHD resulting in a minimum habitable floor level of 3.4m above AHD based on Asset Life of 70 years. As such submit amended plans showing the floor level at 3.4m AHD and relocate the garage of the dwelling at least 6m behind the front boundary as marked on the approved plans.”*

### VARIATIONS TO POLICIES

Standard	0.9m sea level benchmark
Policy	NSW Sea Level Rise Policy Statement
Departure basis	Not supported

Standard	Garage to be setback 6m from the front boundary
Variation Sought	Garage to be setback 5.5m from the front boundary
Policy	Wyong DCP 2005 – Chapter 99 – Building Lines
Departure basis	Not supported

### HISTORY

Development Consent was granted under DA/1153/2009 on 26 November 2009 for a single storey dwelling. This application is now the subject of an application under Section 96(1A) of the (EP&A Act 1979 to modify condition 4 of the consent.

### PERMISSIBILITY

The subject site is zoned 2 (b) (Multiple Dwelling Residential Zone) under the Wyong Local Environmental Plan 1991 (WLEP). In accordance with Clause 13, a dwelling-house is permissible with consent.

**RELEVANT STATE/COUNCIL POLICIES AND PLANS**

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

- Wyong Local Environmental Plan 1991
- State Environmental Planning Policy 71 (Coastal Protection)
- NSW Sea Level Rise Policy Statement, The Department of Environment, Climate Change and Water NSW
- Development Control Plan 2005, Chapter 100 (Quality Housing)
- Development Control Plan 2005, Chapter 99 (Building Lines)
- Development Control Plan 2005, Chapter 67 (Engineering Requirements)
- Development Control Plan 2005, Chapter 69 (Waste Management)
- Flood Prone Land Development Policy F5

**ECOLOGICALLY SUSTAINABLE PRINCIPLES**

The proposal has been assessed having regard to ecologically sustainable development (ESD) principles and is considered to be inconsistent with the principles.

The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments. However, consideration of the potential impacts of climate change on the proposed development reveals that the deletion of condition 4 is unacceptable. A habitable floor level below 3.6 metres AHD would if approved, be unsustainable and inconsistent with the overall objective of ESD; in particular:

- Inter-generational equity – the development would not have regard for maintaining the quality of the environment for future generations. The proposal would be highly vulnerable to risk of flooding which would potentially result in damage to the built environment and environs.

**ASSESSMENT**

Having regard for the matters for consideration detailed in Sections 96 and 79C of the EP&A Act, 1979, other statutory requirements and Council's policies, the assessment has identified the following key issues, which are elaborated upon for Council's information.

**SECTION 96 MODIFICATION**

Under the provisions of Section 96(1A) of the EP & A Act, Council may, in response to an application, modify a consent if the proposal is substantially the same development as the development for which the consent was originally granted.

The proposed application for lowering of the floor level and relocation of the dwelling 0.5m closer to the street is considered to be substantially the same development as that approved under the original consent. As such the consent may be modified in accordance with the provisions of Section 96 of the EP&A Act, 1979.

**THE PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/ POLICIES (s79C(1)(a)(i-iv):  
Climate Change**NSW Government Policy

DECCW published the *NSW Sea Level Rise Policy Statement* (Policy Statement) in 2009, which sets benchmarks for sea level rise. The planning benchmarks have been derived from credible national and international projections of sea level rise, as explained in the technical note that accompanies the Policy Statement.

The Policy Statement is intended to be used by Councils' to assist in assessing the influence of sea level rise on new development.

The Policy Statement provides:

*The goal is to ensure that (development of land that is projected to be affected by sea level rise) recognises and can appropriately accommodate the projected impacts of sea level rise on coastal hazards and flooding over time, through appropriate site planning, design and development control.*

The subject site is recognised as being fully flood affected. The current designated flood level (1% AEP) for the site is 2.2 metres AHD, with a Flood Planning Level of 2.7 metres AHD.

Incorporating the sea level rise benchmark of 0.9 metres for the proposed development, the flood level increases to 3.1 metres AHD; with a Flood Planning Level of 3.60 metres AHD.

The survey plan accompanying the application indicates natural ground levels ranging from 1.29 metres AHD in the north eastern (rear) corner of the property up to 1.69 metres AHD at the south western (front) corner of the property. In order to design the development to comply with the flood planning level incorporating sea level rise, the floor levels of habitable rooms would be approximately 2.10 metres above the natural and surrounding ground levels.

It should be noted that, over time, the return period for flooding events will be reduced by the affects of climate change. That is a 1:100 year flood event over time will have a return period of 1:17 years. This will potentially increase the frequency of inundation of the property.

Over and above the sea level rise affect on the designated flood level there is also the prospect that the property will be regularly inundated by lake water.

A statistical analysis was undertaken on the Tuggerah Lakes water levels between 1984 and 1989. This statistical analysis determined that once every twenty hours the lake level may be as high as RL 0.55m AHD. When the predicted sea level rise is added this means that at 2050 this level could increase up to RL 0.95m AHD and at 2100 up to RL 1.45m AHD.

Based on the survey levels provided with the application together with the projected sea level rises, the road adjacent to the site may be inundated by 2050. Further, by 2100 up to 75% of the site could also be inundated once every 20 hours.



Legal advice was presented to Council on 27 January 2010 by Tim Robertson S.C. In summary the issues outlined by Tim Robertson were:

- Council is legally required to apply the sea level rise benchmarks in the Policy Statement which was released in October 2009.
- Should Council fail to take into account the climate change considerations contained within the NSW Flood Plain Development Manual or the Coastline Management Manual, both which consider climate change, it will be unable to establish “good faith” in accordance with the defences provided by the *Local Government Act, 1993*. Council would also lose its protection under the *Civil Liability Act*.

A summary of the legal advice and a chronology of informed advice are provided as Attachment 1.

#### NSW Flood Plain Development Manual

The subject site is located within a high hazard flood area and the NSW Flood Plain Development Manual requires that a safe (i.e. low hazard flooding) escape route be available for the residents. Given the location of the site and surrounding topography there is no opportunity to provide an escape route during a flooding event. It is considered that a habitable floor level with an RL of 3.60 metres AHD would provide safe harbour and sufficient opportunity for residents to remain in the dwelling during a flood event or alternatively, to enable rescue.

#### Development Control Plan 2005, Chapter 99 (Building Lines)

Section 5.1 Building Lines provides that garages are to be setback a minimum 6 metres from the street frontage.

Condition 4 requires that the garage be setback an additional 0.5m from the front boundary to achieve the required setback of 6 metres.

Clause 2.3 of Chapter 99 provides the following relevant objectives with regard to building lines:

*“To ensure that new development:*

- *is functional and attractive and*
- *contributes positively to the quality and character of its locality”*

The objective seeks to ensure that garages and the driveway area adjacent are functional, attractive and positively contribute to the quality and character of the locality.

In this instance, it is considered that the proposed variation to 5.5 metres should not be supported for the following reasons:

- No justification has been provided by the applicant for the proposed variation.
- The 6 metre front setback requirement is a consistently applied standard for new dwellings.
- Supporting the variation would create an undesirable precedent in an area undergoing urban renewal.

- The average setback to the garages of other dwellings in Marina Street is approximately 14 metres.

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

*The relationship to the regional and local context and setting.*

Provided that the garage is setback 6 metre from the front boundary and irrespective of the finished floor level of the dwelling, the completed development is considered acceptable in terms of its appearance and its relation to the scale and massing of existing built structures in the immediate area. The development is domestic in scale and the proposed external materials and finishes are acceptable.

*The access, transport and traffic management measures.*

No issues to report.

*The impact on the public domain (recreation, public open space, pedestrian links).*

No issues to report.

*The impact on utilities supply.*

No issues to report.

*The effect on heritage significance.*

No issues to report.

*Any effect on other land resources.*

No issues to report.

*Any impact on the conservation of water.*

No issues to report.

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

The site is identified as having Class 3 soils according to the Acid Sulphate Soils Planning Map. In accordance with Wyong LEP Clause 15, a preliminary site investigation is justified where works are proposed which are likely to lower the water table. This is not applicable to the proposed development.

*Any effect on quality of air and microclimate conditions.*

No issues to report.

*Any effect on the flora and fauna.*

No issues to report.

*The provision of waste facilities.*

No issues to report.

*Whether the development will be energy efficient.*

No issues to report.

*Whether the development will cause noise and vibration.*

No issues to report.

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

The Section 96(1A) application seeks to delete condition 4 which requires a FFL for habitable rooms of 3.4 metres AHD. The effect of this modification would be that the FFL for habitable rooms would be reduced to 2.75 metres AHD, the level originally proposed by the applicant.

Under Council's Flood Prone Land Development Policy the Flood Planning Level for the site is 2.7 metres AHD. The proposed floor level of 2.75 metres AHD would comply with Council's policy.

As discussed earlier in the report, Council has a statutory obligation to apply the sea level rise benchmarks within DECCW NSW Sea Level Rise Policy Statement released in October 2009. The Policy Statement's sea level rise benchmark of 0.9 metres raises the Flood Planning Level for the proposed development to 3.60 metres AHD.

As a consequence, the floor level of the dwelling approved under the original consent and the floor level proposed by the Section 96(1A) application are both below the minimum 3.60 metres AHD required.

Approval of the Section 96(1A) in any manner other than to require a FFL for habitable rooms to be set at 3.6 metres AHD would give rise to negative social and economic impacts, set an undesirable precedent and possibly result in potential liability issues for Council.

*Any risks from technological hazards.*

No issues to report.

*Whether the development provides safety, security and crime prevention.*

No issues to report.

*Any social impact in the locality.*

The proposed development is considered likely to have negative social impacts if it were to be approved by Council, by placing both people and property vulnerable to flooding events.

**3.3 DA/1153/2009/A - Modification to an approved Dwelling 2 Marina Street, Budgewoi (contd)**

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*Any economic impact in the locality.*

The proposed development is considered likely to have negative economic impacts if it were to be approved by Council, as a result of reliance on emergency services personnel to assist occupants in the event of a flood in rectifying flood damaged property and placing greater demands on surrounding services and infrastructure in this locality in order to sustain the development in its vulnerable location.

*Any impact of site design and internal design.*

No issues to report.

*Any impacts of construction activities (construction site management, protection measures).*

No issues to report.

*Any cumulative impacts.*

Allowing the proposed development contrary to the DECCW's *NSW Sea Level Rise Policy Statement's* sea level rise planning benchmarks would contravene Council's obligation to consider certain matters as specified in Section 79C of the Act. This includes the likely impacts of the development, ecologically sustainable development and the public interest.

This would not only place Council in a position vulnerable to litigation, but may also encourage further development proposals that threaten to compromise the safety of occupants and defy the public interest.

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

*Whether the proposal fits in the locality.*

As outlined earlier in this report, the proposed modification if approved would result in a development which would not fit in the locality because of the FFL not adequately catering for sea level rise and the garage front setback being less than the 6 metres required.

**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 and no submissions were received.

*Any submission from public authorities.*

No issues to report.

**THE PUBLIC INTEREST (s79C(1)(e)):**

*Any Federal, State and Local Government interests and community interests.*

The information currently available to Council indicates that the site will likely be inundated if a designated flood event (1%AEP) occurs during the life of the proposed development. The information relied upon to make this prediction includes Council's flood studies and the DECCW's *NSW Sea Level Rise Policy Statement*. Having assessed the proposal in accordance with Council's Flood Prone Land Development Policy, the NSW Floodplain Development Manual and the projected sea level rise of 900mm by 2100; the application as sought by the applicant in its current form is not considered suitable for the site. To permit the development on the basis of a lack of full scientific certainty with respect to sea level rise, may result in lives and property being placed under threat.

**OTHER MATTERS FOR CONSIDERATION**

**Council's Power to implement additional or modified conditions under Section 96 of the EP&A Act**

As previously indicated, condition 4, in its current form, does not reflect the requirements of the Policy Statement.

Therefore conditions 4, 6 & 8 which relate to flooding are required to be amended. Although this is not the intent of the applicant, recent outcomes from the Land and Environment Court indicate that Council is within its power to make such an amendment when assessing an application under Section 96.

Land and Environment Court Guidance

The EP & A Act does not specifically address with regard to what matters can be considered and altered in relation to a Section 96 application. The most appropriate guidance is therefore found in the leading Court Case with regard to this issue being 1643 Pittwater Road v Pittwater Council NSWLEC 685 [2004].

In 1643 Pittwater Road McClellan J concluded that Council may impose conditions when determining a s96 application for modification of a development consent. This power to impose conditions is limited as follows:

- The modified development must be substantially the same development as the development originally approved by Council.
- Council's power to impose conditions is limited to the matters raised for consideration by the modification application. For example, if an application is made to modify the height of a building, Council may consider any matter which is either directly or indirectly related to height and may impose conditions accordingly. However, for example, if the application is to change the colour of a building Council would not have power to reconsider the provision of car parking for the development.

Therefore Council may consider all matters relevant to the issues raised in the application for modification and provide additional or modified conditions if required.

In this case, it is appropriate for Council to modify conditions 4, 6 & 8 each relating to the floor level of the proposed dwelling. This will result in a development substantially the same as originally that approved with the modified conditions relate exclusively to the matter for consideration raised in the modified application being the floor level of the dwelling and garage location. It is therefore within Council's power to modify the conditions under this application.

### **CONCLUSION**

The proposal has been assessed having regard to Sections 96 and 79C of the EP & A Act 1979, WLEP 1991, SEPP 71, NSW Sea Level Rise Policy Statement, Wyong DCP 2005 Chapter 100 (Quality Housing), DCP 99 (Building Lines), DCP 67 (Engineering Requirements), DCP 69 (Waste Management) and Flood Prone Land Development Policy. The proposed dwelling and garage is considered satisfactory subject to the dwelling having a finished floor level set at 3.6 metres AHD and the front setback to the garage being increased to 6 metres.

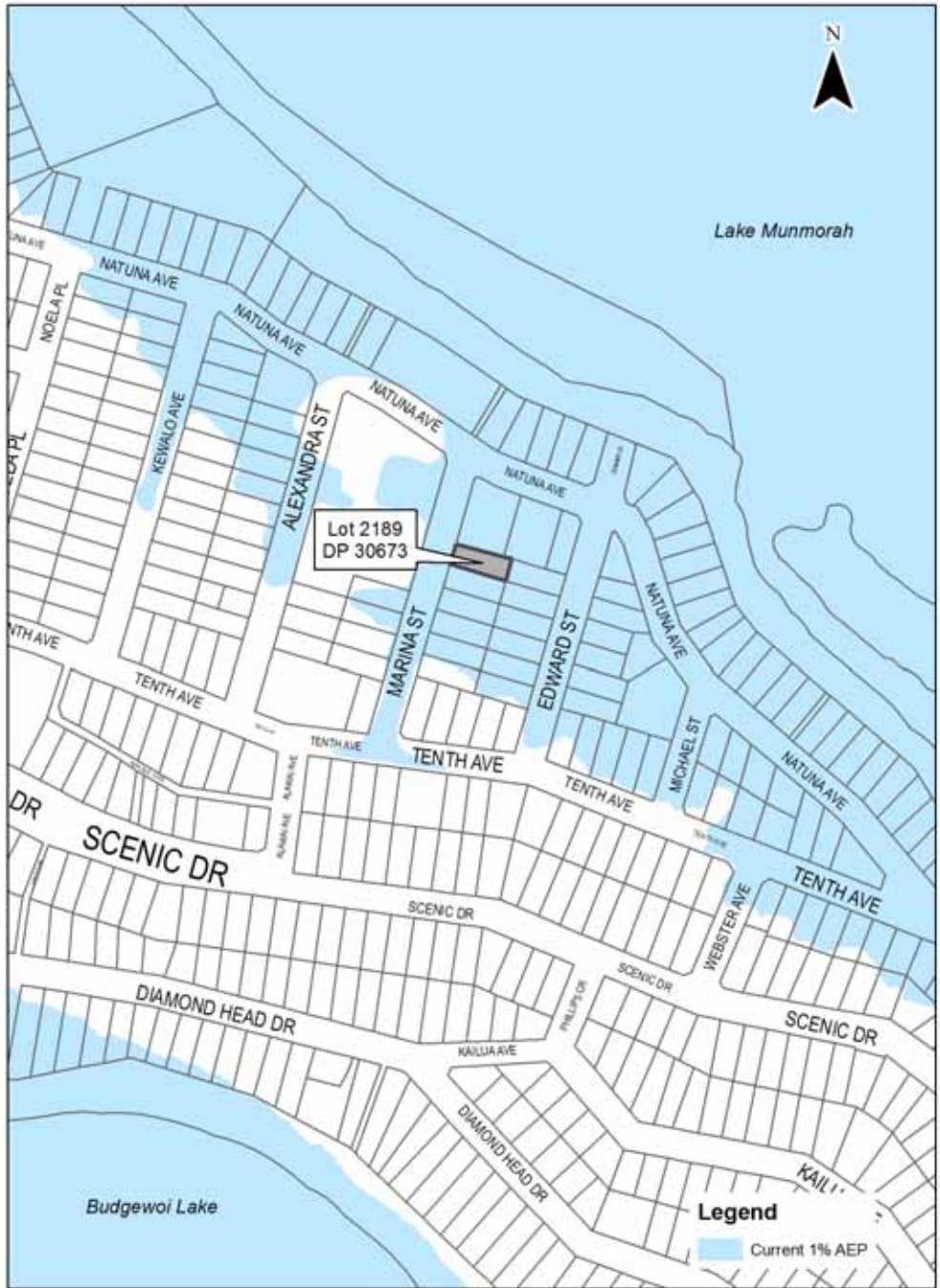
The proposed modifications sought by the applicant are considered unacceptable in terms of the proposed reduced levels of the habitable rooms and the front garage setback. The proposed modification to the floor level does not have sufficient regard to the impacts of flooding and sea level rise and would, if approved, unacceptably contribute to social disruption, economic costs and environmental impacts during a 1% AEP flood event up to the year 2100.

Furthermore, the proposed reduction in the front garage setback to 5.5m would detrimentally affect the character of the immediate locality.

Approval of the application under Section 96(1A) in the manner proposed by the applicant would also set an undesirable precedent and could result in liability issues for Council.

It is therefore recommended that the application under Section 96(1A) be approved as outlined in the report.

Locality Plan



**ATTACHMENTS**

- |   |  |           |
|---|--|-----------|
| 1 | Summary of Legal Opinion & Chronology of Informed Advice | D02183968 |
| 2 | Approved Plan & Elevation Drawings DA/1153/2009          | D02183977 |

**Summary of Legal Opinion & Chronology of Informed Advice****DERIVED LEGAL COMMENTS – SENIOR COUNSEL – TIM ROBERTSON  
WYONG COUNCILLOR BRIEFING SESSION - 27 JANUARY 2010**

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- There are two separate aspects to climate change – mitigation and adaptation.
- Mitigation – issue for Federal Government – Emissions Trading Scheme.
- Adaptation – how to adapt to what is projected to occur.
- Local government leadership is required as guidance and advice.
- “Taking into account climate change” Council has done so since 1990, ie. Floodplain Development Manual - 1990.
- Failure to consider the Floodplain Development Manual, Council can’t establish “good faith” under the defences to an action - *Local Government Act 1993*. *Civil Liability Act*.
- Council need to have regard to climate change in making decisions. In doing that, you need to use the most recent information.
- The Floodplain Manual is knowledge that a public authority would take into account.
- The Standard Instrument – LEP provides at clause 5.5 that Council as consent authority must take into account impacts on coastal processes, which includes sea level rises.
- SEPP 71 – clause 8 – which requires Council as consent authority to consider changes that occur in the coastal zone, which again includes sea level rise.
- Legally, Council needs to apply the precautionary principle - Council’s current obligation.
- The *Environmental Planning and Assessment Regulation* requires Council to consider the coastal policy. Council is explicitly required to look at sea level rises.
- Section 79C of the EP&A Act, and the Ministerial Directions to Council under section 117 of that Act require Council to look at climate change.
- The *Civil Liability Act* Council follows lawful process in administrative law/public law.
- Council should have a policy on climate change – Council should continue then to apply the most up to date knowledge.
- When Council knew about climate change, to reject applying it there is class action.
- Council’s DCPs should aim to set out other options.
- Where the policy or law has changed before determination as climate change is now being considered during this hiatus period there will invariably be conjecture and consternation which Council is obliged to manage. Hence the imperative for a consistently applied policy.

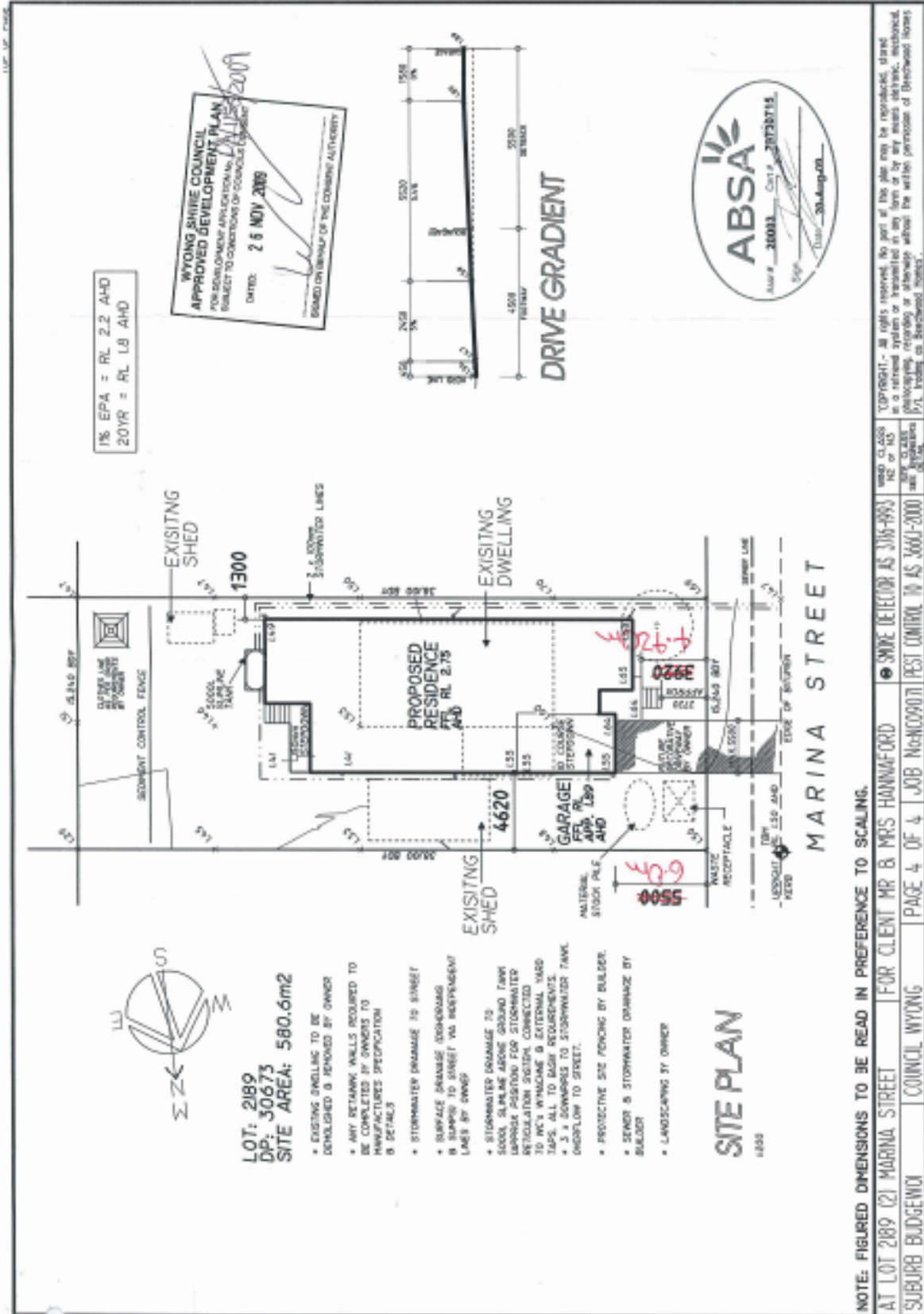


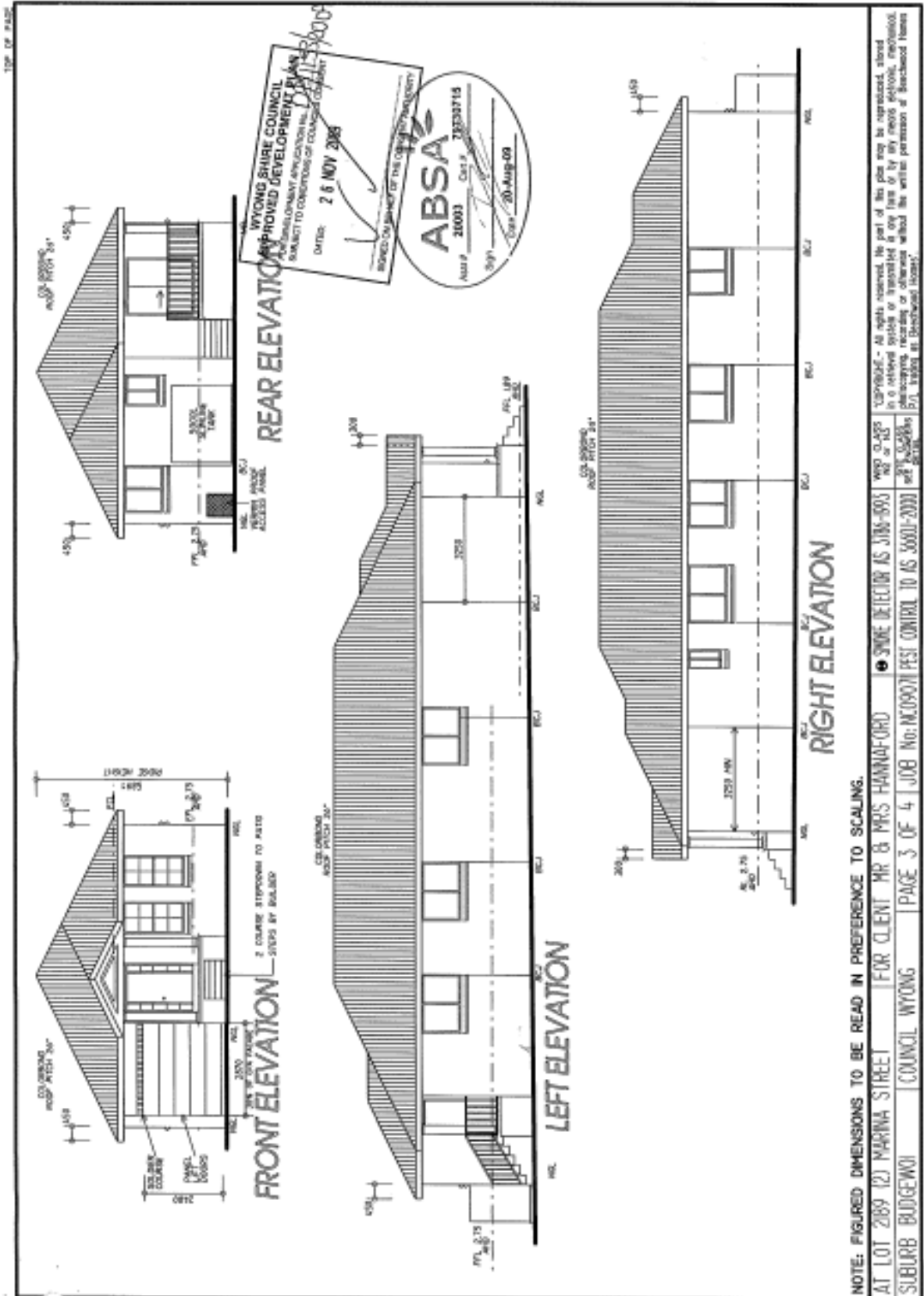
**Wyong Shire Council**  
**Coastal Management Plan**  
**Chronology of Informed Advice – 2 March 2010**

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F2009/01385

- August 2009 Land & Environment Court Paper - Chief Judge Brian Preston on *"Climate Change Litigation"*
- September 2009 Land and Environment Paper Court - Justice Perter Biscoe on *"Climate Change, Stormwater and the Law"*
- September 2009 International Urban Design Conference *"Survival"*
- October 2009 Australian House of Representatives *"Climate Change and Environmental Impacts on Coastal Communities"*
- October 2009 *"NSW Government Sea Level Rise Policy"*
- October 2009 NSW Department of Environmental and Climate Change *"Practical Consideration of Climate Change"*
- October 2009 NSW Department of Climate Change and Water *"Draft Coastal Risk Management Guide"*
- October 2009 NSW Department of Environment Climate Change and Water *"Draft Flood Risk Management Guide"*
- November 2009 NSW Government Media Release *"Planning for Sea Level Rise"*
- November 2009 Planning Institute of Australia *"National Climate Change Adaptation Research Facility"*
- November 2009 Australian Government – Department of Climate Change *"Climate Change Risks to Australia's Coast"*
- November 2009 Wyong Shire Council *"Coastline Management Plan – Workshop 17/11/09"*
- December 2009 Wyong Shire Council *"Draft Climate Change Policy" - on exhibition*
- January 2010 Wyong Shire Council *"Draft Climate Change Policy" – update*
- January 2010 Legal Advice - Senior Counsel – Tim Robertson *"Address to Councillors – Litigation"*
- February 2010 Wyong Shire Council *"Draft Climate Change Policy" – update*
- February 2010 Gosford City Council *"50<sup>th</sup> Annual Floodplain Management Authority's Conference"*
- March 2010 Coast and Climate Change Council *"Coastal Climate Change Forum"*





### 3.4 Rezoning Requests - RZ/18/2009 - 1 London Drive, North Wyong, RZ/19/2009 - 13-15 Hereford Street, Berkeley Vale and RZ/20/2009 - 1 Bryant Drive, Tuggerah

TRIM REFERENCE: F2004/00526 - D02199252

AUTHOR: SA; KH; JM

#### SUMMARY

Reporting on the receipt of three priority rezoning applications requesting the insertion of enabling clauses into Schedule 2 of the Wyong Local Environmental Plan (WLEP) 1991 to permit:

- A service station development at North Wyong.
- A plant hire establishment at Berkeley Vale.
- Commercial premises at Tuggerah.

Desktop assessments have been undertaken for each proposal, having regard for local and state strategies and policies, in addition to applicable legislative requirements. These desktop assessments have identified that the proposals have merit and should be supported.

**Rezoning Application:** RZ/18/2009  
**Applicant:** Doug Eaton  
**Owner:** A Van Stappen Pty Ltd  
**Description of Land:** Lot 1 DP 1100416, 1 London Drive, North Wyong  
**Proposed Development:** Enabling Clause under Schedule 2 of *Wyong Local Environmental Plan 1991* to permit 'Service Station' development  
**Site Area:** Approximately 10,630m<sup>2</sup>  
**Zoning:** 4(a) (General Industrial)  
**Existing Use:** Light industrial, storage and vehicle parking.

**Rezoning Application:** RZ/19/2009  
**Applicant:** R B Smyth (Smyth Planning)  
**Owner:** Hereford Properties Pty Ltd  
**Description of Land:** Lots 9 and 10 DP 255990, 15 and 13 Hereford Street, Berkeley Vale  
**Proposed Development:** Enabling Clause under Schedule 2 of *Wyong Local Environmental Plan 1991* to permit 'Plant hire establishment' activities  
**Site Area:** 2,625m<sup>2</sup> and 2,575m<sup>2</sup> respectively  
**Zoning:** 4(a) (General Industrial)  
**Existing Use:** General industrial - Storage of larger-size hire items including large plant machines, road barriers and portable toilets

**Rezoning Application:** RZ/20/2009  
**Applicant:** Mariners FC Unit Trust  
**Owner:** Wyong RSL Sub Branch Club Pty Ltd and Wyong Shire Council  
**Description of Land:** Lot 21 DP 654119, Lot 24-25 DP 25373 and Lots 80-84 DP 8004 1 Bryant Drive, Tuggerah  
**Proposed Development:** Enabling Clause under Schedule 2 of *Wyong Local*

3.4 Rezoning Requests - RZ/18/2009 - 1 London Drive, North Wyong,  
RZ/19/2009 - 13-15 Hereford Street, Berkeley Vale and RZ/20/2009 - 1  
Bryant Drive, Tuggerah (contd)

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	<i>Environmental Plan 1991 to permit commercial premises</i>
Site Area:	7.44ha
Zoning:	4(b) (Light Industrial), 1(c) (Non-Urban Constrained Land) and 5(a) (Special Uses – Sewerage Buffer)
Existing Use:	Club Tuggerah, a registered sporting club with associated sporting fields, tennis courts, amenities, car parking and landscaping.

#### RECOMMENDATION

- 1 ***That Council prepare planning proposals to insert the following into Schedule 2 - Development for Certain Purposes of Wyong Local Environmental Plan 1991:***
  - a ***Lot 1 DP1100416, 1 London Drive, North Wyong as shown edged heavy black on the map marked “Wyong Local Environmental Plan 1991 – ‘Service Station’”.***
  - b ***Lots 9 and 10 DP 255990 – Hereford Street, Berkeley Vale as shown edged heavy black on the map marked “Wyong Local Environmental Plan 1991 – ‘Plant Hire Establishment’”.***
  - c ***Use of up to 3,500m<sup>2</sup> for the purposes of commercial premises on Lot 21 DP 654119 and Lots 24–25 DP 25373 Bryant Drive, Tuggerah.***
- 2 ***That Council, subject to the determination of the Gateway process and Director General's approval, undertake community consultation regarding the planning proposals.***
- 3 ***That Council, subject to there being no objections received that cannot be resolved by minor amendments to the planning proposals, request the Department of Planning (DoP) to prepare the draft Local Environmental Plan Instruments and the Minister be requested to make the plans.***

REZONING REQUEST RZ/18/2009 – 1 LONDON DRIVE, NORTH WYONG

Locality Plan



### Rezoning Description

This Local Environmental Plan (LEP) Amendment request seeks to introduce an enabling clause to permit the development of a service station on Lot 1, DP 1100416, 1 London Drive, North Wyong.

Schedule 2 (Development for certain additional purposes) of WLEP 1991 enables development which is not ordinarily permissible on certain land due to zoning to be carried out. These clauses are commonly referred to as enabling clauses.

**Figure 1: LEP Amendment Request Site Plan**



### Strategic Context

The subject site is irregular (but essentially rectangular) in shape and has a total area of approximately 10,630 square metres. The site is relatively flat, clear of any significant vegetation and contains general industrial, storage and vehicle parking development/uses. The site is well provisioned in relation to service infrastructure. It has good vehicular access due to abutting the Pacific Highway.

Electricity, sewer, water supply and telecommunications infrastructure are available at the site.

The subject lands are approximately:

- 1.6 kilometres from the nearest service station on the opposite side of the Pacific Highway (to the south-west).

### 3.4 Rezoning Requests - RZ/18/2009 - 1 London Drive, North Wyong, RZ/19/2009 - 13-15 Hereford Street, Berkeley Vale and RZ/20/2009 - 1 Bryant Drive, Tuggerah (contd)

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- 2.3 kilometres from the nearest service station on the same side of the Pacific Highway (to the south-west).
- 3.40 kilometres from the next nearest service station (approved and currently under construction) on the same side of the Pacific Highway (to the south-west).
- 4.40 kilometres from another service station on the same side of the Pacific Highway (in Wyong Township).
- The nearest service station to the north of the subject lands is at Charmhaven, approximately 7 kilometres away.
- Within 3 kilometres of the residential suburbs of Hamlyn Terrace, Woongarra and Wadalba residential suburbs (to the north and east) and Wyong and Watanobbi (to the south and west).

The surrounding land uses include:

- A variety of general industrial uses to the north and west.
- Low density residential uses to the north, south and east.

The site is located within a general industrial area (i.e. North Wyong Industrial Estate) and has good regional connections, via the Pacific Highway.

#### Discussion

This LEP Amendment request, in respect of Wyong Local Environmental Plan (WLEP) 1991, for the purpose of introducing an enabling clause to permit the development of a service station on Lot 1, DP 1100416, 1 London Drive, North Wyong, has been assessed and is supported by Council Staff. Initial discussions with staff at the local office of the Department of Planning (DoP) have indicated that the DoP does not have any major concerns with the proposal.

This request is supported on the basis that:

- It provides for an employment generating development of a service station, employing 11.7 full-time/long term equivalent positions.
- It is consistent with all of Council's locational criteria for service station development/use, which was recommended by Council's consultant on retail matters.
- It is consistent with town planning practice in regard to service stations being permissible developments/uses in a general industrial zone, as evidenced by service station development/use being '*Permitted only with development consent*' in the neighbouring local government areas of Newcastle, Lake Macquarie, Cessnock and Gosford.
- The subject lands are not unreasonably affected by any significant hazards that could not be mitigated.
- The subject lands do not possess any known significant environmental sensitivities that could not be mitigated.
- It supports the development/use of a 24 hour service station, which would provide support for surrounding land uses without unacceptable adverse impact(s) and passive security surveillance for the industrial area in which it is located.
- The subject lands have access to all relevant infrastructure and services.
- The subject lands can be provided with adequate access arrangements.



**3.4 Rezoning Requests - RZ/18/2009 - 1 London Drive, North Wyong,  
RZ/19/2009 - 13-15 Hereford Street, Berkeley Vale and RZ/20/2009 - 1  
Bryant Drive, Tuggerah (contd)**

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- The future development/use of a service station on the subject lands could comply with all the relevant Chapters of Wyong Development Control Plan (DCP) 2005.
- The future development/use of a service station on the subject lands could comply with all the relevant provisions of the Wyong Retail Centres Strategy.
- It is consistent with all relevant State Environmental Planning Policies (SEPPs).
- It is consistent with all relevant s117 (Ministerial) Directions.
- It is consistent with key components of the Central Coast Regional Strategy.
- It is consistent with all of the DoP's criteria for spot rezonings.
- Given there is no proposal to establish a stand alone fast food development there is no inconsistency with Council's endorsed Retail Strategy and DCP.

**CONCLUSION**

It is considered that the LEP Amendment request RZ/18/2009 should be supported for assessment via the Gateway Process (see below for a description of this process) and the following wording be inserted into Schedule 2 - Development for Certain Purposes (Clause 52 - WLEP 1991):

*'Lot 1 DP 1100416, 1 London Drive, North Wyong as shown edged heavy black on the map marked WLEP 1991 – Service Station.'*

**REZONING REQUEST RZ/19/2009 -13-15 HEREFORD STREET, BERKELEY VALE**

*Locality Plan*



**3.4 Rezoning Requests - RZ/18/2009 - 1 London Drive, North Wyong,  
RZ/19/2009 - 13-15 Hereford Street, Berkeley Vale and RZ/20/2009 - 1  
Bryant Drive, Tuggerah (contd)**

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**Rezoning Description**

This LEP Amendment request seeks to introduce an enabling clause to permit '*plant hire establishment*' activities within Lots 9 and 10 DP 255990, 15 and 13 Hereford Street, Berkeley Vale.



Figure 1: LEP Amendment Request Location Plan

**Strategic Context**

The subject sites (Lots 9 and 10 DP 255990) are relatively flat and essentially rectangular in shape and comprise total respective areas of approximately 2,625m<sup>2</sup> and 2,575m<sup>2</sup>. The subject lands are clear of any significant vegetation and are well provisioned in relation to service infrastructure. The sites have good regional connections, via Wyong Road and Enterprise Drive.

Access to both sites is currently obtained via Hereford Street. Electricity, sewer, water supply and telecommunications infrastructure are available at the site. Lot 9 DP 255990 is bounded to the east by Hereford Street, a frontage of approximately 37m. The site has no secondary frontage, however the property is proposed to be used in conjunction with the adjacent Lot 10 DP 255990, a corner allotment with frontages to both Hereford Street (41m) and Craftsman Avenue (60m).

### 3.4 Rezoning Requests - RZ/18/2009 - 1 London Drive, North Wyong, RZ/19/2009 - 13-15 Hereford Street, Berkeley Vale and RZ/20/2009 - 1 Bryant Drive, Tuggerah (contd)

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#### Purpose of the Proposal

The subject sites are located centrally within a larger 4(a) (General Industrial zone) within Berkeley Vale industrial area, in close proximity to Wyong Road. The surrounding land uses therefore include a variety of general industrial uses. The subject sites are currently used for general industrial purposes (i.e. storage of larger-size hire items including large plant machines, road barriers and portable toilets). Both allotments are under the ownership of a single landowner.

Plant hire establishment activities (Coates National Hire) are currently lawfully carried out on Lot 10 DP 255990, subject to existing use rights that apply to the site. On 8 April 2009, a development application (DA/297/2009) for the adjacent Lot 9 DP 255990 was lodged with Council. DA/297/2009 applied for permission to operate a 'Warehouse' for the storage of hire equipment and construction of associated outbuildings, in association with the Coates National Hire business operation on Lot 10 DP 255990. This application was withdrawn on 21 July 2009, as the proposed use was considered to be closer to the definition of a 'Plant Hire Establishment' than a 'Warehouse' subject to WLEP 1991. Plant hire establishments are not permissible in the 4(a) (General Industrial zone).

Therefore, the applicant is now requesting that an enabling clause be inserted into Schedule 2 of the WLEP 1991 to enable the additional use of plant hire establishments on Lot 9 DP 255990. Lot 10 DP 255990 has been included in this rezoning application in the event that existing use rights legislation changes in the future and the permissibility of the plant hire establishment use within this allotment becomes unlawful.

#### Discussion

This LEP Amendment request, in respect of *WLEP 1991*, for the purpose of introducing an enabling clause to permit 'plant hire establishment' activities on Lot 9 DP 255990 – 15 Hereford Street, Berkeley Vale, is supported.

This request is supported on the basis that:

- It provides for an employment generating development of a plant hire establishment, employing 16 full-time/long term equivalent positions.
- The subject lands are not unreasonably affected by any significant hazards that could not be mitigated.
- The subject lands do not possess any known significant environmental sensitivities where impacts arising from the development could not be mitigated.
- The subject lands have access to all relevant infrastructure and services.
- The subject lands can be provided with adequate access arrangements.
- The proposed future development on the subject lands can comply with all the relevant Chapters of Wyong Development Control Plan 2005.
- The proposed future development on the subject lands would comply with all the relevant provisions of the Wyong Retail Centres Strategy.
- It is consistent with all relevant SEPPs.
- It is consistent with all relevant s117 (Ministerial) Directions.
- It is consistent with key components of the Central Coast Regional Strategy and REDES.
- It is consistent with all of the DoP's Criteria for Spot Rezoning.

3.4 Rezoning Requests - RZ/18/2009 - 1 London Drive, North Wyong,  
RZ/19/2009 - 13-15 Hereford Street, Berkeley Vale and RZ/20/2009 - 1  
Bryant Drive, Tuggerah (contd)

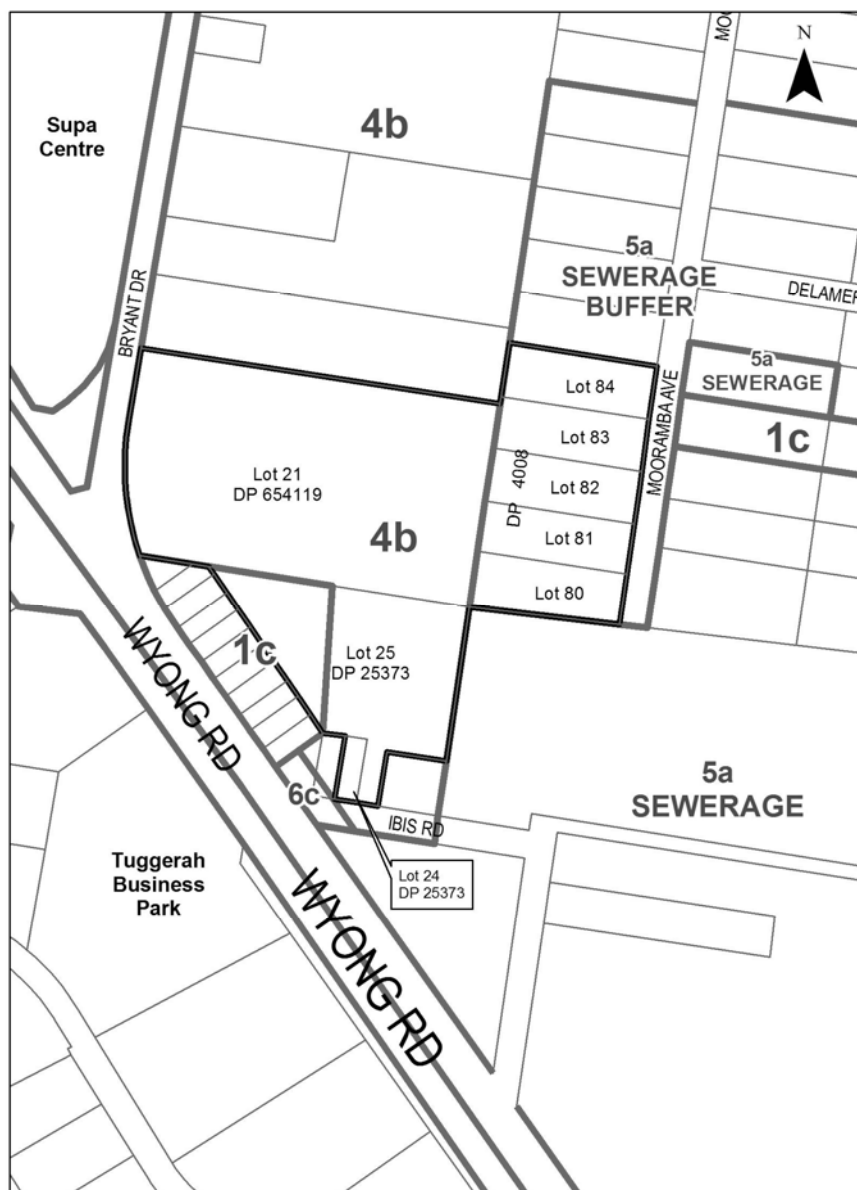
**CONCLUSION**

It is considered that the LEP Amendment request RZ/19/2009 should be supported for assessment via the Gateway Process (see above for a description of this process) and the following wording be inserted into Schedule 2 - Development for Certain Purposes (Clause 52 - WLEP 1991):

*'Lots 9 and 10 DP 255990 – Hereford Street, Berkeley Vale as shown edged heavy black on the map marked WLEP 1991 – Plant Hire Establishment.'*

**REZONING REQUEST RZ/20/2009 – 1 BRYANT DRIVE, TUGGERAH**

**Locality Plan**



**3.4 Rezoning Requests - RZ/18/2009 - 1 London Drive, North Wyong,  
RZ/19/2009 - 13-15 Hereford Street, Berkeley Vale and RZ/20/2009 - 1  
Bryant Drive, Tuggerah (contd)**

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**Purpose of the Proposal**

The enabling clause has been requested by the applicant to further support the uses approved under Development Application (DA) 612/2009: *Central Coast Mariners Football Club and Supporting Community Centre* and DA 1114/2009: *Training field, carparking and vehicular access*.

The current zoning of the site is considered to be too restrictive in terms of the range of uses which can be undertaken with Council consent. This is the particular problem for retail and commercial activity within the 4(b) Light Industrial zone and car parking within the 1(c) Non Urban Constrained Land zone. Whilst development consent has been issued for land uses as described by DAs 612/2009 and 1145/2009 provided these uses remain ancillary, any amendments will be problematic in the future, and could impose limitations to the viability of the development of the centre as a whole.

This rezoning will facilitate between 150 and 200 additional jobs on the Mariners' complex site which is in addition to the estimated 600 jobs covered by the current consent.

**Measures to Resolve Issues**

In order to alleviate this issue in the short term, an amendment to WLEP 1991 to better reflect the approved use of the site is considered appropriate. This would require an amendment to Clause 52 (Additional Permissible Uses) of WLEP 1991. This clause effectively expands the range of permissible uses on certain land beyond those which would otherwise be permissible under the zone tables (Clause 10). These additional uses are identified through Schedule 2 of WLEP 1991.

The proposed enabling clause will allow commercial premises not associated with the Mariners Football Club to utilise approximately 3,500m<sup>2</sup> of the site within the administration building (approved under DA/612/2009). The introduction of the enabling clause would remove this constraint to changes proposed to those approved uses over time. Furthermore, the proposed LEP amendment would alleviate funding implications for the development as a whole.

For the purposes of this proposed LEP amendment, it is important to note that Condition 88 of the Development Consent for DA/612/2009 required the consolidation of Lot 21 DP 654119 and Lot 24-25 DP 25373 prior to the Occupation Certificate being issued. Having regard for these requirements, any amendment to WLEP 1991 to permit additional uses on Lot 21 DP 654119 should also be enabled on Lot 24-25 DP 25373.

**CONCLUSION**

Given that the primary constraint to the effective operation of the centre is the inability to adequately provide for non-ancillary commercial premises and carparking, it is recommended that a planning proposal is prepared to enable the use of up to 3,500m<sup>2</sup> of commercial use on Lot 21 DP 654119 and Lots 24-25 DP 25373 and for the proposal to be forwarded to the DoP for Determination by the Gateway.

### **REZONING PROCESS - THE GATEWAY PROCESS**

The Gateway Process was introduced into the LEP making process through changes to the *Environmental Planning and Assessment Act* (EP&A Act), 1979. These changes became effective as of 1 July 2009. The process has been implemented in order to streamline the plan making process, reduce timeframes for undertaking LEP amendments and increase the transparency of the process.

The introduction of the Gateway process has resulted in a number of changes to terminology and processes involved in LEP amendments. In short, any submission a Council makes to the DoP to amend an existing LEP must be supported by a Planning Proposal (formally a rezoning request) prepared in accordance with the DoP "Guide to Preparing Planning Proposals." Planning proposals under this process must document the objectives, proposed provisions, justification and proposed community consultation processes to be undertaken for each proposal.

Prior to community consultation being undertaken, the Proposal must be supported by the local DoP office, the LEP Review Panel and the Gateway (generally the Minister). The Gateway determination can endorse the proposal, require amendments to the proposal or refuse the proposal in its entirety. If endorsed for consultation, the Gateway will also determine timeframes for completing procedures within the process. Council no longer has delegation to approve a draft LEP for public exhibition.

The legislative amendments also provide for a feedback loop to the Gateway should a Council decide to amend a Planning Proposal for any reason. This enables the Gateway to determine any additional consultation requirements if considered necessary.

A thorough briefing on the new 'Gateway' process and its implications for current processes is proposed to be presented to Council later in the year. The above information is provided as a brief outline of the immediate impacts resulting from this legislative amendment, given the references within the recommendations of this report to this new procedure and processes.

### **ATTACHMENTS**

*Nil.*

#### 4.1 **Contract CPA/137900 - Provision of Security Services at Various Council Facilities**

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TRIM REFERENCE: CPA/137900 - D02166397

AUTHOR: JV

##### **SUMMARY**

This report recommends that Council exercise its option to extend Contract CPA/137900 Provision of Security Services to Various Council Facilities with Newcastle Security Pty Ltd for a further period of 12 months.

##### **RECOMMENDATION**

- 1 ***That Council exercise its option to extend the contract for one year effective from 8 August 2010 at an estimated contract price of \$176,990.00 (excl. GST).***
- 2 ***That Council approve an annual contract budget of \$194,689.00 (excl GST and including CPI adjustment) that provides for an annual contingency amount of \$17,698.00 (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. Actual expenditure may vary slightly if the number of facilities to be secured changes during the course of the contract.***

##### **BACKGROUND**

At the Ordinary Meeting of Council held on 23 July 2008 Council considered a report on the provision of security services for a number of Council facilities.

*“Council resolved unanimously on the motion of Councillor GRAHAM and seconded by Councillor STEVENS:*

*That Council accept tender No 6 from Newcastle Security for a period of two (2) years with the option to extend for a further year. The estimated cost of the contract over the two (2) year contract period is \$294,633.90 including GST (\$267,849 excluding GST).”*

The successful tenderer Newcastle Security Pty Ltd was awarded this contract on 8 August 2008 and commenced takeover works on 18 August 2008. The current contract expires on 7 August 2010.

The contract covers alarm monitoring and alarm response services for approximately 46 sites including customer service centres, childcare centres, treatment plants, depots and other similar Council facilities. In addition, there are approximately 35 sites (toilets and gates) that are required to be opened and closed each day. Currently a thrice-nightly security patrol is required at Buttonderry Waste Management Facility and a static guard is required on certain days at the Gravity Youth Centre and Blue Haven Community Centre. Guards and/or patrols are required from time to time at other facilities and for specific events.

This report reviews Council's option to extend the contract for a further period of 12 months to Newcastle Security Pty Ltd.



**DISCUSSION**

A significant advantage for Council in any security contract is the availability of suitable, locally-based staff for field services such as alarm responses, static guards and patrol services. This provides a greater certainty for quick response times and reliable service.

Of lesser significance is the location of the monitoring centre due to advances in remote monitoring capabilities. It is preferred that the security contractor provide both roles.

Newcastle Security Pty Ltd has utilised locally-based staff for alarm responses, static guard services and security patrols since contract commencement. They also provide a monitoring centre based in Newcastle.

In December 2009 Newcastle Security Pty Ltd arranged the merger of two locally-based field services companies providing a larger personnel base under the direction of Newcastle Security Pty Ltd. This ensured a greater local focus and further promoted Council's Local Content initiative.

Newcastle Security Pty Ltd has actioned in a timely manner all requests and directives made by Council under their security contract. The company has also undertaken on its own initiative and at its own cost, mechanisms for improved reporting to Council and the verification of their performance by installing auditing devices at each of the designated patrol sites under the contract.

Newcastle Security Pty Ltd declined to apply for the CPI adjustment available under the contract at the end of the first year in a show of good faith and to keep their rates competitive. Market research undertaken as part of this analysis reviewed the company's current rates for a number of services supplied under the contract. This showed their rates to Council for alarm responses were up to 50% lower than some of their competitors. Likewise, other services also showed savings confirming that there is no potential commercial gain to Council from re-tendering the works. Extension of this contract at these rates represents good value to Council.

All asset owners have favourably noted the company's flexibility and readiness to action any request for security services. Although it is impossible to prevent all incidents of vandalism and crime that occurs at Council's assets, Newcastle Security Pty Ltd has managed in a responsible manner their obligations under the contract.

The company has indicated that it would be prepared to continue the present contract and would be agreeable to Council exercising its option for a twelve month extension to the contract.

In reviewing the budget for the proposed extension of the contract, adjustments have been made to the original estimated cost to allow for CPI increases and the estimated cost for the provision of static guards. The provision of static guard services has been implemented at community facilities in particular the Blue Haven Community Centre and the Gravity Youth Centre, in response to the level of anti-social behaviour occurring at various Council facilities within the Local Government Area. This was previously reported to Council as a variation to the two year contract in July 2009. The new adjusted contract amount for the third year of the contract is \$176,990.00 (excl. GST); this includes the continued provision of static guards at Blue Haven Community Centre and Gravity Youth Centre.

## **CONCLUSION**

Newcastle Security Pty Ltd has provided a high level of service to Council during the initial two years of their contract. They have responded quickly to requests for service, acted professionally and provided a flexible and cost-effective security service for Council. Their promotion of locally-based patrol services also supports Council's Local Content initiative. The company's ethos of reasonableness and flexibility in relation to any matter that has arisen during the period of the contract supports a further extension of this contract.

Based on the performance of Newcastle Security Pty Ltd to date, the current contractor is considered to be providing a high standard of service at a very competitive price. It is recommended that the option for a one year extension of the contract period for CPA/137900 for the provision of security services for various Council facilities be exercised.

## **ATTACHMENTS**

*Nil.*

## 4.2 Contract CPA/172612 - Construction of Hamlyn Terrace Community Centre & Sporting Facility

TRIM REFERENCE: CPA/172612 - D02187658

AUTHOR: JP

### SUMMARY

Evaluation and selection of lump sum tenders for Contract CPA/172612 – Construction of Hamlyn Terrace Community Centre & Sporting Facility.

### RECOMMENDATION

- 1 ***That Council accept the tender from Scape Constructions Pty Ltd in the adjusted lump sum amount of \$6,360,811.82 (excl GST) for Contract CPA/172612 - Construction of Hamlyn Terrace Community Centre & Sporting Facility.***
- 2 ***That for Contract CPA/172612, Council approve a contract budget of \$7,310,811.82 (excl GST) that provides for a contingency amount of \$950,000.00 (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.***

### BACKGROUND

Council, in Confidential session at the Ordinary meeting on 26 September 2007, resolved unanimously to accept the recommendation to plan for a joint sporting and community facility on Minnesota Road, Hamlyn Terrace.

The site is located on the eastern side of Minnesota Road in the Warnervale/Wadalba Urban Release Area. It is zoned 10A (Investigation) and 1C (Non Urban Constrained Lands) and covers an area of 5.1ha. The site is vacant and has been used as rural grazing land. The site was acquired by Council by compulsory acquisition in December 2008. The Hamlyn Terrace Primary School has recently been constructed on land directly to the north of the site. The co-location of the school, community, sporting and recreation facilities will create a central hub of activity for this community.

The new facilities will comprise a local Community Centre, two sporting fields, three multi-purpose courts and ancillary infrastructure.

Design work for the new facilities commenced in April 2009. This incorporated the results of extensive community and stakeholder feedback, including many of the lessons learnt from previous similar projects. The designs and documentation for the project were completed in November 2009.

This project is strongly aligned with the following key priority objectives of the Shire Strategic Vision:

- Communities will have access to a diverse range of affordable and co-ordinated facilities, programs and services; and

## 4.2 Contract CPA/172612 - Construction of Hamlyn Terrace Community Centre & Sporting Facility (contd)

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- Communities will be vibrant, caring and connected with a sense of belonging and pride in their local neighbourhood.

This report provides recommendations for award of a contract for construction of the new Community Centre and sportsfield facilities.

### Tender Process

Tenders were invited by way of public invitation. Advertisements were placed in the Newcastle Herald on Saturday 28 November 2009, the Sydney Morning Herald on Tuesday 1 December 2009 and the Central Coast Express Advocate on Wednesday 2 December 2009. Tenders were also advertised on Council's e-Tender website. The advertised closing date was Thursday 21 January 2010.

The invitation documents called for lump-sum tenders based on detailed drawings and specification.

A compulsory pre-tender meeting was held at the Council Chambers on Friday 4 December 2009 to outline the project and confirm tender requirements and conditions.

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

- 1 Additional tender documentation (landscape drawings, specifications) - unable to be uploaded with eTender Request For Tender due to size (26 November 2009)
- 2 Additional tender documentation (additional specifications) – unable to be uploaded with eTender Request For Tender due to size (26 November 2009)
- 3 Pre-tender meeting presentation notes, advice on Minnesota Road construction works, confirmation of extent of contract works, specification Attachment 21 - Vegetation Management Plan (04 December 2009)
- 4 CAD versions of civil drawings (14 December 2009)
- 5 Revised tender closing time of 2:00pm Thursday 04 February 2010 (21 December 2009)
- 6 Responses to tenderers queries, revised Attachment 1: Returnable Forms and Schedules (Rev 1), revised tender closing time of 2:00pm Thursday 11 February 2010 (21 January 2010)
- 7 Responses to tenderers queries, revised Attachment 1: Returnable Forms and Schedules (Rev 2) (9 February 2010).

Concerns were raised by the project team regarding the effect of the current Federal Government stimulus measures (especially the BER – Building Education Revolution) on the tender pricing for the Community Centre building as this work would be undertaken by the same sector of the building and construction industry. To ensure that the total project was not compromised by this issue, tenderers were required to submit two separate tender prices, namely:

- Option 1 – Sporting facility and Community Centre building combined
- Option 2 – Sporting facility only (i.e. excluding Community Centre building).

## 4.2 Contract CPA/172612 - Construction of Hamlyn Terrace Community Centre & Sporting Facility (contd)

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This would enable Council to either let and construct the sporting facility and Community Centre building as a combined project (as preferred and originally planned), or alternatively let and construct the sporting facility contract now, and re-tender and construct the Community Centre at a later date (i.e. when the BER stimulus measures had reduced their impact) if the Community Centre tender pricing was excessive.

Tenders closed at Council Chambers at 2:00pm on Thursday 11 February 2010.

### EVALUATION OF TENDERS

Tenders were evaluated by a panel of three staff members (two of whom were 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, environmental, operational and safety risk
- Price
- Recent successful experience in projects of similar nature
- Proposed methodology / construction program
- Client satisfaction on performance on similar projects.

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

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

The evaluation was conducted according to the following process:

- Assessment of receipt of tenders
- Assessment of conformance of tenders
- Detailed weighted evaluation of tenders
- Due diligence checks on preferred tenderer
- Independent review of the tender selection process.

### Assessment of Receipt

The following tenders were received and are listed in alphabetical order for *Option 1 – Sporting facility and Community Centre building combined*.

No.	Tender	Tendered Lump Sum (Ex. GST)	Status
1	AMFM Constructions Pty Ltd	\$7,118,809.00	Submitted on time
2	Bolte Civil Pty Ltd	\$7,011,308.32	Submitted on time
3	Haslin Constructions Pty Ltd	\$6,755,250.00	Submitted on time
4	Kane Constructions (NSW) Pty Ltd	\$5,397,899.00	Submitted on time
5	Maincon Pty Ltd	\$7,969,933.64	Submitted on time

No.	Tender	Tendered Lump Sum (Ex. GST)	Status
6	Nace Civil Engineering Pty Ltd	\$7,729,396.36	Submitted on time
7	Scape Constructions Pty Ltd	\$6,384,811.82	Submitted on time

The following tenders were received and are listed in alphabetical order for *Option 2 – Sporting facility only (i.e. excluding Community Centre building)*.

No.	Tender	Tendered Lump Sum (Ex. GST)	Status
1	AMFM Constructions Pty Ltd	N/A	Option 2 tender not submitted by AMFM
2	Bolte Civil Pty Ltd	\$5,878,168.29	Submitted on time
3	Haslin Constructions Pty Ltd	\$5,677,390.00	Submitted on time
4	Kane Constructions (NSW) Pty Ltd	\$4,518,286.36	Submitted on time
5	Maincon Pty Ltd	\$6,903,057.27	Submitted on time
6	Nace Civil Engineering Pty Ltd	\$6,523,421.82	Submitted on time
7	Scape Constructions Pty Ltd	\$5,120,385.45	Submitted on time

All tenders were progressed to an assessment of conformance.

### Assessment of Conformance

Tenders were assessed for conformance with the general tender requirements including the specification.

Tender No 1 (from AMFM Constructions Pty Ltd) did not return the correct tender schedules. As the returned tender schedules were not complete and as the tender excluded significant works required to be undertaken (i.e. Warnervale sewer main works – with a value of approximately \$150,000), this tender was eliminated from further consideration.

The Panel sought minor clarifications from Tender No 2 (from Bolte Civil Pty Ltd) and Tender No 7 (from Scape Constructions Pty Ltd). Following subsequent clarification responses these tenders were regarded as conforming to all requirements and were progressed to the next stage of evaluation. The Tender Evaluation Panel sought clarification and made minor adjustments to Tender No 2 (from Bolte Civil Pty Ltd) and Tender No 7 (from Scape Constructions Pty Ltd) in relation to the tendered amounts for signage (was to be provided by others). This enabled the assessment of these tenders to proceed on a comparative basis with other tenders.

Tender No 3 (from Haslin Constructions Pty Ltd), and Tender No 5 (from Maincon Pty Ltd) contained several tender conditions and qualifications. The panel sought further clarification from these firms on the tender conditions and qualifications. These firms subsequently withdrew all tender conditions and qualifications without modification to the tender amounts. The Tender Evaluation Panel also sought clarification and made minor adjustments to the tendered lump sum from Tender No 3 (from Haslin Constructions Pty Ltd) in relation to the tendered amounts for signage (was to be provided by others) and included additional costs provided in the tender for concrete multi-purpose courts. This brought this tender into alignment with the specified requirements. Both of these tenders were then regarded as conforming to all requirements and were progressed to the next stage of evaluation.

**4.2 Contract CPA/172612 - Construction of Hamlyn Terrace Community Centre & Sporting Facility (contd)**

Tender No 4 (from Kane Constructions (NSW) Pty Ltd) was received on time but the tenderer did not attend the compulsory pre-tender meeting. This was a mandatory requirement. Further clarifications were sought from this tenderer as part of the initial assessment process. In response to those enquiries the company advised that:

- i. Due to additional work commitments they would not be able to commence work on site until July 2010;
- ii. They were unable to maintain their original tender offer and their revised tender amount would be \$394,344.91 (excl GST) greater than their original Option 1 tender.

These clarifications were considered to be unacceptable as the later start date greatly increased the risk that the project would not be delivered within the required timeframe; and the additional requested tender price was not acceptable under the Local Government Tendering Regulations. As the company had also failed to attend the mandatory pre-tender meeting the tender panel eliminated this tender from further consideration.

Tender No 6 (from Nace Civil Engineering Pty Ltd) conformed to all requirements and was progressed to the next stage of evaluation.

It was confirmed by the Acting Manager, Future Planning that Section 94 project budgets were sufficient to provide for both the sporting facility and the Community Centre projects. From the initial assessment the majority of tendered prices submitted for Option 1 tenders were within the pre-tender estimate and represent good value for money for Council. (Note that the pre-tender estimate had been prepared by a professional quantity surveyor and was based on reasonable costs that were not inflated in response to the Federal Government's stimulus measures). The Option 1 tenders will also deliver completed facilities for community use at a significantly earlier date than under the Option 2 scenario. Option 1 tenders were therefore taken forward for closer evaluation and Option 2 tenders were not considered further.

**Weighted Evaluation**

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

No.	Tender	Adjusted Lump Sum (Ex. GST)	Weighted Evaluation Score
7	Scape Constructions Pty Ltd	\$6,360,811.82 (Adjusted)	92
3	Haslin Constructions Pty Ltd	\$6,822,250.00 (Adjusted)	79
2	Bolte Civil Pty Ltd	\$6,993,126.52 (Adjusted)	76
5	Maincon Pty Ltd	\$7,969,933.64	75
6	Nace Civil Engineering Pty Ltd	\$7,729,396.36	64

Tender No 7 (Scape Constructions Pty Ltd) is a local civil and landscaping contractor. They have proposed to engage a specialist building contractor and specialist playing field contractor to assist in the delivery of this multi-discipline project.

Tender No 7 (from Scape Constructions Pty Ltd), being the highest scoring conforming tender was progressed to the due diligence stage of the evaluation.

**Due Diligence**

Tender No 7 (from Scape Constructions Pty Ltd) 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 Scape Constructions Pty Ltd possesses all of the technical, financial and managerial resources necessary to satisfactorily complete the works.

Scape Constructions Pty Ltd is an Erina-based contractor with a history of successfully completed contracts similar in nature and scope to the current works. The company has in place fully documented Occupational Health Safety and Rehabilitation Management and Environmental Management systems.

The amount tendered by Scape Constructions Pty Ltd is within 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 Coordinator.

**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.
- Changes to regulatory design standards requiring project re-design. Mitigated by using latest information in tender documents and minimising delays in award of contract.
- Latent conditions encountered on the site. Mitigated by additional site and geotechnical investigations being undertaken to determine site conditions (e.g. extent and characteristics of rock in excavation areas).

### **Risk Contingency**

The above risks are considered to be Medium for this contract given the value of the contract, the nature of the work and presence of rock on the site. Accordingly, it is recommended that a contingency sum of \$950,000.00 (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 \$7,310,812.00 (excl GST), which incorporates the contingency allowance, will not be exceeded.

### **BUDGET**

Project funds of \$8.80M (excluding GST) are available from Section 94 funds for the sporting facility (\$7.54M), Community Centre building (\$1.10M) and Warnervale sewer main works (\$160K).

## **TIME-FRAME**

Scape Constructions Pty Ltd nominated the following durations for each Separable Portion of work under contract:

- Separable Portion 1 (playing fields, turf installation and associated preparation works) – 34 weeks
- Separable Portion 2 (Community Centre building, north carpark and associated access works to enable occupation) – 43 weeks
- Separable Portion 3 (balance of works under contract) – 44 weeks

These durations are acceptable. Allowing for an immediate contract commencement and with normal delays for wet weather and other unforeseen circumstances the Community Centre is anticipated to be completed and available for use in early 2011. The sporting facility works are anticipated to be completed and ready for play in the 2011 winter sports season.

## **APPROVALS**

All necessary approvals have been obtained.

## **LOCAL CONTENT**

Scape Constructions Pty Ltd has indicated that the contract works are expected to generate approximately 1,608 person-weeks of labour requirements and that the majority of labour resources to be employed on the project will be sourced from within the Central Coast region.

This contract was tendered and closed prior to 1 March 2010, which was the date of commencement of Council's Local Procurement Policy. Application of the Policy to this contract would not have changed the recommended outcome as Scape Constructions Pty Ltd is a local Central Coast company.

## **CONCLUSION**

Tender No 7 (from Scape Constructions Pty Ltd) is the highest scoring tender and meets all of Council's requirements for this contract. On balance, this tender represents the best value-for-money for Council. It is recommended that the tender be accepted.

## **ATTACHMENTS**

- |   |  |           |
|---|--|-----------|
| 1 | Attachment 1 - Colour Site Plan - Hamlyn Terrace sporting facility and Community Centre            | D02190317 |
| 2 | Attachment - DA 1.05 Amenities Perspective - Hamlyn terrace sporting facility and Community Centre | D02190332 |
| 3 | Attachment - DA 1.08 CC Perspective - Hamlyn Terrace sporting facility and Community Centre        | D02190336 |





COLOURS OF MATERIALS MAY VARY

**QUINN O'HANLON Pty Limited**  
**ARCHITECTS & PLANNERS**

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**HAMLYN TERRACE COMMUNITY CENTRE & SPORTING FACILITY**

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 HAMLYN TERRACE, NSW  
 SYDNEY  
 WYONG COUNCIL

DATE	REVISION	ISSUE

**EDWARD O'HANLON**  
 ARCHITECT

---

SCALE: B 40

DRAWN BY: [ ]  
 CHECKED BY: [ ]  
 DATE: [ ]

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**AMENITIES BUILDING PERSPECTIVE**

PROJECT NUMBER	DRAWING NUMBER	ISSUE
<b>0868NDA 1.05</b>	<b>1</b>	

DEVELOPER'S APPLICATION



COLOURS OF MATERIALS MAY VARY



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 WYONG COUNCIL

DATE	DESCRIPTION	BY
10/01/2018	PRELIMINARY DEVELOPMENT APPLICATION ISSUE	ED
10/01/2018	PRELIMINARY DEVELOPMENT APPLICATION ISSUE	ED
10/01/2018	PRELIMINARY DEVELOPMENT APPLICATION ISSUE	ED

**EDWARD O'HANLON**  
Principal Architect

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SCALE	B 1:10
DRAWN BY	ED
CHECKED BY	ED
DATE	10/01/2018

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DRAWING TITLE  
**COMMUNITY CENTRE  
 PERSPECTIVE**

JOB NUMBER	DRAWING NUMBER	DATE
<b>0868NDA 1.08</b>	<b>1</b>	

DEVELOPER'S APPLICATION

## **5.1 Deductible Gift Recipient status for Wyong Shire Library Service**

---

TRIM REFERENCE: F2004/11651 - D02168886

AUTHOR: JM

### **SUMMARY**

The Wyong Library Service wishes to apply for Deductible Gift Recipient (DGR) status from the Australian Taxation Office. This status will allow the Library Service to apply for funding from private sector foundations and individuals. To allow the Library Service to apply for DGR status it is necessary for Council to establish a Trust for the receipt and management of any gift or grant funds.

### **RECOMMENDATION**

- 1 That Council approve the establishment of a Trust, known as the Wyong Shire Library Service Trust, who will manage a gift fund for the purpose of seeking funding for Wyong Shire Library Service.**
- 2 That Council request the Trustee to seek Deductible Gift Recipient status for that fund.**
- 3 That Council approve the General Manager as the Appointer of the Trust.**
- 4 That Council endorse the recommended management of the Trust as detailed in the report.**

### **BACKGROUND**

Wyong Shire Library Service seeks to provide the best available educational, cultural and recreational resources to the entire Wyong Shire community.

The Library seeks to enable and enrich the lifelong learning and research endeavours of the community by delivering access to extensive and relevant information resources and by providing quality services and facilities.

The Library's long term goals include:

- Taking the library, its resources and programs to the community, where they are.
- Fostering a love of knowledge and learning within the community by recognising the diverse forms of learning and examining alternative ways of structuring collections.
- Redesigning the built assets of the libraries to function as living rooms of the community, neutral accessible and social.
- Building a sense of connectedness in the local community by providing programs and services that encourage learning and growth such as childhood literacy programs, a 'living library', and intergenerational initiatives.

There are a number of private sector foundations and trusts who support public education projects and whose funding guidelines would extend to providing funding towards Wyong Library. These funds would assist programs and activities as well as acquisition of collection materials. All such foundations and trusts require recipient organisations to have deductible gift recipient (DGR) status.

The majority of DGRs are endorsed by the Australian Tax Office (ATO). The only DGRs that do not need to be endorsed are those listed by name in the income tax law. DGRs listed by name in the tax law include organisations such as Amnesty International Australia and the Australian Sports Foundation. They also include prescribed private funds.

The benefits of Wyong Shire Library Service having DGR status include:

- Providing a vehicle for grants and gifts from private sector foundations and individuals which are unlikely to be obtained unless such gifts can be tax deductible to the giver;
- Providing an opportunity for members of the community to show their support for Wyong Shire Library whilst receiving a financial incentive in return through a tax deduction;
- Providing Wyong Shire Library with access to a much greater range of funding opportunities through the private sector.

In some cases DGR status may be a consideration in the making of bequests and distribution of Estates.

Funding received from these grants and donations will be used to expand services for the community and will target specific unmet needs rather than core services.

A growing number of public libraries are recognising the value of DGR endorsement. Councils which have received endorsement for library services include Maitland, Lake Macquarie and Newcastle.

Council has previously explored the establishment of a Trust for the purposes of fundraising for the Wyong Shire Cultural Centre. The information and research done for establishing the Library Trust has been extensively informed by the documents prepared for the Wyong Shire Cultural Centre Trust. The Wyong Shire Cultural Centre Trust will be formed when the facility has been built and established. The Library Trust needs to be formed as a distinct entity with a clear purpose and therefore will operate independently of the Wyong Shire Cultural Centre Trust.

## **THE PROPOSAL**

To be endorsed for DGR status by the ATO, an organisation (or a fund, authority or institution that it operates) must:

- fall within a general DGR category as specified by the income tax law
- have an Australian business number
- maintain a gift fund, and
- be in Australia (with certain exceptions).

## 5.1 Deductible Gift Recipient status for Wyong Shire Library Service (contd)

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There are more than 30 general DGR categories. The category of interest to Council in this instance is that of **public libraries, museums and art galleries** (specifically 'a library that makes its collection available to the public and it is owned or controlled by a government entity or by people or an institution that have a degree of responsibility to the public').

Before application can be made, Council is required to establish a **gift fund**. This fund will be established by a Settlor and governed by a Trust which must provide evidence of the gift fund's existence, name, purpose and operations.

The gift fund must receive **only**:

- gifts and deductible contributions for the principal purpose as stated in the Trust Deed, and
- money received because of such gifts, or deductible contributions (i.e. interest on money invested).

The ATO states that 'the fund must be maintained and used for the principal purpose of the organisation's fund, authority or institution'. (If the fund is not maintained and used, DGR status may be forfeited).

This report seeks approval for the establishment of a Trust, set up by Deed, which is at arms length from Council and whose specific purpose is the management of the gift fund.

The Trust will be established through an initial settled sum, which may be as little as \$10, and which is made by the Settlor (who may not be a Trustee). The Director of Shire Services has offered to be the Settlor with the donation of fifty (\$50) dollars to establish the fund. The Appointor, who is automatically a Trustee, will make an application for DGR status to the ATO.

The Trustees for the Wyong Shire Library Service Trust will be the General Manager (the Appointor), the Mayor, the Deputy Mayor, the Manager of Customer & Community Services.

### OPTIONS

#### Do Nothing

Under this option the funding avenues available to Council for the operation of the Wyong Shire Library Service would continue without change.

#### Proceed with the establishment of a Trust & DGR status for the Library Service

The establishment of the Wyong Shire Library Service Trust, which will apply for DGR status for the Library Service, will open potential avenues of funding for library programs and services which are currently closed to Council.



**STRATEGIC LINKS****Management Plan**

<i>Principal Activity</i>	<i>Key Issue(s) and Objective (s)</i>	<i>Financial Line Item No and Description</i>
A More Sustainable Community	<p><b>Community Support</b> A community that has access to a range of affordable, co-ordinated and high quality services and facilities.</p> <p><b>Community Development</b> A connected community where residents positively interact and participate in the life of their community, have a sense of belonging and a strong interest in local and regional issues.</p> <p><b>Education</b> A community where education, training and lifelong learning is valued.</p>	1.1.18 Library & Customer Service

**Contribution of Proposal to the Principal Activity**

Becoming an organisation with DGR status will provide Wyong Shire Library Service with access to a much greater range of funding opportunities through the private sector. This will allow the Library Service to provide improved services and programs to the community leading to enhanced improved outcomes in education and connectedness.

**Financial Implications**

There are no direct funding implications to establish the Wyong Shire Library Service Trust and management of the Trust can be accommodated in the current budget allocation for Library & Customer Service.

**Principles of Sustainability**

DGR status has the potential to improve Council's service provision to the community through the Library Service and meets the sustainability principle of "working together".

**CONSULTATION**

Following endorsement by Council for the establishment of the Trust, Council will engage with the community to ensure that any funds received by the Trust are expended in accordance with the community's needs. This engagement will be undertaken in a manner that is consistent with the Shire Strategic Vision objectives of valuing increased community participation in decisions that affect them and encouraging residents to value lifelong learning.

**GOVERNANCE**

The Wyong Shire Library Trust will be managed by the Trustees.

**CONCLUSION**

Council's endorsement to establish a Trust called the Wyong Shire Library Service Trust will allow for DGR status to be conferred on the Wyong Shire Library Service. Increased opportunities for funding will be opened up for the Wyong Shire Library Service once it is endorsed with DGR status.

**ATTACHMENTS**

*Nil.*

## 5.2 Extension of Alcohol Free Zone - Wyong

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TRIM REFERENCE: f2004/06083 - D02183625

AUTHOR: ED

### SUMMARY

A proposal to extend an Alcohol Free Zone (AFZ) within Wyong has been advertised and is submitted for approval.

### RECOMMENDATION

***That Council formally adopt the proposal to extend an Alcohol Free Zone in Wyong until 30 June 2013 at the following location:***

***Wyong: Pacific Highway from Wyong River Bridge to Anzac Avenue, Alison Road to Margaret Street, Rankens Courts, Peters Lane, Bakers Lane, Plaza Lane, Robleys Lane and Hely Street from Alison Road to Anzac Avenue.***

### BACKGROUND

At its meeting held on 10 February 2010 Council considered a report concerning the extension of an AFZ extension at Wyong and resolved the following:

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

- 1 That Council propose the extension of an Alcohol Free Zone in Wyong until 30 June 2013 at the following location:*

*Wyong: Pacific Highway from Wyong River Bridge to Anzac Avenue, Alison Road to Margaret Street, Rankens Courts, Peters Lane, Bakers Lane, Plaza Lane, Robleys Lane and Hely Street from Alison Road to Anzac Avenue.*

- 2 That Council complete the required public consultation process and advise the NSW Anti-Discrimination Board of the proposal.*
- 3 That Council determine the extension of the Alcohol Free Zone upon receipt of a report at a later date, following the public consultation process.*

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

AGAINST: NIL”

The proposal was advertised with no submissions received and is therefore recommended for adoption.

**OPTIONS**

- 1 Approve the extension of the AFZ. The evidence of social behaviour improvement since the introduction of AFZs is clear and has received favourable support from Police. There have been no objections received during the exhibition period. Continuation of the AFZs is desirable if continued improvement in behaviour is to be achieved.
- 2 Refuse the extension of the AFZ. This action would certainly result in an increase in complaints regarding anti-social behaviour in the area concerned and may be an unpopular decision with the Police.

**STRATEGIC LINKS****Management Plan**

Principal Activity	Key Issue(s) and Objective (s)	Financial Line Item No and Description
A better community	To contribute to a safe community	1.6

Work in partnership with government, nongovernment agencies and community groups to address crime and safety issues.

Ongoing efforts to reduce the incidence of vandalism across the Shire.

**Principles of Sustainability**

AFZs act as a deterrent for anti-social behaviour to improve and maintain safety, wellbeing and sense of community.

**CONSULTATION**

The proposal was advertised in the Central Coast Express Advocate and no representations were received during the statutory 14 day period.

Notice was forwarded to the Police, NSW Anti-Discrimination Board, relevant holders of liquor licenses and Watanobbi/Warnervale Community Precinct Committee inviting representations within the statutory 30 day period. No objections were received during the period.

**GOVERNANCE**

The proposal is in accordance with section 632 of the Local Government Act. The procedures outlined in the Ministerial Guidelines are addressed.

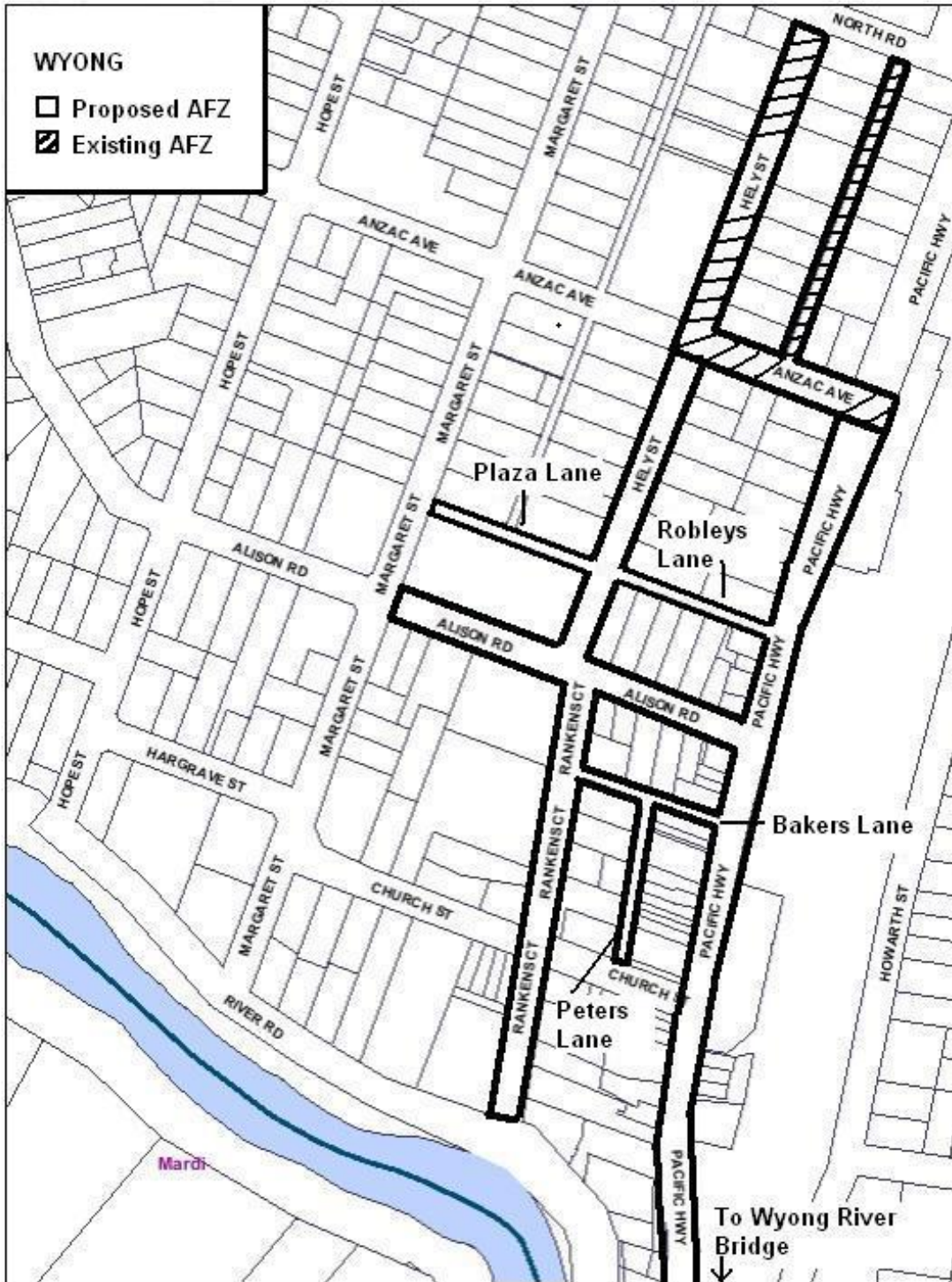
It should also be noted that Council owned land such reserves and cycleways are not classified as a public road or car-park and therefore cannot be included within an Alcohol Free Zone. However, under section 632 of the Local Government Act ordinance signs are located on these properties which prohibit amongst other things, the consumption of alcohol.

**CONCLUSION**

There is obvious benefit to the community in supporting Alcohol Free Zones. Council may now resolve to extend the AFZ within Wyong to expire on 30 June 2013.

**ATTACHMENTS**

- 1 Locality Plan - Wyong Alcohol Free Zone Extension D02124532



### **5.3 Conference attendance - 2010 National General Assembly of Local Government, Canberra.**

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TRIM REFERENCE: F2004/06517 - D02188524

AUTHOR: MR

#### **SUMMARY**

Council has received information in respect of the National General Assembly of Local Government, Canberra to be held from 14 – 17 June 2010.

#### **RECOMMENDATION**

- 1 That Council note that no motions have been received from Councillors for submission to the 2010 National General Assembly of Local Government.**
- 2 That Council authorise interested Councillors to attend the 2010 National General Assembly of Local Government between 14 and 17 June 2010.**
- 3 That Council pay expenses incurred by Councillors attending the Assembly in accordance with Council's Facilities and Expenses Policy for Councillors.**
- 4 That Council determine the voting delegate should the Mayor not attend.**

#### **BACKGROUND**

In accordance with the provisions of Council's Facilities and Expenses Policy for Councillors, a Councillor may attend a maximum of three conferences per year excluding the NSW Local Government Association Annual Conference. Reasonable expenses incurred in Councillors attending conferences will be met in accordance with that policy.

Details of conferences, seminars and external training sessions are provided for determination of Councillor Attendance.

#### **THE PROPOSAL**

The National General Assembly of Local Government (NGA) is the largest and most important event on the local government calendar. It is convened by the Australian Local Government Association (ALGA) for local councils across Australia to develop and express a united voice on the core issues affecting local government and their communities.

The NGA provides an important platform to showcase local government to influential decision-makers of the federal government, at both the political and departmental levels.

Discussions and debate at the NGA will focus around the three themes of productivity, population and participation. ALGA is inviting councils to submit motions for consideration at the NGA with the release of a discussion paper on the three themes. All councils are encouraged to contribute to the shaping of local government's national direction by submitting motions to this year's NGA.

The Mayor has already indicated a desire to attend.

## 5.3 Conference attendance - 2010 National General Assembly of Local Government, Canberra. (contd)

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### Submission of Motions

The ALGA identified the following three themes, under which motions should be submitted. These themes address key priority areas for the Australian Government to develop policy under and are areas which complement and build on existing ALGA and local government positions:

- \* Population;
- \* Productivity; and
- \* Participation.

Motions for the 2010 Assembly are required to fall under one of the above themes, be relevant to the work of local government nationally; and complement or build on the policy objectives of state or territory association in order to be considered eligible for inclusion.

Motions that are carried by the National General Assembly become Resolutions. These resolutions are then considered by the ALGA Board when setting national local government policy and will also feed into the Australian Council of Local Government processes.

### Financial Implications

The table below indicates the cost for attendance at the Conference and associated travel expenses per Councillor:

<b>National General Assembly 2010</b>	<b>(\$)</b>
Registration (early bird rate payment prior to 30 April 2010)	\$840
Travel (own vehicle / petrol)	(\$100)
Travel (flight)	\$400
Accommodation (based on approx \$280 per night for 4 nights)	\$1,120
Other disbursements (meals, taxis etc) say	\$400
<b>Total - estimate</b>	<b>\$2,760</b>

### CONSULTATION

The Facilities and Expenses Policy for Councillors has been advertised with no submissions received.

### GOVERNANCE

The Assembly is an opportunity for Councillors to extend their understanding of productivity, population and participation which are all issues effecting this Shire. It therefore has relevance to Councillors of Wyong.



**CONCLUSION**

The Assembly is an opportunity for Council to ensure issues of concern are debated widely and for Councillors to network with other elected representatives from throughout Australia.

Submission made by Councillors on behalf of Council will ideally require presentation at the Assembly. Attendance by the appropriate Councillor(s) would be necessary if submissions are made.

**ATTACHMENTS**

*Nil.*

## **5.4 Exhibition of Draft 2010-11 Management Plan**

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TRIM REFERENCE: F2004/07006 - D02196469

AUTHOR: BR

### **SUMMARY**

Section 405 of the *Local Government Act 1993* requires Council to place its Draft Management Plan on public exhibition for 28 days.

### **RECOMMENDATION**

***That Council adopt the Draft 2010-11 Management Plan for the purpose of public exhibition in accordance with Section 405 of the Local Government Act 1993.***

### **BACKGROUND**

The Draft 2010-11 Management Plan has been prepared in accordance with the *Local Government Act 1993*.

The Local Government Act was amended in October 2009 to give effect to the integrated planning and reporting framework. As a result, this will be the final "Management Plan" that Council produces; from 2011-12 it will be replaced by an "Annual Plan".

The Local Government Act provides transitional provisions for the phasing of the new legislative requirements and Council resolved at its meeting on 10 February 2010 to be in Group 2 for the implementation of the integrated planning and reporting framework. This means that Council will need to adopt a Delivery Program, Annual Plan, Long-Term Financial Strategy and Asset Management Policy by 30 June 2011.

Council adopted the community's 20-year plan for the Shire in September 2009 – the "Shire Strategic Vision".

Council is currently developing a Delivery Program to identify the activities that Council will undertake to achieve the priority objectives of the Shire Strategic Vision. Work is also progressing on a comprehensive Resourcing Strategy comprising a Long-term Financial Strategy (to ensure fiscal responsibility in the short and long term), an Asset Management Strategy (to establish how to manage Council's asset portfolio to provide the appropriate levels of service) and a Workforce Strategy (to ensure that Council has the right people with the right skills in the right place at the right time). It is anticipated that a draft Delivery Program, Annual Plan, Long-Term Financial Strategy and Asset Management Policy will be adopted for community consultation in the first quarter of 2010-11.

This Draft Management Plan details the initial contribution of Council towards implementing the community's longer-term strategy and provides information to the community about the wide range of Council activities.

The Management Plan outlines Council's key programs and projects, performance measures and budget for the coming year.

The Draft 2010-11 Management Plan includes an expenditure budget of \$373m.

### **IMPLEMENTING THE SHIRE STRATEGIC VISION**

The major focus of the Draft 2010-11 Management Plan is the implementation of the Shire Strategic Vision.

Council will be reallocating its current effort to emphasise, where possible, the eight Priority Objectives identified in the Shire Strategic Vision.

- vibrant, caring and connected communities
- ease of travel
- community access to facilities and services
- enhanced areas of natural value
- a sense of ownership of the natural environment
- strong sustainable business sector
- world's best information communication technology
- educated, innovative and creative community

These eight objectives are underpinned by 43 priority strategies that identify, in more detail, initial steps to move towards achieving these objectives.

There is a significant amount of work that can be done within existing resources to work towards the achievement of the eight priority objectives. In particular, attention is being given to refocusing work programs from planning to service delivery. For example, emphasis will be placed on implementing actions identified in the Community Plan, Cultural Plan and Recreation Facilities Strategy that are consistent with the Shire Strategic Vision. Another example is that there will be an increased focus on Council's advocacy and lobbying role (instead of developing local area traffic management schemes) in relation to the 'ease of travel' objective.

Additional resources have also been added to specific programs in 2010-11 including:

- increased maintenance of sports and recreation facilities (fields, courts, swimming pools and recreation centres), to improve the standards of facilities by implementing planned proactive maintenance programs and addressing the backlog of maintenance requirements.
- increased maintenance and upgrade of community buildings (senior citizens' centres, community centres and other community buildings), to improve the condition of facilities and to ensure facilities are maintained at an acceptable standard, in line with Council's Asset Management Strategy.
- additional community programs to build community connectedness for example: Get-To-Know Your Neighbours, local street and park parties and community information.
- additional local neighbourhood projects to build community connections and pride (either as a direct service provider or in partnership with community organisations/government).

## 5.4 Exhibition of Draft 2010-11 Management Plan (contd)

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- continue to fund the Aboriginal Community Development Worker, (subject to a funding contribution) to work with the growing indigenous population and implement a whole-of-community program to 'bridge the gap'.
- utilisation of volunteer groups to tackle graffiti, for example partnering with community or service groups to supply equipment and training to implement volunteer graffiti removal programs in the community.
- compile promotional materials and maintain up-to-date business information to maximise business and employment opportunities within the Shire.

### **SIGNIFICANT EXPENDITURE ITEMS**

#### **Water and Sewerage Capital Works**

The Draft 2010-11 Management Plan includes water, sewerage and drainage capital works program of \$111.7m including the following projects:

##### ***Water Supply \$80m***

- Mardi-Mangrove Transfer System
- Mardi Dam Transfer
- Mardi High Lift Pump Station and high voltage rising main
- Mardi Dam Pre-treatment facilities (water quality)
- Boomerang Creek Tunnel Rehabilitation
- Porters Creek Stormwater Harvesting Project

In 2010-11 the water supply capital works program is partly funded by a Federal Government Grant of \$25m for the Mardi-Mangrove project and \$11m in contributions from Gosford City Council for Joint Water Supply projects. The Mardi-Mangrove project is an initiative of Gosford City and Wyong Shire Councils with Federal Government funding of \$80.3m for the entire project through the Water Smart Australia Program.

##### ***Sewerage Services \$23.4m***

- Warnervale Town Centre sewerage trunk mains
- Warnervale Employment Zone sewerage trunk mains
- Treatment Plant and pumping station refurbishments

##### ***Drainage Construction \$8.3m***

- Network rehabilitation and drainage construction works are proposed to be undertaken at various locations across the Shire.

### **ROAD CONSTRUCTION**

#### ***Secondary Road Construction***

The major road construction project for 2010-11 is the completion of Railway Road Warnervale (Link Road Stage 1) with budgeted expenditure of \$3.3m. In 2010-11 this project is funded by developer contributions. Funding of \$5.5m was received from Federal Government under the Auslink Program for works undertaken on this project in 2009-10.

Two other significant projects are Warnervale Road between Ebony and Monarch Drives (over culvert) \$1.9m and commencement of works at Minnesota Road Warnervale (\$1.8m). These projects are funded from developer contributions.

### **Holiday Parks Improvement Works**

Council's Holiday Parks are part of Council's entrepreneurial activities and one area of focus for them is to improve their commercial and financial status. In August 2006, Council adopted a Business Strategy with the aim of significantly enhancing the financial contribution of the four holiday parks to the community and to the management of reserve lands. Performance to date has exceeded the adopted Business Strategy.

The predicted surplus for the Holiday Parks in 2010-11 is \$2.4m. Surplus funds must be spent on works and activities on crown land. The actual surplus achieved will be allocated to the ongoing implementation of the Estuary Management Plan, the adopted program of works in the Open Space Cluster Plan, and back into the Holiday Parks for improvement works.

The Holiday Parks capital works budget for 2010-11 is \$2.2m, spread across the four parks:

- Toowoon Bay – \$1,128,000
- Norah Head – \$340,000
- Canton Beach – \$371,000 and
- Budgewoi – \$343,000

Works include amenity improvements, fencing, hot water system and security upgrades, replacement of powerheads, landscaping and rectification of general defects at the parks.

### **Estuary Management Plan**

\$6.9m has been allocated in the Draft 2010-11 Management Plan for the continuation of the implementation of the Tuggerah Lakes Estuary Management Plan and stormwater treatment works on the Shire's other waterways. This amount is made up of \$1.7m from the Waterways Environmental Levy, \$4m in Federal Grant funding, \$102,000 revenue contribution for maintenance and operations in line with the asset management plans and a \$1.118m contribution from the surpluses from Holiday Park operations.

Works to be undertaken in 2010-11 include construction, planning and maintenance of stormwater treatment measures and drainage systems in urban areas, around lake edges and in coastal areas; works to redress the impacts of stormwater on bushland and natural wetlands; restoring rivers and creeks; improving boat access to rivers and improving lakeside recreation facilities and visual appearance and undertaking community stormwater pollution education campaigns.

### **Open Space Capital Improvements**

The Draft 2010-11 Management Plan includes \$10.1m for open space improvements, oval and facility construction and playground construction. Major projects to be undertaken include construction of Hamlyn Terrace fields and courts on Minnesota Road, a subsoil and drainage program to increase resilience of fields, Wadalba environmental corridor works and playground construction at five sites across the Shire. The five sites will be determined in an audit that is currently being undertaken to identify the areas of greatest need. The audit will be completed by 30 June 2010 to allow construction to take place in 2010-11.

### **Community Building Construction**

The Draft 2010-11 Management Plan includes \$2.6m for community building construction including \$1.2m for Hamlyn Terrace Community Centre on Minnesota Road, \$700,000 for the design of the Wyong Shire Cultural Centre and \$648,000 grant funding from the Regional Local Community Infrastructure Program for building renewals at Colongra Bay Hall, The Cottage Community Centre Bateau Bay, Hedor Street Hall Toukley, Halekulani Hall, Kurraba Hall, Myrtle Brush Hall, Tunkawallin Hall and Wyong Old School site.

### **Beach Improvements**

\$1.3m has been allocated in the Draft 2010-11 Management Plan for rebuilding and refurbishment costs for Surf Life Saving Clubs including investigation, design and approval costs and minor upgrades to beach infrastructure such as handrails steps and beach access walkways. The works program for 2010-11 includes minor refurbishment of The Lakes, The Entrance and North Entrance Surf Clubs, major refurbishment of Soldiers Beach Surf Club and the replacement of Shelly Beach Surf Club. The success of the surf club refurbishment/replacement program is reliant on grant funding. If significant grant funding is secured, the scope is likely to include a comprehensive reconstruction program including the reconstruction of Shelly and Soldiers Beach Surf Clubs. Without grant funding, only a partial refurbishment program is likely to proceed.

### **Cabbage Tree Harbour**

\$502,000 (including \$135,000 from Council) has been allocated in the Draft 2010-11 Management Plan to complete the construction of the Cabbage Tree Harbour Toe-Drainage Structure. The total cost of this project (\$1.954m) is being shared with NSW Department of Environment, Climate Change and Water on a 50-50 basis.

## **FINANCIAL OVERVIEW**

It is widely acknowledged that many local government authorities are under significant financial pressure and this is exacerbated by State Government activities such as cost shifting to Councils, rate pegging, the increased costs of legislative compliance and reductions in levies for developers.

The financial forecasts in this Draft Management Plan are based on the continuation of State Government funding – via Cluster Plans, RTA funded works, and other grant funded projects. The success of many of Council's programs is reliant on continued State Government funding. Without this funding some programs would be at risk of not continuing. Grant and external funding sources are normally guaranteed for a period of time, for example a financial year and where this information is known it has been built into the financial forecasts.

### ***Interest on Investments***

The 2010-11 Budget for Interest on Investments is based on market forecasts provided by Council's Investment Advisors and is budgeted at an average interest rate of 5.25% per annum, resulting in a budgeted increase of \$1.2 million over the 2009-10 budget. This reflects that overall investment markets have improved since the 2008 global financial crisis and that returns are expected to remain constant in 2010-11. However, in addition to interest rate forecast risks, there still remains future risk of volatility in regards to Council's remaining investments in managed funds.

In 2009-10 the budget was predicated on an estimated return on investment of 3.5%. Interest returns year-to-date in February were 4.49% and above budget by \$0.45 million, reflecting the general recovery of the financial markets. This favourable variance has been held to offset against the \$4.0 million investment capital losses recognised in 2008-09 in managed funds. In 2009-10 Council has recovered \$2.34 million or 58% of the 2008-209 losses in capital value. A further recovery of \$0.6 million is projected (mostly in 2009-10) based on the managed funds assets retained in the portfolio.

#### ***Increased Street Lighting Costs***

On 11 March 2010 Council received notification that The Australian Energy Regulator (AER) had released its draft determination on street lighting charges which indicates an increase of 54% or \$710,000 for Council in 2010/11. The AER has essentially back tracked on its previous determination and now proposes to introduce this increase in one hit, as opposed to smoothing it out over a four year period. This would have a significant impact on Council's ability to deliver services to the community.

Street lighting charges are made up of three components: energy costs: network costs and capital and maintenance costs. It is the capital and maintenance component that is proposed to increase by 54%. For Council this is an anticipated increase from \$1.2m to \$1.9m. The increase represents a recovery of deferred depreciation costs and a 10.81% return on assets due to the risk of the energy business.

Southern Sydney Regional Organisation of Councils (SSROC) is campaigning to amend the draft determination on behalf of 34 Councils (including Wyong) constituting approximately 94% of all the streetlights in EnergyAustralia's distribution area. SSROC believe that the draft determination contains deficiencies and is hoping to have these addressed and amended in the final determination. It is expected that the final determination will be released mid-April and it is hoped that, at worst, the increase will be phased in over a four year period, \$177,500 per year.

Prior to receiving the draft determination Council's proposed budget for street lighting in 2010-11 was \$2,154,000. The draft budget has now been increased to \$2,332,000 to accommodate the phased increase.

#### ***Budget Result***

The draft budget included in Volume I of the Management Plan forecasts a small deficit of \$110,000 which is acceptable in a total budget of \$376m.

This result may be impacted during the public exhibition period, for example final determination of street lighting charges as mentioned above, and any changes in the forecast result will be reported when the Management Plan is referred back to Council for adoption.

#### **FORMAT**

The Draft 2010-11 Management Plan is presented in a two- volume format.

Volume I provides details of the Shire Strategic Vision Priority Objectives, proposed programs and projects and performance measures. It also includes the financial forecasts for the coming year and the rolling works program.

Volume II contains the Revenue Policy that details the proposed rates and annual charges for 2010-11, as well as a schedule of proposed fees.

### **Inflation**

Traditionally Council has inflated its non-salary expenditure budgets based on the forecast for the Consumer Price Index (CPI). This is in line with the current rate pegging methodology of the State Government that takes into account the Australian Bureau of Statistics Consumer Price Index (CPI) and the index of Average Weekly Ordinary Time Earnings (AWOTE) when determining rate increases.

However, the Local Government Association of NSW and the Shires Association of NSW have found that "alone these indices do not appear to reflect the changing structure of Council costs and when considered jointly have not moved consistently with movements in local government expenses".

The Reserve Bank of Australia has recently made a submission on the Australian Bureau of Statistics' current review of the Consumer Price Index (CPI) and stated that the current Australian CPI is one of the least reliable indicators of inflation in the world.

It is clear that the real rate of increase in costs for Council's activities significantly exceeds both CPI and the rate pegging limit. It is therefore considered that Council should always, as a minimum, increase rates in line with the rate pegging limit as, even then, this will not keep up with the real increases in costs.

In developing the draft 2010-11 financial forecasts inflation has been estimated at 2.5%, which is in line with current financial forecasts for 2010-11.

### **Rates and Charges**

#### ***Ordinary Rates***

The rating proposals for Ordinary Rates, detailed in the Draft 2010-11 Management Plan, have been calculated on the rate pegging limit of 2.6% recently announced by the Minister for Local Government. In 2010-11 Council will be using the same property valuations as in 2009-10, as there has not been a general revaluation of properties in the Council area (revaluations occur every three to four years for local government rating purposes).

The 2.6% increase is applied to Council's total notional rating base and the impact will vary from household to household depending upon movements in property values across the Shire. In practical terms this means that some households will pay more than a 2.6% increase where their respective property values have risen at a rate beyond the average and some will pay less as their property values have increased below the average.

#### ***Special Rate - The Entrance Town Centre***

It is proposed to continue the special rate on all non-residential properties in The Entrance for 2010-11 and increase it by the Minister's rate pegging determination (2.6%). It will apply to:

- All land categorised and used for business purposes in the suburb known as The Entrance.



- All land used as Major Facilities servicing tourists including Service Stations, Camp or Caravan Sites, Registered Clubs, Tourist Accommodation and Hotels/Motels as defined in Council's current Local Environmental Plan (LEP) and District Shopping Centres as defined in Council's current Retail Strategy in the suburbs known as The Entrance North, The Entrance, Blue Bay, Long Jetty, Toowoan Bay, Shelly Beach, Bateau Bay and Magenta.
- All land used as rental accommodation that is rented or leased for periods of three months or less in the suburbs known as The Entrance North, The Entrance, Blue Bay and Toowoan Bay.

Revenue from this rate is lower than in previous years, due to a reduction in the number of properties to which this rate applies, therefore expenditure on The Entrance Town Centre has been reduced by \$22,000 in 2010-11. The rating base for The Entrance Special Rate is quite dynamic due to the fact that approximately 87% of the properties within the special rate rating base fall within the short-term rental component, that is residential properties used for holiday lettings. This is a difficult component to manage due to issues in identifying what properties are/are not used for short-term rentals. A review process based on sales and mailing address changes is in place however, the revenue from The Entrance Special Rate does fluctuate from year to year.

***Special Rate - Non-Residential Properties Toukley Area***

It is proposed to continue the special rate on all non-residential properties in the Toukley/Canton Beach/Noraville/Norah Head areas for 2010-11 and increase it by the Minister's rate pegging determination (2.6%). The number of properties to which this Special Rate applies has remained relatively stable from last year, decreasing by only two properties.

***Special Rate - Non-Residential Properties Wyong Area***

It is proposed to continue the special rate on all non-residential properties in the Wyong/North Wyong/Watanobbi areas for 2010-11 and increase it by the Minister's rate pegging determination (2.6%). The number of properties to which this Special Rate applies has remained relatively stable from last year, increasing by only two properties.

***Waterways Environmental Levy***

It is proposed to continue the Waterways Environmental Levy of \$25 per residential property in 2010-11 to provide funds towards the continued implementation of the Tuggerah Lakes Estuary Management Plan, as well as undertake works on the Shire's other waterways. (Details of the proposed expenditure from the levy are included in Volume 2 of the Draft 2010-11 Management Plan.) The levy forms part of Council's matching contribution to the \$20m grant from Federal Government and as such it is essential that Council continue to collect the levy and put it towards the ongoing implementation of the Tuggerah Lakes Estuary Management Plan. The Waterways Environmental Levy applies to the urban area of the Shire – defined as the area to the east of the F3 Freeway plus the Highway Service Centre and any industrial-zoned land to the west of the Freeway. Vacant properties (i.e. those without impervious surfaces) are not subject to this levy.

In 2010-11 funding for the ongoing implementation of the Tuggerah Lakes Estuary Management Plan is provided by the Waterways Environmental levy (\$1.716m), operational surpluses from Council's Holiday Parks (\$1.118m), Federal Government Grant funds (\$4m) and \$102,000 from general revenue.

Works completed to date include:

## 5.4 Exhibition of Draft 2010-11 Management Plan (contd)

- Constructed wetlands at Wendi Close Tumby Umbi, Lowana Ave Charmhaven and Sunrise Ave Budgewoi
- Gross pollutant traps installed at Kite Crescent Kanwal, Jetty Ave Charmhaven, and Kurruba Oval Berkley Vale
- Restoration and revegetation of severely eroding drainage channels at Loxley Close Tumby Umbi and Parkside Drive Charmhaven and
- Extensive streambank erosion control and revegetation on Saltwater creek.

All of these works have contributed significantly to reducing the volumes of sediment reaching the Tuggerah lakes estuary.

The implementation of the Estuary Management Plan will continue to target the most important issues for the health of the lakes to ensure a sustainable future for the Shire's waterways. Should Council choose not to continue to raise the levy, Council would be jeopardising further grant funding and break its commitment to implementing the Tuggerah Lakes Estuary Management Plan

### **Domestic Waste Management Charge**

The proposed domestic waste management charge for 2010-11 is \$348.50, a proposed increase of 8.5% (or \$27.35) over 2009-10. The increase above the estimated inflation rate is due to the increase in the Environmental Protection Authority (EPA) Waste Levy, increased costs associated with Council's Tip Rehabilitation Program, and Department of Environment, Climate Change and Water (DECCW) charges.

The EPA levy is a charge levied by the State Government which is increasing by \$12.90 per tonne to \$65.30 per tonne in 2010-11 – a 25% increase. In 2010/11 the total budget for the EPA Levy is \$11.3m, comprising \$2.5m for Domestic Waste, \$177,000 for Commercial Waste and \$8.6m for tipping, compared to \$8.24m in 2009/10, an overall increase of approximately 37%.

Council's tip rehabilitation program has grown which has resulted in an increase from \$40 to \$46.62 (17.1% increase) per Domestic Waste Management Service in 2010-11.

The proposed charges for 2010-11 are as follows:

<b>Service</b>	<b>2010-11 Proposed Charge Per annum (\$)</b>	<b>2009-10 Current Charge Per annum (\$)</b>	<b>% Increase</b>
Domestic Waste Charge	<b>348.50</b>	321.15	8.5%
Domestic Waste - West Freeway	<b>286.20</b>	258.45	10.7%
Domestic Waste - Additional Garden Bin	<b>75.70</b>	73.50	3.0%
Domestic Waste - Additional Waste Bin	<b>188.90</b>	167.80	12.6%
Domestic Waste - Additional Recycling Bin	<b>63.40</b>	61.50	3.1%

**Commercial Waste Charges**

The proposed commercial bulk bin service charges for 2010-11 are as follows:

<b>Bin Size</b>	<b>2010-11 Proposed Charge Per annum (\$)</b>	<b>2009-10 Current Charge Per annum (\$)</b>	<b>% Increase</b>
140 Litre	<b>204.70</b>	190.75	7.3%
240 Litre	<b>311.40</b>	290.50	7.2%
660 Litre	<b>1,242.00</b>	1067.30	16.4%
1.1 cubic metre	<b>1,794.00</b>	1,586.85	13.1%
1.5 cubic metre	<b>2,422.00</b>	2146.45	12.8%

The proposed charges for 2010-11 represent the fully-absorbed cost of providing each service. When setting the proposed charges the estimated waste tonnages and estimated costs (contract costs, tip rehab, EPA Levy, tip charges, staff costs and overheads, and waste contributions to roads, rangers and open space programs) are used in calculating the charge.

**Water Supply and Sewerage Service Charges**

Wyong Shire Council is constituted as a Water Supply Authority under the *Water Management Act 2000* and charges for water and sewer are levied under this Act. As a Water Authority, Council's water and sewerage charges are subject to approval by the Minister for Energy and Utilities, following determination by the Independent Pricing and Regulatory Tribunal (IPaRT).

Water and sewerage charges included in the proposed Draft 2010-11 Management Plan are in line with IPaRT's determination covering the period 1 July 2009 to 30 June 2013. Council is awaiting notification from IPaRT of the actual CPI rate to apply in calculating 2010-11 fees and charges. This will not be known until The Australian Bureau of Statistics releases its CPI figures for the March quarter at the end of April 2010. An estimate of 2.5% CPI has been applied in developing the draft fees and charges included in Volume 2 of the Draft 2010-11 Management Plan. Upon release of the actual CPI figure, the draft water and sewer fees and charges will need to be adjusted if CPI is more or less than 2.5%. Some fees, including the Water Usage Charge and Water Service Charge are increased by a flat amount plus CPI, in line with the IPaRT determination.

Council, as a Water Supply Authority, is not required to place its water and sewer charges on public exhibition as the price path is set by IPaRT after a public consultation process. However Council, since the introduction of the *Local Government Act 1993*, has included water and sewer charges in its Management Plan public exhibition process.

A summary of the water and sewerage prices for 2010-11 are below:

	<b>2010-11 Charge (\$)</b>	<b>2009-10 Charge (\$)</b>	<b>% Increase</b>
Water Usage Charge	<b>1.88 per KI</b>	1.78 per KI	5.6%
Water Service Charges (access)*	<b>136.73</b>	117.46	16.4%
Sewer Service Charges (access)	<b>439.84</b>	429.11	2.5%
Drainage Service Charge	<b>85.20</b>	83.12	2.5%

Notes:

\* Council is required to make an annual contribution of \$950,000 to the State Government's 'Climate Change Fund' which is used to provide assistance to business, government and households to save water and energy. Council's Water Service Charge incorporates this contribution to the State Government. The contribution payable by householders is calculated by dividing the \$950,000 contribution by the number of properties in the Shire. In 2010/11 the contribution per property has reduced from \$15.78 per property to \$15.28 per property as the number of properties in the Shire has increased, while the contribution payable to the State Government has remained the same. The money contributed into this fund by Wyong and Gosford Councils is used for water saving activities in the local area.

### Typical Residential Ratepayer

The impact of the proposed increases in rates and annual charges on the typical residential ratepayer is shown in the table below.

#### Median Property Valuation

The typical residential ratepayer has a property value of \$157,000 and water usage of 141KI per annum (which is the average residential demand for all residences).

The increase for the typical residential ratepayer, as shown below, is \$92.79 per annum or approximately \$1.76 per week. Most of this increase is outside of the control of Council and is determined by the State Government. In fact of the total increase of \$92.79 per annum, \$73.74 (or just over 79%) is dictated by the NSW State Government.

	2009-10 (\$)	2010-11 (\$)	Increase in \$	Increase as a %
<b>Median Property Valuation</b>	<b>157,000</b>	<b>157,000</b>		
General Rates	666.76	686.02	19.26	2.9%*
Water Service Charge	117.46	136.73	19.27	16.4%
Sewerage Service Charge	429.11	439.84	10.73	2.5%
Drainage Service Charge	83.12	85.20	2.08	2.5%
Domestic Waste Charge	321.15	348.50	27.35	8.5%
Waterways Environmental Levy	25.00	25.00	0	0%
<b>Sub-Total</b>	<b>1,642.60</b>	<b>1,721.29</b>	<b>78.69</b>	<b>4.8%</b>
Water Usage (141KI)	250.98	265.08	14.10	5.6%
<b>Total</b>	<b>1,893.58</b>	<b>1,986.37</b>	<b>92.79</b>	<b>4.9%</b>

\*Note: General Rates are increasing by 2.9% even though rate pegging is only 2.6%.

To explain this, the rates model provides for:

- recovery of \$173,000 lost through valuation objections since the 1 July 2008 revaluation and
- \$3,000 'catch up' of allowable revenue from 2009-10
- $\$176,000 / \$59,285,000$  (Total rate revenue) = 0.3%
- 2.6% (rate pegging) + 0.3% (objection and catch up factor) = 2.9%

### Changes to Other Fees and Charges

The following is a summary of the most significant changes that have been proposed to Council's other fees and charges for 2010-11.

#### Child Care Fees

It is proposed that Child Care Fees will increase by \$2 per day to \$70 for 0-1 year olds (2.9% increase) and to \$63 for 2-6 year olds (3.3% increase). A number of factors have contributed to these proposed increases being greater than CPI, including:

- NSW Department of Community Services (DoCS) introduction of new Children's Services Regulation 2010 requiring a new ratio of one carer for every four children under the age of two. The new regulation commences on 1 September 2010. DoCS have granted a transition period for existing centres to make the necessary changes to ensure compliance with the 1:4 ratio that will become mandatory in early 2011.
- DoCS have also introduced an annual licensing fee of \$900 per centre. From 1 January 2010 an annual fee is payable in advance (due the day before the anniversary of the licence first being granted). The purpose of the licence fee is to raise funds directly from the regulated child care sector to contribute to the cost of children's services regulatory activity undertaken by DoCS.
- Increased training costs as a result of the new regulations requiring all staff to have a level of formal qualification depending on their position. This also impacts on salary and wages costs as staff have to be replaced while they are at training.
- Award increases for staff and increased costs of paid maternity leave scheme.

The proposed fee increases will see Little Coast Kids' Care & Education continue to operate as Centres of excellence on a cost-neutral basis (according to Council's definition).

#### Holiday Park Fees

In setting Tourist fees and Holiday Storage Van fees for the Central Coast Holiday Parks consideration was given to the upgrade works completed and due for completion at each park, facilities available at each park, new furniture in the cabins and previous yields and occupancies for the various cabin and site types. A benchmark exercise of like parks was undertaken to ensure competitiveness. Each cabin type at each park was individually assessed and proposed fees set at a level to maintain market competitiveness.

The increases below demonstrate the increase for peak periods which include Easter; the Christmas Holidays and long weekends. The demand during these periods is extremely high. There has been very little increase in the off peak period and in some cases no increase. The shoulder period has only moderate increases.

In 2010/11 it is proposed to increase Storage Van fees at Canton Beach and Budgewoi holiday parks by 6.25%, Norah Head 7% and Toowoan Bay 9%.

In relation to proposed Tourist fees cabin accommodation has increased by a range depending on cabins age, presentation and yields. For example in peak season the proposed fee increase for cabin accommodation is 2.22% for an older style Ospray cabin that can accommodate up to 6 people at Canton Beach and a modern Kingfisher cabin at Norah Head or Toowoan Bay has increased by 11.11%. The proposed increase in fees have taken into consideration the cabins age and presentation and any additional improvements that have been made in the past financial year.

The proposed fees for powered sites include an increase of 6.67% at Budgewoi, 7.14% at Canton Beach, 12.24% at Norah Head and 15.56% at Toowoan Bay. Norah Head and Toowoan Bay have both had significant levels of capital works completed and there are further works that will be completed prior to the 2010 Christmas period. The new facilities at both of these parks are of a standard that can command a higher fee. The most notable proposed increases are for the ensuite sites at Norah Head and Toowoan Bay during peak periods due to the demand and the location of these sites.

The adopted Business Strategy included proposed fee increases for the first 3 years (2007-08, 2008-09 and 2009-10) and then assumed that the facilities and yields at the parks would have improved and that fees would be re-assessed and set at appropriate levels thereafter, but that an annual increase of 5% would not be unrealistic

### **Tip Fees**

The proposed tip fee for 2010-11 is \$178.90 per tonne, a proposed increase of 17.7% (or \$26.90) over 2009-10. The increase above the estimated inflation rate is due to the increase in the Environmental Protection Authority (EPA) Waste Levy, increased costs associated with Council's Tip Rehabilitation Program and anticipated reduction in tonnes to be landfilled. The EPA levy is increasing by \$12.90 per tonne to \$65.30 per tonne in 2010-11 – a 25% increase. If there was no EPA Levy increase, the proposed increase in tip fees for 2010-11 would be \$14 or 9.2%. Council's tip rehabilitation program has grown which has resulted in a \$3.87 increase in Tipping fees in 2010-11. An anticipated reduction in the number of tonnes to be landfilled in 2010-11 (due to economic downturn and reduced activity in the building industry) has also impacted on the proposed tipping fees by \$10.05 per tonne (as fixed costs still need to be covered).

### **Rezoning Fees**

Council currently charges fees for the processing of amendments to Wyong Local Environmental Plan (LEP) 1991. The LEP amendment process operates essentially as a 'user pays' system. As a result of recent changes to the legislation covering rezoning applications and an analysis of the amount of time taken to assess the current batch of rezoning applications invited through Council's Settlement Strategy process, it has become apparent that the fees currently charged are not sufficient to cover the costs incurred and therefore it is proposed to increase rezoning application fees in 2010-11. The proposed changes more accurately reflect the amount of time required to assess each phase of these applications.

- Phase 1 Lodgement fee increased by \$5,485 to \$8,808 to fully recoup staff time – this phase involves the initial desktop assessment of the application including internal referrals to specialist and technical staff and a report to Council's Development Management Panel (DMP) and includes an allowance of up to 60 hours of staff time.
- Phase 2 fee increased by \$1,458 to \$8,808 – this phase includes the work leading up to the exhibition of the rezoning proposal and includes an allowance of up to 60 hours of staff time.
- Phase 3 fee increased by \$622 to \$5872.50 – this phase includes the work from public exhibition through to gazettal and includes an allowance of up to 40 hours of staff time.

### **Development Assessment**

In 2009-10 whilst there has been an increase in the number of development applications, the most significant increase, in terms of income, has been in inspections and building

certificates indicating that more properties are changing hands. This trend is projected to continue in 2010-11 and has been interpreted as a leading indicator of increased economic activity with an associated increase in development applications forecast for next year.

Council currently has 80% of the market for Construction Certificates and is priced below the average fee. An outcome of the service review process undertaken by Council in late 2009/early 2010 was to increase the fees for certification-related activities (to the high side of average as indicated by a comparative analysis of adjoining and similar-sized councils) to achieve an additional \$229,000 in revenue. Council's market share will need to be closely monitored in 2010-11 to ensure that this additional revenue will be achieved.

### **Companion Animal Fees**

It is proposed to change the seizure release fees in 2010-11 to move away from a weight based model to a more affordable and incentive driven model. The majority of release fees are proposed to be reduced (with a handful remaining the same) and they include price incentives to de-sex and register animals upon release. The base same-day release fee is proposed to reduce from \$51.00 to \$20.00 and, for example, the cost to release an unregistered, non-de-sexed male dog after three days is proposed to reduce from \$240.40-\$280.40 (depending on weight) to \$181.00.

The new pricing structure includes a wide range of fees depending on whether the animal is registered or unregistered, desexed or not desexed and if the animal has a pensioner or non-pensioner owner. The proposed fees are designed to achieve the following outcomes:

- Reduce the number of animals that need to be re-homed and/or euthanised by implementing a fee structure that is less likely to be a disincentive to owners to reclaim their lost or seized animals.
- Introduction of a low same day release fee and fees capped over three holding periods to encourage timely reclaiming of animals. A review of seizure release statistics over a recent eight-month period showed 42% of animals are claimed after seven days, the aim here is to increase the rate of early release i.e. less than seven days.
- Reduce the financial disincentive for pet owners not to reclaim their unregistered animals because of the relatively high costs of seizure release and registration costs. Currently, 50% of the 51,384 micro-chipped animals living in the Shire remain unregistered.
- Increase the voluntary de-sexing of animals through a regime of low cost release fees, low cost de-sexing service by Council's contracted vet and low cost registration for de-sexed animals.
- Ensure the sustainability of the Animal Care Facility to deal with an increase in incoming animals as the Shire's population grows, without relying on major capital expenditure for future expansion, as well as reducing/controlling the pet population through a long-term, low cost, high volume de-sexing program.

Despite the proposed reduction in fees for 2010-11, income is expected to increase (draft budget includes a \$15,000 increase) as it is anticipated that it will be more affordable for people to pay for the release of their animals.

**Public Exhibition**

The Draft Management Plan is required to be publicly exhibited for 28 days. It is proposed that the public exhibition period will be from Wednesday 21 April to Wednesday 19 May 2010. During the exhibition period, copies of the draft plan will be made available for viewing at the Civic Centre in Wyong, at Council's Library and Information Centres, and on Council's website.

In addition a Community Briefing will be conducted on Thursday 29 April 2010 to explain the Draft 2010-11 Management Plan.

Following the exhibition period and the consideration of submissions, it is anticipated that Council will adopt the 2010-11 Management Plan on 9 June 2010.

**ATTACHMENTS**

*Nil.*



## 5.5 Proposed Councillors' Community Improvement Grants

TRIM REFERENCE: C2010/01723 - D02189442

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 \$11,200.00 from the 2009-10 Councillors' Community Improvement Grants as outlined in the report.***

### BACKGROUND

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

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

### THE PROPOSAL

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

### OPTIONS

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

### STRATEGIC LINKS

#### Management Plan

<b><i>Principal Activity</i></b>	<b><i>Key Issue(s) and Objective (s)</i></b>	<b><i>Financial Line Item No and Description</i></b>
A More Sustainable 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.

## 5.5 Proposed Councillors' Community Improvement Grants (contd)

### Link to Key Focus Areas

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

### Financial Implications

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

### CONSULTATION

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

### GOVERNANCE

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

### CONCLUSION

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

### Councillors' Community Improvement Grants 2009-10

COUNCILLORS' COMMUNITY IMPROVEMENT GRANTS ALLOCATION	Best	Eaton	Graham	Matthews	McBride	McNamara	Symington	Vincent	Webster	Wynn	SUB TOTAL
Allocation 01/07/2009 - 30/06/2010	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	150,000
Expenditure up to and including Ordinary Council Meeting of 24/03/2010	7,197	7,100	7,048	6,999	6,741	4,850	3,434	8,925	10,820	10,425	73,539
Available allocation as at 24/03/2010	7,803	7,900	7,952	8,001	8,259	10,150	11,566	6,075	4,180	4,575	76,462
Proposed Allocations for 14 April 2010											
1st Wyong Scout Group (\$1,700)	250	350		150			250				1,000
A Classified Weekend - a Festival of square dancing (\$1,200) (\$600 already allocated)							250				250
Bateau Bay PCYC (\$1,000) (\$950 already allocated)										50	50
Bateau Bay PCYC (\$2,000) (payment in advance)			500	250	250	250	250		250		1,750
Camp Breakaway Inc (\$5,000)	250				250	500					1,000

## 5.5 Proposed Councillors' Community Improvement Grants (contd)

### Councillors' Community Improvement Grants 2009-10 (contd)

COUNCILLORS' COMMUNITY IMPROVEMENT GRANTS ALLOCATION	Best	Eaton	Graham	Matthews	McBride	McNamara	Symington	Vincent	Webster	Wynn	SUB TOTAL
<b>Allocation 01/07/2009 - 30/06/2010</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>15,000</b>	<b>150,000</b>
<b>Expenditure up to and including Ordinary Council Meeting of 24/03/2010</b>	<b>7,197</b>	<b>7,100</b>	<b>7,048</b>	<b>6,999</b>	<b>6,741</b>	<b>4,850</b>	<b>3,434</b>	<b>8,925</b>	<b>10,820</b>	<b>10,425</b>	<b>73,539</b>
<b>Available allocation as at 24/03/2010</b>	<b>7,803</b>	<b>7,900</b>	<b>7,952</b>	<b>8,001</b>	<b>8,259</b>	<b>10,150</b>	<b>11,566</b>	<b>6,075</b>	<b>4,180</b>	<b>4,575</b>	<b>76,462</b>
<b>Proposed Allocations for 14 April 2010</b>											
Camp Endeavour (At Camp Breakaway, San Remo) (\$1,000)						250			500	250	<b>1,000</b>
Careflight (NSW) Ltd (\$2,000)	200				150		250				<b>600</b>
Central Coast Community Congress (\$2,085)					300						<b>300</b>
Gorokan High School (\$1,000)	250					250				500	<b>1,000</b>
Stop Korean Coal Mining (\$2,000)	500	500								500	<b>1,500</b>
Toukley & District Chamber of Commerce (\$3,000) (\$2,050 already allocated)										500	<b>500</b>
Toukley & District Senior Citizens Club Inc (\$2,000) (\$200 already allocated)										500	<b>500</b>
Tuggerah Lakes Art Society Inc (\$2,000) (\$1,050 already allocated)										500	<b>500</b>
Tuggerawang Retirement Village Residents Committee (\$1,900) (\$190 already allocated)										500	<b>500</b>
Warnervale Family & Community Centre (\$500)						500					<b>500</b>
Wyong RSL Sub Branch (\$3,000) (\$1,000 already allocated)					250						<b>250</b>
<b>Total Proposed Allocations for 14/04/2010</b>	<b>1,450</b>	<b>850</b>	<b>500</b>	<b>400</b>	<b>1,200</b>	<b>1,750</b>	<b>1,000</b>	<b>0</b>	<b>750</b>	<b>3,300</b>	<b>11,200</b>
<b>Total Accumulated Allocations as at 14/04/2010</b>	<b>8,647</b>	<b>7,950</b>	<b>7,548</b>	<b>7,399</b>	<b>7,941</b>	<b>6,600</b>	<b>4,434</b>	<b>8,925</b>	<b>11,570</b>	<b>13,725</b>	<b>84,739</b>
<b>Balance Uncommitted as at 14/04/2010</b>	<b>6,353</b>	<b>7,050</b>	<b>7,452</b>	<b>7,601</b>	<b>7,059</b>	<b>8,400</b>	<b>10,566</b>	<b>6,075</b>	<b>3,430</b>	<b>1,275</b>	<b>65,262</b>

## ATTACHMENTS

Nil

## 5.6 Establishment of an Environment Committee

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TRIM REFERENCE: F2004/06960 - D02132081

AUTHOR: GV

### SUMMARY

At the Ordinary meeting of Council held on the 9 September 2009, Council resolved that staff report on the possibilities for establishment of an Environment Committee. This report reviews the models currently operating in other Councils and recommends the establishment of an Environment Committee (EC) by way of an extension to the charter of the Tuggerah Lakes Estuary Coastal and Floodplain Management Committee (TLECFMC).

### RECOMMENDATION

- 1 ***That Council amend the Charter of the Tuggerah Lakes Estuary Coastal and Floodplain Management Committee to form a strategic level Environment Committee .***
- 2 ***That Council determine the membership of this Environment Committee.***
- 3 ***That the Environment Committee continue to meet on the same basis as the current Tuggerah Lakes Estuary Coastal and Floodplain Management Committee.***
- 4 ***That the purpose of the Environment Committee is to examine, develop, review and report to Council on broad shire wide strategic environmental issues and initiatives, whilst continuing to consider the existing matters currently contained within the charter of Tuggerah Lakes Estuary Coastal and Floodplain Management Committee.***

### BACKGROUND

At the Ordinary meeting of Council held on the 9 September 2009, Council **RESOLVED** unanimously on the motion of Councillor WYNN and seconded by Councillor BEST:

*“That the Shire Planning Department provide a report that outlines the possibilities for establishment of an Environment Committee. The report should include, but not be limited to:*

- The Terms of Reference (charter, roles, responsibilities and function);*
- Possible membership;*
- Whether it should be a committee of Council; and*
- Report on environment committees that have been established in other Council areas, their roles, functions and achievements.*

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

AGAINST: NIL”

## CURRENT ENVIRONMENT COMMITTEE MODELS IN LOCAL GOVERNMENT

In relation to point 4 of the Resolution, there are a number of differing models for local government environmental or sustainability committees, the most common being:

- Committees of Council
- Advisory committees to Council
- Community consultation committees
- Action groups.

A review of similarly placed Councils (See Table 1) indicates that these committees have experienced varying success. The most apparent feature of the active and successful committees is a clear statement of the function and objectives of each committee, a clear membership structure and well administered meetings. The real success of any Committee is dependent on the expertise and drive of its membership.

With an increasing emphasis and need to address *sustainability and climate change issues*, some Councils have attempted to reduce their number of committees and have incorporated terms of reference on sustainability and climate change into the terms of reference of all Council committees (for example, Gosford Council). Other Councils see *environmental sustainability* as a discrete issue and therefore have specific committees.

Some Council committees (such as Hornsby Council's Sustainable Action Committee) focus on community based projects culminating in achievements such as a Green Buildings program, Ride to Work Day, Walk to Work Day and the Sustainable House Day Bus Tour.

Other Council committees (such as Lake Macquarie Council's Environment Committee and Manly Council's Community Environment Committee) consist of expert panels or technical advisory committees who consult technical expertise locally and from around the world and serve an advisory function to Council for example, on ecosystem enhancement and sustainable living.

Gosford's Environment Committee deals with a broader scope of sustainability issues (other than just environmental issues) and advises Council on matters such as sustainability, identification of emerging issues affecting the LGA, city planning and development of environmental partnerships.

## Function and Role of an Environment Committee (EC)

### Council Objectives

The goal for Council in establishing an EC is enhanced strategic environmental management. The outcomes of the Committee should assist in

- Enhancing Councillor's understanding of strategic environmental issues.
- Enabling timely input by Council into corporate planning matters that potentially effect Council's ability to manage and influence strategic environmental issues.

Enhancing Council's decision-making ability in respect of the prioritisation of environmental objectives as measured against social and economic objectives.

In ideal circumstances a specific committee to deal with strategic environmental matters would not be required and in fact should be superfluous on the basis that the full Council should make all of its decisions on the basis of the triple bottom line (therefore giving appropriate consideration to environmental matters).

However, it is considered that we, as an organisation have not yet reached that level of maturity as we have only recently commenced our journey along the road towards sustainability. In addition, it is only within the past 18 months that a specific sustainability unit has been established within the organisation and the unit is yet to fully roll out the sustainability decision making framework, which will provide the tools for Council to appropriately consider environmental issues as they relate to or are impacted by social and economic issues.

Therefore, at this point in time, it is considered good governance for Council to establish a strategic level EC, which would perform a similar function in respect to environmental issues as is currently fulfilled by the Strategic Finance Committee in relation to financial matters.

The purpose and objectives of an EC would be as follows:

- To enhance the Shire's environmental sustainability by way of the development and consideration of strategic environmental policy.
- To consider, examine and review broad shire wide strategic environmental issues and initiatives.
- To drive the implementation of the strategic environmental objectives contained within the SSV.
- To enable strategic and corporate focus to be given to the environmental aspects of the triple bottom line in a similar way to the Strategic Finance Committee and its consideration of economic aspects.
- To encourage/consider Council's advocacy role at State and Federal Government level in relation to environmental issues affecting Wyong Shire.
- To develop and consider strategic environmental initiatives of benefit to the Shire such as carbon trading, bio banking etc.
- To develop strategic environmental KPI's and monitor Council's strategic environmental performance.
- To implement and administer the Estuary Management Plan for the Tuggerah Lakes including implementation of capital works, ongoing maintenance programs and administering funding programs for works and services.
- To implement and administer Council's Floodplain Risk Management Program including flood emergency management and reporting on the impacts of significant flood events.
- To develop, implement and administer Council's Coastline Management Plan including reporting on the implications of significant erosion and storm events on coastal property.

To meet its strategic objectives, it should be noted that the Committee would not deal with operational matters such as individual development applications or local environmental plans. However, it would be appropriate that all major strategic planning policies and documents that may substantially impact the environment (in a positive or negative way) be considered by the EC. Examples of these would include the Shirewide Settlement Strategy, Comprehensive LEP, the environmental part of the State of the Shire Report, Natural Resources Strategy, Climate Change Policy and the Biodiversity Management Plan, etc.

### **Role of Existing Committees**

The EC would and should become the peak environmental committee of Council, therefore, the role currently undertaken by the TLECFMC. The current role and significance of the TLECFMC should not be understated as it is required from a legislative point of view (as outlined in the Coastline Management Manual, Floodplain Management Manual and the Estuary Management Manual), and performs an important role in community engagement. However, the TLECFMC only deals with particular aspects of the environment. In contrast the EC will deal with wider environmental issues at a strategic level, whilst the existing committees have an operational/advisory function and would retain their current role.

### **Options**

Council has three major options in respect to the establishment of the EC.

- 1 Resolve not to establish an EC.
- 2 Establish an EC as the peak forum for the consideration of strategic environmental issues and therefore the TLECFMC becomes a sub committee of the EC.
- 3 Extend the role and charter of the TLECFMC to perform the function of an EC. In this option, the name of the committee would be changed to EC, however, all the legislative functions of the TLECFMC would be incorporated.

### **Recommended Option**

Option 3 is recommended for the following reasons:

- The current functions of the TLECFMC are required from a legislative point of view to satisfy the provisions of the Coastline Management Manual, Estuary Management Manual and Floodplain Management Manual. Therefore, no matter what form an environment committee might take, there would be a need to maintain the current role of the TLECFMC.
- It would be considered unnecessary and ineffective use of resources to form a separate committee to the TLECFMC, particularly taking into account that it already deals with a wide range of environmental issues.
- The broad membership of the TLECFMC with its inclusion of relevant State Government Authorities and members of the community provides an appropriate membership base and discussion forum for all potential environment issues that would be considered by the EC.
- Combining the TLECFMC with the EC will only require the same level of resource, one business paper and only one meeting requiring the attendants of both staff and Councillors.

### **Legislative Background**

The right to establish an EC is given to Council under s355, of the Local Government Act 1993 (the Act).

Council must establish the Committee in accordance with s.259-s.271 of the Local Government Regulations (General) 2005 (the Regs.)

### **Committee Accountability**

The Committee would be accountable to Council.

### Committee Membership

In accordance with Section 267 of the LG Regs, the Mayor is required to be the Chairperson of all Council Committees unless he/she chooses to relinquish that position. The Mayor is required to be a member of every committee (s.260 Regs.)

With respect to existing environment committees that have been investigated, Committee membership numbers vary between Councils depending on function. The roles and background of members is also varied but is always linked with the function of the committee.

### Meeting Frequency

The frequency of meetings is also dependent on the function of the committee and amongst other Councils, appears to range from monthly to quarterly. With respect to the recommended option to establish an EC, it is proposed that meetings would continue to be held on a monthly basis as currently occurs with the TLECFMC.

**Table 1 – Other Council Committees**

Council Committee Name	Terms of Reference		
	Function/Charter/ Scope	Membership	Meeting Frequency
<b>Gosford Council - Environment Committee</b>	<ul style="list-style-type: none"> <li>Review the sustainability report indicators and initiatives and provide advice to Council and Council Directorates as applicable.</li> <li>Identify and evaluate emerging local and global issues that impact upon the local government area of Gosford City Council.</li> <li>Evaluate and identify the long term environmental benefits into City plans.</li> <li>Effectively communicate the committee's achievements via the Sustainability Report and the Community Newsletter.</li> <li>The Committee may establish and dissolve Sunset Groups to assist in addressing projects and issues that come before the committee.</li> </ul>	Chairperson 6 Councillors Director Environment & Planning Principal Environmentalist Sustainability Officer Communications Officer Sustainability (Education) Officer Natural Resource Officer 7 community representatives  Total: 20+	N/A
<b>Hornsby Council - Sustainable Action Committee</b>	<ul style="list-style-type: none"> <li>The Committee works with Council and community in order to achieve its strategic intent of creating a living environment towards a sustainable future.</li> <li>The purpose of the Committee is to assist the Council and community of the Shire to realise the objectives of Council's Management Plan, particularly the development and</li> </ul>	Chairperson Councillor Councillors Council staff Up to 20 Community representatives  Total: 24+	Quarterly



Council Committee Name	Terms of Reference		
	Function/Charter/ Scope	Membership	Meeting Frequency
	<p>implementation of initiatives that contribute towards achieving the vision for sustainability in Hornsby Shire.</p> <ul style="list-style-type: none"> <li>○ Subcommittees may be established to work on specific projects or activities.</li> <li>○ The Committee may seek information and briefings from Council staff and from organisations and individuals other than Council.</li> <li>○ Council is responsible for the budget and overall coordination of the committee.</li> </ul> <ul style="list-style-type: none"> <li>● Primary Roles: <ul style="list-style-type: none"> <li>○ Contribute to the development of Councils Management Plan</li> <li>○ Review the annual State of Environment Report.</li> </ul> </li> </ul>		
<p><b>Manly Council -</b> Community Environment Committee</p>	<p>Special Purpose Committee, to provide a forum for discussion and recommendation to Manly Council to:</p> <ul style="list-style-type: none"> <li>● Advise Council regarding special natural landscapes, biodiversity and aquatic environments to conserve a sustainable, healthy and safe environment for future generations of the community.</li> </ul> <p>Key functions of the Committee:</p> <ul style="list-style-type: none"> <li>● Promote environmental best practice</li> <li>● Advise the General Manager on priority projects to be considered for funding from the Environmental Levy each year</li> <li>● Review the effectiveness of projects funded on an annual basis following advice provided by Council staff.</li> </ul>	<p>Councillor representatives Representative from the National Parks and Wildlife Service. Little Penguin Warden. 11 Community members.</p> <p>Total: 14+</p>	Monthly

<p><b>Ku-ring-gai Council - Sustainability Reference Committee</b></p>	<p>The objective of this committee is to support and assist residents, businesses, Council and others to communicate and to engage in sustainability. The committee has a wide term of reference that includes:</p> <ul style="list-style-type: none"> <li>• comment on and input into the development of public policy</li> <li>• strategic planning</li> <li>• corporate reporting</li> <li>• social, environmental and financial planning</li> <li>• risk management</li> <li>• community engagement</li> <li>• climate change.</li> </ul>	<p>Chairperson (Councillor) Deputy Chairperson (Councillor) 18 community members</p> <p>Total: 20+</p>	<p>N/A</p>
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#### ATTACHMENTS

1 Charter - Environment Committee      D02204092



**CHARTER**

**OF THE**

**ENVIRONMENT COMMITTEE**

## CONTENTS

1	MEMBERSHIP: .....	1
2	PURPOSE AND OBJECTIVE:.....	1
3	MEETING TIMEFRAMES:.....	2
4	DECISION MAKING PROCEDURES:.....	2
5	QUORUM: .....	3
6	VOTING:.....	3
7	COMMITTEE MEMBERS' NON-ATTENDANCE AT MEETINGS: .....	3
8	EXPENSES OF COMMITTEE MEMBERS.....	3
9	NON-MEMBERS ATTENDANCE AT COMMITTEE MEETINGS.....	3
10	VACANCY .....	4
11	CHAIRPERSON: .....	4
12	SECRETARY:.....	4
13	AGENDA: .....	4
14	MINUTES: .....	4
15	PROCEDURE FOR CHANGING THE CHARTER: .....	5
16	TERM: .....	5

# CHARTER

## WYONG SHIRE ENVIRONMENT COMMITTEE

### 1 MEMBERSHIP:

- 4 Councillors (the Mayor is a member of all Committees and if in attendance will be the Chairperson or a Councillor will be the Deputy Chairperson)
- 1 Wyong Shire Council - Manager Natural Resources/Sustainability
- 1 Wyong Shire Council – Manager Estuary Management
- 1 Wyong Shire Council – Senior Planning Engineer (Hydrology)
- 1 representative from each of the following community groups:
- i Conservation Groups
  - ii Commercial Fishing Association
- 10 Community members made up as follows:
- 1 valley resident
  - 1 Coastal resident, Shelley Beach to Bateau Bay
  - 1 Coastal resident, Budgewoi / Norah Head
  - 3 Shire residents with interest in environmental issues and coastal management
  - 1 resident with interest in estuary and lakeshore issues, Tuggerah Lakes
  - 1 resident with an interest in management of the coastline and intertidal zone
  - 2 representatives with interest in flooding issues
  - 1 representative from the local aboriginal community
  - 1 representative from the Community Environment Network (CEN)
  - 1 representative from State Emergency Services (Police and Emergency Services NSW)
  - 1 representative from Department of Lands (Department of Services, Technology & Administration)
  - 4 representatives from Department of Environment, Climate Change and Water
    - i 1 representative for Coastal and Estuary Management issues
    - ii 1 representative for Floodplain Management issues
    - iii 1 representative from the Hunter Central Rivers Catchment Management Authority
    - iv 1 representative for National Parks and Wildlife Management issues.
  - 1 representative from Department of Primary Industries, Fisheries (Industry and Investment)
  - 1 representative from NSW Maritime (Transport and Infrastructure)

### 2 PURPOSE AND OBJECTIVE:

The goal for Council in establishing an EC is to promote a more sustainable shire through the strategic management of environmental issues. The outcomes of the Committee should assist in

- Enhancing Councillor's understanding of strategic environmental issues.
- Enabling timely input by Council into corporate planning matters that potentially effect Council's ability to manage and influence strategic environmental issues.
- Enhancing Council's decision-making ability in respect of the prioritisation of environmental objectives as measured against social and economic objectives.

**The purpose and objectives of an EC would be as follows:**

- To enhance the Shire's environmental sustainability by way of the development and consideration of strategic environmental policy.
- To consider, examine and review broad shire wide strategic environmental issues and initiatives.
- To drive the implementation of the strategic environmental objectives contained within the SSV.
- To enable strategic and corporate focus to be given to the environmental aspects of the triple bottom line in a similar way to the Strategic Finance Committee and its consideration of economic aspects.
- To encourage/consider Council's advocacy role at State and Federal Government level in relation to environmental issues affecting Wyong Shire.
- To develop and consider strategic environmental initiatives of benefit to the Shire such as carbon trading, bio banking etc.
- To develop strategic environmental KPI's and monitor Council's strategic environmental performance.
- To implement and administer the Estuary Management Plan for the Tuggerah Lakes including implementation of capital works, ongoing maintenance programs and administering funding programs for works and services.
- To implement and administer Council's Floodplain Risk Management Program including flood emergency management and reporting on the impacts of significant flood events.
- To develop, implement and administer Council's Coastline Management Plan including reporting on the implications of significant erosion and storm events on coastal property.

**3 MEETING TIMEFRAMES:**

The interval between meetings will not exceed three months but will usually be monthly except January each year. Notification will be given by the Chairperson at least one week in advance together with a copy of the proposed agenda.

**4 DECISION MAKING PROCEDURES:**

The Committee is directly responsible and accountable to the Council for the exercise of its responsibilities. In carrying out its responsibilities, the Committee must at all times recognise that the primary responsibility for the management of Council rests with the Council and the General Manager as defined by the Local Government Act.

No powers are delegated to the Committee and minutes must be adopted by Council.

**5 QUORUM:**

A quorum shall consist of 10 delegates including a minimum of 2 Councillors.

If for any reason a quorum is not present within half an hour of the scheduled commencement of the meeting, the meeting shall be rescheduled.

If, before the scheduled meeting date, the Chairperson has knowledge that a quorum will not be present, the Chairperson shall reschedule the meeting for another time.

**6 VOTING:**

A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee. If voting is tied, the Chairperson has a casting vote.

**7 COMMITTEE MEMBERS' NON-ATTENDANCE AT MEETINGS:**

Committee members are expected to attend all Committee meetings.

Where a representative fails to attend three successive meetings without submitting a satisfactory explanation, the organisation that the person represents will be requested to replace its representative.

**8 EXPENSES OF COMMITTEE MEMBERS**

Each participating organisation with membership of the Committee shall meet all costs of their members participation and attendance at Committee meetings.

**9 NON – MEMBERS ATTENDANCE AT COMMITTEE MEETINGS**

Persons other than Committee members/alternates shall be permitted to attend meetings subject to

- a Prior agreement at the previous meeting, if the invitee is known, or
- b Agreement by the Chairperson

Such person may be requested to provide input by virtue of having special knowledge or information for the benefit of members, or may come as an observer, in which case no contribution is allowed.

Other staff may be requested to attend and provide input (at the Chairperson's invitation) by virtue of having special knowledge or information for the benefit of members, or they may come as an observer, in which case no contribution is allowed.

The Chairperson may grant speaking rights to any person at his/her sole discretion.

Permission to attend to speak at the meeting can be withdrawn at any time by the Chairperson.

**10 VACANCY**

If for any reason a vacancy is created, the position shall be filled by nomination from the affected organisation as soon as practicable after the vacancy has occurred.

**11 CHAIRPERSON:**

The Chairperson will be the Mayor or the designated Councillor/alternate. In the absence of the Chairperson/alternate, the Manager, Natural Resources will be the Chairperson, and in his/her absence, the meeting may continue on an informal basis only.

**12 SECRETARY:**

The position shall be filled by a Councillor Services staff member.

A suitable meeting place and facilities will be made available by Council for the conduct of Committee meetings.

**13 AGENDA:**

All agenda items shall be submitted to the Council 14 days before the meeting. Members submitting items should ensure the content is given in sufficient detail to assist members understand the issues raised, or by providing additional supporting information.

If a Committee member wishes to raise an urgent/late item that is not on the agenda, it is at the Chairperson's discretion to determine the appropriate manner for dealing with the matter.

**14 MINUTES:**

The Secretary is responsible for recording the minutes, which shall contain:

- (a) Description of the meeting (i.e. name of Committee, ordinary meeting, etc.), date, time and venue at which the meeting was held.
- (b) A list of persons present.
- (c) Notification of endorsement of minutes from previous the meeting.
- (d) Whether there was business arising from the minutes.
- (e) Notation of reports or correspondence.
- (f) Items of general business.
- (g) Time meeting closed, date and venue for next meeting.



**15 PROCEDURE FOR CHANGING THE CHARTER:**

- (a) Council may amend the Charter by resolution.
- (b) The following procedures shall apply for the Committee to amend the Charter.
  - i Any proposed changes to the Charter shall be submitted to the Committee Secretary at least 21 days before any Committee meeting so that notice may be given to all members at least 14 days in advance of any meeting.
  - ii Any proposed changes will require the support of the majority of the Committee membership.
  - iii Proposed amendments to the Charter can be effective only after approval by the Council.

**16 TERM:**

The Committee will report to the Council and cease operation on 1 September 2012.

The Committee will cease to operate before 1 September 2012 if Council adopts a review of the Committee by the General Manager which indicates that the Committee is either not fulfilling or is in breach of its Charter.

Established	
Reports to	
File Reference	
Reviewed	
Review details	

## **5.7 Minutes of the Senior Citizens' Council Meeting - 19 March 2010**

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TRIM REFERENCE: F2008/00407 - D02190765

AUTHOR: SG

### **SUMMARY**

Report on the Minutes of Senior Citizens' Council meeting held 19 March 2010.

### **RECOMMENDATION**

*That Council receive the minutes of the Wyong Shire Senior Citizens' Council Meeting held on 19 March 2010 and adopt the recommendations contained therein.*

### **BACKGROUND**

A meeting of the Wyong Shire Senior Citizens Council was held on 19 March 2010. The minutes are included as Attachment 1.

### **ATTACHMENTS**

1 Minutes Senior Citizens Council Meeting - 19 March 2010 D02190471

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**WYONG SHIRE COUNCIL**

MINUTES OF THE  
**SENIOR CITIZENS' COUNCIL**  
 HELD IN THE COMMITTEE ROOMS  
 WYONG CIVIC CENTRE, HELY STREET, WYONG  
 ON 19 March 2010  
 COMMENCING AT 2:05 PM

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**PRESENT**

Ms June Goss (Chairperson)	Older Women's Network, isolated neighbourhoods
Mrs Juliet Axford	Seniors health & fitness community
Mr Luigi Bruni	Italian community
Mr Bruce Pyke	National Seniors Association and "Wrap with Love"
Ms Dawn Thompson	National Serviceman's Association
Mr Bruce Kirkness	Toukley Senior Citizens Club
Ms Patricia Parperis	Long Jetty Seniors Choral Group

**IN ATTENDANCE**

Ms A Evans	Wyong Shire Council
Ms S Gardiner	Minute Secretary

Ms June Goss, Chairperson opened the meeting and read the acknowledgement to country statement.

**APOLOGIES**

Councillor G Best	Wyong Shire Council
Councillor D Eaton	Wyong Shire Council
Ms Maryanne Housham	Aboriginal and Torres Strait Island Communities; grandparents groups

**SENIOR CITIZENS COUNCIL RECOMMENDATION**

*That the Senior Citizens Council accept the apologies.*

**PROCEDURAL ITEMS****1.1 Disclosure of Interest****RECOMMENDATION**

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

**SENIOR CITIZENS COUNCIL RECOMMENDATION**

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

**CONFIRMATION OF MINUTES OF PREVIOUS MEETING****2.1 Minutes of Previous Meeting held on 25 February 2010**

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**SENIOR CITIZENS COUNCIL RECOMMENDATION**

*That members confirm the minutes of the previous Senior Citizens' Council Meeting held on 25 February 2010.*

**BUSINESS ARISING OUT OF THE MINUTES**

Bruce Kirkness added his apology for non attendance at the last meeting as he had business finalizing nominees for the Board at the Toukley Senior Citizens Club.

**3.1 National Seniors Meeting**

Annette Evans tabled the New Residents booklet as general information on the type of information that could be contained in the Senior's information booklet. The New Residents booklet is currently under review.

Two information sheets from Wyong Aged Care Services and Wyong Seniors Activities were also tabled. The Senior Citizens Council commented that this was an excellent idea.

Updates on the information booklet to be brought to a further meeting of the Seniors Citizens Council.

The Chairperson, Mrs June Goss asked members of the Council to bring to the next meeting any additional information that could be contained in the booklet.

Bruce Kirkness referred to large poster that Wyong Shire Council (WSC) produced in the International Year of Older Persons (1999). Many senior, neighbourhood and aged care organisations kept this posted on their walls for years after and would value an updated version.

**3.2 2010 NSW Seniors Card Discounts**

Bruce Kirkness mentioned applications only available online. Annette Evans mentioned some available at Council.

**4.1 Volunteering Central Coast**

Advice was given that the Computer Basics for Seniors training course was cancelled. Luigi Bruni to attend the next course when it is available.

## INFORMATION REPORTS

### 3.1 Update on Activities for Seniors Week for 22-26 March 2010

#### SENIOR CITIZENS COUNCIL RECOMMENDATION

*That Council receive the report on Update on Activities for Seniors Week for 22-26 March 2010.*

A luncheon was held with the Mayor, Councillor Graham launching Seniors Week for 22-26 March 2010 with a compilation of calendar activities.

Further information that was not received to be included in the Senior Citizens activities for Seniors Week by the due date is on the Council's website such as:

- Greater Union – Seniors Club at the movies on Thursdays including a free morning tea (cost: \$8.00 per person)
- YMCA – offering free mornings Lake Haven and Toukley Pool with morning tea
- Toukley Neighbourhood Centre – energy saver forum on Wednesday, 24 March 2010

Activities for Seniors Week as follows:

- Trivia Day at Wyong RSL – Friday, 26 March 2010 from 10.00 am.
- Safety Symposium – Monday, 29 March 2010 at Wyong Civic Centre advertised through Shirewide.

The Senior Citizen's Council spoke about the Safety Symposium – 29 March 2010 and the part members would have on the day, as follows:

The **Safety Symposium** will be held in Function Room of Wyong Shire Council with displays and guest presenters sitting in a panel at the front to the room.

- 9.30 am Arrivals & Registration** (June on entry table)  
There will be 'sample bags', programs and other 'stuff' for people to collect.
- 9.45 am Welcome & housekeeping**  
Bruce Pyke
- 9.50 am Acknowledgement of Country**  
(Maryanne Housham – has recommended Chairman of Eleanor Duncan Health: Mr Phil Peterson)
- 9.55 am Introductions:** Mayor/Councillors
- 10.00 am FIRE SAFETY (home safety) Speaker: Melanie Rebane**  
Thanks – Luigi Bruni
- 10.30 am HEALTH PROMOTION (personal safety) & FALLS PREVENTION**  
**Speaker: Helen Kale**  
Thanks – Juliet Axford
- 11.00am FAIR TRADING DEPT(consumer safety) Speaker: Jillan Meyers-Brittain**  
Thanks – Dawn Thompson

- 11.30 am **CRIME PREVENTION DVD (community safety)**  
Contact : Sen Const Murray Alcock  
Thanks – Bruce Kirkness
- 11.45 am **AGED CARE RIGHTS (legal safety)**      **Speaker: Rosalene Jones**  
Thanks – June Goss
- 12.15 pm **Beverages and snacks**

\*APIA (Australian Pensioners Insurance Association) have offered to sponsor morning tea\*

### **3.2            Future Speakers at Senior Citizens' Council Meetings**

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#### **SENIOR CITIZENS COUNCIL RECOMMENDATION**

*That the item be deferred until the next meeting of the Senior Citizens' Council to be held on 22 April 2010.*

#### **4.0    GENERAL BUSINESS**

##### **GB1/10    Aida to jazz - Music Festival at Toukley Senior Citizens club** F2008/00407

Bruce Kirkness spoke regarding festivals to be held from April – September 2010 being arranged by the Senior Citizens Club in Centenary Hall, 1 Hargraves Street, Toukley. Tickets available at the Club for \$20 each.

Programme is as follows:

- Beccy Cole and Her Band – Monday, 26 April 2010
- Newcastle Festival Opera Co – Monday, 14 June 2010
- “Strictly Dixie” Jazz Concert – Sunday, 4 July 2010
- Central Coast Symphony Orchestra, Sunday, 22 August 2010 (tickets also available at Conservatorium.
- Gosford Musical Society with Rogers & Hammerstein, Sunday, 19 September 2010.

Bruce Kirkness spoke about an application to assist with funding for the upcoming music festivals to the Ageing Disability and Home Care (ADHC) and that there has not been any replies as yet on whether it has been successful. The applications are still with the Minister for approval.

##### **GB2/10    Review of Membership of the Senior Citizen's Council** F2008/00407

The issue was raised regarding the membership of the Council.

Annette Evans raised that the review of the membership and charter of the Council will need to be resolved by Council.

**GB3/10 Cultural Meeting**

F2008/00407

June Axford spoke about the cultural meeting that she attended and updated the Council on the status of the Performing Arts Centre

There were different groups represented who use the current Memorial Hall. The Architect was available at the meeting. June spoke about the options available for the floor plan which included the seating arrangements. The theatre will hold 450 seats. There will be two foyers, green room, bar, café, art gallery and amenities.

Annette Evans raised issues regarding access for people with mobility issues.

June Axford raised concerns regarding the raked seating and that there would be no stairs. Other issues were problems with parking for performers, police and delivery vehicles.

June Axford to give an update at the next meeting regarding disability parking.

Luigi Bruni left the meeting at 3.08 pm and did not return.

**GB4/10 Issue of Length of Senior Citizen's Council Agenda and Minutes**

F2008/00407

Bruce Pyke raised the issue regarding the length of the agenda and minutes being a waste of paper. Annette Evans said that it is the standard format for all Committees of Council. It is in the general business as a notation.

**GB5/10 Future Meetings / Seminars**

F2008/00407

Bruce Pyke spoke about the public transport meetings funded by the Regional Development Association. The first meeting will be held on 22 March 2010 and it is a public forum on transport issues at Ourimbah Campus.

Another a forum to be arranged will be on the Warnervale Town Centre to be held in May 2010. Bruce gave further information to the Senior Citizen's Council regarding these forums.

**GB6/10 Mayor's Luncheon**

F2008/00407

The Chairperson, June Goss thanked Annette Evans for all the hard work that she had done with arranging the Luncheon with the Mayor that was held on 19 March 2010.

**THE MEETING** terminated at 3.15 PM.

## **6.1 Information Reports**

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TRIM REFERENCE: F2010/00009 - D02192023

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 in total.

### **RECOMMENDATION**

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

### **ATTACHMENTS**

*Nil.*



## 6.2 Investments for February 2010

TRIM REFERENCE: f2004/06604 - D02185804

AUTHOR: HS

### SUMMARY

The following report details Council's investments as at 28 February 2010.

### RECOMMENDATION

*That Council receive the report on Investments for February 2010.*

### BACKGROUND

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

The strategy has proven to be appropriate. In 2009/10 recovery of capital value has occurred and is expected to continue for those managed fund assets still in Council's portfolio. However, due to liquidity issues, investments in the ING and Aberdeen funds have been largely redeemed. WSC still has a significant holding in the Blackrock care and maintenance fund.

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

### CURRENT STATUS

In February 2010, the total net return was \$0.43m consisting of interest earnings \$0.32m and capital gains \$0.11m. Council's total investments as at February 2010 are summarised in Table 1 and detailed in Attachment 1.

**Table 1 Investment Portfolio by Risk Category**

	February 2010 \$ '000	Year-to-Date Returns		
		Total %	Interest Only \$ '000	Interest Only %
Cash at Call	14,320	4.57	650	4.57
Term Deposits	51,085	4.74	1,605	4.74
Cash Plus Funds	1,658	12.18	45	0.86
Cash Management Funds	20,473	11.92	853	5.45
Enhanced Income Funds	14,016	12.70	359	4.00
<b>Total Investments</b>	<b>101,552</b>	<b>7.53</b>	<b>3,512</b>	<b>4.49</b>

## 6.2 Investments for February 2010 (contd)

Favourable year-to-date returns of 7.53% (total) reflect WSC's capital recovery and compares well with the year-to-date UBSA Bank Bill Index of 3.60%.

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

WSC's investments have regained \$2.34m in value from the 2008-09 year end position – the recovery being equivalent to 58% of the paper losses in the previous financial year. A further recovery of \$0.60m is thought likely based on the managed funds assets retained in the portfolio.

Under advice from Council's investment advisors, CPG, this financial year Council has redeemed a significant holding in the Aberdeen managed fund. Council retains a nominal holding of \$1.62m, which is subject to a termination process.

Under current accounting practice capital losses on investments are written off in each year's annual accounts. Included in last year's write off is an amount of \$0.75M in respect of investment assets which have been sold and will not be recoverable.

**Table 2 Portfolio Performance**

	<b>July - Sept 2009 \$m</b>	<b>Oct - Dec 2009 \$m</b>	<b>January 2010 \$m</b>	<b>February 2010 \$m</b>	<b>Year to Date 2009-10 \$m</b>
<i>Movement in Assets</i>					
<b>Opening Balance</b>	<b>99.22</b>	<b>130.02</b>	<b>118.03</b>	<b>104.67</b>	<b>99.22</b>
Capital Gain/Loss – (see below)	1.39	0.47	0.37	0.11	2.34
Net Cash/Investments( Withdrawals)	29.41	-12.46	-13.73	-3.23	-0.01
<b>Closing Balance</b>	<b>130.02</b>	<b>118.03</b>	<b>104.67</b>	<b>101.55</b>	<b>101.55</b>
<i>Trading Position</i>					
Capital Gain/(Loss) Realised	-	-	-	-	-
Capital Gain/(Loss) Unrealised	1.39	0.47	0.37	0.11	2.34
Interest Earnings	1.47	1.29	0.43	0.32	3.51
<b>Total Return for Period</b>	<b>2.86</b>	<b>1.76</b>	<b>0.80</b>	<b>0.43</b>	<b>5.85</b>

### Interest Returns

Interest returns year-to-date continue above budget by \$0.45m reflecting the general recovery of the financial markets Application of these funds to new projects, however, is not recommended, since much of the benefit accrues to restricted funds such as section 94 developer contributions. As well, Council should apply any favourability against realised capital losses.

Also, Council's holdings in managed funds and the manner in which interest on these funds is distributed makes it difficult to make precise predictions of future interest earnings.

Workcover have mandated that Council deposit \$9.89m with TCorp and this only returned 3.9% in February. The interest rates on deposits in the month range from 5.33% to 6.50% and these rates all exceed the Union of Switzerland Australia (UBSA) Bank Bill Index for February which was 4.60%.

Banks operating in the domestic markets have suffered funding shortages over the past period, and this resulted in the issuance of term deposits at high premium rates. This situation will not continue indefinitely and it is anticipated that in the months to come term deposit rates will move closer to the benchmark.

**Table 3 Interest Only Performance at 28 February 2010**

<b>Investment Source</b>	<b>YTD Budget \$ '000</b>	<b>YTD Actual \$ '000</b>	<b>Var. \$ '000</b>
General Fund	1,635	2,283	648
Water (all)	301	527	226
Sewerage (all)	1,132	702	-430
<b>Total</b>	<b>3,068</b>	<b>3,512</b>	<b>444</b>

The allocation of investment interest between General and other funds was realigned in February to reflect a true return on investments and cash. While no budget variation is required for 2009/10, individual adjustments between funds will be included in the March quarterly review.

#### **Black Rock Care and Maintenance Fund**

The return for the month of February was an overall gain of \$0.04m. Total capital gains continue to be positive for the year to date being \$0.99m.

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

#### **Aberdeen Cash Plus Fund**

At 1 July 2009 WSC's holding was \$10.66m and \$0.58m has been the amount of capital gains since then. There have been no significant income distributions. On 8 January 2009, Aberdeen declared the fund closed, and stated that it would be selling off the fund assets in an orderly fashion.

Under advice from CPG, WSC has redeemed value of \$9.60m. This redemption reflects the sale by Aberdeen of the fund's more liquid assets. Council has a nominal value of \$1.64m remaining on its books which represents some of the less liquid assets held in the fund.

The best estimate at present is that the remaining assets will be sold at a 3% discount, which would mean a future irrecoverable capital loss of about \$40K.

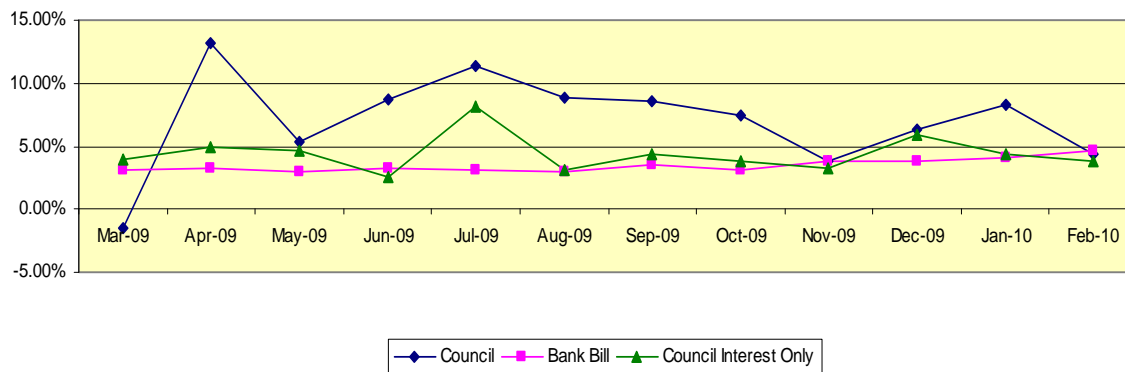
#### **Benchmark - Monthly Returns (Annualised)**

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

## 6.2 Investments for February 2010 (contd)

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

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



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

### INVESTMENT STATEMENT

In accordance with the Local Government (General) Regulation 2005, Part 9, Division 5, Clause 212, it is certified that the investments held as at 28 February 2010 have been made in accordance with the Act, the Regulations and Council's Investment Policies.

### CONCLUSION

Council has significantly reduced its holdings in managed funds and more reductions have been recommended by the advisor. The challenge now is to add value in a portfolio where there are significant legislative constraints on new acquisitions.

### ATTACHMENTS

- 1 Summary of Investments by Type as at 28 February 2010 D02185957

**Wyong Shire Council**  
**Summary of Investments - By Type**  
**As at 28 February 2010**

FUND MANAGER	MATURITY	PORTFOLIO BALANCE \$	INCOME FOR MONTH \$	INTEREST RATES % p.a.
<b>CASH AT CALL:</b>				
ANZ High Yield Cash Account (AA)	Daily	14,319,574	59,737	
<b>Total Cash At Call</b>		<b>14,319,574</b>	<b>59,737</b>	
<b>TERM DEPOSITS &amp; BONDS</b>				
T-Corp (WorkCover NSW)	02/03/2010	9,896,000	28,302	3.90
CitiBank Term Deposit	25/02/2010	-	14,794	5.40
Allied Irish Term Deposit	25/02/2010	-	14,602	5.33
BankWest Term Deposit	13/04/2010	5,000,000	21,095	5.50
Bank of Cyprus Term Depsoit	26/05/2010	5,000,000	2,404	5.85
NAB Term Deposit	05/07/2010	5,000,000	23,013	6.00
Bank of Qld Term Deposit	12/07/2010	5,000,000	24,164	6.30
Allied Irish Term Deposit	12/07/2010	5,000,000	23,397	6.10
SunCorp Term Deposit	19/07/2010	5,000,000	24,931	6.50
CitiBank Term Deposit	24/08/2010	5,000,000	2,580	6.28
SunCorp Term Deposit	26/11/2010	2,000,000	9,665	6.30
Westpac Deposit Bond	24/09/2012	4,188,710	22,430	5.13
<b>Total Term Deposit &amp; Bonds:</b>		<b>51,084,710</b>	<b>211,377</b>	
<b>CASH PLUS:</b>				
Aberdeen Cash Plus Fund (A)	To be liquidated - Fund Termination in Process	1,637,984	19,049	
ING Enhanced (A)	To be liquidated - Fund Termination in Process.	20,194	50	
LGFS 12-Month Cash Facility	Redeemed	-	10	-
<b>Total Cash Plus</b>		<b>1,658,178</b>	<b>19,109</b>	
<b>CASH MANAGEMENT FUNDS:</b>				
BlackRock Care & Maintenance Fund	June 2015 (Estimate)	8,429,532	38,189	
LGFS Fixed Out-Performance Cash Fund (AA-f)	Open Ended	12,043,911	45,834	
<b>Total Cash Management Funds</b>		<b>20,473,443</b>	<b>84,023</b>	
<b>ENHANCED INCOME:</b>				
Macquarie Income Cash Plus (A)	Open Ended	14,016,171	53,632	
<b>Total Enhanced Income</b>		<b>14,016,171</b>	<b>53,632</b>	
<b>TOTAL</b>		<b>101,552,076</b>	<b>427,878</b>	

### 6.3 Bus Servicing Review

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TRIM REFERENCE: F2004/06706 - D02186811

AUTHOR: RB

#### SUMMARY

Update on the Bus Servicing Review being undertaken by New South Wales Transport and Infrastructure, Red Bus Services and Busways.

#### RECOMMENDATION

***That Council receive the report on Bus Servicing Review.***

#### BACKGROUND

At its meeting held on 9 December 2009, Council considered a report relating to the Bus Servicing Review undertaken by New South Wales Transport and Infrastructure (NSWTI) and the local bus companies, Red Bus Services and Busways, and resolved as follows:

*"RESOLVED unanimously on the motion of Councillor GRAHAM:*

- 1 *That Council advise New South Wales Transport and Infrastructure that the consultation process is seriously flawed.*
- 2 *That Council support the request for the following additional services:*
  - *Express buses from Belmont stopping on the Highway at Gwandalan/Summerland Point, Lake Munmorah, Chain Valley Bay across to Mannering Park (loop with one stop on Vales road) to Morisset Railway Station.*
  - *Express bus services (with limited stops) along the Highway from Gwandalan to Wyong Railway Station,*
  - *Express bus services (with limited stops) along the Highway from Budgewoi to Wyong Railway Station,*
  - *Express bus services (with limited stops) along Wallarah Road between Norah Head and Wyong Railway Station (by-passing Lake Haven Shops),*
  - *Express bus services (with limited stops) along the Central Coast Highway between Doyalson and Gosford,*
  - *A loop service incorporating Doyalson, Ruttleys Road and both Morisset and Wyee Railway Stations*
  - *Improved late night shopping services*

- *Sunday services to match those on Saturdays.*
- 3 *That Council write to all Local State and Federal Members seeking their support in getting a significantly improved Bus Service in Wyong Shire and what they are prepared to do to achieve these outcomes.*

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

AGAINST: NIL"

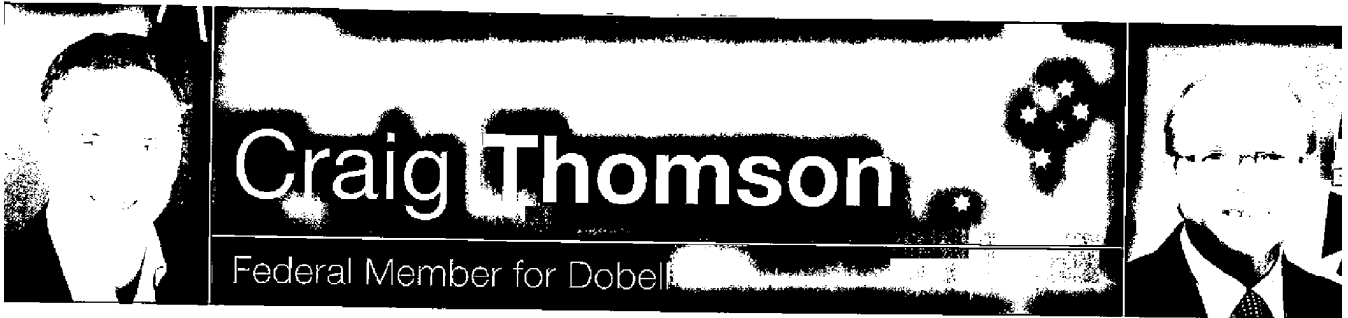
Letters were subsequently forwarded to Mr Craig Thomson MP, Mr Grant McBride MP, Mr David Harris MP and Mr Robert Coombs MP on the 17 December 2009.

No formal response was received from Mr David Harris MP. His office has advised that he did make representations late last year to the Minister for Transport and Roads on Council's behalf.

A copy of each of the written responses received is attached.

#### **ATTACHMENTS**

1	Craig Thomson Reply	D02142428
2	Grant McBride MP Reply	D02135822
3	Robert Coombs MP Reply	D02133625
4	Minister for Transport and Roads Reply	D02189363



25 January 2010

Mr Bob Graham  
Mayor Wyong Shire Council  
PO Box 20  
Wyong NSW 2259

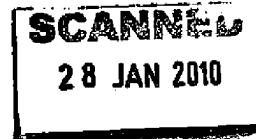
Dear Mr Graham

Please find enclosed a copy of correspondence sent by me to the Hon David Campbell MP, Minister for Transport and Roads re the Bus Servicing Review. I have taken this step in support of the Wyong Shire Council's Mayoral Minute of the 9 December 2009.

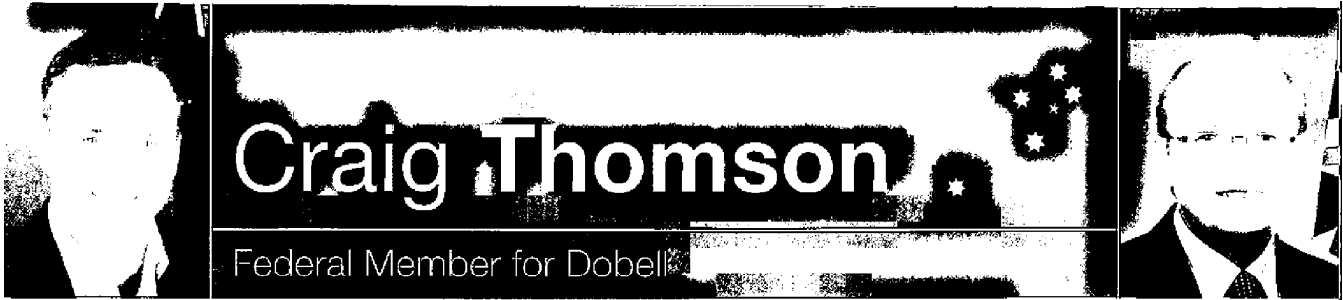
As you would be aware the regulation of local bus services is the responsibility of the State Government. However I have made it very clear that people from this region should be treated fairly and respectfully. I have also indicated that prior to the letting of new contracts in the future that a full and thorough review of transport requirements for this region should be undertaken.

Yours faithfully,

Craig Thomson MP  
Federal Member for Dobell







25 January 2010

Honourable David Campbell  
Minister for Transport and Roads  
GPO Box 5341  
SYDNEY NSW 2001

Dear Minister Campbell

Re Central Coast bus services.

On the 9 December 2009 Wyong Shire Council passed a Mayoral Minute requesting improved bus services for the Northern areas of the Central Coast of NSW. The key observations of the Mayoral Minute were:

1. The bus servicing review was seriously flawed.
2. That a number of express services were required to improve access/linkages for commuters.
3. Improved services to cater for late night shopping and Sundays are required.

The correspondence signed by the acting General Manager, Ms Gina Vereker clearly outlines the council's concerns. I have enclosed a copy for your consideration. I am also concerned of how the review was conducted and request you use your influence to ensure that the people of this region are treated respectfully and are given appropriate opportunity to respond to this important process.

After discussing the issue with Mr David Harris NSW Parliamentary Secretary for the Central Coast I am aware that the bus servicing contracts will be up for renewal in approximately five years time. I request that a total review of bus services on the Central Coast be conducted prior to the calling for tenders in the future to ensure that the requirements of this region are adequately identified. The current bus services are deficient in many regards as indicated in the Mayoral Minute of the 9<sup>th</sup> December 2009.

Your assistance with these issues would be appreciated.

Yours faithfully

Craig Thomson MP

Cc : David Harris MP, Member for Wyong.  
: Bob Graham Mayor, Wyong Shire Council

PO Box 5253 CHITTAWAY BAY, NSW 2261  
Phone: (02) 4351 1223 Fax: (02) 4353 6480 Email: Craig.Thomson.MP@aph.gov.au



**WYONG SHIRE  
COUNCIL**

*building a better tomorrow!*



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RCB/R Burch  
F2004/06706

17 December 2009

Mr Craig Thomson  
Federal Member for Dobell  
PO Box 123  
OURIMBAH NSW 2250

Dear Mr Thomson

**BUS SERVICING REVIEW**

At its meeting held on 9 December 2009 Council received a Mayoral Minute on the Bus Servicing Review currently being carried out by New South Wales Transport & Infrastructure (NSWTI) and the local bus companies, Red Bus Services and Busways.

At the meeting Council resolved unanimously on the motion of Councillor GRAHAM:

- "1 That Council advise New South Wales Transport and Infrastructure that the consultation process is seriously flawed.
- 2 That Council support the request for the following additional services:
  - Express buses from Belmont stopping on the Highway at Gwandalan/Summerland Point, Lake Munmorah, Chain Valley Bay across to Mannering Park (loop with one stop on Vales road) to Morisset Railway Station.
  - Express bus services (with limited stops) along the Highway from Gwandalan to Wyong Railway Station,
  - Express bus services (with limited stops) along the Highway from Budgewoi to Wyong Railway Station,
  - Express bus services (with limited stops) along Wallarah Road between Norah Head and Wyong Railway Station (by-passing Lake Haven Shops),
  - Express bus services (with limited stops) along the Central Coast Highway between Doyalson and Gosford,
  - A loop service incorporating Doyalson, Ruttleys Road and both Morisset and Wye Railway Stations
  - Improved late night shopping services
  - Sunday services to match those on Saturdays.

- 3 That Council write to all Local State and Federal Members seeking their support in getting a significantly improved Bus Service in Wyong Shire and what they are prepared to do to achieve these outcomes."

As you are aware, NSWTI commenced the public consultation ("Have Your Say") for the bus servicing review on 16 November 2009. The consultation for the Central Coast is being carried out concurrent with those in the Lower Hunter and Lake Macquarie. Separate flyers have been prepared for the two bus company regions on the Central Coast, Red Bus Services (Region 7) and Busways (Region 6 – covering the remainder of the Central Coast area).

At the end of the fourth week of the consultation process, (originally due to close on Monday, 14 December) residents in Hamlyn Terrace, Blue Haven, Norah Head, Buff Point, Budgewoi, Halekulani, Doyalson, Lake Munmorah, Mannering Park, Wye Point, Summerland Point and Gwandalan, to name a few, have still not received the flyer. Following continuous requests from Council to NSWTI, it has now extended the consultation period to Friday, 18 December 2009.

The questionnaires attached to the flyers do not encourage residents to submit their bus servicing needs. If you do not catch a bus at present, you could be forgiven for thinking that the form is not relevant to you and you do not need to reply to it. It is very confusing. With the exception of an additional 4 services per day from Budgewoi to Wye Railway Station (2 in the morning and 2 return trips in the afternoon), no services are shown on the Busways flyer for the area north of Tuggerah. The residents living north of Tuggerah consider that the flyer is not relevant to them and consequently have not responded.

If Council had not been proactive in arranging two public meetings and contacting the local Precinct Committees, it is unlikely that many residents would have known about the bus review. Any flyers delivered to date by NSWTI/Busways, within the Busways region were wrapped with the "junk mail". Experience has shown that many residents despise "junk mail" received at this time of the year and throw it in the recycling bin without going through the "bundle".

Flyers were also delivered with "junk mail" in the Red Bus region. However, Council is not aware of any major delivery problems in this region.

NSWTI should have carried out surveys at Railway Stations to find out whether rail passengers would catch a bus if an express service was provided that matched the time of their train.

The timeframe for submissions and input is clearly inadequate and would appear to be designed to overlap with the Christmas period and minimise any proper analysis and review.

NSWTI has been promoting at the public meetings that the bus changes are in response to the recommendations identified in the State Government's Review of Bus Services in NSW, which was carried out in 2003 and that the services are to be fast, frequent, direct, consistent and reliable. The current services in the northern part of the Shire are neither fast, frequent nor direct.

The residents of Gwandalan, Summerland Point, Mannering Park, Lake Munmorah and Budgewoi have been asking for express buses to Wyong Railway Station for four years. Yet, with the exception of the four additional services as identified above for Budgewoi, no improvements are proposed for the northern part of Wyong Shire (Busways region).

The additional services listed in the Council resolution have been identified by the local residents.

They were identified to:

- Encourage more commuters onto Public Transport rather than use private vehicles.
- Connect Youth with entertainment, training, work, etc.
- Enhance Tourism as a fast access to facilities.
- Connect employment areas to residential areas with fast reliable transport, particularly for apprentices.
- Provide better servicing to Gosford for access to Hospital and Medical Specialists
- Provide reliable access to schools - Schools of Excellence
- Provide access to TAFE and Private training facilities in Gosford.

Other improvements required to bus servicing for the Central Coast include:

- Better sequencing of buses meeting the trains
- Integrated ticket for use with both bus companies and/or train. At the moment you need to purchase two separate tickets if you have a connection between Red Bus Services and Busways services.
- "Youth Ticket"
- Provision for bicycles on the buses

Council has been advocating for some time the use of express buses to provide fast and direct services to the major destinations. These together with commuter carparks located at strategic locations along the major roads will provide "park-n-ride" opportunities. It is important however that the connections/interchanges ("Park-n-ride" locations) be safe and have timely connections. Given the dispersed and low density of the population, these types of arrangements are necessary to try and attract more passengers to buses. These principles were also identified in the transport study carried out for the Wyong North area in 2006. The report suggested that there be local buses connecting with direct buses on the Highway. The "Park-n-Ride" principle is being pursued by Council in the preparation of its Shire Wide Settlement Strategy.

The proposal put forward by NSWTI falls far short of providing significant changes to the bus system to encourage greater use and efficiencies for local bus users. An innovative servicing arrangement is required to attract more passengers on the buses. The 2006 Journey to Work Survey identified a decline in the travel mode share for buses when compared to 2001. Unless the State Government makes a strong commitment to improving public transport in Wyong Shire, the mode split for buses may only decline further.

If the State Government continues to operate bus services in the way it has done in the past, the buses will continue to get the current levels of use, or lower than they do at present.

Your support for achieving a significantly improved bus service for the residents of Wyong Shire would be appreciated. In addition, as resolved by Council as part of Councillor Graham's motion, it is requested that you also advise Council of what actions you will take to achieve this outcome.

Please contact Council's Senior Transportation Engineer, Mr. Bob Burch on 4350 5455 if you have any enquiries.

Yours faithfully

  
Gina Vereker  
**ACTING GENERAL MANAGER**



Tuesday, January 19, 2010

Ms Gina Vereker  
Acting General Manager  
Wyong Shire Council  
PO BOX 20  
WYONG NSW 2259

YatesK-Tra100119-1352.Doc

Dear Ms Vereker

Thank you for your letter of 17 December 2009 concerning the Bus Servicing Review of local bus services.

I met with Mr David Bain from Red Bus Services and Mr Barry McDonald, a consultant on 30<sup>th</sup> November 2009 to discuss the proposed services relating to my electorate.

The representatives indicated their support for the service plan.

Yours sincerely

**Grant McBride MP**  
**Member for The Entrance**





**Robert Coombs MP**  
MEMBER FOR SWANSEA



Shop 1, 204-206 Pacific Highway Swansea NSW 2281 • PO Box 306 Swansea NSW 2281  
Phone: 02 4972 1133 • Fax: 02 4972 1494 • Email: [swansea@parliament.nsw.gov.au](mailto:swansea@parliament.nsw.gov.au)

13 January 2010

Ms Gina Vereker  
Acting General Manager  
Wyong Shire Council  
PO Box 20  
WYONG NSW 2259

Dear Ms Vereker

I acknowledge your letter dated 17 December 2009 (Reference RCB/R Burch F2004/06706) regarding the Bus Servicing Review.

I have made written representations on your behalf to the Minister for Transport, The Hon. David Campbell, MP in support of improving the bus service in Wyong Shire.

As soon as I receive a response from the Minister, I will be in touch with you again.

In the meantime, should you wish to discuss this matter further or any other State Government matters of concern, please do not hesitate to contact the electorate office.

Yours sincerely



Robert Coombs MP  
*State Member for Swansea*



*Ca. Venetian*



**Robert Coombs MP**  
Member for Swansea

*With Compliments*

Ph: 4972 1133  
Fax: 4972 1494  
Shop 1, 204-206 Pacific Highway  
PO Box 306  
SWANSEA NSW 2281  
Email: [swansea@parliament.nsw.gov.au](mailto:swansea@parliament.nsw.gov.au)



**David Campbell**

Minister for Transport and Roads

03/10

ML10/00813

Mr Robert Coombs MP  
Member for Swansea  
PO Box 306  
SWANSEA NSW 2281

Dear Mr Coombs

Thank you for your correspondence on behalf of Wyong Shire Council concerning bus services on the Central Coast. I have taken careful note of Council's views. I apologise for the delay in responding.

The NSW Government has reformed bus services across the Sydney Metropolitan and Outer Metropolitan Areas by replacing the old bus contracts with improved, more accountable ones which apply common fare standards and service levels across different operators. Larger, more integrated contract regions require operators to cooperate to provide coordinated services for customers, and strategic bus corridors mean more direct transport to where people want to go.

We are creating a bus system across NSW that responds to the changed travelling demands of our communities.

As part of the bus reform agenda, integrated bus network planning is also under way across metropolitan Sydney and the Outer Metropolitan Areas. Bus operators are working closely with NSW Transport and Infrastructure to ensure that all stakeholders and the community are involved in the planning of these integrated bus networks.

Planning is underway on the Central Coast and a formal consultation has been undertaken which invited passengers, stakeholders and the community to provide feedback to a proposed integrated bus network.

The feedback from consultation is now being analysed and Council's feedback will be considered as part of this analysis, prior to the implementation of the new network which is due to occur in May 2010.

Council's feedback will also be passed on to Busways and Red Bus Service for their consideration.

All Correspondence to:  
GPO Box 5341  
Sydney NSW 2001  
[david@campbell.minister.nsw.gov.au](mailto:david@campbell.minister.nsw.gov.au)

Level 35, Governor Macquarie Tower  
Farrer Place, Sydney NSW 2000  
Ph: +61 2 9228 3777  
Fx: +61 2 9228 3722

As you may already be aware, the NSW Government is also investing in additional services for the Central Coast, above and beyond the current review of services, spending in excess of \$43 million on bus services on the Central Coast.

The Government will purchase 65 new replacement buses for Busways Central Coast and 22 new replacement buses for The Entrance Red Bus Service over a seven year period up to July 2013. The new buses will all have a low floor entry for easy access and will be air-conditioned.

Further, as part of the 300 additional announced in November 2008 for Sydney, the Central Coast, Newcastle and the Illawarra, 16 of these will be used on key routes on the Central Coast and all will be in service by July 2010.

Again, thank you for taking the time to write to me with Council's perspective on this issue. If you require further information on this matter, please feel free to contact Ms Belinda Groves, Deputy Chief of Staff, in my office on (02) 9228 3777.

Yours sincerely



**David Campbell MP**  
**Minister for Transport and Roads**

- 1 MAR 2010

## **6.4 Disclosures of Interest - 1 January to 31 March 2010**

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TRIM REFERENCE: F2009/01526 - D02081153

AUTHOR: ED

### **SUMMARY**

The Local Government Act, 1993 requires Disclosure of Interest (DOI) Returns for Councillors and Designated Persons to be lodged with the General Manager who, in turn is required to keep a register of the Disclosure of Interest Returns.

The Act further requires the DOI Returns lodged with the General Manager to be tabled at a meeting of Council.

### **RECOMMENDATION**

***That Council receive the report on Disclosures of Interest - 1 January to 31 March 2010.***

In accordance with the Local Government Act 1993, staff are required to lodge a Return within three months of being appointed to a designated position. Councillors and staff are also encouraged to lodge an amended return if circumstances change during the year.

Section 450A(2)(a) also specifies that the General Manager must table the returns lodged under Section 449(1). The returns for the period 1 January to 31 March 2010 are now tabled.

### **NB**

Sections 449(1) and (5) of the Local Government Act, 1993 - Disclosure of Interest Returns for Councillors and Designated Persons to be lodged with GM

Section 450A(1) – register required of the Disclosure of Interest Returns lodged.

Section 450A(2) - Returns lodged with the General Manager under section 449(1) to be tabled at a meeting of Council.

### **ATTACHMENTS**

- 1 List of Disclosures of Interest - 1 January to 31 March 2010 D02175446

**Disclosures of Interest  
1 January to 31 March 2010**

**Councillors**

-

**Staff**

Beattie E (amended)

Brogan P (amended)

Dean A

Drake M

Foreman B

Gale S (amended)

Hanson-Kentwell M

Jewell R (amended)

Johnson I

Lawrence A

Morgan P (amended)

O'Malley K

Royall J

Southern T

Susindran D (amended)

## 6.5 Mardi to Mangrove Link Project Status

TRIM REFERENCE: F2007/01120 - D02193181

AUTHOR: CC

### SUMMARY

Report on status of Mardi to Mangrove Link Project.

### RECOMMENDATION

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

### PROJECT SCOPE

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

### CURRENT STATUS

<b>Expenditure to date</b>	<b>\$32.6m</b>
<b>Project Estimate</b>	<b>\$120.6m</b>

### Construction Status

	<b>Scheduled Start</b>	<b>Scheduled Completion</b>	<b>% Complete</b>
Pre-construction – Management Plans & Approvals	4 January 2010	2 June 2010	90%
Work Package 1 – Wyong River Off-take	7 April 2010	14 January 2011	4%
Work Package 2 – Wyong River Pump Station	19 February 2010	16 January 2011	4%
Work Package 3 – Wyong Mardi Rising Main 3	16 February 2010	3 August 2010	1%
Work Package 4 – Wyong Mardi Inlet	6 May 2010	2 December 2010	
Work Package 6 – Mardi Mangrove Transfer Pump Station	21 June 2010	14 January 2011	
Work Package 7 – Mardi Mangrove Transfer Main	1 March 2010	12 January 2011	2%
Work Package 18 – Wyong Weir, Fishway & Gauging	4 August 2010	25 November 2010	
Commissioning	17 January 2011	19 April 2011	

## 6.5 Mardi to Mangrove Link Project Status (contd)

### Key Dates

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

### Land Matters

- 55 privately owned properties require easements.
- 5 out of 6 agreements signed for additional land required for construction.
- 3 private and Crown land easements were compulsory acquired on 29 January 2010. For the remaining privately owned property requiring an easement, Council lodged a compulsory acquisition application on 6 April for approval by the Minister and Governor.

### Stakeholder Liaison

#### Community

- A media release and fact sheet was issued on the sod-turning event to announce the start of construction.
- A media release was issued on the arrival of large machinery to the construction site.
- Displays at Erina Fair Shopping Centre (long-term display) and Kariong Tourist Centre. Arrangements have been made to set up a display at Westfield Tuggerah Shopping Centre from late April, and discussions continue with Lakehaven Shopping Centre regarding free space for displays during 2010.
- The Mardi to Mangrove Link Project pages of the GWCWA website were updated in relation to construction progress and timeframes, media releases and traffic information.
- A Project update was provided to the Water Services Association of Australia (WSAA) online bulletin.
- Traffic updates continue to be given to local emergency services, schools and bus services every 1-2 weeks.

## **6.5 Mardi to Mangrove Link Project Status (contd)**

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- A new banner has been made to include all relevant logos for the Mardi to Mangrove Link Project. The banner will be used at official events and functions.

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### **Landholder**

- A traffic email was sent to landholders who sought direct traffic updates. Other landholders have been invited to join this email list.
- No correspondence items have been received in April

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### **Government**

- The Project Team liaised with DEWHA in the lead up to the sod turning event.

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### **Incidents**

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

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### **Major Achievements / Issues**

- A sod-turning event to mark the start of construction was held on 29 March 2010. The event was attended by over 60 members of the local community including community and business group representatives, Councillors and Members of Parliament.

### **ATTACHMENTS**

*Nil.*

## **6.6 Emergency Access from Freeway to Hue Hue Road**

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TRIM REFERENCE: F2008/00039 - D02188242

AUTHOR: RB

### **SUMMARY**

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

### **RECOMMENDATION**

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

### **BACKGROUND**

At the Ordinary Meeting held on 24 February 2010 Council resolved as follows:

*“RESOLVED unanimously on the motion of Councillor Eaton and seconded by Councillor McNamara:*

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

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

*AGAINST: NIL”*

### **REPORT**

As a result of the above resolution, staff made enquiries with the Roads and Traffic Authority (RTA). The RTA has verbally advised that it will not support the new emergency access from the Freeway to Hue Hue Road being used as a full time permanent left in left out access. The RTA has a mandatory requirement to have a minimum of 2 kms between the end of an acceleration lane and the commencement of a deceleration lane on Freeways. With the provision of an acceleration lane from the emergency access, the distance between the end of the acceleration lane and the commencement of the deceleration lane to the Highway Service Centre would only be approximately 300 metres. The RTA's mandatory requirement cannot therefore be satisfied.

The existing connection to Hue Hue Road, with no deceleration or acceleration lanes on the Freeway, are only suitable for use during emergency situations whilst a 40 kmph speed limit is operating on the Freeway.

Notwithstanding the RTA's mandatory requirements, the following are other major issues that would need to be addressed in changing the emergency access into a permanent left in left out access.



- Significant roadworks.

The RTA indicated that approximately 2 kms of roadworks would be required. Based on the existing ramps at the Wyong Road and Sparks Road interchanges and taking into account the grade on the Freeway, a northbound deceleration lane, well in excess of 800 metres would be required. An acceleration lane in the order of 1km long would also be required. As stated earlier this would leave a distance of approximately 300 metres between the end of the acceleration lane and the commencement of the deceleration lane to the service centre. The RTA requires a minimum distance of 2 kms.

- Extension of Alison Road Bridge over the Freeway

The deceleration lane would impact on the Alison Road Bridge, requiring an additional span across the Freeway.

- “Cut” batter between the Alison Road Bridge and the Hue Hue connection.

The deceleration lane would impact on the western “cut” batter immediately north of Alison Road. This batter was unstable during the initial construction of the Freeway and would require significant treatment to maintain its stability. Changes to the batter are also likely to affect the stability of Hue Hue Road. Hue Hue Road may require realignment, impacting on adjoining private properties.

- Connection between the Freeway and Hue Hue Road

Significant roadworks would be required between the Freeway exit/entry points and Hue Hue Road to avoid cars queuing on the Freeway deceleration lane. A major intersection would be required on Hue Hue Road. To avoid queuing on the Freeway deceleration lane, the intersection would need to be moved further to the west resulting in a requirement for property acquisition etc.

The plan attached identifies the works that would be required. It is difficult to estimate the cost of the works. Substantial geotechnical investigations and concept designs would be required to determine any “order of cost”.

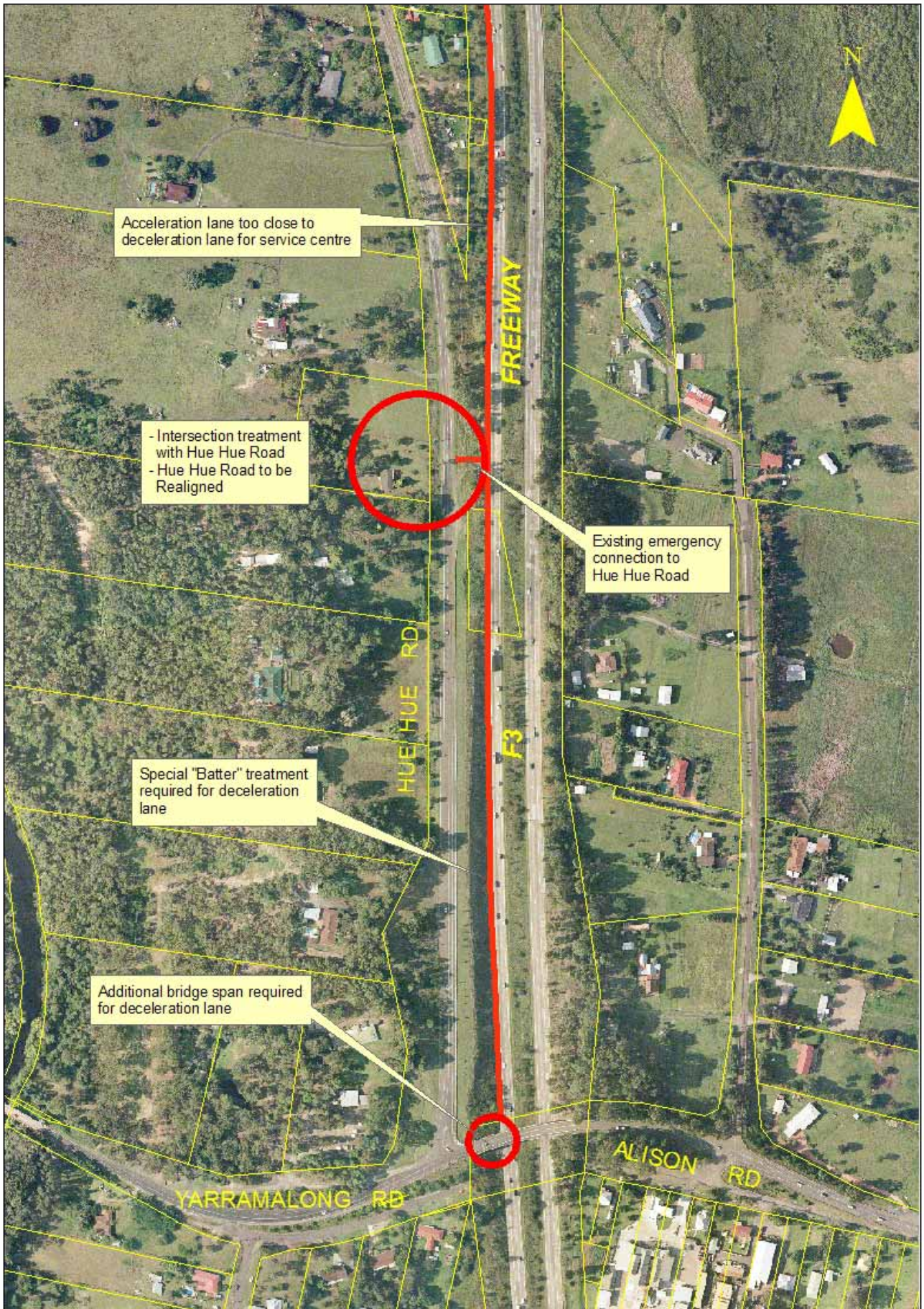
## CONCLUSION

The RTA has advised that it will not support the new emergency access from the Freeway to Hue Hue Road being used as a full time permanent left in left out access. The distance between the end of the acceleration lane and the commencement of the deceleration lane to the service centre would not comply with the RTA’s current requirements.

There are other major implications in providing a full time permanent left in left out access from the Freeway to Hue Hue Road as identified in the above report.

## ATTACHMENTS

- 1 Plan - Hue Hue Rd\_ Freeway connection D02192470



## 6.7 Outstanding Questions Without Notice and Notices of Motion

TRIM REFERENCE: F2010/00009 - D02192031

AUTHOR: SW

### SUMMARY

Report on outstanding Questions Without Notice and Notices of Motion.

### RECOMMENDATION

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

Question Asked / Councillor	Department	Meeting Asked	Status
Q68/10 – Street-scaping along Central Coast Highway, Long Jetty  <i>“Could staff advise whether street-scaping is being considered along the Central Coast Highway through Long Jetty?”</i>	Shire Services	10 March 2010 Cr Webster	A response will be submitted to Council's meeting of 28 April 2010.
Q69/10 – Playground Proposed for Baker Park Precinct  <i>“Could staff advise of plans (if any) for a playground in the Wyong Sporting Baker Park, Tennis Court/Pool Precinct and possible construction program?”</i>	Shire Planning	10 March 2010 Cr Eaton	A response will be submitted to Council's meeting of 28 April 2010.
Q71/10 – NSW Fees and Charges Collected by Wyong Shire Council  <i>“Please provide the details of the annual total fees and charges collected by Wyong Shire Council on behalf of the NSW State Government?”</i>	Corporate Services	24 March 2010 Cr McNamara	A response will be submitted to Council's meeting of 12 May 2010.
Q72/10 – Cost to Wyong Shire Council for Providing NSW State Government Services  <i>“Please provide the total cost to ratepayers of shifting of services from NSW State Government to Wyong Shire Council?”</i>	Corporate Services	24 March 2010 Cr McNamara	A response will be submitted to Council's meeting of 12 May 2010.
Q73/10 – Viability of Providing Solar Panels to Council Buildings  <i>“Could Council staff advise on process and viability of installing solar panels for electricity generation on Council buildings including Surf Clubs and Senior Citizens Centres?”</i>	Shire Planning	24 March 2010 Cr Eaton	A response will be submitted to Council's meeting of 12 May 2010.

## 6.7 Outstanding Questions Without Notice and Notices of Motion (contd)

Question Asked / Councillor	Department	Meeting Asked	Status
<p>Q74/10 – Provision of Additional Parking at Lake Munmorah Senior Citizens</p> <p><i>“Could Council investigate creating additional parking at Lake Munmorah Senior Citizen Centre by utilising the space occupied by the former demolished Northern Lakes Family Centre?”</i></p>	Shire Services	24 March 2010	A response will be submitted to Council's meeting of 12 May 2010.

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

## 6.7 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"> <li>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"> <li>a <i>Establish community gardens in new and existing residential areas in partnership with local residents.</i></li> <li>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></li> <li>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></li> <li>d <i>That clearly identifies Council's roles and responsibilities.</i></li> </ol> </li> <li>2 <i>That Council identify funding opportunities eg grants and other forms of in kind assistance to help community groups.</i></li> <li>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></li> <li>4 <i>That this policy be prepared by the Shire Planning Department and submitted to Council for consideration.</i></li> <li>5 <i>That the policy be developed in partnership with the Community Development Unit.</i></li> </ol>	<p>Shire Planning</p>	<p>22 July 2009 Cr Wynn / Cr Graham</p>	<p>A report will be prepared for Council's consideration once community consultation has been completed.</p> <p>The draft Policy has been incorporated within the Legal and Policy Unit Work Program to be developed in the third quarter of 2009-10.</p>

## 6.7 Outstanding Questions Without Notice and Notices of Motion (contd)

Notice of Motion	Department	Meeting Resolved	Status
<p>9.3 - Notice of Motion - Review of All Boat Ramps with Lake Macquarie Frontage.</p> <p><i>That Council conduct an audit/review of all boat ramps and adjacent infrastructure in those areas of Wyong Shire that have frontage to Lake Macquarie.</i></p>	Shire Planning	26 August 2009 Cr Symington / Cr Graham	A report is being prepared for 28 April 2010 Council Meeting.
<p>8.1 - Notice of Motion – Energy Reduction Targets</p> <p><i>That the Shire Planning Department, in consultation with Shire Services Department, provide a report to Council that outlines the implications (social, economic and environmental) of applying a minimum 30% reduction by 2030 or earlier in greenhouse emissions based on 1999-2000 performance levels to:</i></p> <ul style="list-style-type: none"> <li>• <i>the top 10 sites for energy consumption as identified in Council's Energy Saving Action Plan (as these sites consume two-thirds of all electricity consumed by Council);</i></li> <li>• <i>vehicle and small plant fleet; and</i></li> <li>• <i>Buttonderry landfill site.</i></li> </ul> <p><i>Further, that the report include the implications (social, economic and environmental) of achieving carbon neutrality for these sites and activities by 2050 based on 1999-2000 performance levels.</i></p> <p><i>The report is to take into account but not be limited to, the effects of population growth, drought mitigation actions and staff retention and attraction issues.</i></p>	Shire Planning	9 September 2009 Cr Wynn / Cr Best	This report has not been finalised due to other earlier priorities such as Climate Change requiring an additional resource. A secondment from Shire Services has now commenced to ensure that a Councillor Briefing and report can be presented in April.
<p>8.1 - Notice of Motion – Shire Civic Garden</p> <p>1 <i>That Council consider the creation of a civic garden within the Shire that consists predominantly of native plantings</i></p> <p>2 <i>That Council staff provide a report by March 2010 on the implementation cost, maintenance, including planting and/or maintenance, by local garden clubs and/or land care groups/schools/communities.</i></p>	Shire Planning	11 November 2009 Cr Vincent / Cr Matthews	A report to be submitted to Council's meeting on 14 April 2010.

## 6.7 Outstanding Questions Without Notice and Notices of Motion (contd)

Notice of Motion	Department	Meeting Resolved	Status
<p>8.4 - Notice of Motion – Proposed Additional Development Policy</p> <p>1 <i>That taking into account the unsightly appearance of a number of unfinished and empty buildings throughout the Shire, that staff develop a policy that can be integrated into the relevant chapters of Development Control Plan 2005.</i></p> <p>2 <i>That the draft policy be written to apply to major residential, commercial and industrial development.</i></p> <p>3 <i>That the provisions of the policy include:</i></p> <p style="padding-left: 20px;">a <i>objectives relating to ensuring visual amenity is maintained should buildings remain unfinished or empty;</i></p> <p style="padding-left: 20px;">b <i>requirements for ensuring visual amenity by way of hoardings, landscape buffers, painting and / or other means of screening; and</i></p> <p style="padding-left: 20px;">c <i>a focus on buildings located within town centres and on major roads within the Shire.</i></p> <p>4 <i>That the draft policy be reported back to Council for consideration.</i></p>	Shire Planning	11 November 2009 Cr Best / Cr Webster	The drafting of this policy has been placed on Legal and Policy Works program for 2010/2011. Commencement of drafting this policy will occur when current projects are completed.

## 6.7 Outstanding Questions Without Notice and Notices of Motion (contd)

Notice of Motion	Department	Meeting Resolved	Status
<p>5.1 - Notice of Motion – Planning Disputes Mediation Process Trial</p> <p>1 That Council <u>recognise</u> in principle that the establishment of a Mediation process may reduce litigation and expedite dispute resolution in appropriate cases.</p> <p>2 That Council <u>receive</u> a report on the establishment of a Mediation process. The report should include the following:</p> <p>a A review of “best practice” mediation committees / mediation processes operating elsewhere.</p> <p>b A review of practices / procedures / committees operating in adjoining Councils.</p> <p>c The means of ensuring compliance of such a committee with Department of Local Government guidelines, ICAC guidelines, applicable legislation and Code of Conduct.</p>	Shire Planning	<p>10 February 2010</p> <p>Cr Eaton / Cr Graham</p>	This item has been included in the Legal and Policy Works Program to be commenced mid 2010.
<p>5.2 - Notice of Motion – Elected Council Independent Legal Advisor</p> <p>1 That Council <u>invite</u> tenders from separate independent firms of solicitors to advise the Mayor and Councillors in those circumstances where the interests of the staff and the elected Council may not be identical or in cases where Council wishes to seek further legal opinion.</p> <p>2 That Council <u>receive</u> quarterly reports on expenditure and information on general details of the matters on which legal advice has been sought.</p>	Shire Planning	<p>10 February 2010</p> <p>Cr Eaton / Cr Graham</p>	Discussions regarding tender process have commenced. Councillors will be notified via a Business Update when Tenders have been called.
<p>5.3 - Notice of Motion – Warnervale Airport and Associated Lands</p> <p>That staff <u>report</u> to Council generally on the history and legal status of the Warnervale airport including the impact of the Warnervale Airport Restrictions Act.</p>	Shire Planning	<p>10 February 2010</p> <p>Cr Best / Cr Eaton</p>	A report will be submitted to Council on 28 April 2010.



## 6.7 Outstanding Questions Without Notice and Notices of Motion (contd)

Notice of Motion	Department	Meeting Resolved	Status
<p>10.1 –Notice of Motion – LDO Coal Chain Valley Bay Colliery</p> <p><i>That Council:</i></p> <ol style="list-style-type: none"> <li>1 <u>Take</u> all steps possible to make LDO Coal Chain Valley Colliery exclude any mine operations under residential and/or commercial areas</li> <li>2 <u>Request</u> that LDO Coal Chain Valley Colliery undertake and provide a work as executed survey to establish the extent of past mining as mining in the past has exceeded the boundaries of the mining leases.</li> <li>3 <u>Seek</u> an independent surveyor provide the monitoring data for regular review, to establish that once mining has commenced it is within its bounds and specified extraction amounts in accordance with lease conditions. Results to be reported to the Council and the community. Cost to be borne by LDO Coal.</li> <li>4 <u>Inform</u> the State Government Department of Planning of the LDO Coal Chain Valley Coal Project to take it into account in their proposed North Wyong Structure Plan.</li> <li>5 <u>Conduct</u> an audit and survey of Wyong Shire Council's roads and infrastructure in the affected area in order to be able to assess the impact of LDO Coal Chain Valley Coal Project on them for adequate reparation, if required. The conditions of approval should include the appropriate dilapidation reporting and monitoring with this validation cost to be borne by LDO Coal.</li> <li>6 Have LDO Coal <u>seek</u> alternative transport for their coal to the Newcastle port due to the safety issues and concerns for damage to Rutleys Road due to the increased volume of coal truck movements on the suburban road.</li> <li>7 <u>Nominate</u> a Councillor delegate as Council's representative on the Chain Valley Coal Project Stakeholder Reference Group.</li> </ol>	<p>Shire Planning</p>	<p>10 March 2010</p> <p>Cr Wynn / Cr Vincent</p>	<p>A letter has been issued to the LDO informing it of the Council resolution.</p>

## 6.7 Outstanding Questions Without Notice and Notices of Motion (contd)

Notice of Motion	Department	Meeting Resolved	Status
<p>10.3 - Notice of Motion – Fuel Efficient Fleet</p> <p>1 <i>That Council <u>report</u> on current initiatives of moving its motor vehicle fleet towards greater fuel efficiency.</i></p> <p>2 <i>That, further to Council's policy on the use of new fuel efficient vehicles including, hybrid, electric and diesel and other emerging technologies in its fleet, staff <u>report</u> on running costs, capital costs etc in a publicly accessible way for the benefit of our community.</i></p>	Shire Services	<p>10 March 2010</p> <p>Cr Eaton / Cr Wynn</p>	A report will be submitted to Council by May 2010
<p>10.5 - Notice of Motion – Traffic Gridlock San Remo</p> <p>1 <i>That Council <u>draw</u> the attention to the Roads and Traffic Authority of the congestion currently being experienced in the vicinity of the new Northlakes Shopping Centre and request that they urgently undertake remedial work.</i></p> <p>2 <i>That staff <u>report</u> on actions taken by the Roads and Traffic Authority and the success or otherwise of these initiatives.</i></p>	Shire Planning	<p>10 March 2010</p> <p>Cr Matthews / Cr Vincent</p>	<p>A letter has been issued to the RTA.</p> <p>A report will be forwarded to Council once a response has been received from the RTA.</p>
<p>9.1 – Notice of Motion – Tsunami Warning Effectiveness</p> <p>1 <i>That Council <u>recognise</u> the importance of a coordinated tsunami action plan having regard to the vulnerability of our Coastal communities such as Cabbage Tree Bay, Budgewoi, North Entrance and various lakeside suburbs, that may be devastated in the wake of a tsunami.</i></p> <p>2 <i>That Council <u>refer</u> this matter to the State Emergency Services (SES) with a request for them to brief Councillors in regard to tsunamis at a future scheduled briefing.</i></p>	Corporate Services	<p>24 March 2010</p> <p>Cr Best / Cr Webster</p>	<p>A letter has been issued to the SES.</p> <p>A briefing will be scheduled once a response has been received.</p>

## 6.7 Outstanding Questions Without Notice and Notices of Motion (contd)

Notice of Motion	Department	Meeting Resolved	Status
<p>9.3 - Notice of Motion – Warnervale GP Super Clinic</p> <p><i>That Council <u>urgently</u> investigate and report on other potential sites for the Warnervale GP Super Clinic that are correctly zoned and in the correct geographic area and particularly include the site on Louisiana Road that reportedly is DA approved for a large medical centre.</i></p>	Shire Planning	<p>24 March 2010</p> <p>Cr Eaton / Cr Best</p>	A report will be submitted to Council on 12 May 2010.
<p>9.4 - Notice of Motion – Costs of the Survey and Preliminary Design to the Entry Road and Intersection at Warnervale Town Centre</p> <p>1 <i>That in order to facilitate the development of the Warnervale Town Centre, Council <u>endorse</u> the commitment by staff to meet one third of the cost of the survey and preliminary design of the entry road into the centre from Sparks Road and the intersection on Sparks Road.</i></p> <p>2 <i>That the Mayor and Deputy Mayor in conjunction with Council staff <u>urgently</u> pursue discussions with the State Government, Landcom (State owned corporation) and Woolworths in order to reach agreement on the sharing of the construction costs of the road and intersection in such a way that the ratepayers of the Wyong Shire are not unduly penalised.</i></p>	Shire Planning	<p>24 March 2010</p> <p>Cr Graham / Cr Vincent</p>	Ongoing discussions being held with all relevant stakeholders to facilitate cost of survey and preliminary designs to Warnervale Town Centre.

## 6.7 Outstanding Questions Without Notice and Notices of Motion (contd)

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### 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
8.2 - Possibility for the Establishment of an Environmental Committee <i>That the Shire Planning Department provide a report that outlines the possibilities for establishment of an Environment Committee.</i>	9 September 2009 Cr Wynn / Cr Best	Response included in this business paper.
Q70/10 – Date of Commencement of Trial of Road Blisters on Woodbury Park Drive and Coachwood Drive  <i>“Could staff advise when the trials of the Road Blisters on Woodbury Park Drive and Coachwood Drive will commence?”</i>	10 March Cr Eaton	A response has been included in this Business Paper.

### ATTACHMENTS

*Nil.*

## **7.1 Answers to Question Without Notice**

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TRIM REFERENCE: C2008/05521 - D02185526 AUTHOR: AP

### **7.1 Q70/10 - Commencement of Trial of Road Blisters on Woodbury Park Drive and Coachwood Drive**

The following question was asked by Councillor Eaton at the Ordinary Meeting held on 10 March 2010:

*“Could Staff advise when the trials of the Road Blisters on Woodbury Park Drive and Coachwood Drive will commence?”*

Both Woodbury Park Drive, Mardi and Coachwood Drive Ourimbah have been subject to numerous investigations and consideration by the Wyong Shire Traffic Committee in relation to speeding vehicles.

A design option has been completed in relation to Woodbury Park Drive involving the use of new devices called road cushions. The design has been endorsed by the Traffic Committee and extensive public consultation has been completed. A design option for Coachwood Drive/Shirley Street Ourimbah utilising road cushions is currently in development. The Traffic Committee has however recommended that a trial at Woodbury Park drive be completed prior to consideration of a design for Coachwood Drive/Shirley Street.

Road cushions are a form of road hump which occupies only a part of the roadway width, with at-road-level gaps between the raised areas. This allows buses and emergency services vehicles to straddle the devices, while the majority of cars with narrow wheel tracks must mount or partially mount the devices. Recent analyses by traffic calming practitioners involved with the Austroads association indicate the suitability of road cushions for reducing vehicle speeds, while minimising adverse impact on bus operations and emergency services vehicles. The installation of the devices into existing pavements is also relatively straightforward and low cost relative to other devices such as asphalt speed humps and chicanes.

The estimate for the installation of speed cushions along Woodbury Park Drive and associated signage is \$50,000. A preliminary estimate for Coachwood Drive/Shirley Street is \$75,000. Budget provision for both budgets has been made within the draft 2010-11 Rolling Works Program. Subject to endorsement of the 2010-11 Rolling Works Program as part of the Management Plan process, works are proposed in Woodbury Park Drive early in the financial year 2010-11 and then following an initial trial and review of the road cushions, works will be completed in Coachwood Drive/Shirley Street.

## **ATTACHMENTS**

*Nil.*

## 8.1 Notice of Motion - Bike Racks on buses

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TRIM REFERENCE: F2004/06706 - D02194053

AUTHOR: GB

Councillors Best and Wynn have given notice that at the Ordinary Meeting to be held on 14 April 2010 they will move the following Motion:

*“That Council investigate and report on the possibility of local bus services providing passengers with transport racks for push bikes as is common in Europe and the USA.”*

### COUNCILLOR'S NOTE

Following is a photograph of a bus / bike rack system as used in Washington, USA.



## **8.2 Notice of Motion - Access to Council Information - Anywhere, Anyhow, Anytime**

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TRIM REFERENCE: F2004/00056 - D02196212

AUTHOR: JM

Councillors McNamara and Graham have given notice that at the Ordinary Meeting to be held on 14 April 2010 they will move the following Motion:

- "1 That Council actively continue its rollout of community access to Council information and related services.*
- 2 That Council promote these new services to the community and highlight the availability of information from mobiles, PDA's, Internet and phone.*
- 3 That staff report on how new technologies can improve internal efficiency and productivity."*

### **8.3 Notice of Motion - Deferment of Determination of Development Applications affected by Sea Level Rise**

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TRIM REFERENCE: F2009/00067 - D02196258

AUTHOR: BS

Councillors Symington and Wynn have given notice that at the Ordinary Meeting to be held on 14 April 2010 they will move the following Motion:

*"In accordance with resolution on Item 5.2 – Notice of Motion – Elected Council Independent Legal Advisor adopted on 10 February 2010 to seek legal advice from a separate independent firm of solicitors in relation to the determination by Councillors of development applications affected by Sea level Rise*

*That Council defer determination of any development applications so affected, until such time as this advice has been received and considered."*



#### **8.4 Notice of Motion - Public Access to Coast via Tuggerah Lakes Golf Course**

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TRIM REFERENCE: F2005/00568 - D02202520

AUTHOR: DE

Councillor Eaton has given notice that at the Ordinary Meeting to be held on 14 April 2010 he will move the following Motion:

- "1 That Council note the closure of the long established public access to the coast through the golf course near the northern end of the course resulting from the locking by the club of the gate in this location.*
- 2 That Council seek legal advice as to enforcing the public's right of access in this location and this advice be reported to council.*
- 3. That in the interim Council formally advise the golf course that its recent closure of this access is not supported by council and that it requires the access to be reopened immediately."*

## **9.1 Rescission Motion - Sale of Land - Moala Parade, Charmhaven**

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TRIM REFERENCE: F2008/02625 - D02196761

AUTHOR: GB

Council, at the Ordinary Meeting held on 22 July 2009 gave consideration to a report regarding Proposed Sale of Land at Lot 83 DP 27286 and Lot 94 Section 1 DP 11824 Charmhaven.

At that meeting, Council resolved as follows:

- 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.*

Council, at the Ordinary Meeting held on 24 March 2010 gave consideration to a report regarding Sale of Land at Charmhaven.

At that meeting, Council resolved as follows:

- 1 *That Council receive the report and note the information.*
- 2 *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.*
- 3 *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.*
- 4 *That Council authorise the Mayor and the General Manager to execute all documents.*

A Rescission Motion has been received from Councillors Wynn, Symington and Best to be moved at the Ordinary Meeting of Council to be held on Wednesday, 14 April 2010, as follows:

*"MOVE that Council rescind the following resolutions carried at the Ordinary Meetings of Council held on 22 July 2009 and 24 March 2010:*

*"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.”

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

- 1 That Council receive the report and note the information.
- 2 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.
- 3 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.
- 4 That Council authorise the Mayor and the General Manager to execute all documents.”

Should the above Rescission Motion be carried, further notice is given that they will move the following motion:

- “1 That Council receive the report and note the information.
- 2 That Council recognise the need to provide a community accessway over Lot 94 Moala Parade and Lot 83 Charmhaven Avenue through forming a standard accessway/public space over the above lots.
- 3 That Council appropriately dispose of the residual land for an amount not less than market value for each parcel as determined by an independent registered valuer and the funds returned to Council’s General Revenue.
- 4 That Council as with other shared pathways seek joint funding.
- 5 That Council in partnership with the local community and precinct committee gauge the level of support for the establishment of a community native gardens on various Council owned lands within close proximity to the proposed walkway.
- 6 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.
- 7 That Council authorise the Mayor and the General Manager to execute all documents.”