



Works are well underway to revamp the beautiful Mannering Park foreshore. Council is installing a half metre sandstone wall, cobblestone beach and grassed area. The \$127,000 works are to protect the tree roots along the foreshore and improve the look of the area.

Business Paper

ORDINARY MEETING

24 November 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 24 NOVEMBER 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 Disclosure of Interest..... 5
- 1.2 Address by Invited Speakers..... 6
- 1.3 Confirmation of Minutes of Previous Meeting..... 7

2 NOTICE OF INTENTION TO DEAL WITH MATTERS IN CONFIDENTIAL SESSION

- 2.1 Notice of Intention to Deal with Matters in Confidential Session..... 28

3 KEY ISSUES

- 3.1 Iconic Development Sites 29

4 PLANNING REPORTS

- 4.1 DA/127/2010 - Section 82A Review for a Proposed Gymnastics and Movement Centre at Berkeley Vale..... 55
- 4.2 DA/36/2010 - Proposed Dwelling-House at Springs Road, Kulnura 82
- 4.3 Wyong Shire-wide Heritage Review - Request Endorsement to Proceed to Public Exhibition 113

5 PROPERTY REPORTS

- 5.1 University of Newcastle Ourimbah Campus - Proposed Extension of Lease for Playing Fields Part Lot 1 DP 837937 Chittaway Road Ourimbah..... 132

6 CONTRACT REPORTS

- 6.1 Contract CPA/182955 - Supply and Delivery of Ready Mix Concrete 136
- 6.2 Contract CPA/182958 - Supply and Delivery of Unbound and Modified Base and Sub Base for Surfaced Road Pavements..... 142
- 6.3 Contract CPA/182963 - Supply and Delivery of General Bulk Garden Materials 150

7 GENERAL REPORTS

7.1	Annual Report 2009-10	161
7.2	Tuggerawong Retirement Village	164
7.3	Alcohol Free Zone - The Entrance North	169
7.4	Funding and Cost of Link Road Construction.....	173
7.5	Bicycle Racks on Buses	187
7.6	Proposed Councillors' Community Improvement Grants	196
7.7	Staff Contract Management.....	199
7.8	Christmas Leave Arrangements	200

8 GENERAL MANAGER'S REPORT

8.1	2010-11 Annual Plan - September Quarter Review	203
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9 INFORMATION REPORTS

9.1	Information Reports	206
9.2	Works in Progress - Water Supply and Sewerage	207
9.3	Ourimbah Campus Parking	212
9.4	General Works in Progress	214
9.5	Mardi to Mangrove Link Project Status	228
9.6	Activities of the Development Assessment Unit	233
9.7	Investments for October 2010	238
9.8	Water Supply Authority - Statutory Audit for the year ended 30 June 2010	243
9.9	Results on Water Quality Testing for Beaches and Lake Swimming Locations	294
9.10	Central Coast Region of Councils Meeting	298
9.11	Central Coast Tourism - Update.....	302
9.12	Outstanding Questions without Notice and Notice of Motions	303

10 ANSWERS TO QUESTIONS WITHOUT NOTICE

10.1	Q107/10 - Water Leakage on Ratepayers Property	317
10.2	Q108/10 - Swimming areas at Gwandalan and Mannering Park	318

11 NOTICES OF MOTION

11.1	Notice of Motion - Old Sailing Club Building at Tuggerah Parade, Long Jetty.....	320
11.2	Notice of Motion - Drains along Long Jetty Foreshore.....	321
11.3	Notice of Motion - Council calls to Support Local Nurses	322

12 CONFIDENTIAL ITEMS

12.1	General Manager Performance Management Appraisal Process
12.2	Expenditure and Information for Legal Advices

13 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.

Michael Whittaker
GENERAL MANAGER

1.1 Disclosure of Interest

TRIM REFERENCE: F2010/00009 - D02422550

MANAGER: Lesley Crawley, Manager Governance and Administration
AUTHOR: Monica Redmond, Administration Assistant

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

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

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

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

RECOMMENDATION

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

AMENDED REPORT

24 November 2010
To the Ordinary Meeting

Procedural Item
Corporate Services Department

1.2 Address by Invited Speakers

TRIM REFERENCE: F2010/00009 - D02422552

AUTHORS: MR

SUMMARY

The following people have been invited to address the meeting of Council:

SPEAKERS	REPORT	PAGE NO	DURATION
Ms Sasha Smith, representing a local business owner (speaking against the recommendation)	4.1 DA/127/2010 – Section 82A Review for a Proposed Gymnastics and Movement Centre at Berkley Vale	55	5 mins
Mr Michael Schembri, neighbouring land owner (speaking against the recommendation)	4.2 DA/36/2010 – Proposed Dwelling – House at Springs Road, Kulnura	82	5 mins
Mr David Scobie, Heritage Consultant (speaking for the recommendation)	4.3 Wyong Shire-wide Heritage Review – Request Endorsement to Proceed to Public Exhibition	113	5 mins
Mr George Kinealy, Administrator of the Tuggerawong Retirement Village (speaking against the recommendation)	7.2 Tuggerawong Retirement Village	164	5 mins
Mr Ollie Philpotts, from Central Coast Tourism (speaking for the recommendation)	9.11 Central Coast Tourism - Update	302	5 mins
Mr Doug Darlington, representing The Entrance Peninsula Community Precinct Committee (speaking in support of the notice of motion)	11.1 Notice of Motion - Old Sailing Club Building at Tuggerah Parade, Long Jetty	320	5 mins
Mr Doug Darlington, representing The Entrance Peninsula Community Precinct Committee (speaking in support of the notice of motion)	11.2 Notice of Motion – Drains along Long Jetty Foreshore	321	5 mins
Ms Michelle Cashman, local nurse from Long Jetty Hospital (speaking in support of the notice of motion)	11.3 Notice of Motion – Council calls to Support Local Nurses	322	5 mins

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

TRIM REFERENCE: F2010/00009 - D02422556

AUTHOR: Monica Redmond, Administration Assistant
MANAGER: Lesley Crawley, Manager Governance and Administration

SUMMARY

Confirmation of minutes of the previous Ordinary Meeting of Council held on 10 November 2010.

RECOMMENDATION

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

ATTACHMENTS

- 1 Minutes of the Ordinary Meeting of Council held on 10 November 2010. D02427238

WYONG SHIRE COUNCIL

**MINUTES OF THE
ORDINARY MEETING OF COUNCIL
HELD IN THE COUNCIL CHAMBER
WYONG CIVIC CENTRE, HELY STREET, WYONG
ON 10 November 2010
COMMENCING AT 5:05 PM**

PRESENT

Councillors D J Eaton (Chairperson), G P Best (arrived at 5:06 pm), R L Graham, 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 Environment and Planning, Acting Director Infrastructure Management, Director Corporate Services, Manager Place Management, Project Director Mardi to Mangrove Project and General Counsel.

Manager Regulation and Compliance, Manager Headworks Gosford Wyong Joint Water Authority, Senior Strategic Planner and two administration staff.

The Mayor, Councillor Eaton, declared the meeting open at 5:05 pm and advised in accordance with the Code of Meeting Practice that the meeting is being recorded.

The Mayor expressed Council's condolences to Councillor Wynn on the loss of her mother.

Councillor McBride announced that Wyong District Netball Association were the successful bidders for the NSW State Age Netball Championships to be held in July 2012. Councillor McBride thanked staff for their contribution and Mr B Kelly in obtaining the event.

Councillor Wynn spoke briefly on her participation as a panellist / presenter at the Institute of Local Government Internal Auditors Conference to be held in Sydney on 5 November 2010.

John Hardwick delivered the opening prayer.

Councillor Matthews read an acknowledgment of country statement.

Councillor Best arrived at the meeting at 5.06 pm.

APOLOGIES

There were no apologies.

At the commencement of the ordinary meeting report nos 1.1, 1.2, 1.3, 2.1 and 3.1 were dealt with first then the remaining reports in order with report no 9.1 being called forwarded during the meeting. However for the sake of clarity the reports are recorded in their correct agenda sequence.

1.1 Disclosure of Interest

6.6 Acid Etching of Tiles at The Entrance Town Centre

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

9.3 Notice of Motion – Call to Close Dirty Coal Generator

Councillor Vincent declared a non-pecuniary significant conflict of interest in the matter for the reason that he is an employee of Delta Electricity; left the chamber at 10:11 pm took no part in discussion, did not vote and did not return to the chamber.

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

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 Address By Invited Speakers

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

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

1.3 Confirmation of Minutes of Previous Meeting

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

That Council confirm the minutes of the previous Ordinary Meeting of Council held on 27 October 2010.

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

AGAINST: NIL

Business Arising

Councillor Symington sought to raise an issue concerning the minutes of 13 October 2010. The Mayor ruled it out of order.

2.1 Mayoral Minute - Local Job Creation - the Shire of the Third Age

Mr Stephen Byfield, Chief Executive Officer representing diggers@theentrance, addressed the meeting at 5.10 pm, answered questions and retired at 5.17 pm.

Councillor Matthews left the meeting at 5:38 pm and returned to the meeting at 5:40 pm during consideration of this item.

RESOLVED unanimously on the motion of Councillor EATON:

That Council adopt a strategic target of creating 5,000 local jobs over 10 years by creating Wyong Shire as a nationally recognised district of excellence in aged housing. The following strategies would be involved in reaching this target:

- a Establish a register of sites appropriate for development of aged housing and facilities based on appropriate parameters including size and location.**
- b Increasing flexibility in the new Local Environmental Plan to encourage aged housing for example consider allowing aged housing and associated medical facilities in the Wyong Employment Zone.**
- c Amend dual occupancy DCP to encourage the redevelopment of single cottages more than 30 years old in existing urban areas. Recognising that dual occupancy development is generally suitable for aged housing and replacing old housing with new housing increases energy and resource and Environmental efficiency.**
- d In conjunction with the public and private sector identify and market the advantages of Wyong Shire for aged housing.**
- e Reviewing Council owned sites for possible aged housing including the Warnervale Country Music site.**
- f Work with local registered clubs to encourage their participation in this sector and identify and ameliorate barriers to entry.**
- g Call for expressions of interest to form an expert panel to advise Council on this initiative.**

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

AGAINST: NIL

3.1 Draft LEP (Amendment No. 179) Lot 2 DP 520220 Lake Munmorah, Draft DCP 2005: Chapter 114 - Lake Munmorah Village Centre and Draft VPA

Mr Paul Mailath, representing residents and shopkeepers from Lake Munmorah, addressed the meeting at 6:05 pm, answered questions and retired at 6:16 pm.

Councillor Graham left the meeting at 6:06 pm and returned to the meeting at 6:07 pm during consideration of this item.

Councillor Best left the meeting at 6:34 pm and returned to the meeting at 6:35 pm during consideration of this item.

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

- 1 That Council refer the draft Local Environmental Plan 179 to the Department of Planning requesting that the Minister for Planning make the plan.***
- 2 That Council adopt draft Development Control Plan 2005: Chapter 114 – Lake Munmorah Village Centre and provide appropriate public notice within 28 days of this resolution, and that it becomes effective upon the gazettal of Local Environmental Plan Amendment No. 179.***
- 3 That Council endorse the Voluntary Planning Agreement (VPA) and authorise the General Manager to execute the VPA.***
- 4 That Council forward a copy of the executed Voluntary Planning Agreement to the Minister for Planning in accordance with the provisions of Clause 93G of the Environmental Planning and Assessment Act 1979.***

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

AGAINST: NIL

3.2 DA/600/2010 - Proposed Torrens Title Subdivision located at 4 Beach Parade and 2 Crossingham Street, Canton Beach

Councillor Vincent left the meeting at 6:42 pm during consideration of this item and as a result took no part in voting.

Councillor Wynn left the meeting at 6:42 pm and returned to the meeting at 6:42 pm during consideration of this item.

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

- 1 That Council, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues, grant consent subject to the conditions detailed in the schedule attached to the report.**
- 2 That Council vary Clause 42D of Wyong Local Environmental Plan 1991 to permit the development.**
- 3 That Council assume the concurrence of the Director General of the Department of Planning for the use of State Environmental Planning Policy No 1 to vary the development standard of Clause 42D of Wyong Local Environmental Plan 1991 to permit the proposed development.**

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

AGAINST: NIL

3.3 DA/754/2010 Subdivision (Boundary Adjustment creating no additional allotments) at Bumbles Creek Road, Ourimbah

Councillor Vincent left the meeting at 6:42 pm and as a result took no part in voting.

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

- 1 That Council, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues, grant consent subject to the conditions detailed in the schedule attached to the report.**
- 2 That Council vary Clause 14 of Wyong Local Environmental Plan 1991 to permit the development.**
- 3 That Council assume the concurrence of the Director General of the Department of Planning for the use of State Environmental Planning Policy No 1 to vary the development standard of Clause 14 of Wyong Local Environmental Plan 1991 to permit the proposed development.**

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

AGAINST: NIL

3.4 DA/1061/2009 Proposed Rural Boundary Adjustment at Little Jilliby

Councillor Vincent returned to the meeting at 6:43 pm during consideration of this item.

Councillor Matthews left the meeting at 6:45 pm during consideration of this item and as a result took no part in voting.

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

- 1 That Council, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act 1979 and other relevant issues, grant consent subject to the conditions detailed in the schedule attached to the report.**
- 2 That Council seek the concurrence of the Director General of the Department of Planning for the use of State Environmental Planning Policy No 1 to vary the development standard of Clause 14(2) of Wyong Local Environmental Plan 1991 to permit the proposed development.**

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

AGAINST: NIL

4.1 Renewal of Lease to Killarney Vale Pre-School Kindergarten Inc - Lot 384 DP 755263 Adelaide Street Tumby Umbi

Councillor Matthews returned to the meeting at 6:46 pm during consideration of this item.

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

- 1 That Council renew the lease of Lot 384 DP 755263 Reserve 63621 Adelaide Street, Tumby Umbi to The Killarney Vale Pre-School Inc for a period of twenty years as prescribed by the Land and Property Management Authority.**
- 2 That Council authorise the Common Seal of Wyong Shire Council to be affixed to the Lease between Wyong Shire Council and The Killarney Vale Pre-School Inc.**
- 3 That Council authorise the Mayor and the General Manager to execute all documents relating to the Lease.**

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

AGAINST: NIL

4.2 Proposed Lease to Toukley Rugby League Football Club of Part of Lot 550 DP 1130653 at Darren Kennedy Oval, Noraville

A MOTION was MOVED by Councillor MCNAMARA and SECONDED by Councillor VINCENT:

- 1 That Council approve a lease of the existing clubhouse building at Crown Reserve 1011729, Lot 550 DP 1130653 at Evans Road, Noraville to Toukley Rugby League Football Club Inc for a period of five years at rent as prescribed by the Land and Property Management Authority and, subject to development consent being granted for construction of a gym and office, approve a lease of the proposed gym and office.
- 2 That Council endorse, as the Reserve Trust Manager of the Darren Kennedy Oval Reserve Trust (R1011729), Lot 550 DP 1130653 at Evans Road, Noraville a development application by Toukley Rugby League Football Club Inc to construct a gym and office on the land.
- 3 That Council authorise the Common Seal of Wyong Shire Council to be affixed to the Lease between Wyong Shire Council and Toukley Rugby League Football Club Inc.
- 4 That Council authorise the Mayor and the General Manager to execute all documents relating to the Lease.

AN AMENDMENT was MOVED by Councillor VINCENT and SECONDED by Councillor MATTHEWS:

- 1 That Council approve a lease of the existing clubhouse building at Crown Reserve 1011729, Lot 550 DP 1130653 at Evans Road, Noraville to Toukley Rugby League Football Club Inc for a period of ten years at rent as prescribed by the Land and Property Management Authority and, subject to development consent being granted for construction of a gym and office, approve a lease of the proposed gym and office.
- 2 That Council endorse, as the Reserve Trust Manager of the Darren Kennedy Oval Reserve Trust (R1011729), Lot 550 DP 1130653 at Evans Road, Noraville a development application by Toukley Rugby League Football Club Inc to construct a gym and office on the land.
- 3 That Council authorise the Common Seal of Wyong Shire Council to be affixed to the Lease between Wyong Shire Council and Toukley Rugby League Football Club Inc.
- 4 That Council authorise the Mayor and the General Manager to execute all documents relating to the Lease.

FOR: COUNCILLORS MATTHEWS, MCBRIDE AND VINCENT

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

The AMENDMENT was put to the VOTE and declared LOST.

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

- 1 That Council approve a lease of the existing clubhouse building at Crown Reserve 1011729, Lot 550 DP 1130653 at Evans Road, Noraville to Toukley Rugby League Football Club Inc for a period of five years at rent as prescribed by the Land and Property Management Authority and, subject to development consent being granted for construction of a gym and office, approve a lease of the proposed gym and office.
- 2 That Council endorse, as the Reserve Trust Manager of the Darren Kennedy Oval Reserve Trust (R1011729), Lot 550 DP 1130653 at Evans Road, Noraville a development application by Toukley Rugby League Football Club Inc to construct a gym and office on the land.
- 3 That Council authorise the Common Seal of Wyong Shire Council to be affixed to the Lease between Wyong Shire Council and Toukley Rugby League Football Club Inc.
- 4 That Council authorise the Mayor and the General Manager to execute all documents relating to the Lease.

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

AGAINST: NIL

4.3 Proposed Telstra Telecommunications Facility and Lease at Lot 35 DP 710255, Eastern Road, Bateau Bay

Councillor Wynn left the meeting at 6:57 pm during consideration of this item and as a result took no part in voting.

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

- 1 That Council approve a lease of Part of Lot 35 DP 710255 at Eastern Road, Bateau Bay to Telstra Corporation Ltd subject to development consent being granted for the construction of a telecommunication facility.
- 2 That Council approve the terms of the lease as:
 - a a period comprising four consecutive five year leases for a period up to 20 years.
 - b an annual rent commencing at \$27,500 with annual 5% increases over the period and market reviews every five years.
- 3 That Council authorise the Common Seal of Wyong Shire Council to be affixed to the lease between Wyong Shire Council and Telstra Corporation Ltd.
- 4 That Council authorise the Mayor and General Manager to execute all documents relating to the Lease.
- 5 That Council endorse, as owner of Lot 35 DP 710255 at Eastern Road, Bateau Bay, a development application by Urbis, on behalf of Telstra Corporation Ltd to construct a telecommunication facility on the land.

- 6 That Council **note** for the public record, that its endorsement of the Development Application (as the landowner) cannot be interpreted in any way whatsoever as support or otherwise for the determination of the Application by Council.

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

AGAINST: NIL

5.1 Contract CPA/182957 - Supply and Delivery of Bituminous Coldmix

Councillor Wynn returned to the meeting at 6:59 pm during consideration of this item.

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

- 1 That Council **accept** Tender No. 1 from Tropical Asphalts Pty Ltd as the preferred supplier of Bituminous Cold Mix for a period of 36 months commencing on 1 December 2010.
- 2 That Council **note** the estimated annual expenditure against this contract is \$77,850 (ex GST) but that actual expenditure may vary with fluctuations in demand.

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

AGAINST: NIL

5.2 Contract CPA/182960 - Supply and Delivery of Type S Filter Sand

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

- 1 That Council **accept** Tender No. 3 from Norgrath Pty Ltd T/as Roy Lamb The Sand Man as the preferred supplier of Type S Filter Sand for a period of 36 months commencing on 1 December 2010.
- 2 That Council **note** the estimated annual expenditure against this contract is \$179,084 (ex GST). Actual expenditure may vary with fluctuations in demand.

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

AGAINST: NIL

5.3 Contract CPA/182961 - Supply and Delivery of Top Soil

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

- 1 That Council accept Tender No. 3 from Norgrath Pty Ltd T/as Roy Lamb The Sand Man as the preferred supplier of Top Soil for a period of 36 months commencing on 1 December 2010.**
- 2 That Council note the estimated annual expenditure against this contract is \$55,177- ex GST but that actual expenditure may vary with fluctuations in demand.**

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

AGAINST: NIL

6.1 Access to Council Land for Mandalong South Exploration Drilling Program

Councillor Matthews left the meeting at 7:15 pm and returned to the meeting at 7:17 pm during consideration of this item.

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

- 1 That Council reject the negotiation and execution of agreement with Centennial Coal for access to Council land for the Mandalong South Exploration Drilling Program.**
- 2 That in the event of any exploration being executed on Council land, that Council request that the Buttonderry Waste Management Facility site be excised from the exploration program by Centennial Coal.**
- 3 That Council write to the State Member for Wyong, David Harris MP and State Member for Lake Macquarie, The Honourable Greg Piper MP and The Honourable Paul Lynch MP, Minister for Energy concerning this issue.**
- 4 That Council consider that the Buttonderry Waste Management Facility is a significant improvement for the purpose of Section 31 of the Mining Act 1992.**

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

AGAINST: NIL

6.2 Toukley Desalination Plant

Councillor Best left the meeting at 8:01 pm and returned to the meeting at 8:02 pm during consideration of this item.

Councillor Webster left the meeting at 8:03 pm and returned to the meeting at 8:04 pm during consideration of this item.

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

That Council adopt the recommendation of the Gosford-Wyong Councils' Water Authority from the 18 August 2010 Board Meeting in relation to the Toukley Desalination Plant.

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

AGAINST: COUNCILLORS BEST, VINCENT AND WYNN

6.3 Lakes Contamination

Councillor Symington left the meeting at 8:15 pm and returned to the meeting at 8:17 pm during consideration of this item.

Councillor Vincent left the meeting at 8:20 pm and returned to the meeting at 8:24 pm during consideration of this item.

Councillor Matthews left the meeting at 8:20 pm and returned to the meeting at 8:24 pm during consideration of this item.

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

- 1 That Council receive and note the report on Lakes Contamination.**
- 2 That Council forward the report to Tuggerah Lakes Estuary and Coastal Floodplain Management Committee for information.**
- 3 That Council request water and sewerage staff prepare a report to Council on the options and costs to further mitigate raw sewage discharges to the lakes systems including additional storage at pump stations, the effectiveness of bunding at pump stations, enhancement of Council's present telemetry system and the continued use of new technologies in replacing and repairing sewer assets.**

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

AGAINST: NIL

6.4 Whale Dreamers Festival 2010

Councillor McNamara left the meeting at 8:33 pm and returned to the meeting at 8:36 pm during consideration of this item.

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

- 1 That Council receive the report on the Whale Dreamer's Festival and its inclusion in the Council's community calendar of events.**
- 2 That Council decline to include the event in the Annual Plan on a recurrent basis and encourage the committee to apply for support via Council's grant program.**
- 3 That staff provide a report to Council on a structured framework for event sponsorship prior to the consideration of the 2011/2012 Annual Plan.**

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

AGAINST: NIL

6.5 Waste and Sustainability Improvement Payment Program 2010/2011

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

- A That Council endorse and support the following high priority projects to be submitted for consideration of funding through the 2010/11 WaSIP program:**
- 1 Community Halls - sustainability improvement program (\$160,000.00 excl GST).**
 - 2 Domestic waste audit (\$80,000.00 excl GST).**
 - 3 Metal litter bin installation in targeted areas (\$19,425.00 excl GST).**
 - 4 Wyong South Sewerage Treatment Plant (STP) computer model (\$16,000.00 excl GST).**
 - 5 Wyong Civic Centre lighting proximity switches (\$10,000.00 excl GST).**
 - 6 Charmhaven Depot energy consumption reduction (\$20,000.00 excl GST).**
 - 7 Wyong Pool – Pool Cover (\$20,000.00 excl GST).**
 - 8 Wyong Civic Centre energy sub metering (\$50,000.00 excl GST).**
 - 9 Continued employment of temporary WaSIP Project Officer (\$100,000.00 excl GST).**
 - 10 Illegal Dumping - integrated enforcement and education plan (\$50,000.00 excl GST).**
 - 11 Recycled organics workshops (\$12,100.00 excl GST).**
 - 12 Sustainable Events Management at events and appropriate functions conducted by Council (\$20,000.00 excl GST).**

- 13 Sustainability Indicator Framework and policy development (\$30,000.00 excl GST).
- 14 Shelly Beach staircase using recycled plastic (\$123,000.00 excl GST).
- 15 Sustainable Wyong workshop series (\$11,000.00 excl GST).
- 16 Mattress recycling (\$20,000.00 excl GST).

B That Council write to the State Member for Wyong, David Harris MP and The Honourable Frank Sartor MP, Minister for Climate Change and the Environment requesting that the refund from the Section 88 waste and environment levy be increased to a possible 100% of return to enable council to make major and lasting environmental improvements in Wyong Shire.

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

AGAINST: NIL

PROCEDURAL MOTION

SUSPENSION OF ORDER OF BUSINESS

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

That Council suspend the order of business to allow consideration of Item 9.1 – Notice of Motion – Women’s Committee.

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

AGAINST: NIL

PROCEDURAL MOTION

SUSPENSION OF ORDER OF BUSINESS

Councillor Symington left the meeting at 9:16 pm and returned to the meeting at 9:19 pm and as a result took no part in voting.

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

That Council use the exception method to deal with the balance of the Agenda.

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

AGAINST: NIL

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

That with the exception of report numbers 6.6, 7.2, 7.3, 7.4 and 7.6, Council adopt the recommendations contained in the remaining reports.

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

AGAINST: NIL

6.6 Acid Etching of Tiles at The Entrance Town Centre

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

Councillor Symington returned to the meeting at 9:19 pm during consideration of this item.

Councillor Vincent left the meeting at 9:22 pm and returned to the meeting at 9:23 pm during consideration of this item.

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

That Council approve acid etching of the tiles at The Entrance Town Centre by the Glason Group in the lump sum amount of \$37,753.73 (excl GST) for the pedestrian area tiles along The Entrance Road between the Coral Street/ Marine Parade intersection south to Dening Street.

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

AGAINST: NIL

6.7 Further Update Report on Future Directions for Body Hire Services for Wyong Shire Council

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

- 1 That Council receive the report on Further Update Report on Future Directions for Body Hire Services for Wyong Shire Council.**
- 2 That Council receive a further report at the Ordinary Meeting of 8 December 2010 on the phasing out of Mardi to Mangrove Link contractors and engagement of a management team.**

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

AGAINST: NIL

6.8 Contract Variations and Finalisation - September 2010

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

- 1 That Council receive the Contract Variations and Finalisation September 2010 report (Attachment 1).**

- 2 That Council approve additional expenditure above resolved estimates for the following contract:

Contract Title	Contract No	Additional Expenditure
Concept Design, Detail Design and Tender Documentation for Toukley STP Inlet Works Upgrade	136486	\$1,380.00

- 3 That Council note the additional expenditure requested will be funded from Water and Waste Budgets.

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

AGAINST: NIL

6.9 Staff Recognition Dinners

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

That Council review and endorse the continuation of Staff Recognition Dinners for 10, 15, 20 and 25 years service.

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

AGAINST: NIL

6.10 Union Picnic Day

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

- 1 That Council support the practice of granting Union Picnic Day to non union members for the 2010 Union Picnic Day as a paid leave day.
- 2 That Council endorse the General Manager giving notice to staff that the practice will be reviewed for 2011 and future years.
- 3 That Council agree the date for future Union Picnic Day recognise the community and business needs of Wyong Shire.
- 4 That Council notify the community of this local government holiday.

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

AGAINST: NIL

6.11 Proposed Councillors' Community Improvement Grants

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

That Council allocate an amount of \$2,500.00 from the 2010-11 Councillors' Community Improvement Grants as outlined in the report.

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

AGAINST: NIL

6.12 Community Buildings Upgrades

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

That, subject to review of the funding agreement, Council accept the Federal funding allocation of \$659,000 for the upgrade to eight highly utilised Council owned community buildings.

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

AGAINST: NIL

7.1 Results of Survey on Council's Investment of Resources

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

That Council receive the report on Results of Survey on Council's Investment of Resources.

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

AGAINST: NIL

7.2 Proposed Amendment to Schedule 3 of State Environmental Planning Policy (Major Development) 2005

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

- 1 That Council receive the report on the amendment to Schedule 3 of State Environmental Planning Policy (Major Development) 2005.**
- 2 That Council condemn the State Government and The Honourable Tony Kelly MLC, Minister for Planning on the amendment to Schedule 3 of the State Environmental Planning Policy (Major Development) 2005 at Gwandalan and Catherine Hill Bay and further removal of good planning policies and environmental protection.**

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

AGAINST: COUNCILLORS MATTHEWS, MCBRIDE AND VINCENT

7.3 Warnervale Town Centre Progress Report

Councillor McBride left the meeting at 9:41 pm and returned to the meeting at 9:42 pm during consideration of this item.

Councillor Matthews left the meeting at 9:47 pm and returned to the meeting at 9:49 pm during consideration of this item.

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

That Council receive the report on Warnervale Town Centre Progress Report.

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

AGAINST: NIL

7.4 Outstanding Mine Subsidence Claims - Chain Valley Bay South

This item was withdrawn as it was dealt with at the last meeting of 27 October 2010.

7.5 Mardi to Mangrove Link Project Status

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

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

7.6 Porters Creek Stormwater Harvesting Scheme - Notification of Unsuccessful Grant Application

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

- 1 *That Council receive the report on Porters Creek Stormwater Harvesting Scheme - Notification of Unsuccessful Grant Application.***
- 2 *That Council authorise the Delegation to raise this issue on their forthcoming visit to Canberra in view of the importance of this scheme to the Warnervale Employment Zone and report back to Council.***

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

AGAINST: NIL

7.7 Outstanding Questions without Notice and Notice of Motions

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

That Council receive the report on Outstanding Questions without Notice and Notice of Motions.

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

AGAINST: NIL

9.1 Notice of Motion - Women's Committee

Gosford City Councillor Vicki Scott, addressed the meeting at 8:48 pm, answered questions and retired at 8:57 pm.

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

- 1 That Council include consideration of a Status of Women Committee during their deliberations on the whole committee structure.**
- 2 That Council consider participation / membership to include Councillors, staff and community representatives to support women's issues within the Local Government area.**

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

AGAINST: NIL

9.2 Notice of Motion - Lot 1 DP 450166 Main Road Toukley

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

- 1 That further to Council's consideration of this matter on 11 June 2008 and staff reply (reports attached), Council reiterate on behalf of its residents and ratepayers its serious concern regarding the unsightly and potentially unsafe condition of the partially built structure locally know as the Toukley Taj Mahan on Lot 1 DP 450166, Main Road, Toukley at the bridge.**
- 2 That acknowledging the substantial period of time that has lapsed since any work has taken place on the property and noting that a Notice of Intent has been issued requiring the completion of the development:**
 - a Council proceed to issue a formal Order for completion.**
 - b Council's legal counsel investigate any other avenues to achieve completion.**
 - c Should the owners not comply with the terms of the Order upon its expiry, Council commence legal action in the Land and Environment Court.**

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

AGAINST: NIL

9.3 Notice of Motion - Call to Close Dirty Coal Generator

Councillor Vincent declared a non-pecuniary significant conflict of interest in the matter for the reason that he is an employee of Delta Electricity, left the chamber at 10:11 pm took no part in discussion, did not vote and did not return to the chamber.

Councillor Graham left the meeting at 10:10 pm and returned to the meeting at 10:11 pm during consideration of this item.

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

- 1 That Council investigate reports that the State Government through Delta Electricity is seeking to divest itself of the aging Munmorah Station with a view to retaining the soon to be upgraded Colongra portion. As this station was constructed in the mid 60s and upgraded in the early 1980s it is the most polluting power station and clearly the general site is significantly environmentally degraded.**
- 2 That further residents and ratepayers of the Shire's north have endured dust, noise and health challenges associated with dirty coal generation it is with this understanding that Council seek to confirm the State's intention subject to confirmation, Council on behalf of our residents and ratepayers call on the State Government to demolish the aging Station and utilise the land for more conventional and environmentally friendly employment generating opportunities.**
- 3 That Council request staff investigate appropriate notations to be attached to the Section 149 Certificate for the land associated with the Power Station to deal with the degraded and likely contamination issues associated with the site.**

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

AGAINST: COUNCILLORS MATTHEWS AND MCBRIDE

QUESTIONS WITHOUT NOTICE

There were no questions without notice asked.

THE MEETING closed at 10:14 pm.

2.1 Notice of Intention to Deal with Matters in Confidential Session

TRIM REFERENCE: F2010/00009 - D02433420

AUTHOR: Monica Redmond, Administration Assistant
MANAGER: Lesley Crawley, Manager Governance and Administration

SUMMARY

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

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

RECOMMENDATION

- 1 That Council consider the following matters in Confidential Session, pursuant to Sections 10A(2) (a) and (g) of the Local Government Act 1993:**

***Report no 12.1 General Manager Performance Management Appraisal Process
Report no 12.2 Expenditure and Information for Legal Advices***
- 2 That Council note its reason for considering Report No 12.1 in confidential session is because it deals with personnel matters concerning particular individuals and Report No 12.2 in confidential session as it concerns legal professional privilege.**
- 3 That Council request the General Manager to report on this matter in open session of Council.**

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

"2(a) personnel matters concerning particular individuals (other than Councillors),

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

3.1 Iconic Development Sites

TRIM REFERENCE: F2005/00149 - D02404492

AUTHOR/MANAGER: Paul Bowditch, Manager Future Planning

SUMMARY

Reporting on the identification of Iconic Development Sites within the Shire that have the potential to be a catalyst for economic growth and development confidence. The report also proposes a framework for creating planning controls that provide a balance between incentives for proposals and orderly development of these key areas of the Shire.

RECOMMENDATION

- 1** *That Council endorse the Iconic Development Sites as outlined in the report for the purpose of further action by staff in identifying planning controls to facilitate development through the Comprehensive Local Environmental Plan process or subsequent amendment to the Comprehensive Local Environmental Plan.*
- 2** *That Council incorporate these sites into the draft Comprehensive Local Environmental Plan process.*
- 3** *That Council seek written confirmation from the Department of Planning of its support for this process.*
- 4** *That Council commence an engagement process with the owners of properties proposed to be delineated as Iconic Development Site.*

BACKGROUND

Similar to most areas of the State, Wyong Shire is experiencing a reduction in the level of activity within the development industry. There are many complex factors that have contributed to this situation, most notably the financial challenges presented by the global financial crisis. Council is currently in a unique position to generate an increase in the level of interest in development within the Shire given the current review of its statutory planning controls. Council normally receives a number of representations and proposals from developers and land owners seeking support for various proposals. The number of these representations has increased recently, due mainly to the fact that Council's planning controls are currently under review.

Given the level of representations being received, it is considered that Council can play a greater role in facilitating the economic growth within the Shire. This could be achieved by identifying sites within the various commercial/retail centres of the Shire that would provide a significant economic benefit to the Shire if they were developed to a suitable standard. For the purpose of this report, these sites will be referred to as "Iconic Development Sites". In the past, these sites have been referred to as "Catalyst Sites" or "Trigger Sites".

Regional Economic Development and Employment Strategy

Earlier this year, the NSW Government released the Regional Economic Development and Employment Strategy (REDES) for the Central Coast. REDES contains a number of strategies and actions that support this project. Such actions include:

- Facilitating employment growth associated with population growth.
- Streamlining planning processes by:
 - Identifying strategic projects;
 - Implementing streamlined approval processes;
 - Continuing to implement the State Government’s reforms to the NSW planning system; and
 - Facilitating the timely delivery of major development proposals and ensuring an ongoing supply of land for employment.
- Creating sustainable centres as major employment hubs.
- Developing key centres in accordance with the Central Coast Regional Strategy (CCRS).
- Developing a stronger network of new, revitalised and vibrant centres across the region.
- Ensuring suitable commercial space is available to attract larger employers to the region.

It is considered that Council can assist in meeting these strategies and actions by the establishment of planning controls that will encourage the development of Iconic Development Sites.

To determine the location of these Iconic Development Sites, staff have developed the following criteria. It should be noted that not all sites meet every criterion, for example, some sites are located outside of Centres.

Location within a Centre

The CCRS identifies a hierarchy of centres which classifies larger centres and articulates their future roles. Recognising the key role these centres will play in the future of the Centre Coast, the CCRS also sets employment and housing targets for these centres.

The following table describes the hierarchy of centres within Wyong Shire:

Table 1: Hierarchy of Centres

Classification	Location of Centre
Major Centre	Wyong/Tuggerah
Town Centre	Wyong, Toukley, The Entrance, Bateau Bay, Warnervale, Lake Haven
Village Centre	Lake Munmorah, Budgewoi, Wadalba, Chittaway Bay, Killarney Vale, Long Jetty, Ourimbah

It is proposed to only include those Centres with a classification of “Major Centre” or “Town Centre” as a criterion for identifying Iconic Development Sites. Additionally, the physical location of a site within the Centre has also been considered. The sites with greater prominence (eg. gateway sites) are considered to be more suitable for this designation.

Land Ownership Pattern

It is considered that potential Iconic Development Sites should ideally be held in single ownership. However, this is not always possible and in some instances, it may not be necessary if multiple land owners form a partnership to consolidate their sites to maximise their development potential.

It is proposed to give greater consideration to sites with a minimum number of land owners when identifying Iconic Development Sites.

Size of the Site

To maximise the development potential and create a greater stimulus to further development of an area, it is important that the area (m²) of a site is of a sufficient size. However, it is recognised that some smaller sites with significant prominence could also be considered.

Employment Generating

In addition to the overall economic stimulus the development of these sites can achieve, it is important to give consideration to the level of employment that will be generated by the development. Council currently identifies major employment generating development as that which will provide employment for 10 or more full time employees (or equivalent). Given the proposed planning incentives that are proposed to be offered to the development of these Iconic Development Sites, it is considered reasonable that these developments provide a greater level of employment than the standard that would normally apply. Therefore, it is considered reasonable for Council to set a higher target of 50 full time employees for these developments.

Constraints

Some recognition has been given to the level of physical constraints that apply to the sites such as flooding and access, etc.

Toukley Planning Strategy

The Toukley Planning Strategy was recently adopted by Council at the Ordinary Meeting on 27 October 2010. At this meeting the following formed part of the resolution:

- “5 That Council request staff to prepare a further report for Council’s consideration on the Waterfront Tourist Park and the Lakeside Tourist Park to establish appropriate uses, zones and controls to provide the incentives for these sites to be redeveloped.”

The Strategy proposes rezoning to 2(g) Residential Tourist with a building height of four storeys which will facilitate the development of this area as a lakeside tourist precinct. It is considered that the recommended land use is appropriate, whilst the building height is also appropriate as a “baseline” building height. It is, however, recognised that the Waterfront Tourist Park and Lakeside Caravan Park present significant sites that if redeveloped have the potential to stimulate revitalisation of this precinct toward achieving the vision outlined in the Strategy. Each site is relatively large and provide potential for innovative building design. Accordingly, it is recommended that these two sites be included as “Iconic Development Sites” to provide incentive for redevelopment to occur.

It should be noted that the potential climate change impacts associated with lake level rise in this immediate locality are as yet unresolved. Rezoning recommended under the Strategy will not proceed until these matters are resolved, which is expected to occur with the Tuggerah Lakes Risk Management Plan.

The Entrance Peninsula Planning Strategy

The Entrance Peninsula Planning Strategy (TEPPS) was adopted by Council last year and identified a series of sites that had the potential for appropriate performance criteria to be inserted into Council’s planning controls. Under such an initiative, the Strategy stated that applicants would be required to demonstrate that innovative proposals including design excellence would result in superior outcomes to the ‘deemed to comply’ scenarios within the Strategy.

These sites that were included in TEPPS have been included in Council’s list of Iconic Development Sites.

THE PROPOSAL

Based on the above criteria and the knowledge of existing development proposals and representations, the following Iconic Development Sites have been identified in Tables 2 and 3.

The Iconic Development Sites identified in Table 2 are supported by an adopted Strategy and/or do not require detailed supporting studies and rezoning. Therefore, these are termed ‘Phase 1’ Iconic Development Sites and are considered suitable for inclusion into the Comprehensive LEP.

The Iconic Development Sites identified in Table 3 are not currently supported by an adopted Strategy and require detailed supporting studies and rezoning before being able to be included in the LEP as a Iconic Development Site (Key Site). These are therefore termed Phase 2 and subject to supporting studies may be added to the Comprehensive LEP as a subsequent amendment in the future.

Table 2: Iconic Development Sites – Phase 1 – Supported by Adopted Strategy and/or Not Requiring Investigations and Rezoning

Centre	Number	Name of Property	Location
The Entrance	1	Dunleith Tourist Park Site	North side of The Entrance Channel, The Entrance North - 2 Hutton Road, The Entrance North.
	2	Vacant 'Key' Site	Corner of The Entrance Road and Marine Parade, The Entrance - 14 The Entrance Road, The Entrance.
	3	Ebbtide Mall Site	Between The Entrance Road and Torrens Avenue, The Entrance - 155-163 The Entrance Road, The Entrance.
	4	Dening/Short Street Carpark Site	Corner of Denning and Short Streets, The Entrance - 10 Denning Street, The Entrance.
	5	Lakeside Plaza Site	Corner of The Entrance Road and Dening Street - 78-94 The Entrance Road, The Entrance.
	6	The Greens The Entrance Bowling Club	Warrigal Street, The Entrance - 2-4 Park Street, The Entrance.
	7	Residential Tourist Zone 'Klumper' Site	Between Manning Road/Bent Street and The Entrance Road West.
	8	Diggers @ The Entrance Site	The Entrance Road.
	9	Tuggerah Lakes Golf Club Site	Shelly Beach Road.
	10	Long Jetty Town Centre Extension	Bounded by Pacific and Thompson Streets between Tuggerah Parade and the Central Coast Hwy.
Toukley	11	Coles Development, Council Carpark and	Yaralla Road, Toukley.

3.1

Iconic Development Sites (contd)

Centre	Number	Name of Property	Location
		Toukley Senior Citizens Centre	
	12	Old Service Station Site and adjoining Council carpark	Cnr Main Road and Yaralla Road, Toukley.
	13	Toukley Caravan Park	Main Road, Toukley.
	14	Waterfront Tourist Park	Beach Parade, Canton Beach
	15	Lakeside Caravan Park	Beach Parade, Canton Beach
	16	Rustrum Site	Main Road, Toukley (East of Beachcomber Hotel)
	17	Club Toukley (Toukley RSL)	Holmes Avenue, Toukley
Wyang	18	Oasis Youth Facility Site	Cnr of Anzac and Hely Street, Wyong
	19	Aldi Site	Cnr of North Road and the Pacific Highway, Wyong
	20	Gateway site	Pacific Highway, Wyong (southern entry to town)
	21	Chapman Building	Cnr Hely Street and Alison Road, Wyong
	22	Grand Hotel	Pacific Highway, Wyong
	23	The Active River Foreshore Precinct	River Road, Wyong
	24	Wyang Tennis Club and Wyong Swimming Pool Site	Cnr Rose Street and Ithome Street, Wyong
	25	Wyang Racecourse	Cnr Rose Street and Howarth Street, Wyong
Tuggerah	26	Westfield/Abattoir Site	Cnr Wyong Road and the F3 Freeway Tuggerah
Lake Haven	27	Lake Haven Bulky Goods Site	Cnr Lake Haven Drive and Pacific Highway, Lake Haven

3.1 Iconic Development Sites (contd)

Table 3: Iconic Development Sites – Phase 2 – Sites Requiring Detailed Supporting Studies and Rezoning

Centre	Number	Name of Property	Location
Doyalson	28	Doyalson RSL	Cnr Pacific Highway and Wentworth Avenue, Doyalson
Kanwal	29	Wyong Leagues Club and Oasis Caravan Park	Cnr Wallarah Road and Lake Haven Drive, Kanwal
Mardi	30	Old Farm Site	Old Maitland Road, Mardi
Ourimbah	31	Ourimbah Triangle Site	Cnr Ourimbah Creek Road and Pacific Highway, Ourimbah

Plans indicating the location of these properties are attached.

Incentives for Development

In order to achieve iconic developments at these locations, it is considered necessary for Council to offer certain development incentives to ensure that the sites attract the attention of developers and financiers as well as ensuring the sites are delineated from surrounding development.

Such incentives that will be considered include increases to building heights, access to a major application client manager within Council staff, variations to Council DCP chapters (normally in lieu of the preparation of a site specific DCP chapter from the land), variations to development contributions in lieu of the provision of significant material public benefits. Whilst Council would normally consider such proposals if they provide a further 10% increase to the public domain improvements, for these Iconic Development Sites, it is considered reasonable to expect a 20% increase to the level of public domain improvements. These developments would also be subject to Council's Priority Assessment process.

Such incentives will also only be considered when a development achieves certain planning outcomes. These are discussed further under planning controls/mechanisms to be utilised.

Planning Controls/Mechanisms to be Utilised

A range of planning controls and mechanisms exist that may be utilised for 'Iconic Development Sites'. The focus is to provide flexibility in height limitations and the capability to distribute floor space across a site in a way that balances commercial return to investors with benefits to the community.

The purpose of bonus height provisions for 'iconic' or 'key' sites (the adopted term under the Standard Instrument) would be to accommodate development solutions, although exceeding strategic height recommendations that deliver significant environmental, social and economic benefits. It is not proposed that land use or floor space ratio (FSR) would be subject to any bonus provision in order to provide a level of certainty in relation to the maximum scale or intensity of any development proposal.

3.1 Iconic Development Sites (contd)

Any new planning controls (within LEPs) must be consistent with the Standard Instrument and *Model Local Provisions*; with *Planning Circulars* or *Practice Notes* issued by DoP; and with the directions identified by the *Central Coast Regional Strategy*.

The available mechanisms outlined below are based upon the *Standard Instrument* and *Model Local Provisions* and elements of these have already been applied to key sites in recent LEPs for major regional centres such as Parramatta, Liverpool and Wollongong.

At this stage, the most feasible option is considered to be a combination of the following:

- Within the LEP, 'Iconic Development Sites' or 'Key Sites' may be referenced and shown on a *Key Sites Map*, which is an appendix to the LEP.
- The *Height of Buildings Map* may specify 'baseline' building heights for the key sites provided Clause 4.6 of the Standard Instrument can be switched off (to avoid duplication of process).

Alternatively, an option may be available to nominate 'baseline' building height for each key site on the *Key Sites Map*. Either way, these baseline heights should be consistent with relevant adopted Local Planning Strategies. 'Baseline' heights would apply to development proposals that either did not pursue bonus height or which failed to satisfy 'threshold tests' for bonus height.

- Pursuant to the *Model Local Provisions*, a separate part in the LEP dealing with *Local Provisions* would be required to be included for "Key Sites", which would define the 'threshold tests' for bonus building height.
- Buildings on key sites may be taller than the baseline heights, provided they demonstrate design excellence incorporating the applicable five star building rating and deliver significant public benefit.
- The 'threshold test' would require, prior to DA determination (for buildings above the 'baseline height'), the preparation of a DCP for the site, which confirms the extent of design excellence and public benefits that must be achieved by development proposals on the site.
- This part of the LEP may also spell out the design excellence and public benefit criteria that must be addressed in preparing such a DCP for a key site. Alternatively this part of the LEP may refer to a DCP Chapter 'Key Sites' containing the criteria to be addressed. The best location for 'the criteria to be addressed' would be dependent largely upon the extent thereof and level of detail (which is still to be developed).
- Also, this part may include a section requiring that DA consent not be granted without positive appraisal and endorsement of a 'Site Specific' DCP and associated development proposal by an independent design review panel.

The above approach offers reasonable flexibility and certainty to applicants. *Section 74D* of the *Environmental Planning and Assessment (EP&A) Act 1979* requires prompt consideration of draft DCPs by consent authorities and in the event of refusal the proponent retains the right of appeal for a DA subsequently lodged.

Discussions are ongoing with DoP to confirm the appropriate technical approach in relation to the inclusion of key sites into the Comprehensive LEP.

Council's Ongoing Facilitation Role

As part of the Service Delivery Review adopted by Council in August 2010, a Land Use Planning and Policy Development Unit has been created with one of the functions being DA Client Management/Pre-lodgement. It is envisaged that this function will be provided to facilitate the development of these Iconic Development Sites and can provide an immediate facilitation role for those sites with current development approvals.

Engagement Teams and Process

Another newly created Unit under the Service Delivery Review is Place Management. The adopted purpose of this Unit is "to support quality town centre development to build a sense of community cohesion and pride..." It is proposed that this Unit together with the Economic and Property Development Unit would develop an engagement procedure to approach the owners of these sites and enter into discussions on future proposals.

The establishment of this procedure is considered essential to ensure that transparency and good governance surrounds this activity. Council should note however, that all owners of properties proposed to be delineated as Iconic Development sites have been advised in writing of Council's proposal and their ability to attend this meeting to hear Council's deliberations.

OPTIONS

There are a number of options available to Council. The first is to adopt the listed iconic development sites as outlined within the report. This is the preferred option. In considering the available options, it has been important to test these against a number of relevant objectives including:

- Stimulate interest and investment in the locality.
- Pro-active and transparent.
- Flexible and creative process.
- Efficiency of process.
- Robust threshold test in process.
- Certainty in process.
- Provide for design excellence and public benefit.
- Provide for community input.

Preferred Option

The preferred option places Council in a pro-active position with Iconic Development Sites being identified upfront in a transparent manner based upon sound strategic planning. It provides incentives to stimulate activity and interest in strategic centres and locations within a flexible, yet transparent and robust process for proponents to follow. While providing incentives the process also allows for public input and threshold tests for design excellence and public benefit.

The preferred option does involve additional steps such as preparation by a proponent, in consultation with Council staff, of a site specific DCP Chapter. This could be seen as an impediment to the efficiency of the process. However, concept planning (or pre-development application planning) already often occurs for large scale projects involving consultation with the consent authority and although this is not always a formal process it almost never

involves the public. The preferred option involves public consultation, and while this may add some time to the process, it is considered that the benefits of exploring and confirming incentives, flexibility and certainty prior to detailed development application documentation do outweigh any perceived negatives. Furthermore, a proponent would retain the option of pursuing a 'deemed-to-comply' proposal through compliance with 'baseline' controls if timing was given higher priority than pursuing incentives.

Alternative Options

Alternative options have been considered but on balance have not satisfied the relevant objectives to the same level as the preferred option.

Do Nothing - No Iconic Development Sites Process

The 'do nothing option' would see the continuation of current situations where developers approach Council on an ad hoc basis (or even approach State Government under Part 3A provisions). The current planning framework and controls are generally prescriptive and do not provide flexibility to facilitate valid but non-conforming proposals without triggering rezoning, and therefore lead to considerable cost, time and uncertainty. The current process places Council in a re-active rather than pro-active position.

In the absence of a formal process (other than rezoning), generally proposals that depart from prescriptive controls are dealt with in the development assessment context. This can be a combative environment with developers often reluctant to alter plans due costs associated with plan documentation and inherent time constraints and therefore is not a forum conducive to creativity and flexibility.

Site Concept Masterplan

This option would identify key sites through the LEP and/or DCP and require the preparation of a masterplan prior to lodgement of a development application. This option allows for creativity and flexibility and may be faster (than the preferred option), however, it is not a process that fits within the current NSW planning framework which reduces certainty. Furthermore, there is not a mandatory public consultation process (as opposed to site specific DCP) which reduces transparency, nor do appeal rights apply as they do under Section 74D of the EP&A Act 1979 for site specific DCPs.

Bonus Provisions

A further option considered was the use of 'Bonus Provisions' either under an LEP or DCP. This approach would reduce the number of steps in the process as bonus provisions can be applied for during the development application process. Sufficient certainty is afforded if criteria to be satisfied are clearly outlined. However, this option does restrict flexibility as departures from 'baseline' standards are generally modest and is confined to the development application process including public consultation. Furthermore, this approach does not encourage a strategic consideration of the context and the development of ideas at a conceptual level.

Variation to Standards

The option to allow Iconic Development Sites to be treated through variations to LEP or DCP provisions was considered. However, as this option is conducted within the context of DA assessment it is similarly constrained as the current 'do nothing option'. Furthermore, the scope for flexibility and creativity is limited by the extent to which variations can be permitted

3.1 Iconic Development Sites (contd)

to an LEP standard (made under SEPP No 1 or Clause 4.6 of the Standard Instrument) or to DCP development controls. A variation up to 10% may be considered but generally not beyond. This option may be seen as time-efficient, however, it is not strategic, pro-active or flexible.

It is recommended that Council adopt the recommended approach including the listed Iconic Development Sites. Council may choose not to adopt the list of Iconic Development Sites. This would mean that normal planning provisions consistent with the surrounding land/properties would apply and Council will forgo the opportunity of stimulating development within its centres.

STRATEGIC LINKS

Annual Plan

<i>Principal Activity</i>	<i>Strategy or Program</i>	<i>Financial Line Item No and Description</i>
A More Sustainable Community	1.1 Expand and support programs that increase participation among all ages. 1.2 Expand and support programs and activities that encourage and enhance neighbourhood connections. 1.3 Encourage and value genuine youth and seniors' participation in the community. 1.4 Expand and resource children and family service program. 1.5 Develop and implement the Wyong Shire-wide Settlement Strategy. 1.1.2 Continue to implement Public Art projects. 1.5.1 Continue work on Council's Comprehensive LEP to meet the timeframes of the Department of Planning.	
A More Sustainable Economy	2.1 Ensure public and private bus services are timely, clean, safe and affordable. 2.3 Improve and link the bicycle/shared pathway network and related facilities to encourage more cycling opportunities. 2.3.3 Continue to construct shared pathways throughout the Shire in accordance with the On-Road Bicycle and Shared Pathway Strategy.	

3.1 Iconic Development Sites (contd)

<i>Principal Activity</i>	<i>Strategy or Program</i>	<i>Financial Line Item No and Description</i>
A More Sustainable Environment	<p>3.1 Provide and maintain local and regional community facilities for recreation, culture, health and education.</p> <p>3.2 Provide and maintain a range of community programs focused on community development, recreation, culture, environment, education and other issues.</p> <p>3.3 Provide recurrent funding for community support and development services.</p> <p>3.4 Promote community facilities to help maximise their benefits and use.</p>	

Link to Shire Strategic Vision

<i>Priority Objective</i>	<i>How the proposal contributes or links to the Priority Objectives in Shire Strategic Vision and Annual Plan</i>
Communities - Communities will be vibrant, caring and connected with a sense of belonging and pride in their local neighbourhood.	Development of these Iconic Sites will result in significant public domain improvements. Some sites will incorporate public areas that will be attractions to community and focal points for public gatherings.
Travel - There will be ease of travel within the Shire, and to other regional centres and cities. Travel will be available at all hours and will be safe, clean and affordable.	All developments have the potential to generate significant traffic. As such, each development will be required to undertake traffic studies and include how it can be integrated into the public transport systems.
Facilities and Services - Communities will have access to a diverse range of affordable and coordinated facilities, programs and services.	Each site has the potential to provide a range of affordable and co-ordinated facilities and services.
Education - The community will be well educated, innovative and creative. People will attain full knowledge potential at all stages of life.	Nil impact.

3.1 Iconic Development Sites (contd)

Priority Objective	How the proposal contributes or links to the Priority Objectives in Shire Strategic Vision and Annual Plan
Employment - There will be a strong and sustainable business sector and increased local employment built on the Central Coast's business strengths.	As mentioned in the report, these sites have been chosen on the basis that each has the potential to significantly contribute to local employment.
Telecommunications - Information communication technology will be consistent with world's best practice and adaptive to technological advances across all sectors.	Nil impact.
Natural Areas - Areas of natural value in public and private ownership will be enhanced and retained to a high level in the context of ongoing development.	Nil impact.
Environmental Programs - There will be a sense of community ownership of the natural environment through direct public involvement with environmental programs.	Nil impact.

Financial Implications

Nil impact.

Principles of Sustainability

The principles of sustainability will be required to be addressed and integrated into design proposals for iconic development sites. Site Specific DCPs (discussed above) will need to include controls requiring sustainability principles to be reflected in design excellence that contributes to economic, environmental and social sustainability. In line with this, new buildings will be required to demonstrate design excellence incorporating the applicable 5 star building rating.

CONSULTATION

It is proposed that the consultation associated with the development of the planning controls for the iconic development sites will occur as part of the exhibition processes associated with Comprehensive Local Environmental Plan (CLEP).

Council staff have also discussed the proposed planning controls with the Regional Director of the Hunter/Central Coast Region of the Department of Planning (DoP), Mr Michael Leavey. Whilst he advised that the DoP are generally supportive of the program, he raised concerns with the identification of Phase 2 sites and stated that it would be more appropriate that the DoP work with Council on a separate process to identify other strategic sites. He further stated that the inclusion of Phase 2 sites at this time has the potential to complicate Council's main objective with the program.

GOVERNANCE

As mentioned above, clear procedures will be developed to cover the engagement process surrounding Council staff and the owners/developers of the iconic development sites. These procedures will ensure transparency and good governance will exist during this engagement process.

CORPORATE RISKS

Nil impact.

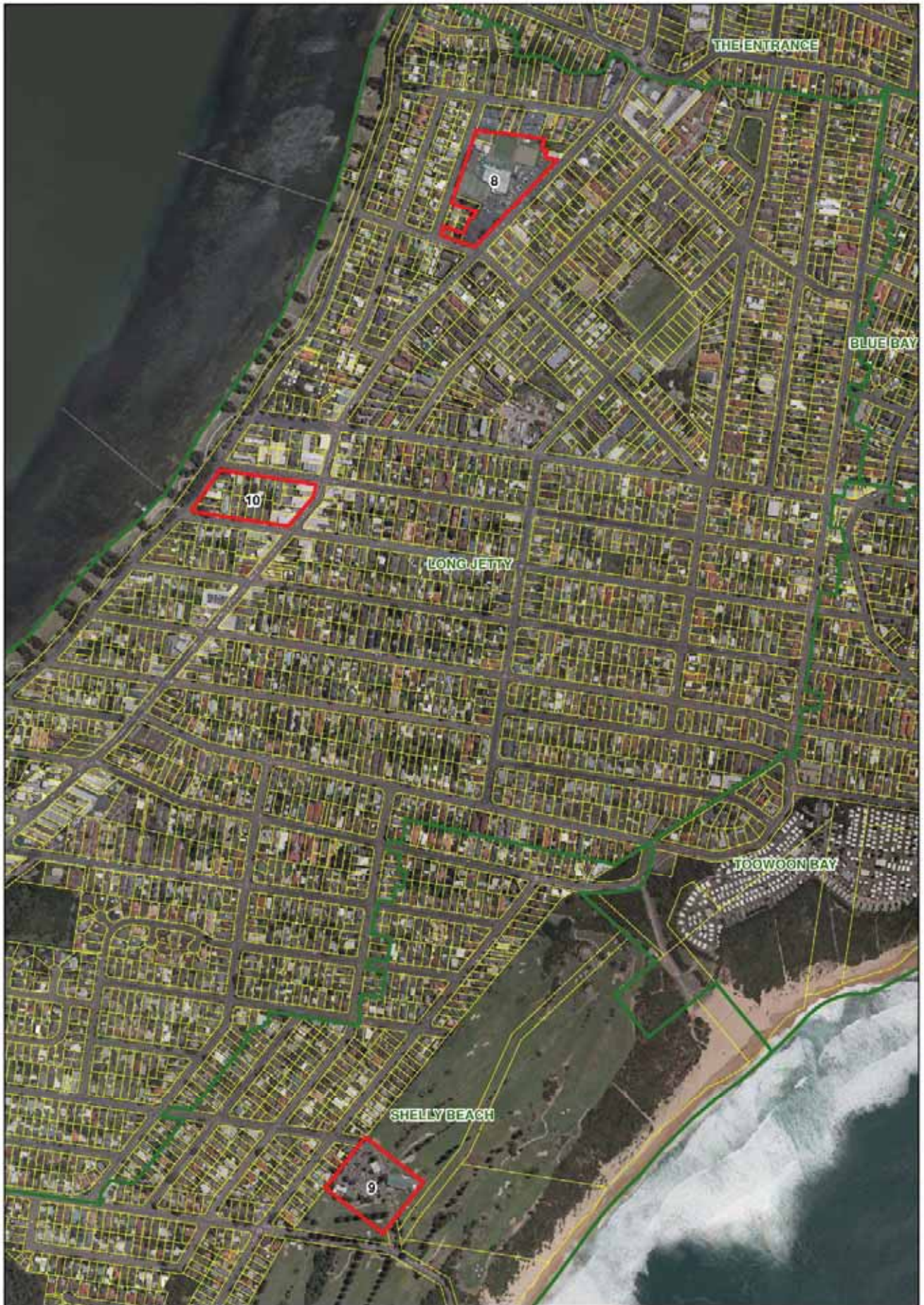
CONCLUSION

Council has a unique opportunity to develop planning controls to encourage quality development on iconic sites within the Shire. These development sites have been chosen based on their ability to provide a significant economic benefit to the community, stimulate further development and provide a significant public domain benefit.

ATTACHMENTS

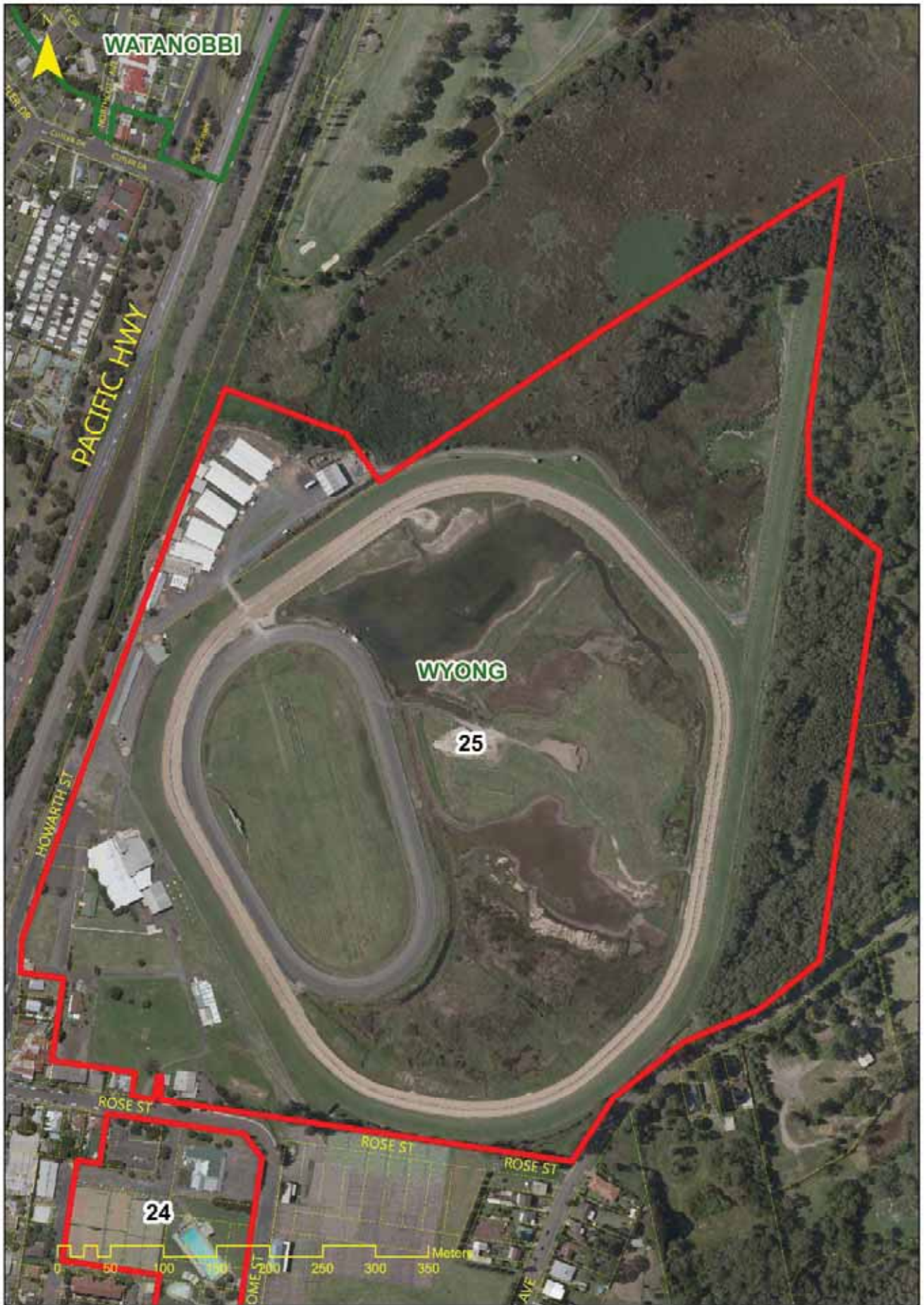
1	Iconic Development Sites - The Entrance	D02425535
2	Iconic Development Sites - Long Jetty	D02425536
3	Iconic Development Sites - Toukley	D02425538
4	Iconic Development Sites - Wyong	D02425541
5	Iconic Development Sites - Wyong Race Course	D02430304
6	Iconic Development Sites - Tuggerah	D02425539
7	Iconic Development Sites - Lake Haven	D02426073
8	Iconic Development Sites - Doyalson RSL	D02430302
9	Iconic Development Sites - Wyong Leagues Club	D02430303
10	Iconic Development Site - Wyong Old Farm	D02430306
11	Iconic Development Sites - Wyong Triangle	D02430305





















4.1 DA/127/2010 - Section 82A Review for a Proposed Gymnastics and Movement Centre at Berkeley Vale

TRIM REFERENCE: DA/127/2010 - D02407643

AUTHOR: Salli Pendergast, Team Co-ordinator, Major Applications
MANAGER: Peter Fryar, Manager Development Assessment

SUMMARY

A request for a Section 82A review of the determination of a development application has been received by Council. The development application lodged for use of an existing unit for a gymnastics and movement centre (recreation facility) was refused by Council. The review has been carried out in accordance with the provisions of the Environmental Planning and Assessment (EP&A) Act 1979. As a consequence of the review it is recommended that Council change its determination and approve the application.

Applicant	Ms K A Ryan and Hill & Co. Lawyers
Owner	K G and L A Parnell
Application No	DA/127/2010
Description of Land	Lot 1 SP 57842, Unit 1, 7 Enterprise Drive, Berkeley Vale
Proposed Development	Use of unit for gymnastics and movement centre (recreation facility)
Site Area	6963m ² (unit 1 : 401m ²)
Zoning	4(b) Light Industrial
Existing Use	Existing industrial units

RECOMMENDATION

- 1 ***That Council, having regard to the matters for consideration detailed in Section 82A of the Environmental Planning and Assessment Act, 1979, grant consent for an initial 12 month period, subject to the conditions detailed in the schedule attached to the report.***
- 2 ***That Council vary Development Control Plan 2005 Chapter 61 to permit the development.***

PRECIS

- In January 2010 a gymnastics and movement centre commenced operation within an existing industrial unit without development consent. A development application was lodged for the use on 9 February 2010.
- The application was refused at Council's Ordinary Meeting of 28 July 2010.
- A request for review of the application has been made by the applicant under Section 82A of the EP&A Act 1979. The basis for the review is additional information included for assessment to address the concerns raised under the original determination.

- To ensure that the previously raised concerns relating to parking, pedestrian safety and proximity to a brothel are addressed, a condition is to be imposed limiting the operation of the consent to a 12 month period, following which further consent is to be obtained. This will provide the opportunity for review of the development as conditioned.
- The use continues to operate without development consent.

The Site

The site is an irregular shaped allotment located on the southern side of Enterprise Drive, between Blade Close and Wyong Road. There is an existing light industrial complex on the site containing five strata subdivided units and 32 parking spaces. Unit number 1 is positioned at the eastern end of the existing building complex. Surrounding the site to the rear (south) and sides is land zoned light industrial and located opposite the site on Enterprise Drive is land zoned general industrial. An approved brothel adjoins the site along the eastern boundary and further to the south of this is land zoned open space. The site is identified as bushfire prone land. Vehicular access to the site is from Enterprise Drive and parking is provided within the front setback of the complex and loading to each unit provided at the rear (southern side).



The Proposed Development

The development application sought approval for use of unit 1 as a children's gymnasium (recreational facility) and related signage. The applicant has advised of classes between 10:00am – 12 noon and again between 4:00pm and 7:00pm for up to 40 children at a time for no longer than a 2 hour period.

The original determination of the development application was for refusal for the following reasons:

- 1 No written owners' consent from the owner's corporation for the works proposed on common property accompanied the application.
- 2 Insufficient information (full details of the proposed land use including hours and days of operation, participant and staff numbers, class frequency and the nature of all activities to be undertaken on site were not provided).
- 3 Insufficient parking provision to meet the demand generated giving rise to child and pedestrian safety issues contrary to Wyong Development Control Plan (DCP) 2005 Chapter 61 – Parking, clauses 3.0 and 5.0.
- 4 Non compliance with the intent of the Wyong DCP 2005 Chapter 71 – Location Criteria for Brothels, 2.3 – Separation Distances from Certain Land Uses, in that it is located in close proximity to an approved brothel on the adjoining site.
- 5 Non compliance with the Wyong DCP 2005 Chapter 75 – Industrial Development, clause 3.29 – Child Care Centres and Ancillary Uses in that it is not a component of a purpose built industrial development predominantly for the use of employees of a light industrial development at No 7 Enterprise Drive.
- 6 Detrimental economic impact in the locality.
- 7 The site is not considered suitable for the development proposed having regard to the nature of the locality and the site's attributes.
- 8 The proposal is not considered to be in the public interest given it does not provide sufficient car parking, poses a pedestrian safety issue and is within close proximity to an approved brothel on the adjoining site.

The additional information provided by the applicant seeks to address the original concerns with the proposal as outlined above.

Summary

During the original assessment of the application, there were a number of aspects of the proposal for which insufficient or conflicting information had been provided. Conditions have now been imposed to address these conflicting or unclear aspects of the proposal to ensure that potential impacts are satisfactorily addressed.

4.1 DA/127/2010 - Section 82A Review for a Proposed Gymnastics and Movement Centre at Berkeley Vale (contd)

The proposal includes a parking shortfall of 19 spaces that equates to a 67% variation to Council's DCP Chapter 61. Additional information has been submitted with the request for review of the determination and a number of conditions are to be imposed to:

- limit the intensity of the use on the site,
- address the pedestrian safety concerns and
- further separate the use from the adjoining brothel.

A condition is to be imposed requiring a maximum of 10 participants and 2 staff be in attendance on the site at any time before 5:00pm weekdays. On the basis that class sizes are limited during regular business hours, the 9 parking spaces available on the site for the proposed use should be adequate. Outside of these hours and on weekends overflow parking is available for the use when other businesses on the site are not in operation.

VARIATIONS TO POLICIES

Clause	3 – Parking requirements
Standard	Variation to parking provision
DCP	Chapter 61 - Carparking
Departure basis	Shortfall of 19 spaces or a 67% variation to parking

HISTORY

Development Consent No. 455/91 was granted on 16 March 1993 for an industrial building on the site. Condition 4 of this consent required the provision of a minimum of 30 parking spaces for the development.

Development Consent No. 349/97 was granted on 10 June 1997 for 5 lot strata subdivision. Parking spaces were not separately allocated to units under this consent but remained in common property.

Development Application No. 127/2010 was lodged on 9 February 2010 for the use of unit 1 as a gymnastics and movement centre (recreational facility). Council considered the development application at a meeting held 28 July 2010, and resolved:

- 1 *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 the application subject to the reasons for refusal attached to the report.*
- 2 *That Council advise those who made written submissions of its decision.*
- 3 *That Council assist the applicant to locate another suitably zoned property for the purpose of conducting the proposed use.*

The reasons for refusal included:

- 1 Pursuant to Section 49 (1)(b) of the Environmental Planning and Assessment Act 1979 the development application is not accompanied by written owners consent from the Body Corporate for the Strata Plan No 57842 for the works proposed on common property.
- 2 Pursuant to Section 79C (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the development application does not contain sufficient information or documentation to permit a fair and accurate assessment of the application as required by clause 50(1)(a) of Environmental Planning and Assessment Regulation 2000. Full details of the proposed land use including hours and days of operation, participant and staff numbers, class frequency and the nature of all activities to be undertaken on site have not been provided.
- 3 Pursuant to Section 79C (1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with the provisions of the Wyong Development Control Plan 2005 Chapter 61 – Parking, clauses 3.0 and 5.0 in that sufficient car parking has not been provided to meet the demand generated giving rise to child and pedestrian safety issues.
- 4 Pursuant to Section 79C (1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with the intent of the Wyong Development Control Plan 2005 Chapter 71 – Location Criteria for Brothels, 2.3 – Separation Distances from Certain Land Uses, in that it is located in close proximity to an approved brothel on the adjoining site.
- 5 Pursuant to Section 79C (1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with the Wyong Development Control Plan 2005 Chapter 75 – Industrial Development, clause 3.29 – Child Care Centres and Ancillary Uses in that it is not a component of a purpose built industrial development predominantly for the use of employees of a light industrial development at No 7 Enterprise Drive.
- 6 Pursuant to Section 79C (1)(b) of the Environmental Planning and Assessment Act 1979 the proposed development is having and is likely to continue to have a detrimental economic impact in the locality.
- 7 Pursuant to Section 79C (1)(c) of the Environmental Planning and Assessment Act 1979 the site is not considered suitable for the development proposed having regard to the nature of the locality and the site's attributes.
- 8 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 provide sufficient car parking, poses a pedestrian safety issue and is within close proximity to an approved brothel on the adjoining site.

A request for a review of determination was lodged under Section 82 of the EP&A Act 1979.

PERMISSIBILITY

The subject site is zoned 4(b) Light Industrial under the Wyong Local Environmental Plan 1991 (WLEP). The proposed development is for a recreation facility that is permissible with consent.

The definition of **recreation facility** means a building or place designed, equipped and used for indoor recreation, such as a billiard saloon, table tennis centre, squash court, swimming pool, gymnasium, health studio, bowling alley and fun parlour, whether used for the purpose of gain or not, but (in the Table to clause 10) does not include anything elsewhere defined in this clause.

Clause 10 of the WLEP requires that *Council must not grant consent to the carrying out of a development...unless, in the opinion of the Council, the proposed development is compatible with the objectives of the zone within which the development is proposed to be carried out.*

The objectives of the 4(b) Light Industrial zone are:

- (a) *to provide opportunities for the development of a wide range of industrial, service and storage activities which do not have a materially detrimental effect on the amenity of adjoining residential areas, and*
- (b) *to restrict commercial, retail or other development except where it is ancillary to the use of land within this zone for light industrial, service and storage purposes, and*
- (c) *to enable the Council to provide more detailed guidelines about industrial development in a development control plan.*

Subject to conditions of consent to address the impacts of the development, the proposed development is considered compatible with the objectives of the 4(b) zone within which the development is proposed to be carried out.

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 No.64 – Advertising and Signage
- Wyong Local Environmental Plan 1991
- Wyong Shire Development Control Plan 2005
 - Chapter 50 - Advertising signs
 - Chapter 61 - Carparking
 - Chapter 67 - Engineering Requirements for Developments
 - Chapter 69 - Controls for Site Waste Management
 - Chapter 70 - Notification of Development Proposals
 - Chapter 75 - Industrial Development
 - Chapter 71 - Location Criteria for Brothels
- Planning for Bushfire Protection 2006

ECOLOGICALLY SUSTAINABLE PRINCIPLES

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

ASSESSMENT

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

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

State Environmental Planning Policy No. 64 – Advertising and Signage

The proposed development seeks approval for new signage related to the proposed use being flush wall signage. In accordance with Clause 6, the provisions of State Environmental Planning Policy (SEPP) No.64 – Advertising and Signage apply to the proposed signage. As the proposed signage would constitute 'building identification signs' and 'business identification signs' Part 3 of the SEPP does not apply to the development. In accordance with Clause 8 of the SEPP, the signage is considered consistent with the objectives of the policy and satisfies the assessment criteria outlined under Schedule 1 of the instrument.

Wyong Local Environmental Plan 1991 (WLEP)

Clause 10 Zoning

The subject site is zoned 4(b) Light Industrial under the Wyong Local Environmental Plan 1991. The proposed development is for a recreation facility that is permissible with consent and subject to specified conditions is considered compatible with the objectives of the zone.

Wyong Shire DCP 2005

Chapter 61 - Carparking

The development generates parking on the following basis under Chapter 61 of the DCP:

- Gymnasiums at a rate of 7 spaces per 100 m² GFA

Unit 1 has a gross floor area of 400m² which equates to generation of demand for 28 spaces under the DCP Chapter 61. The DCP also requires provision of one (1) accessible parking space for the development.

There are 32 existing car parking spaces within the industrial complex that are located on common property. The parking generated by the proposed use would require the majority of parking spaces available in order to comply. This would leave a total of 4 spaces available for the remaining four tenancies.

The applicant has argued that the nature of the use does not generate a parking demand of this magnitude during normal business hours and this is discussed in more detail below.

DCP Chapter 71- Location Criteria for Brothels

The reasons for refusal of the application included consideration of the requirements of Wyong DCP 2005 Chapter 71 – Location Criteria for Brothels. Specifically, that the proposed development does not comply with the intent of the DCP Chapter and with Clause 2.3 that identifies separation distances from certain land uses that are frequented by children.

Clause 2.3 of the DCP states:

2.3(b) Access to or exit from a brothel shall not be provided within 100 metres of the property boundary of any land used for or reserved for a church, school, child care centre, or any place frequented by children for cultural activities or structured recreation.

For the purposes of this plan, this distance... is measured (from door to the nearest point on the affected property boundary) along the most direct established pedestrian route between the premises.

The use of unit 1 would be identified as a place frequented by children for structured recreation. For the purposes of the clause, the distance between the door of the existing approved brothel to the property boundary of the subject site along the most direct pedestrian route is only marginally less than 100 metres due to the landscaping obstructions on the adjoining site.

The applicant has outlined the following arguments as to why the proximity of the use to the existing brothel in this instance is not of concern:

- The subject unit and the brothel both have discreet and separate entries. This separation is evidenced by both by the distance and orientation of each building entry away from the other.
- The applicant has argued that although the use is frequented by children, the children are accompanied by an adult to and from the premises.
- The typical hours of operation of each of the uses do not conflict.

Additionally, the applicant has questioned the validity of applying the requirement of the 100 metre separation distance under DCP Chapter 71 in reverse to this proposal.

In respect of the applicant's arguments, the following additional comments are made. The approved hours of operation of the brothel are 10:00am – 2:00am, 7 days a week (under DA/604/98) and the hours proposed for the gymnasium use are from 9:00am – 7:00pm, Monday to Saturday. It is not readily evident as to the basis for the applicant's argument that these hours do not conflict. However, the building entry to each of the uses is well separated and oriented away from each other so as to be not readily visible by either from one or the other. Existing landscaping further screens the two buildings and the existing vehicle access is well separated between the two developments.

The two activities can be further physically separated by extending the existing front landscaping and fencing to create a visual and physical barrier to the existing pedestrian access between the site and Enterprise Drive in the northern corner of the car park.

This would require the permanent closure of the pedestrian gate in the northern corner of the carpark and a new pedestrian access to the site to be established alongside the existing driveway to the south west. Although there would be no change to the straight line distance between the two properties, installing these measures would increase the walking distance door to door between the two activities (to around 300m).

The applicant has installed shade cloth along the boundary fence that extends between the subject site and the site containing the brothel in an effort to provide some visual separation of the two uses. This shade cloth or an equivalent non transparent screening measure should be installed to extend across the area containing the gate which is to be permanently closed. These measures will be included as conditions of consent.

DCP Chapter 75 - Industrial Development

The nature of the existing development is light industrial. The development is not designed to cater for activities that are frequented by children. DCP Chapter 75 requires that such activities like child care centres need to be custom designed for that purposes (ie.not a fitout of an existing industrial unit) and be designed to serve as ancillary to a larger industrial activity. The proposal is not for a child care centre and is not custom designed for the site. The proposal involves the use of a unit originally designed for light industrial purposes. Therefore, additional conditions (related to parking and safety) are required in order to allow for the use to be compatible with the surrounding industrial activities and to be conducted in a safe and reasonable manner.

DCP Chapter 50 - Advertising

The application seeks approval for the erection of a non illuminated flush wall sign on the façade of the unit measuring 10.2 metres x 2.1 metres. Under Clause 5.6 of DCP Chapter 50, flush wall signs:

- are not to exceed 25% of the wall space for each frontage,
- are not to extend laterally from the wall and
- are not to extend beyond the edges of the wall.

The sign complies with the DCP requirements under this Clause.

Under Clause 8, flush wall signs are approved signs and are required to be in keeping with the scale of the building and integrated with the development. Additionally, such signage should be principally for information, not product display, to ensure that the area does not become a “de facto” commercial area. The signage is satisfactory with regard to the DCP.

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

The relationship to the regional and local context and setting.

Subject to conditions, there are no significant or unreasonable impacts anticipated.

Parking, access, transport and traffic management measures.

Actual parking demand and the proposed hours of use

Under the original assessment, it was identified that the development did not comply with clauses 3.0 and 5.0 of the Wyong DCP 2005 Chapter 61 – Parking, in that sufficient car parking has not been provided to meet the demand generated giving rise to child and pedestrian safety issues.

The development generates a need for 28 parking spaces to be provided in order to comply with DCP Chapter 61. There are a total of 32 existing parking spaces provided for the five unit light industrial complex. Under the strata plan these were not allocated individually to each unit but remained in common property being therefore shared by all of the tenancies.

The applicant submitted a report from a traffic consultant identifying that the peak activity at the centre usually occurs after 4:00pm on weekdays and after 2:00pm on weekend afternoons. The applicant argues that the use predominantly operates outside standard business operating hours, with the actual parking demand during the day for the use being minimal. The traffic consultant has argued that peak parking demand for the gymnasium is as follows:

During Business hours: 1 to 2 parking spaces (for staff only)
After hours and weekend afternoons 7 to 12 parking spaces

Concerns were raised under the original assessment regarding the conflict between this assertion in the traffic report and the information provided on the website for the business (including the class timetable).

Class times Mon-Thurs	Ages
9:00am (Thurs only)	9 months-2 years
10:00am	2-3 years old
11:00am	3-4 years old
12:00 noon	4-5 years old
1:00pm – 2:30pm	School groups

The traffic report assumes that no parents would be in attendance during any of the above classes. That is, despite the fact that children are aged 2 to 5 years old for these classes. The report assumes that all parents would drop off their children and leave the site. Additionally, no details are provided within the traffic report as to how school children would arrive at the premises and whether bus parking or a bus standing area would be required.

The applicant has argued the circumstances applicable to this use generate less parking demand than a gym attended by adults because:

- there is typically higher vehicle occupancies (ie.parents bringing more than one child for participation), and,
- children being dropped off and picked up (ie. the vehicle not remaining on the site for the duration of the class).

However, no survey information of the parents who attend was provided in support of these assumptions. These assumptions are more typical of older children rather than younger non-school aged children. The classes for these younger children (under 5 years old) that take

4.1 DA/127/2010 - Section 82A Review for a Proposed Gymnastics and Movement Centre at Berkeley Vale (contd)

place before 4:00pm would likely have a parent remaining on the site in attendance. Additionally, siblings would not be able to attend the same class as each other due to the class times being separated by age.

Therefore, the estimate of 1 or 2 spaces during the weekday business hours for staff only is not an accurate assessment of the likely parking demand for the use. Likewise the estimate of 7 to 12 spaces for peak parking demand for after hours operation is not supported by submission of any survey information from parents currently attending the site.

Parking generation rates and variation

It is considered reasonable to assume that in the event of any of these units being vacated that parking be allocated based on an industrial factory rate of 1 space/75m². This rate being the most intense industrial activity likely on the site. On this basis the gross floor area for each unit as a factory use would generate parking as follows:

Unit No.	Gross Floor Area	Parking rates based on DCP Ch.61	Required	Rounded up to whole no.
1	401	1 space/75m ²	5.3	6 spaces
2	392	1 space/75m ²	5.2	6 spaces
3	413	1 space/75m ²	5.5	6 spaces
4	428	1 space/75m ²	5.7	6 spaces
5	321	1 space/75m ²	4.3	5 spaces
				29 spaces

The actual rate applicable to the current uses of the units within the complex (except unit 1) under the DCP Chapters is as follows:

Unit No.	Use	Gross Floor Area	Parking rates based on DCP Ch.61	Required	Actual available
2	Electrical wholesaler or if vacant	392	1 spaces/300m ² 1 space/75m ²	1.3 - 5.2	2-6
3	Clothing manufacture	413	1 space/75m ²	5.5	6
4	Video hire	428	6.1 spaces/100m ²	25.2	6 spaces (Court approval)
5	Vacant (formerly metal fabrication)	321	1 space/75m ²	4.3	5
	TOTAL				23 spaces

Although unit 2 currently generates a requirement for only 2 parking spaces, were the unit to be vacated, it is reasonable to reserve 6 spaces on the site for any future use of the unit based on the higher factory rate of parking. This would leave 9 spaces available for the use of unit 1 as a gymnasium. Additional spaces would likely be available to the use as overflow spaces outside of standard business hours and on weekends.

4.1 DA/127/2010 - Section 82A Review for a Proposed Gymnastics and Movement Centre at Berkeley Vale (contd)

Unit No.	Use	Gross Floor Area	Parking rates based on DCP Ch.61	Required	Actual Available
1	Gymnasium	401	7 spaces/100m ²	28	9

On this basis the variation to parking under Council’s DCP Chapter 61 would equate to a shortfall of 19 spaces or a 67% variation to parking.

In order to mitigate any adverse impacts as a consequence of this parking shortfall, conditions are to be imposed to restrict the intensity of the use on Monday through to Friday before 5:00pm to a maximum of 10 participants and two staff. This will assume two spaces for the staff and a vehicle occupancy of 1.4 children per vehicle.

New parking and existing loading conflicts

The applicant has argued that an additional 13 spaces can be accommodated at the rear of the building. Although a plan was submitted by the applicant indicating the generally proposed configuration of this newly proposed parking, no parking space dimensions or aisle widths were provided on the plan in order to establish the practicality of using these spaces. Additionally, the area to the rear of the units that is proposed to accommodate the additional parking is approved as manoeuvring area for the loading bays for each unit within the complex. The proposed new 13 parking spaces would conflict with the original turning circles required for manoeuvring larger vehicles on the site to service the units.

The impacts of the removal of this area for manoeuvring purposes would require further assessment that has not been provided under the information submitted for the proposal. This would involve amendment to the original plans approved for the industrial complex. In this regard, turning templates would be required to demonstrate that the use of the loading bays are not rendered impractical by virtue of the new parking spaces, and that parking spaces can be readily accessed without conflict to the use of the existing loading areas for each unit.

The servicing of these units for their intended light industrial use would likely be compromised by the removal of the existing manoeuvring area for new parking spaces. Therefore, the new parking spaces are not supported as it is not readily evident, nor has it been demonstrated how the parking will not adversely impact upon the future servicing of the industrial complex.

Safety

Concern was raised in the original assessment that the design of the car parking area requires children and parents to cross heavy vehicle circulation aisles. The design and layout of the original development allowed for heavy vehicle access through the site (ie. entering and exiting the site in a forward direction). The applicant’s traffic consultant examined this issue of safety and has concluded that the existing handrail along the entry to unit 1, prevents any direct access to the parking aisle allowing for sufficient sight distance for drivers to see pedestrians. Additionally, the speed limit of 10km/h allows for adequate stopping distance.

Further, the applicant has argued that as the existing metal fabrication business has vacated the premises, there is no longer a real safety conflict between children associated with the use and heavy vehicles accessing the site. This is not a reasonable argument as the development was designed and approved for heavy vehicle servicing. A future application for operation of a light industrial use serviced by heavy vehicles on the site is permissible within the zone and is consistent with zone objectives and would not be refused on this basis.

Conditions are to be imposed requiring the installation of advisory signage to both drivers and parents regarding safety and the 10km/h speed limit for the complex. Additionally, a linemarked route for pedestrian access between the unit entry and parking is to be identified on the pavement within the circulation aisle.

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

There are no issues to discuss.

The impact on utilities supply.

There are no issues to discuss.

The effect on heritage significance.

The development is not identified as a heritage item and is not in the vicinity of any heritage items. There are no issues related to heritage to discuss.

Any effect on other land resources.

There are no issues to discuss.

Any impact on the conservation of water.

There are no issues to discuss.

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

Contamination

In relation to Clause 4 of SEPP 55 (Remediation of Land), the subject site is not land on which development for a purpose outlined in the contaminated land planning guidelines is being, or is known to have been, carried out.

Acid Sulphate Soils

The site is identified as Class 5 - within 500m on the Acid Sulphate Soils Planning Map. There are no works proposed as part of the proposal that are likely to lower the water table in any adjacent 1, 2, 3 or 4 land to any point below 1 metre AHD.

Any effect on quality of air and microclimate conditions.

There are no issues to discuss.

Any effect on the flora and fauna.

A condition is to be imposed requiring that additional landscaping be established within the area containing the pedestrian footpath adjoining the northern corner of the car park.

The provision of waste facilities.

A Waste Management Plan (WMP) was submitted with the proposal in accordance with Council's DCP Chapter 69 – Controls for Site Waste Management.

Whether the development will be energy efficient.

There are no issues to discuss.

Whether the development will cause noise and vibration.

The noise associated with the use is not unreasonable or significant for an established light industrial zone.

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

Bushfire Safety

The site is identified as bushfire prone land (buffer). However, the BCA does not provide for any bush fire specific performance requirements for development in a Class 5 and 6 building such as this one and as such AS 3959 does not apply as a set of 'deemed to satisfy' provisions. The general fire safety construction provisions are taken as acceptable solutions, but the aim and objectives of Planning for Bushfire Protection (PBP) 2006 apply in relation to other matters. The development is considered consistent with the aims and objectives of PBP. The development is not likely to be a refuge in the face of a bushfire event given the good access to the site for firefighting and evacuation and the established nature of development around the site. There are no changes to the building materials, design or layout under the proposal.

Any risks from technological hazards.

There are no issues to discuss.

Whether the development provides safety, security and crime prevention.

A condition will be included to address this impact.

Any social impact in the locality.

There are no issues to discuss.

Any economic impact in the locality.

Concerns were raised in the previous assessment regarding the likely detrimental economic impact the development would have on the continued operation of the brothel next door. It was argued that the ability of the brothel to operate in a discrete manner has been compromised due to ready visibility of the brothel driveway from the car park servicing the unauthorised children's gymnasium. With the adoption of additional screening measures to restrict the visibility of the brothel driveway entry and exit from the northern corner of the carpark of the subject site, the concerns raised can be reasonably addressed.

Any impact of site design and internal design.

The development was designed to service light industrial activities including provision for heavy vehicle access and manoeuvring. The development was not designed for high pedestrian activity by children and their parents. Conditions have therefore been imposed to address the previously raised concerns in relation to safety and other potential conflicts.

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

There are no issues to discuss.

Any cumulative impacts.

Cumulative impacts associated with the parking provision are a relevant consideration. Future use of other units within the development may be constrained as a consequence of the parking non compliance associated with the proposed use. Particularly, if a future use is likely to operate outside of normal business hours or if a use is likely to generate more parking demand than spaces available for that unit. The cumulative impacts of the shortage of parking on the site may hinder the ability of future uses to operate from the site.

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

The proposed use is located within an established industrial area within a light industrial unit complex. Concerns were originally raised regarding the suitability of the site having regard to the nature of the locality and the site's attributes. The existing building, parking and accessways are not designed to accommodate the presence of children.

Additional measures are to be included as conditions to address the pedestrian safety concerns associated with the use by children and their parents. Additional measures are also to be adopted to minimise any impacts to surrounding properties like the operation of other light industrial activities on the site and the operation of the brothel next door.

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

The application was advertised in accordance with DCP 2005 Chapter 70-Notification of Development Proposals with 7 submissions being received. The issues raised in the submissions have been addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979. A summary of the submissions is detailed in the table below.

Doc. No	Summary of Issues	Response
D02402581 D02402570 D02402569 D02402558	Oppose for the same reasons raised previously which included: <ul style="list-style-type: none"> • Unauthorised use • Located next to an approved brothel • Gymnasium has plans to expand into the adjoining unit with outside play facilities overlooking rear of brothel. • Proposed use breaches DOC's related legislation • Proposal will set a precedent • Complaints regarding unsupervised children in car park and insufficient parking. 	Addressed in the conditions of consent. Approval recommended subject to conditions to address impacts including child and pedestrian safety, proximity to a brothel and parking deficiencies. The proposal does not breach the Young Persons Care Act 1998 or Children Service Regulation 2004. However, it is the responsibility of the operator to ascertain whether a licence may be required from DOC's in relation to any activity on the site. The proposed expansion of the gymnasium including the use of outside areas is not included under this application and would not be supported on the basis of the information provided.
D02396001	Oppose for the same reasons raised previously. Although engineering firm moved, the site is still zoned for industry. Children's activities have taken place in the carpark (BBQ's) The church has been replaced by an industrial use.	Addressed in the report discussion and conditions of consent. The vacant unit previously occupied by the engineering firm is still zoned for light industry and a future tenant would need to comply with the zoning requirements. A condition is included to ensure that all children activities associated with the unit are to take place within the unit and not car park areas, accessways or landscaped areas.
D02395997	Submission in support of the proposal.	Addressed in the approval of the proposal subject to conditions of consent.
D02382326	Submission in support of the proposal.	Addressed in the approval of the proposal subject to conditions of consent.

Any submission from public authorities.

There were no submissions received from public authorities.

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

The concerns raised in relation to adequacy of the car parking, pedestrian safety and proximity to an approved brothel have been addressed under the conditions of consent. Measures restricting the intensity of the use during the weekday operation, requiring the installation of advisory signage and linemarking for safety, and to physically separate the use from the adjoining brothel have been imposed to address the previous concerns raised.

OTHER MATTERS FOR CONSIDERATION

Owners' Consent

Written owners consent from the Body Corporate for the Strata Plan No 57842 has now been provided. The owners' consent bears the common seal and references earlier correspondence wherein the owners' corporation confirmed approval for the use of unit 1 and works proposed on common property. These works included:

- The installation of speed humps,
- Permanent closure of the pedestrian gate in the northern corner of the carpark,
- Approval for overflow parking to be created as new spaces to the rear of the building
- Additional traffic measures as required to allow for the use.

This consent satisfies the concern that was raised previously under the earlier determination constituting a reason for refusal.

Insufficient Information

The second reason for refusal on the determination notice reads:

...the development application does not contain sufficient information or documentation to permit a fair and accurate assessment of the application as required by clause 50(1)(a) of Environmental Planning and Assessment Regulation 2000. Full details of the proposed land use including hours and days of operation, participant and staff numbers, class frequency and the nature of all activities to be undertaken on site have not been provided.

During the original assessment of the application there were a number of aspects of the proposal for which insufficient or conflicting information had been provided. Despite previous requests, all of the information that was originally requested was not submitted. Conditions have now been imposed to address these conflicting or unclear aspects of the proposal to ensure that potential impacts are satisfactorily addressed.

CONCLUSION

The Section 82A Review application seeks Council's reconsideration of its refusal to grant consent for the use of unit 1 for gymnastics and movement centre (recreation facility) for children of all ages. The previous determination raised a number of concerns related to the activity on the site including pedestrian safety, proximity to a brothel, and insufficient information. Additionally, the proposal includes a parking shortfall of 19 spaces that equates to a 67% variation to Council's DCP Chapter 61. Additional information has been submitted with the request for review of the determination. A number of conditions are to be imposed to limit the intensity of the use on the site, to address the pedestrian safety concerns and to further separate the use from the adjoining brothel. A condition is to be imposed requiring a maximum of 10 participants and 2 staff be in attendance on the site at any time before 5:00pm on weekdays (Monday – Friday).

4.1 DA/127/2010 - Section 82A Review for a Proposed Gymnastics and Movement Centre at Berkeley Vale (contd)

On the basis that class sizes are limited during regular business hours, the 9 parking spaces available on the site for the proposed use should be adequate. Outside of these hours and on weekends overflow parking is available for the use when other businesses on the site are not in operation.

That pursuant to Section 82A of the EP&A Act, 1979, Council's Refusal Notice of Determination be overturned and approved subject to the conditions in the attached schedule.

ATTACHMENTS

- | | | |
|----------|-----------------------------|-----------|
| 1 | Development Plans | D02407792 |
| 2 | Draft Conditions of Consent | D02425742 |
| 3 | Class timetable | D02430565 |

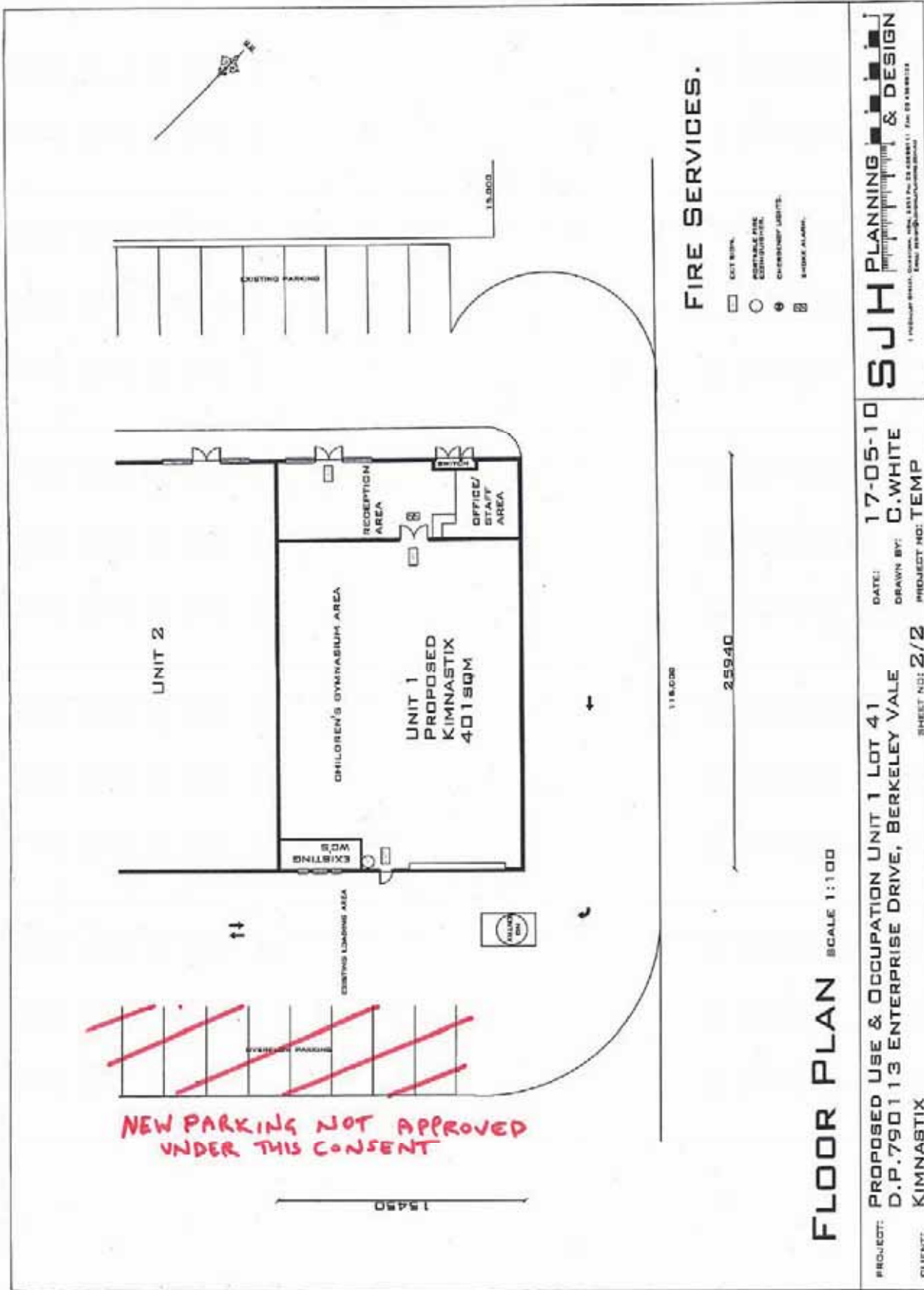


PROJECT: PROPOSED USE & OCCUPATION UNIT 1 LOT 41
 D.P. 7901 13 ENTERPRISE DRIVE, BERKELEY VALE
 CLIENT: KIMNASTIX

DATE: 17-05-10
 DRAWN BY: C. WHITE
 PROJECT NO: TEMP

SHEET NO: 1/2

SJH PLANNING & DESIGN
 1 HIGHLAND PARK, SUITE 101, 2001 WILSON AVENUE, MELBOURNE VIC 3048
 TEL: (03) 9487 1111 FAX: (03) 9487 1118



Date: 9 November 2010
Responsible Officer: Salli Pendergast
Location: 1/7 Enterprise Dr, BERKELEY VALE NSW 2261
Lot 1 SP 57842
Owner: Mr K G Parnell and Ms L A Parnell
Applicant: Ms K A Ryan and Hill & Co Lawyers
Date Of Application: 9 February 2010
Application No: DA/127/2010
Proposed Development: Use of Unit 1 as a Gymnastics and Movement Centre
Land Area: 401.00

PROPOSED CONDITIONS

- 1 The development taking place in accordance with the approved site and layout plans numbered sheet 1/2 & 2/2 dated 17.05.10, all prepared by SJH Planning, and front elevation (signage) plan unnumbered, and undated, the application form and any other supporting documentation submitted as part of the application, except as modified by any conditions of this consent, and any amendments in red.
 - The proposed additional (overflow) parking is to be deleted from the plans and is not included as part of this consent.

Prior to Release of Construction Certificate:

The following conditions must be satisfied prior to the release of the Construction Certificate. Conditions may require the submission of additional information with the Construction Certificate Application. Applicants should also familiarise themselves with conditions in subsequent sections and provide plans in accordance with any design requirements contained therein.

No conditions

Prior to Commencement of Works:

The following conditions must be satisfied prior to the commencement of site works, including any works relating to demolition, excavation or vegetation removal.

No conditions

Prior to Release of Occupation Certificate:

The following conditions must be satisfied prior to the release of an Occupation / Subdivision Certificate.

Building Code of Australia

- 2 Compliance with the relevant provisions and requirements of the Building Code of Australia.

Certificates/Engineering Details

- 3 An application for an Occupation Certificate for the development must be submitted to and approved by the Principal Certifying Authority.

Ongoing Operation:

The following conditions must be satisfied during use / occupation of the development.

Restriction on use

- 4 All activities involving children are to take place wholly inside the unit and not in surrounding car park areas, landscaped areas or access ways.
- 5 The hours of operation for the use of unit 1 are as follows:

Monday to Friday 9:00am – 7:00pm
Saturday 9:00am – 7:00pm
Sunday and public holidays no operation
- 6 To ensure that sufficient parking is available within the complex, the use is limited to a maximum of 10 participants and 2 staff being present on site at any one time before 5:00pm, Monday- Friday and a maximum of 40 participants and 5 staff for classes held between 5:00pm and 7:00pm Monday – Friday and on weekends.
- 7 **This consent is for a twelve (12) month period only** and accordingly must cease at the expiration of 12 months from the date of issue of the consent. Council must be informed in writing at the time of the commencement of the use, otherwise it will be determined that the approved use was commenced at the determination date of this consent.

Any extension of the approved use beyond 12 months will require the prior submission and approval of an application under Section 96 of the Environmental Planning and Assessment Act, 1979. In considering any application for the extension of this consent, Council would have regard for relevant matters under the Environmental Planning and Assessment Act, including any submissions received during the period.

Development must commence within two (2) years of the date of this consent.

Privacy measures

- 8 Maintaining in good order the shade cloth (or equivalent screening treatment) installed on the fencing along the eastern boundary to restrict viewing between properties. This work is to be completed within 6 weeks of the issue of this consent.
- 9 Removal of the pedestrian access at the northern corner of the car park and installation and maintenance of additional landscaping to restrict viewing between the two properties. This work is to be completed within 6 weeks of the issue of this consent.
- 10 The pedestrian access gate is to remain permanently closed and shade cloth (or an equivalent screening treatment) is to be installed and maintained along the fence (for a distance of 20 metres) within in this area so as to restrict access and viewing from the car park to the adjoining driveway. This work is to be completed within 6 weeks of the issue of this consent.

Traffic and Safety

- 11 Linemarking of an area between the parking and directly adjacent to the unit 1 entry so as to provide a safe and designated route for children and parents to cross the circulation access. This work is to be completed within 6 weeks of the issue of this consent.
- 12 Advisory signage to be installed and completed within 6 weeks of the issue of this consent, and maintained along the circulation aisle advising:
 - vehicles to slow down and be careful of children.
 - parents to supervise children at all times within the car park area.
 - A speed limit of 10km/h applies.
- 13 Management plan is to be prepared outlining the measures to be adopted to ensure the safety of children associated with the use, this shall include advising parents of the safety concerns associated with the location of the use within an industrial complex. This work is to be completed within 6 weeks of the issue of this consent.
- 14 Child proof gates are to be installed and maintained at the front and rear entry/exit to the building to prevent children from leaving the unit unattended by an adult. This work is to be completed within 6 weeks of the issue of this consent.
- 15 The installation of speed humps to reduce vehicle speeds within common areas throughout the development. This work is to be completed within 6 weeks of the issue of this consent.

Safer by Design

- 16 The development management shall adopt an ongoing policy of rapid repair for vandalism and graffiti within the development and ensuring that all lighting is in working order.

Access for the Disabled - Disability Discrimination Act

- 17 The building/development must comply with the requirements of the Disability Discrimination Act (DDA). It should be noted that this approval does not guarantee compliance with the DDA and the applicant/owner should investigate their liability under this Act.
- 18 An accessible parking space is to be linemarked and signposted in close proximity to the building. The dimensions of the space are to comply with AS 2890.1.

Waste/Garbage - Storage and Removal

- 19 Arrangements being made to the satisfaction of Council for the storage on the site and regular removal of garbage, recycling and trade wastes.

Advertising Signs

- 20 No advertisement is to be erected on or in conjunction with the development without prior development consent unless the advertisement is an 'approved sign' under Council's Advertising Signs Development Control Plan 2005 - Chapter No 50 - Advertising Signs.
- 21 The proposed business identification sign must not contain any flashing light, animated or reflective or moving parts, no iridescent or fluorescent colours or materials shall be used on the external surface of the sign. The colours to be used in the advertisement to be exhibited on the sign shall not result in any adverse impact on the amenity of the surrounding area.

Class Timetable Sourced from www.kimnastix.com.au

<u>Class</u>	<u>Monday</u>	<u>Tuesday</u>	<u>Wednesday</u>	<u>Thursday</u>	<u>Friday</u>	<u>Saturday</u>
Baby Movement (9mths-2yrs) This is truly the best age to start your child in an accredited movement program				9-9.45am		
KG Up growth (2-3 yrs) Saturday is a mixed Kindergym Class/ 0-5yrs, Suitable for families with multiple children.	10-10.45am	10-10.45am	10-10.45am	10-10.45am		9-9.45am
KG Up growth (3-4 yrs)	11-11.45am	11-11.45am	11-11.45am	11-11.45am		
Pre-Recreational (4-5 yrs) Children from this age group can make-up in any Jnr Recreational Class during the week	12-12.45pm		12-12.45pm			11.45-12.30am
Pre-School Development Squad 2 Hour State Prep Class for gifted children – invitation only – Leotard Required					10-11.30am	
Pre-School Development Squad						
School Groups Perhaps your school is interested in our curriculum based Progressive School Program - Endorsed by Gymnastics NSW	1-2.30pm	1-2.30pm	1-2.30pm	1-2.30pm	1-2.30pm	
Junior Progression 1 Hour Progression Class for children beyond Recreational Level	4.30-5.30pm	4.00-5pm	4.30-5.30pm	4.30-5.30pm		
Senior Progression 1 Hour Progression Class for children beyond Recreational Level	5.30-6.30pm	5.30-6.30pm	5.30-6.30pm	5.30-6.30pm		
Junior Advancement – Squad	4.00-6.00pm	4.00-6.00pm	4.00-6.00pm	4.00-6.00pm	10.00am-11.30am	
Senior Advancement – Squad	4.00-6.30pm	4.00-6.30pm	4.00-6.30pm	4.00-6.30pm		
Junior Recreational (5-9 yrs) Beginner Level – Pre Recreational Children are also allowed to attend this class	4.00-5pm	4.00-5pm	4.00-5pm	4.00-5pm		

Senior Recreational 10+ yrs Beginner Level	5.00-6pm	5.00-6pm	5.00-6pm	5.00-6pm		
Junior Progression 1 Hour Progression Class for children beyond Recreational Level	4.30-5.30pm	4.30-5.30pm	4.30-5.30pm	4.30-5.30pm		
Senior Progression 1 Hour Progression Class for Children beyond Recreational Level	5.30-6.30pm	5.30-6.30pm	5.30-6.30pm	5.30-6.30pm		
Junior Advancement - Squad 2 hour State Level Class by invitation only – Competition Optional – Club leotard/tracksuit required	4.00-6.00pm	4.00-6.00pm	4.00-6.00pm	4.00-6.00pm		
Senior Advancement - Squad 2 hour State Level Class by invitation only – Competition Optional – Club leotard/tracksuit required	4.00-6.30pm	4.00-6.30pm	4.00-6.30pm	4.00-6.30pm		
Advanced Boys Class Designed for boys who wish to learn more skills and have been in recreational gymnastics for at least one term	5.30-6.30pm					
Junior Dance/Gymnastics (7-12 yrs) This is not a beginner Class. For children attending Dance Lessons and wish to add another dimension to their abilities					4.00-5.00pm	
Senior Dance/Gymnastics (12+ yrs) This is not a beginner Class. For children attending Dance Lessons and wish to add another dimension to their abilities					5.00-6.00pm	
Advanced High School Class		6.00-7.00pm				
Advanced Recreation Children MUST be High School age and have attended 1 term of Senior Recreation		6.00-7.00pm				
Adults Gymnastics				6.00-7.00pm		
Women's Stretch & Core Regain – Women's Only Class – 30 minute stretch & abdominal targeted Class – Great for those Mum's 6 week post natal		12-12.30pm		12-12.30pm		
Acrobatics/Tumbling/Tramp						11am-1pm

<ul style="list-style-type: none"> - 2 Hour Strength & Skills Class by invitation only. - Option to compete at State Level in Sports Acrobatics. - Once a stable class is established, 2011 season gymnasts will be coached by Kim & Chloe, alternating throughout the lesson 						
<p>Birthday Parties</p> <ul style="list-style-type: none"> - Min 10 booking for each party - Inc. supervised play, food & lolly bags - Welcome to bring a cake if cake is desired - 1 & ½ hour duration 						1.30pm - 3.00pm

4.2 DA/36/2010 - Proposed Dwelling-House at Springs Road, Kulnura

TRIM REFERENCE: DA/36/2010 - D02407870

AUTHOR: JW

AUTHOR: Jenny Webb, Senior Development Planner, Major Applications

MANAGER: Peter Fryar, Manager Development Assessment

SUMMARY

An application has been received for the construction of a dwelling-house at No 149 Springs Road, Kulnura. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment Act (EP&A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

Applicant	Coastal Design Link
Owner	Harvey Douglas Woodhouse
Application No	DA/36/2010
Description of Land	Lot 5011 DP 791632, No 149 Springs Road, Kulnura
Proposed Development	Dwelling-house
Site Area	40.66 hectares
Zoning	1(a) Rural Zone
Existing Use	Cattle grazing
Employment Generation	N/A
Estimated Value	\$200,000.00

RECOMMENDATION

- 1** *That Council, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues, grant consent subject to the conditions attached to this report.*
- 2** *That Council advise those who made written submissions of its decision.*

PRECIS

- Development Application (DA 36/2010), lodged for a dwelling-house to be constructed on land adjacent to an existing meat poultry farm.
- Main issues include potential land use conflict and odour.
- History of Land and Environment Court (LEC) action between owner of subject site and poultry farm operators on adjoining land.
- Previous development application for a dwelling-house on the subject site refused by Council.
- Three (3) submissions received on behalf of adjoining property owner to the current development application (DA 36/2010) .

INTRODUCTION

The Site

An application has been received for the construction of a single storey brick veneer dwelling-house and associated infrastructure at No 149 Springs Road, Kulnura. The property has an area of approximately 40.66 hectares and is currently used for the grazing of cattle. There are no existing dwellings or ancillary buildings on the site, although fencing, a driveway and stock yards have been constructed. The site adjoins a meat poultry farm to the north-west (located at 127 Springs Road) and is bound to the east and south by Ourimbah Creek. The land to the west of the site is in the same ownership as the subject site. The majority of the site has been cleared for agriculture, although patches of remnant bushland remain.



Figure 1: Aerial photograph showing location of dwelling house to poultry farm.



Figure 2: Proposed location of dwelling-house.

The Proposal

The proposed dwelling-house is sited on an elevated and cleared area of land to the south of the existing poultry farm and approximately 600 metres from Springs Road. The proposed location of the dwelling-house is relatively level and there is an existing driveway from Springs Road to the dwelling site. The dwelling-house is proposed to be of brick veneer construction with concrete raft floor and Colourbond roof. A water tank and on-site effluent disposal area are also proposed.

The proposal is generally compliant with Development Control Plan (DCP) 2005 Chapter 100 – Quality Housing and the application has been accompanied by the necessary information to assess the application, including a BASIX certificate, bushfire assessment report, effluent disposal assessment and threatened species assessment. However, the main issues identified with the application relate to potential land use conflict due to the proximity of the proposed dwelling-house to the poultry farm. In particular, this relates to odour impacts as well as being satisfied that consistency with Sydney Regional Environmental Planning Policy No 8 – Central Coast Plateau Areas (SREP 8) and the zone objectives under Wyong Local Environmental Plan (WLEP) 1991 is achieved.

Background

A naturally ventilated meat poultry farm has been in operation on the adjoining site for some years. In 2004, Council received a development application to redevelop the poultry farm to incorporate a number of tunnel ventilated sheds, which was later approved by Council in 2005. Following that approval, a third party Appeal (S.123 of the Act) was lodged with the LEC by the owner of the property subject to this application. The concerns raised were that the potential for the erection of a future dwelling house on the subject site would be sterilised unreasonably, in particular by odour buffers.

During the LEC proceedings, hypothetical dwelling sites for the subject property were specifically considered, particularly in relation to odour and noise impacts. The Court found that the redevelopment of the poultry farm to incorporate six (6) new sheds, as approved by Council, would exceed acceptable odour limits and the Court provided an opportunity for the applicant to reconsider their proposal.

The application was amended to provide for four (4) sheds and a maximum of 168,000 birds. The modified proposal was considered by the Court and was found to be acceptable, subject to a number of conditions and the implementation of an Environmental Management Plan (EMP). The redevelopment of the poultry farm has now commenced, with two (2) out of the four (4) approved sheds having been constructed.

A development application for a dwelling-house in the vicinity of that currently proposed dwelling house was lodged with Council in 2007. However, at that point the Court Orders for the poultry sheds had not been issued and therefore there was no certainty that the consent would be granted. On that basis, the potential impacts of the naturally ventilated sheds had to be taken into consideration. As no information was provided in relation to the naturally ventilated sheds (e.g. odour, noise, dust) there was insufficient information to demonstrate that the dwelling was appropriately located to reduce land use conflict and therefore the application could not be supported.

Summary

In relation to potential land use conflict, various pieces of evidence presented to the LEC during the assessment of the adjoining poultry farm have been taken into consideration as have all public submissions and information provided by the applicant. Having reviewed the relevant information, the determination made by the Court in relation to the acceptability of the potential impacts on a dwelling-house is supported and subject to conditions, the application is recommended for approval.

VARIATIONS TO POLICIES

No variations proposed.

HISTORY

- On 7 July 2004, Council received a 'designated development' application over the adjoining property to the subject site at No 127 Springs Road. The application was for the demolition of an existing poultry farm and erection of 6 new tunnel ventilated poultry sheds and associated boundary adjustment.
- The application was approved at the Ordinary Meeting of Council on 9 February 2005.

- Following approval of the poultry farm, the owner of the adjoining property (the site subject to this application) lodged an Appeal against the approval of the poultry sheds in the LEC.
- The Appeal was heard on 26-27 September and 24 October 2005. Findings on the merits of the proposal were delivered on 22 December 2005 and a decision on the matter deferred.
- On 6 February 2006, leave was granted to amend the application. The amended application proposed for four (4) sheds and a maximum of 168,000 birds.
- On 24 February 2006, the Appeal was dismissed and the Court granted a deferred commencement consent for the erection of a reduced four (4) tunnel ventilated poultry sheds and the boundary adjustment.
- The deferred commencement condition required the applicant to submit a set of final architectural development drawings generally in accordance with and supplementing previously submitted plans and documents. This condition has been satisfied and an operational consent has been granted.
- In July 2007 Council received an application to modify two (2) of the Court imposed conditions relating to the order and timing of the construction of the new sheds and also to delete a condition relating to an acoustic barrier. This was approved by Council in September 2007.
- In August 2007, a development application for a dwelling on the subject site was lodged (DA/1177/2007).
- On 7 November 2007, an Appeal was lodged in the LEC by the owner of the subject site against the approval of the modified consent for the poultry farm.
- The Appeal against the modified consent for the poultry farm was heard in January 2008, and an agreement between the parties was reached and the development consent was granted in February 2008.
- On 28 August 2008, DA/1177/2007 for a dwelling-house on the subject site was refused by Council for the following reasons:
 - 1 *Approval of the dwelling in the location proposed would be contrary to the provisions of Sydney Regional Environmental Plan No 8 – Central Coast Plateaus and the zone objectives of Wyong Local Environmental Plan 1991 in that it would be likely to adversely affect the present and future use of the adjoining prime agricultural land for the purposes of agriculture (poultry farm) (Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).*
 - 2 *Insufficient information has been provided to demonstrate that the amenity of future occupants would not be impacted by odour or noise from the adjoining land use (Section 79C(1)(b) of the Environmental Planning and Assessment Act, 1979).*

- 3 *The application has failed to address valid concerns raised within a public submission regarding the location of the dwelling and potential land use conflicts (Section 79C(1)(d) of the Environmental Planning and Assessment Act, 1979).*
 - 4 *Approval of the application is not considered to be in the public interest due to the potential to increase land use conflict, reduce the ability of the adjoining agricultural land to operate at full production and the likely impact on the future amenity of the residents (Section 79C (1)(e) of the Environmental Planning and Assessment Act, 1979).*
- Following the commencement of the redevelopment of the poultry farm, an application was made under Section 82A of the EP&A Act, 1979 in August 2009 to review the notice of determination for the dwelling. However, in December 2009 the applicant was advised that Council could not review the determination as the period during which the review could be undertaken had expired. As a result, the subject development application for a dwelling has been lodged.

PERMISSIBILITY

The subject site is zoned 1(a) Rural Zone under the WLEP 1991, in which the proposed development, defined as a 'dwelling-house' is permissible with development consent. The objectives of the 1(a) zone are:

- “(a) to protect, enhance and conserve agricultural land in a manner which sustains its efficient, sustainable and effective agricultural production potential, and*
- (b) to facilitate development requiring a rural or isolated location or associated with agricultural pursuits, and rural industry, provided that it is unlikely to.-*
 - (i) prejudice the present environmental quality of the land within this zone, or*
 - (ii) generate significant additional traffic, or create or increase a condition of ribbon development on any road, relative to the capacity and safety of the road, or*
 - (iii) prejudice the intent of the objective specified in paragraph (a), or*
 - (iv) have an adverse impact on the region's water resources.”*

In considering the zone objectives, the proposed dwelling-house is unlikely to reduce the ability of the subject site to sustain agricultural production, particularly given that the dwelling-house is proposed to be located outside the existing fenced and pasture improved paddocks. However, consideration must also be given to the proposed location of the dwelling-house in relation to adjoining agricultural production i.e. the meat poultry farm. In this regard, there is potential for the amenity of future occupants of the dwelling-house to be affected, which could increase land use conflict and if complaints were made, potentially limit the ability of the poultry farm to operate efficiently.

Potential impacts resulting from the redeveloped poultry farm were specifically considered by the LEC and found to be acceptable, subject to the implementation of conditions, including an EMP. While the redevelopment of the poultry farm is not yet complete, the conditions of the approval require the development to be completed within a period of four years.

As such, there is a level of certainty that the redevelopment will be completed and that the conditions of approval, including the EMP will be implemented. It is therefore considered that the efficient, sustainable and effective agricultural production potential would be sustained and the likelihood of land use conflict reduced.

In terms of objective (b), the construction of a dwelling-house is considered to be ancillary to the agricultural pursuit of grazing on the subject site and is unlikely to impact on any of the items listed in (i) to (iv).

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:

- Sydney Regional Environmental Plan No 8 – Central Coast Coastal Plateaus (REP8 now have status of a deemed State Environmental Planning Policy)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Wyong Local Environmental Plan 1991
- Development Control Plan 2005 Chapter 100 – Quality Housing
- Development Control Plan 2005 Chapter 99 – Building Lines
- Development Control Plan 2005 Chapter 70 – Notification of Development Proposals
- Development Control Plan 2005 Chapter 69 – Controls for Site Waste Management
- Development Control Plan 2005 Chapter 65 – Guidelines for Domestic Waste Water
- Development Control Plan 2005 Chapter 14 – Tree Management
- Council Policy W1 – Water Catchment Areas Development
- Council Policy C6 – Controls for Site Waste Management
- Council Policy E1 – Erosion and Sedimentation Control
- Council Policy L1 – Landscape

ECOLOGICALLY SUSTAINABLE PRINCIPLES

The proposal has been assessed having regard to Ecologically Sustainable Development principles and is considered to be consistent with the principles.

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

Climate Change

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the application. Climate change includes consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope / combat / withstand these potential impacts. In this particular case, the following matters are considered to warrant further discussion, as provided below:

Sustainable building design - The application has been accompanied by the necessary BASIX Certificate.

Bushfire Protection – The site is located within a bushfire prone area and has been referred to the local office of the NSW Rural Fire Service (RFS). A number of conditions of consent have been recommended should the application be approved in relation to Asset Protection Zones (APZ's), water and utility supplies, access, design and construction and landscaping.

ASSESSMENT

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

Sydney Regional Planning Policy No 8 – Central Coast Plateau Areas (Deemed SEPP)

The general aims of this policy are:

- *“to provide for the environmental protection of the Central Coast plateau areas and to provide a basis for evaluating competing land uses,*
- *to encourage the use of land having a high agricultural capability for that purpose and, as much as possible, to direct development for non-agricultural purposes to land of lesser agricultural capability,*
- *to protect regionally significant mining resources and extractive materials from sterilization,*
- *to enable development for the purposes of extractive industries in specified locations,*
- *to protect the natural ecosystems of the region, and*
- *to maintain opportunities for wildlife movement across the region, and*
- *to discourage the preparation of draft local environmental plans designed to permit rural residential development, and*
- *to encourage the preparation of draft local environmental plans based on merits”.*

Clause 6 of the SREP specifically applies to 'prime agricultural land' and states that:

"(1) A person shall not:

- (a) erect a building on prime agricultural land,*
- (b) construct a dam on prime agricultural land, or*
- (c) subdivide prime agricultural land,*

except with the consent of the Council.

(2) A council shall not consent to an application to carry out development on or with respect to prime agricultural land unless:

- (a) (Repealed)*
- (b) the council is satisfied that the carrying out of the development would not adversely affect the present or future use of other prime agricultural land for the purposes of agriculture.*

(3), (4) (Repealed)

(5) A council shall not consent to the carrying out of development on prime agricultural land for a purpose other than a purpose of agriculture unless it is satisfied that no other land to which this plan applies, not being prime agricultural land, could provide a viable or workable alternative site for the carrying out of the development.

(6) Development may be carried out, but only with the consent of a council, on prime agricultural land for the purposes of extractive industries and rural tourist facilities within the locations respectively specified for them on the map. Subclause (5) does not apply to the grant of such a consent."

The subject site is classified as 'prime agricultural land' containing land identified as Class 1B, 2, 3 and 4 lands on the "Classes of Agricultural Land on the Plateaux of New South Wales Central Coast" map. The dwelling house is proposed to be located on Class 4 land, which is defined as having a total depth of soil to solid rock of 0.5 to 1 metre and being suitable for cropping in rotation with pasture. The Department of Primary Industries (DPI) has previously advised Council that typically, at 40 hectare property could support between 13 and 20 head of cattle without supplementary feeding.

Subclause 2(b) of SREP8 is considered particularly relevant to the subject application. In this regard and as previously discussed, the approval of a dwelling-house adjacent to a meat poultry farm has the potential to increase land use conflict and potentially affect the operation of the poultry farm. However, given that the redevelopment of the poultry farm has commenced, a higher level of environmental management strategies and conditions as imposed by the Court will apply and based on these management strategies and conditions, the Court (through the use of expert witnesses) has found that the location of a dwelling-house in the vicinity of that proposed, would be acceptable.

SREP 8 no longer requires concurrence from the NSW Department of Industry and Investment (DII) prior to granting development consent in areas affected by the SREP8.

However, during the assessment of the previous development application for a dwelling-house on the subject site (DA/1177/2007), a referral was sent to the NSW DPI (now DII). After considering the findings of the LEC, it is considered that the potential for land use conflict has been reduced and approval of the proposed dwelling would not be contrary to SREP 8.

Wyong Local Environmental Plan 1991

Clause 16 – Dwelling-houses

Subclause (1) sets a minimum site area for the construction of a dwelling-house and specifies that only one (1) dwelling-house may be constructed on an allotment of land in specified zones. The minimum area for the 1(a) zone is 20 hectares. The subject site has an area of 40.66 hectares and therefore the construction of a dwelling-house is permissible under this clause. Subclauses (2) to (4) are not applicable to this development application.

Clause 19 – Development near lakes, rivers and creeks

The subject site adjoins Ourimbah Creek and therefore the following must be taken into consideration:

- a) *“the impact of that development on water quality and quantity, existing vegetation, fish, aquatic life and the location of the water body or watercourse, and*
- b) *any effects of the development on water supply, and*
- c) *whether the development is likely to cause detrimental effects on a watercourse or water body through erosion, sedimentation or the emission of pollutants, and*
- d) *whether the development incorporates best practice water sensitive urban design techniques”.*

The proposed location of the dwelling-house on the site is a minimum of 250 metres away from the creek and is separated by dense vegetation, which reduces the potential for any impacts. Sedimentation control on the building site can be controlled via conditions of consent and the waste water application area can be accommodated outside the minimum recommended buffer distance to permanent surface waters. Having regard to the factors listed above, it is unlikely that the proposed development would detrimentally impact Ourimbah Creek.

Clause 29 – Services

This clause of the LEP requires there to be adequate water supply and facilities for the removal or disposal of sewage and drainage. Water supply will be via rainwater storage tanks and an on site sewage management system will be installed.

Development Control Plan 2005 Chapter 100 – Quality Housing

This DCP applies to development applications for new dwelling-houses and aims to:

- Identify Council’s requirements for design and construction of dwelling houses and ancillary development;
- Establish the quality elements for dwelling houses and ancillary development in Wyong Shire; and

- Facilitate the development of energy and water efficient sustainable housing.

The proposed dwelling-house is generally compliant with the DCP and satisfies the DCP in terms of building materials and design, site design, sustainability and the preservation of trees and native vegetation. The proposed dwelling house also complies with the minimum building lines and setbacks as detailed in DCP Chapter 99 – Building and reproduced within DCP Chapter 100.

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

The relationship to the regional and local context and setting

The subject site has a 1(a) – Rural Zone and is surrounded by properties with the same zoning. Agricultural activities within the broader area include cattle grazing, horses, poultry, nurseries/cultivation of crops and associated dwelling-houses. As previously discussed, a meat poultry farm and associated dwellings adjoin the site to the north-west and Ourimbah Creek forms the eastern and southern boundaries of the site. The southern portion of the property contains remnant bushland and is quite steep as it falls toward the creek.

The proposed dwelling-house is located on a cleared portion of the site approximately 600 metres to the south of the Springs Road frontage and 50 metres from the property boundary of the poultry farm. Once the construction of the poultry sheds is completed, the proposed dwelling-house would be approximately 110 metres from the closest shed. The potential impacts resulting from the proximity of the dwelling-house to the poultry sheds is discussed further in the report. Ourimbah Creek and other adjoining properties are located in excess of 300 metres from the proposed dwelling-house and therefore any impacts are likely to be minimal.

The remaining vegetation on the site contributes to the scenic quality of the area and the dwelling-house has been sited so that vegetation clearing is minimal. No tree removal is required within the building footprint although some canopy thinning and removal of understorey would be required for maintaining APZ's (See Flora and Fauna Assessment) for bushfire purposes. It is unlikely that the construction of a dwelling-house would impact on the scenic quality, character or amenity of the area.

The access, transport and traffic management measures

An existing all weather driveway is located on the subject site. However, additional work will be required in order to comply with the access requirements of the Rural Fire Service (RFS), including the provision of truck passing bays and a turning head and hardstand area adjacent to the static water supply tanks. The requirements of the RFS are achievable on the site and can be included as conditions of consent.

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

No further issues identified.

The impact on utilities supply.

The subject site is not connected to a reticulated water or sewerage system. The applicant has advised that electricity and telecommunications are available to the site and a standard condition of consent in relation to this can be imposed.

The effect on heritage significance.

No issues identified.

Any effect on other land resources.

No further issues identified.

Any impact on the conservation of water.

No further issues identified.

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

The site is not identified as containing acid sulphate soils. Standard conditions relating to erosion and sedimentation control can be included as a condition of consent should the application be approved.

Any effect on quality of air and microclimate conditions.

The adjoining meat poultry farm is a potential existing source of odour. During the various Court cases relating to the approval of the poultry farm, the issue of odour was investigated in depth. This specifically included consideration of the potential impact of the tunnel ventilated sheds on future dwelling sites on surrounding land. As part of the Hearing, a concept development plan identifying a potential five (5) dwelling locations on the subject site was submitted to the Court. The location of the dwelling-house subject to this application is representative of dwelling site H3 on the concept plan considered by the Court.

When considering the Council approved development, which incorporated 6 tunnel ventilated sheds with a capacity of 248,800 birds, the Court was not satisfied that more than three (3) sheds could be constructed without exceeding acceptable odour limits. The Court provided an opportunity for the proposal to be modified. Following amendment of the application to reduce the number of sheds and the number of birds, it was agreed by the joint Odour Experts that the redeveloped farm, incorporating four (4) sheds and a maximum of 168,000 birds should 'result in acceptable odour to both existing and proposed residences nearby'. This agreement was subject to a number of conditions, including the implementation of an EMP. The judgement also acknowledged that the odour criteria that was used requires compliance only 99% of the time and that 'while this creates the opportunity for odour in excess of an acceptable standard, the opportunity is very limited'.

During the assessment of this development application, a number of submissions have been received on behalf of the adjoining poultry farm owners/operators. This has included a report prepared by PAEHolmes (2010), (and more specifically by one of the authors of the joint report relied upon in the Court case), which addresses concerns associated with potential residential development adjacent to the poultry farm. The report discusses various matters including dispersion modelling issues, separation distances and site conditions.

In summary, the report concludes that models for predicting odour impacts are not precise and that the meteorological data used during the Court case '*was not representative and very likely led to lower odour impacts being predicted at the subject site than would otherwise be obtained*'. The report also concluded that '*it is considered to be highly prudent in any situation, where the ability exists, to maximise separation from sources of odour, dust and noise emissions so that the risk of adverse impacts is minimised*'.

The applicant has provided legal advice in response to the PAEHolmes report. In summary, the legal advice suggests that 'it is clear that the decision of the Court in approving the Schembri application (Poultry Farm) was on the basis that it would not unreasonably impact on the development potential of the Woodhouse property'. The legal advice also suggests that if the poultry farm cannot comply with the conditions the Court imposed, *that the operators 'can take steps, either by management or reduction in stock, to achieve an outcome where they do not unreasonably impact on other land'*.

For the purpose of assessing this application (and the previous application for the dwelling-house), the position taken by the LEC is accepted. On this basis, and in accordance with the conditions of the Court determination, it is considered that once the poultry farm is redeveloped, the potential impacts on a dwelling-house as proposed should be acceptable. It is however acknowledged that if the dwelling-house is approved, there is the potential for it to be constructed prior to the completion of the meat poultry farm as approved by the Court. This would result in a period of time where both naturally and tunnel ventilated sheds would be in operation and odour impacts would be uncertain. However, given that the Court has set a limit of four (4) years to complete the development, there is a level of certainty about the longer term impacts and it is not considered reasonable to impede the development of the subject site based on shorter term impacts.

Airborne dust is another potential impact the poultry farm may have on the proposed dwelling-house. In this regard, it is noted that a number of conditions of consent are placed on the poultry farm in terms of managing and reducing dust emissions.

Any effect on the flora and fauna.

Native vegetation will need to be modified for bushfire asset protection purposes and potentially for installation of pipes to the on-site sewage management system.

The vegetation on the site has previously been mapped as 'Hawkesbury Exposed Kulnura Plateau Forest'. This vegetation type is typical across the Kulnura and Somersby Plateau and does not conform with any listed Endangered Ecological Communities (EEC's).

The area of native vegetation proposed to be managed as an APZ's contains numerous hollow bearing trees, deep leaf litter and rocky outcrops. Council's Ecologist recorded several terrestrial orchid species within the proposed APZ, including *Caladenia catenata*, *Calochilus robertsonii* and *Thelymitra* sp. none of which are listed as locally significant or threatened. No threatened flora or fauna species listed under either the *Threatened Species Conservation Act 1995* were recorded on the site.

The Threatened Flora and Fauna Assessment submitted with the application stated that the proposed development will result in the modification (canopy thinning and removal of understorey) of approximately 0.25 hectares of vegetation. Potential habitat was identified within the development area for nine (9) threatened flora species and 22 threatened fauna species.

Two (2) koala feed trees namely, Scribbly Gums, have been identified on the site although as they constituted less than 15% of the total number of trees on the subject site, the vegetation does not constitute 'potential koala habitat' as defined by SEPP 44 – Koala Habitat Protection. No direct observations of koala or evidence of use, such as scats or scratches, were observed and therefore no further assessment is required under the SEPP 44.

The vegetation on the site has also been mapped as part of a major fragment under the Wyong Shire Squirrel Glider Conservation Management Plan. The vegetation proposed to be modified does contain several suitable hollows and feed species preferred by Squirrel Gliders, such as Banksia, Acacia and Xanthorrhoea, and is well connected to large remnants including Ourimbah State Forest. However, the proposal will only remove non-habitat trees and understorey over a small area (0.25 ha). It is recommended that if approved, the retention of habitat trees is enforced through conditions and that any excavation within the vicinity of native vegetation is undertaken in accordance with Council's DCP and the relevant Australian Standard.

An assessment of significance has been conducted for all identified threatened flora and fauna species and it has been concluded that the proposal is unlikely to have a significant effect on them, or their habitats. A Species Impact Statement is therefore not required for the proposal.

The provision of waste facilities.

A Waste Water Management Plan for onsite sewage management has been submitted in support of the development application. The site has the required capability to sustain an OSSM system associated with a dwelling-house. Should the development proceed, a location specific system design in the form of a report meeting the requirements of AS3500:2000 will need to be undertaken and submitted to Council for approval. This can be addressed via a condition of consent. It is also recommended that given the proposed sub surface application area is located on the lower part of the site, a condition be included to ensure it is located clear of any overland flow paths.

Whether the development will be energy efficient.

A BASIX Certificate has been supplied with the development application and no further issues are identified.

Whether the development will cause noise and vibration.

Noise levels associated with the redeveloped meat poultry farm were considered during the LEC proceedings. Expert witnesses agreed that a 35dBA night time criterion was an appropriate goal, and the location of the proposed dwelling-house (referred to as location H3 in the Court evidence) did not fall within the 35dBA noise contour. A goal for intermittent traffic movements was also agreed upon and the subject site was identified as being outside the appropriate noise contour. In addition, agreement was also reached on the location of noise barriers. On this basis, and in keeping with the LEC judgement, the potential impact of noise on the proposed dwelling-house is considered satisfactory.

However, as with odour, it is acknowledged that if the dwelling-house if approved, there is the potential for it to be constructed prior to the completion of the poultry farm as approved by the Court. This may result in a period of time where the noise impacts may be uncertain, as noise modelling for the current situation has not been undertaken. However, given that the Court has set a limit of four years to complete the development, there is a level of certainty about the longer term impacts, which is considered reasonable in the circumstances.

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

Section 79B of the EPA&A Act requires consideration of the publication Planning for Bushfire Protection for all new dwellings within a bushfire prone area. The application has been accompanied by a report from Australian Bushfire Protection Planners Pty Ltd, which has been referred to the local office of the RFS. Both the assessment report and the comments received by the RFS are favourable subject to a number of recommendations, which could be included as conditions of consent.

Any risks from technological hazards.

No further issues identified.

Whether the development provides safety, security and crime prevention.

No further issues identified.

Any social impact in the locality.

No further issues identified.

Any economic impact in the locality.

No further issues for discussion.

Any impact of site design and internal design.

The findings of the LEC have deemed the potential impacts of the meat poultry farm to be acceptable in relation to the proposed location of the dwelling-house on the subject site. The Court decision also acknowledged that odour criteria requires compliance only 99% of the time and therefore there is limited opportunity for odour in excess of an acceptable standard. Based on this, the Applicant was asked to consider relocating the dwelling-house further away from the adjoining farming operations, but the applicant declined to modify the proposal. Despite this, the findings of the LEC are still supported. The location of the dwelling house on the subject site is currently further away from the Poultry Farm as identified on location H3.

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

Conditions of consent can be included should consent be granted to address the construction phase. No further issues are identified.

Any cumulative impacts.

No further issues identified.

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

The location of a dwelling-house on an elevated, cleared and reasonably level area of the site is considered appropriate having regard to the characteristics of the subject site. However, it is also necessary to consider the proposed location of the dwelling-house in terms of its context, which includes the adjoining meat poultry farm. Having regard to the findings of the LEC, it is considered that the risk of potential for odour, noise and dust impacts is acceptable. The Court gave specific consideration to this issue in granting development consent to the proposed dwelling-house location H3.

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

The application was advertised in accordance with DCP 2005 Chapter 70-Notification of Development Proposals with a number of submissions being received on behalf of the operators of the adjacent poultry farm. The issues raised in the submissions have been considered in the assessment of the application and pursuant to the heads of consideration contained within Section 79C of the EP&A Act 1979. A summary of the submissions is detailed in the table below.

Doc. No	Summary of Issues	Response
D02146607 & D02148727	<ul style="list-style-type: none"> Applicant should provide Council with a detailed odour study to demonstrate that there is no other suitable location for a dwelling-house. Documentation referred to in the SEE has not been provided. Numbering and references to Annexures is not correct. The Flora and Fauna assessment referred to in the SEE has not been provided and is not relevant as it is 5 years old and refers to a proposed subdivision. It is also unclear as to how much vegetation will be impacted upon. Application has not adequately addressed DCP 100 or SREP 8. 	<ul style="list-style-type: none"> Council must consider the development as proposed. In this regard, the applicant has relied on the findings of the joint odour report as reported to the LEC. Additional information has been provided by the applicant. This does not affect Council's assessment. An updated assessment and 7-part test for threatened flora and fauna has been provided by the Applicant. Additional information as requested by Council has been submitted.

Doc. No	Summary of Issues	Response
D02155102	<ul style="list-style-type: none"> • Objection in relation to the location of the proposed dwelling considering other areas are available within the site, which are further away from the poultry farm. • Not all the documentation referred to in the SEE has been provided and information is lacking. • Disregard for the previous reasons of refusal of the dwelling-house (DA/1177/2007). • Application has given no due consideration to surrounding and adjoining land uses and the likelihood of land use conflict. • Land use conflict often results in farmers having to carry out mitigative measures post construction to address complaints from nearby rural residential occupations. 	<ul style="list-style-type: none"> • Council must consider the development as proposed. As discussed within the report, Council is satisfied that the impact of the poultry farm on the proposed dwelling would be acceptable. • Additional information has been provided by the Applicant as requested by Council. The additional information was publically available for review. • The application does provide discussion on each reason of refusal, which was considered by Council. • Consideration of the issues associated with land use conflict was dealt with in detail by the Court. Copies of Court documents have been provided. • Noted. The adjoining poultry farm was approved on the basis that a number of conditions, mitigation measures and performance criteria would be met
D02155102	<ul style="list-style-type: none"> • The Applicant is using the Court case as justification for the location of the dwelling, however has not considered the following: <ul style="list-style-type: none"> - The court case hypothetical dwelling sites was based on a subdivision, which is not proposed. - There are several other superior locations for siting a dwelling on planning grounds. - Alternative house sites were never challenged in the Court and there are more suitable house sites on the property. • Council should maintain their previous refusal of the application due to the likely conflict it would cause between the future occupants and the operators of the poultry farm. • The Applicant's claim that the previous reasons of refusal have been overcome due to the redevelopment of the poultry farm commencing is questioned. • The SEE has not addressed SREP 8. • There are other more suitable locations for a dwelling rather than at the exhaust end of the poultry sheds. 	<ul style="list-style-type: none"> • Although a subdivision is not proposed, the Court considered the likely location of the erection of dwellings on the subject property. Regardless of whether the proposal includes a subdivision, the findings of the Court remain valid in terms of acceptable impacts from the poultry farm on potential dwelling sites. • The previous refusal was based on the uncertainty surrounding the impact of the naturally ventilated poultry sheds. As this is a new application, it is subject to a complete re-assessment. • See above • The documentation provided by the applicant has addressed SREP8. • Council must consider the development as proposed. As discussed within the report, and as determined by the Court, Council is satisfied that the impact of the poultry farm on the proposed dwelling would be acceptable.

Doc. No	Summary of Issues	Response
	<ul style="list-style-type: none"> • NSW DECCW guidelines typically seek to adopt a minimum separation of 150 m between poultry farming operations and dwellings not associated with the poultry farm. • The process of odour modelling is not an exact science. • Other impacts include light spill and noise impacts. • Bushfire hazard and necessary clearing. • A 7-Part test of significance is required for threatened species. • Landscape plan needs to be provided. 	<ul style="list-style-type: none"> • It is noted that the proposed dwelling would be within 150 metres of the poultry sheds. • Noted. Odour modelling has been accepted by the Court and was part of the justification for approving the poultry farm. • Noted. Noise was specifically addressed through the Court proceedings and conditions of consent for the poultry farm. It is also noted that there is a condition of the poultry farm consent that all lighting is to be designed to ensure that glare does not adversely impact upon any adjoining property. If the poultry farm operations are conducted in accordance with the consent conditions, there should be no unreasonable impact from lighting. • The application has been referred to the Local RFS and they have recommended conditions of consent. Some canopy thinning and clearing of understorey would be required, which has been assessed as being acceptable. A 7 part test has been provided. • Given the location of the proposed dwelling-house and the existing vegetative treatments on the site, it is not considered necessary for a landscape plan to be provided as part of the development application. Conditions requiring any landscaping to be undertaken in accordance with Planning for Bushfire Protection would need to be included in approved.

Doc. No	Summary of Issues	Response
	<ul style="list-style-type: none"> • Location of dwelling has not considered surrounding development patterns, and the relationship with Springs Road. • Location of dwelling creates ribbon development, requires vegetation removal and the distance from Springs road would mean emergency services would have further to travel. • Concern over location of waste water disposal having regard to Ourimbah Creek. • The full level of documentation is not available for review. 	<ul style="list-style-type: none"> • A consistent development pattern along Springs Road is not evident and accordingly the proposed location of the dwelling-house is not inconsistent. • The provision of a single dwelling-house would have a negligible impact on ribbon development. Vegetation removal is minimal and the appropriate vehicular access is provided to the proposed dwelling site. • The proposed application area is outside the minim buffer required to natural surface waters. • Documentation has been made available on Council's website and the objector advised of this.
D02358069	<ul style="list-style-type: none"> • An odour report submitted concluding that: <ul style="list-style-type: none"> - Models for predicting odours are not precise. - the meteorological data used in Court case was not representative of the longer term trend in terms of temperature and wind direction and therefore impacts may be higher than that predicted in evidence provided during the court case. - On this basis, the dwelling should be located further away from the source of odour, dust and noise. 	<ul style="list-style-type: none"> • Noted. In considering the proposed development in relation to the adjoining poultry farm, it is clear that the applicant for the proposed dwelling-house is relying on the same odour modelling that was used to support the approval of the poultry farm by the LEC. In suggesting that the modelling is not representative of what the impacts are likely to be, a question is then raised in relation to the approval of the poultry farm. However, as it stands, the poultry farm has been approved by the LEC following consideration of its impact on adjoining land, specifically the subject site. The Court found that poultry farm should be approved subject to conditions to reduce its impact. The matter of compliance with the conditions of consent is outside the scope of the assessment of this current application and the potential non compliance of an adjoining land use should not be used as a reason to prevent development of adjoining land. The Court in its determination to grant consent relied upon expert evidence provided "under oath".

Any submission from public authorities.

A submission from the RFS and DII were received.

THE PUBLIC INTEREST (s79C(1)(e)):***Any Federal, State and Local Government interests and community interests.***

The site is within a drinking water catchment and therefore Council Policy W1 – Water Catchment Areas Development is applicable. The objective of the policy is to protect community interests by reducing potential threats to the quality of the Central Coast water supply by restricting land use in the Wyong water supply catchment area. The policy lists various land uses which are not considered suitable for drinking water catchment areas. This list does not include a single dwelling-house. It is unlikely that the proposal would detrimentally impact on the drinking water supply.

OTHER MATTERS FOR CONSIDERATION

No further issues for discussion.

CONCLUSION

The proposed location of the dwelling-house in close proximity to a meat poultry farm has raised the issue of potential land use conflict between the future occupants of the dwelling-house and the operation of the poultry farm. A previous development application for a dwelling-house in a similar location was refused by Council in 2008 due to the uncertain impacts of the then naturally ventilated poultry sheds. However, the poultry farm is now in the process of being redeveloped to incorporate tunnel ventilated sheds. A number of the likely impacts of the tunnel ventilated sheds on adjoining properties, including the site of the proposed dwelling-house, have been considered in detail by expert witnesses in the LEC. As a result, it was found that the impact of the poultry farm on the adjoining property would be acceptable. After assessing the subject application on its merits, the findings of the LEC are supported and it is recommended that the application is approved, subject to conditions.

Locality Plan



ATTACHMENTS

1	Draft Conditions of Consent		D02419180
2	Applicant's Legal Advice Prepared by Pikes Lawyers		D02428829
3	Development Plans (A3)	Enclosure	D02431638
4	Objectors Odour Report prepared by PAE Holmes	Enclosure	D02428802

Date: 2 November 2010
Responsible Officer: Jenny Webb
Location: 149 Springs Road, KULNURA NSW 2250
LOT 5011 DP 791632
Owner: Mr H D Woodhouse
Applicant: Coastal Design Link
Date Of Application: 15 January 2010
Application No: DA/36/2010
Proposed Development: Dwelling-house
Land Area: 40.66 ha

PROPOSED CONDITIONS

- 1 The development is to be undertaken in accordance with the approved development plans and specifications, reference number 07-027 Drawing N A-01 Amendment P4 and A-02 Amendment P3 and except as modified by any conditions of consent and any amendments in red.
- 2 A Construction Certificate is to be issued by the Principal Certifying Authority prior to commencement of any works. The application for this Certificate is to satisfy all of the requirements of the Environmental Planning and Assessment Regulation 2000.

Prior to Release of Construction Certificate:

The following conditions must be satisfied prior to the release of the Construction Certificate. Conditions may require the submission of additional information with the Construction Certificate Application. Applicants should also familiarise themselves with conditions in subsequent sections and provide plans in accordance with any design requirements contained therein.

Certificates/Engineering Details

- 3 Satisfactory structural plans prepared by a suitably qualified Structural Engineer must be submitted to the Principal Certifying Authority for the dwelling-house prior to the issue of a Construction Certificate.

Bush Fire

- 4 In accordance with the provisions of Planning for Bushfire Protection Guidelines 2006 (NSW), the building has been assessed as a Level 1 construction pursuant to the requirements of AS3959 -1999 - Construction of Buildings in Bushfire-Prone Areas. Full construction details demonstrating compliance with the required level of construction shall be provided to the Principal Certifying Authority for consideration and approval prior to the issue of the Construction Certificate.

Ecology/Trees

- 5 Trees and native vegetation proposed for retention and exclusion fencing are to be clearly identified on all the final approved engineering plans. All fenced tree protection areas are to be clearly marked as 'No Go Area' on all final engineering plans.

Rural Dwelling

- 6 An application is to be submitted to Council for the installation of on site sewage management system on the subject allotment pursuant to the provisions of S68 of the Local Government Act 1993 and the Local Government General Regulation 2005, prior to the issue of any construction certificate or complying development certificate. It should be noted that the report prepared by Larry Cook and Associates dated 20 August 2007 is accepted in principle and a location specific system design in the form of a report meeting the requirements of AS3500:2000 will need to be undertaken and submitted to Council at the time of lodgement for the application to install an on site sewage management system.

Prior to Commencement of Works:

The following conditions must be satisfied prior to the commencement of site works, including any works relating to demolition, excavation or vegetation removal.

Approved Plans

- 7 A copy of the stamped approved plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.

Acoustic

- 8 Construction or demolition may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction or demolition is to be carried out at any time on a Sunday or a public holiday.

Ecology/Trees

- 9 No tree (or other vegetation) other than those specifically notated on the approved plan(s) as "tree to be removed" or those required to be removed to achieve approved bushfire protection zones shall be felled, lopped, topped, ring-barked, uprooted, or otherwise wilfully destroyed or removed, without the further written consent of the Consent Authority.
- 10 The protection of trees retained on site by fencing or other accepted protection method in accordance with Council's Development Control Plan 2005, Chapter 67 - Engineering Requirements for Development and AS/NZ 4970:2009 Protection of Trees on Development Sites. Such protection measures must be installed prior to commencement of any works and maintained in good order for the duration of the works. No cement wastings, materials or vehicles are to be stored within the protective fence area.

- 11 If canopy thinning is required to achieve the Bushfire Asset Protection Zone then it shall be conducted selectively. Priority shall be given to removal of noxious or environmental weeds. Those trees with poor health shall be removed prior to those of with good health. Selective removal shall also consider maintenance of species diversity. No hollow-bearing trees may be removed to achieve Bushfire Asset Protection Zones. An appropriately qualified Arborist or Ecologist and Bushfire consultant shall flag and clearly identify those trees best removed to achieve bushfire asset protection requirements. Trees or fallen logs removed should be relocated into retained bushland to provide habitat, where possible.
- 12 Any approved excavation or filling within a retained tree's canopy perimeter shall be in accordance with Development Control Plan 2005, Chapter 67 - Engineering Requirements for Development and AS/NZ 4970:2009 Protection of Trees on Development Sites, as excavation or filling can lead to tree instability or death.

Erosion and Sediment Control

- 13 The provision of soil erosion and silt controls on the site in accordance with Council's Policy E1 - Erosion and Sediment Control from Building Sites and Development Control Plan 2005, Chapter 67 – Engineering Requirements for Development and the approved development plans prior to any works commencing on the site. **Note: On-the-spot fines may be imposed by Council for non-compliance with this condition.**
- 14 The display of an appropriate sign to promote the awareness of the importance of the maintenance of sediment control techniques on the most prominent sediment fence or erosion control device, for the duration of the project. **Note: On-the-spot fines may be imposed by Council for non-compliance with this condition.**

General

- 15 The developer is responsible for any costs relating to alterations and extensions of existing roads, drainage, Council services and other services for the purposes of the development.

Other Authorities

- 16 Other public authorities may have separate requirements and should be consulted prior to commencement of works in the following respects:
 - Australia Post for the positioning and dimensions of mail boxes in new commercial and residential developments;
 - AGL Sydney Limited for any change or alteration to gas line infrastructure;
 - Energy Australia for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
 - Telstra, Optus or other telecommunication carriers for access to their telecommunications infrastructure.

Plumbing and Drainage

- 17 Council as the water supply authority, or in unsewered areas where an onsite sewage management facility is to be installed, Council is to be notified to undertake inspections of the internal drainage, (prior to the pouring of the concrete slab), and external drainage prior to the backfilling of the trenches. These inspections can be arranged by telephoning Council's customer services section on 4350 5555 a minimum of 24 hours prior to the required time for the inspection. **Note: All drainage inspection fees are to be paid to Council prior to these inspections being undertaken.**

Site Requirements

- 18 Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet must:
- a be a standard flushing toilet connected to a public sewer; or
 - b have an on-site effluent disposal system approved under the LGA 1993, or be a temporary chemical closet approved under the LGA 1993 supplied by a licensed contractor.
- 19 The provision of a metal waste skip (with self-closing lid or secure covering) or lined mesh steel cage(s) in accordance with the requirements of DCP 2005, Chapter 100 – Quality Housing, on site for the duration of the construction to ensure that all wastes are contained on the site. The receptacle is to be emptied periodically to reduce the potential for rubbish to leave the site. **Note: On the spot fines may be imposed by Council for pollution incidents.**
- 20 In accordance with the requirements of Council's Development Control Plan 2005, Chapter 69 - Controls for Site Waste Management, an on site storage area for reuse, recycling and disposal of materials is to be provided during construction. Concrete, brick, tile and excavation material is to be given first priority for reuse and recycling.
- 21 The Principal Contractor (or Owner/Builder) is to erect a sign in a prominent position on the site (not attached to any tree) identifying the name, address and telephone number of the Principal Certifying Authority (PCA) for the work; the name, address and telephone number (including a number for outside of business hours) of the Principal Contractor for the work (or Owner/Builder); and stating that unauthorised entry to the site is prohibited. The sign must be maintained while the work is being carried out and is to be removed when the work is completed. Appropriate signs can be collected from Council's Customer Service Centre, where Council is the nominated PCA.

Certificates/Engineering Details

- 22 Prior to the occupation of the building, an application for an Occupation Certificate for the development must be submitted to and approved by the Principal Certifying Authority.

Prior to Release of Occupation Certificate:

The following conditions must be satisfied prior to the release of an Occupation Certificate.

BASIX

- 23 Pursuant to Clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this Development Consent that all the commitments listed in the BASIX Certificate for the development are fulfilled. All work is to be satisfactorily completed prior to the issue of the Occupation Certificate.

Building Code of Australia

- 24 Compliance with the relevant provisions and requirements of the Building Code of Australia.

Bush Fire

- 25 The recommendations contained in the advice from NSW Rural Fire Services CZ/PLA/036 and dated 25 March 2010 are to be fully implemented, including the following:
- At the commencement of building works and in perpetuity, the property around the building to a distance of 50 metres, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
 - Water, electricity and gas are to comply with section 4.1.3 of "Planning for Bush Fire protection 2006".
 - A Static Water Supply (SWS) marker shall be obtained from the local NSW Rural Fire Service and positioned for ease of identification by brigade personnel and other users of the SWS. In this regard:
 - a) Markers must be fixed in a suitable location so as to be highly visible; and
 - b) Markers should be positioned adjacent to the most appropriate access for the static water supply.
 - In recognition that a potentially unreliable water supply exists, a 20,000 litre water supply shall be provided for fire fighting purposes. In accordance with RFS Fast Fact 3/08 "Water Supply for Fire Fighting Purposes".
 - A minimum 5hp or 3kW petrol or diesel powered pump shall be made available to the water supply. A 19 mm (internal diameter) fire hose, able to be connected to the pump and capable of reaching all parts of the exterior of the building shall also be provided.
 - Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush fire Protection 2006'.

- New construction shall comply with Australian Standard AS3959-1999 'Construction of buildings in bush fire-prone areas' Level 1.
- Roller doors, tilt-a-doors and other such doors shall be sealed to prevent the entry of embers into the building.
- Roofing shall be gutterless or guttering and valleys are to be screened to prevent the build up of flammable material. Any materials used shall have a flammability Index of no greater than 5 when tested in accordance with Australian Standard AS1530.2-1993 'Methods for Fire Tests on Building Materials, Components and Structures – Test for Flammability of Materials'.
- External doors are to be sealed with draft excluders or weather strips to prevent the entry of embers.
- Vents and weepholes shall be screened with corrosive resistant steel mesh with an aperture not greater than 1.8 mm.
- Landscaping on the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

Ecology/Trees

- 26 The edge of the Inner Protection Area and Outer Protection Area for the dwelling must be permanently delineated using fencing, posts, bollards or similar. Evidence of this is to be supplied to Council prior to issue of Occupation Certificate.

Erosion and Sediment Control

- 27 The provision of a single all weather access way incorporating a vehicle shake down device within the property, extending from the kerb and gutter to the building under construction, so as to provide appropriate access to the site which will reduce the potential for erosion to occur and for materials to be tracked onto the road by vehicles. A diversion drain is to be installed to divert runoff from the accessway into a silt fence. These works are to be in accordance with the requirements of Council's Policy E1 - Erosion and Sediment Control from Building Sites. **Note: On-the-spot fines may be imposed by Council for non-compliance with this condition.**
- 28 The downpipes and stormwater drainage being installed and connected to the approved stormwater disposal system immediately after the roof materials are positioned to prevent erosion of the site from roof water. **Note: A Compliance Certificate for the frame cannot be issued until the stormwater drainage system is installed.**

Landscaping

- 29 All disturbed surfaces on land resulting from the buildings and works authorised or required by this consent shall be revegetated and stabilised to the satisfaction of the responsible authority so as to prevent any erosion or siltation either on or adjacent to the land.

Plumbing and Drainage

- 30 The hot water installation must deliver hot water not exceeding 50 degrees Celsius at the outlet of the sanitary fixtures used primarily for personal hygiene purposes. Note: Compliance with this temperature limit is optional for kitchen sinks and laundry tubs. AS/NZS 3500 Part 4.2 C1.1.6.2.
- 31 Prior to the issue of an Occupation Certificate, the On Site Sewage Management Facility is to be finalised by Council as the water and sewer authority.

Ongoing Operation:

The following conditions must be satisfied during use / occupation of the development.

Bush Fire

- 32 Compliance with the recommendations contained in the advice from NSW Rural Fire Services CZ/PLA/036 and dated 25 March 2010.

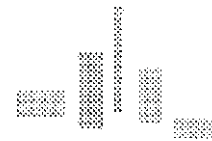
Ecology/Trees

- 33 All external lighting is to be of a type that minimises overspill into retained vegetated areas.

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PIKES LAWYERS

18 October 2010

The General Manager
Wyong Shire Council
PO Box 20
WYONG NSW 2259

FACSIMILE 02 4351 2098

Dear Sir

DEVELOPMENT APPLICATION 36/2010
LOT 5011 DP 791632 SPRINGS ROAD, KULNURA
Our ref JAR:W926/70700

We act for Mr Woodhouse, with respect to the abovementioned development application.

We have had the opportunity of considering the submission made on behalf of Mr and Mrs Schembris (Schembris') operators of the adjoining poultry farm. In particular, we have considered the report prepared by Mr Ormerod of PAE Holmes 19 July 2010.

We understand that the main point of contention raised by the Schembris' is that the proposed dwelling house will have inappropriate separation distance to the poultry sheds.

The Council is aware of the judgments of Land and Environment Court which approved the poultry farm. We note that the Court originally sought to approve only three (3) poultry sheds, but allowed Mr and Mrs Schembris to put on further evidence to support the four (4) approved sheds. That evidence was provided by Mr Ormerod and indicated that the sheds would have an acceptable impact on the proposed dwelling locations on Mr Woodhouse's property.

The Court expressed concern about the odour from the proposed poultry sheds. However, on the basis of the evidence of Mr Ormerod and Dr Holmes' (who have now merged practices) accepted that whilst Mr Woodhouse's proposed dwelling site would not be free from odour, it would be an acceptable impact. We draw Council's attention to paragraph 9 in the judgment of *Woodhouse v Wyong Shire Council and Ors* [No 2] [2006] NSWLEC 83:

"Odour

- 9 *On the question of odour, I accept the submissions of Mr McEwen SC. The acceptability of the amended proposal is succinctly put by Mr Ormerod and Dr Holmes in their joint report where they state:*

18 October 2010
 Wyong Shire Council
 Page 2

We agree that the Schembri farm, if developed and managed according to conditions described below and in the Environmental Management Plan, should result in acceptable odour to both existing and proposed residences nearby.

We agree that the development of four sheds, each with a maximum capacity of 42,000 birds, equating to a total capacity of 168,000 birds is acceptable subject to suitable conditions

- 10 *In accepting the submissions of Mr McEwen SC, I acknowledge that the odour criteria require compliance only 99% of the time. While this creates the opportunity for odour in excess of an acceptable standard, the opportunity is very limited. It is consistent with the attempts to establish an objective criterion for a largely subjective impact. It is an approach adopted in other areas and was generally accepted by Mr Ormerod and Dr Holmes."*

Further, in the initial judgment (*Woodhouse v Wyong Shire Council and Ors* [2005] NSWLEC 709) the Court noted, at paragraph 23:

- "23 *The subdivision potential of the adjoining property was not a matter addressed by Council in its consideration of the development application. However, the Court is satisfied that the potential subdivision of the adjoining property and the likely location for the erection of dwellings ("the hypothetical dwellings") is a relevant and valid consideration. This is consistent with the object of the EP&A Act relating to "the promotion and co-ordination of the orderly and economic use and development of land" (s 5(a)(ii)). Prima facie, the 100 ha property can be subdivided into 5 lots and a dwelling can be erected on each of these lots. This is a consideration in determining development on the adjoining land."*

It is clear that the decision of the Court in approving the Schembri application was on the basis that it would be not unreasonably impact on the development potential of the Woodhouse property.

The evidence given by Mr Ormerod in 2005 and again on a s96AA application in 2008, was given under oath. In Mr Ormerod's recent report to the Council he indicates that the evidence was given under the constraints of a court timetable and is therefore not accurate. Mr Ormerod had plenty of time to consider his position and findings in the first set of proceedings and again three (3) years later. It appears

18 October 2010
Wyong Shire Council
Page 3

disingenuous to come back and change the position previously put to the Court [which formed the basis of the approval of the intensity of the Schembri (firm)]. We note also the disclaimer to the report that "PAE Holmes acts in all professional matters as a faithful advisor to the client". Further, the report is for the "exclusive use of the client". The disclaimer is somewhat different to Mr Ormerod's previous compliance with the experts code of conduct in the Court, where his first priority was to give honest and impartial evidence for the benefit of the Court.

In the circumstances of the disclaimer and the radical departure of the opinion of Mr Ormerod we suggest that Council give the report no weight.

The decision of the Court was made to balance the competing development potential of each property. If Mr and Mrs Schembri now say that they are unable to adequately contain the impacts from their property they can take steps, either by management or reduction in stock, to achieve an outcome where they do not unreasonably impact on other land.

If the Council has a concern in the future that Mr and Mrs Schembri are operating their premises in a manner in which the odour emitted is unreasonable, it may manage the situation by issue of an order under the Protection of the Environment Operations Act 1997.

We trust that the Council will uphold the intent of the Land and Environment Court's decision and permit our client to develop his land in an orderly and economic manner.

Yours faithfully



for Jacinta A Reid
Partner

E jreid@pikepikeferwick.com.au

4.3 Wyong Shire-wide Heritage Review - Request Endorsement to Proceed to Public Exhibition

TRIM REFERENCE: CPA/158185 - D02368067

AUTHOR: Raianan Helies, Strategic Planner, Land Use Planning
MANAGER: Paul Bowditch, Manager Future Planning

SUMMARY

Part of the comprehensive review of the Shire's local planning framework is a necessary review of local heritage provisions. The following report details the progress to date on the Wyong Shire-wide Heritage Review project and subsequent heritage management recommendations. The purpose of this report is to seek Council endorsement of the recommendations in order to proceed to public exhibition.

RECOMMENDATION

- 1** *That Council endorse the Wyong Shire-wide Heritage Review draft report and draft recommendations for the purpose of public exhibition.*
- 2** *That Council place the Wyong Shire-wide Heritage Review on public exhibition for a period of six weeks.*

BACKGROUND

As part of the comprehensive review of the Shire's local planning framework Council has commenced a Shire-wide review of local heritage provisions. The Wyong Shire-wide Heritage Review commenced in June 2009 and builds upon the Shire-wide heritage studies undertaken in 1994 and 1996 and will update heritage information, including thematic history, Local Environmental Plan (LEP) listings, conservation management recommendations, and incentive policies for heritage items in Wyong Shire.

Council has received grant funding from the Heritage Branch, Department of Planning (DoP) NSW to undertake the Wyong Shire-wide Heritage Review. Dollar for dollar funding was provided to the amount of \$12,300 for the review project. Heritage consultant, David Scobie Architects was subsequently engaged to undertake a Shire-wide review of heritage items within the Wyong Local Government Area.

THE PROPOSAL

The Wyong Shire-wide Heritage Review project involves the following key stages:

- 1** Update of the Thematic Local History for Wyong Shire (including stakeholder/community consultation).
- 2** Invitation to the public to nominate items for listing/delisting.

4.3 Wyong Shire-wide Heritage Review - Request Endorsement to Proceed to Public Exhibition (contd)

- 3 Update of Council's Heritage Inventory (including stakeholder/community consultation).
- 4 Review of existing planning controls and recommendations for policy implementation and conservation management.
- 5 Briefing to the Councillors.
- 6 Report to Council.
- 7 Public exhibition of the Shire-wide Heritage Review.
- 8 Finalisation and submission to Council of the Shire-wide Heritage Review.
- 9 Adoption of the Shire-wide Heritage Review.
- 10 Inclusion of the Heritage Inventory, identified Conservation Areas, and heritage provisions and incentives into the Wyong Local Environmental Plan (WLEP) 2011.

The project is now up to Stage 6, this stage informs Council of the draft report and recommendations and seeks endorsement to take the study to public exhibition.

As mentioned above, the initial stages of the review sought to update Council's existing Local Thematic History and review Council's heritage items listed on the LEP. Following this, stakeholder and community consultation was undertaken to consider the listing of new items or the delisting of existing items. Local Aboriginal Groups were approached during the study process and the consultant was provided with historical documentation to inform the thematic history update.

As mentioned above, the Heritage Review provided an opportunity to the public early in the process, to nominate items of heritage significance or nominate items for delisting. Public nominations were invited from 22 July 2009 to 4 September 2009 for a period of six weeks. The public nomination period was extended by a further four weeks to 7 October 2009 in order to maximise the opportunity for public input due to the limited initial response. Six submissions were received from the public (four to list and two to delist, i.e. remove from LEP Schedule 1 of listed heritage items) and have been considered as part of the review. A draft report has been prepared by the Consultant that outlines a number of recommendations. The review recommendations will have the effect of improving Council's existing levels of service in relation to heritage management, advice to the community and the level of support provided to owner's of heritage items. The review recommendations are discussed in further detail below.

KEY RECOMMENDATIONS

The Wyong Shire-wide Heritage Review recommendations are threefold and comprise of recommendations for listing/delisting of items, conservation management policies and guidelines, and recommended heritage controls.

Recommendations for Listing/Delisting

Individual Items

A total of 375 items were identified in the review as a result of research, site investigations and public nominations. Of this, a total of 175 properties (including the existing LEP items) are recommended for heritage listing; a list of all items considered under the review and items recommended for listing on the WLEP is provided in Attachment 1.

In addition to individual LEP listings, the review has identified nine items that are recommended for listing on the State Heritage Register. This total includes the existing four items within Wyong Shire that are already listed on the State Heritage Register and are shown below:

Proposed

- Ourimbah Railway Station and Station Master's House
- Strathavon Country Club – Guest House - Wyong
- Carnival including Carousel and Alfred Bruder Organ – The Entrance
- Munmorah State Recreation Area
- Wyrabalong National Park – Bateau Bay to Norah Head

Existing

- The Entrance Ocean Pools
- Norah Head Lightstation Group
- Noraville House and Garden
- St Barnabas Church and Cemetery – Yarramalong (currently the church is State listed but the Cemetery is not)

The process for undertaking works on or in the vicinity of items that are listed on the State Heritage Register occurs through a s60 application under the Heritage Act 1977. This application, along with a Heritage Impact Statement, would accompany a development application and be forwarded to the Council to be assessed as Integrated Development. A referral would subsequently be sent to the NSW Heritage Council for comment and approval.

For works that do not require development consent, such as Part 5 applications under the Environmental Planning and Assessment (EP&A) Act 1979, a Conservation Management Plan should be submitted to the Heritage Council for endorsement, thereby affording an exemption from approval for any future works undertaken at the site.

Various works which require development consent may be exempt from the s60 application process, these works can include 'like for like' maintenance and restoration among other works. The NSW Heritage Branch Heritage Information Series provides detail on what works are exempt from this process.

Conservation Areas

The review has made recommendations for the establishment of Conservation Areas within the Wyong Town Centre, South Tacoma, and Oakland Avenue, The Entrance. A Conservation Area is a geographic area containing many different elements which collectively have heritage significance. Characters and elements that contribute to the significance include:

- Subdivision patterns.
- Consistency of building material.
- Consistency of building styles.
- Common building stock.
- Planting elements.
- Common uses and/or a layering of historical elements that provide evidence of the development through various periods.

Implementation of a Conservation Area is through the LEP with the controls for development contained within the Development Control Plan (DCP). All development within a Conservation Area is subject to review by Council staff in relation to the impact of the development on the significance of the Conservation Area. This includes exempt and complying development and Council works, however, where Council is of the opinion that the proposed development or works would not adversely affect the heritage significance of a heritage item, further assessment is not required. Development controls affect changes to (heritage) listed buildings, buildings in the visual vicinity of listed buildings and generally to infill buildings in relation to their scale and character. Controls for Conservation Areas aim to promote good design, the reuse of listed and unlisted buildings and contemporary interpretations for new work. Replicas and 'pseudo' heritage is not encouraged.

Properties included within the proposed Conservation Areas consist of:

Wyong Town Centre – Main Street

No's: 1, 52, 54, 64-70, 74, 78, Palm Trees, Milepost, Shopping Complex in Railway Square, Railway Station.

The Entrance – Oakland Avenue

No's: 20-22, 27, 31, 42, 45-49, 51-59, 65-67, Corner Armidale Street and Oakland Avenue.

South Tacoma – South Tacoma Road

No's: 11, 13, 14, 37, 40 (rear), 42, 69

The proposed Conservation Area boundaries are provided in Attachment 1.

Items for Delisting

The review has identified six items that require delisting from the WLEP 1991. Four of these items have been recommended for delisting due to fire, demolition or dilapidation, while other items were recommended for delisting as a result of significant unsympathetic modifications, or a reduced significance. These items are provided in Attachment 2.

Council Owned Properties

The following lists those items which were identified in the review and are owned by Wyong Shire Council:

Council owned items which are currently listed - State and local

All Council owned items currently listed on the WLEP Schedule of Heritage Items are recommended to remain, these include:

- The Entrance Ocean Pools
- Old Maitland Road
- Wyong Public School (former)
- Council Civic Building
- St Barnabas Church and Cemetery
- Brownlee Sawmill
- The Entrance Surf Club
- Alison Homestead
- World War 1 and 2 Monument - Wyong
- The Long Jetty - Long Jetty

Council owned items recommended for listing which are not currently listed

These items are not currently listed and are recommended for local listing on the WLEP Schedule of Heritage Items:

- Dwelling (12 Church Street, Wyong)
- Water Reservoir (Gilbert Street, Long Jetty)
- Woodbury's Inn Park (Yarramalong Road, Wyong Creek)
- Yarramalong Cemetery

Council owned items identified as having heritage significance with no recommendation for listing

These items were identified as having some heritage significance, but are not significant enough to warrant statutory protection via local listing:

- 8 Norfolk Island Pines (Waterfront Plaza, The Entrance)
- Arthur Mollet Reserve (6 Rankens Court, Wyong)
- Day Care Centre (Battley Avenue, The Entrance)
- Wyong Memorial Hall

For items such as these which are important but not at a level to warrant listing, recommendations are made for Provision of a Statement of Heritage Impact and Prepare an Archival record. For example, for Wyong Memorial Hall, a Statement of Heritage Impact would be prepared and an archival record made before any demolition associated with redevelopment. In this manner an appropriate record can be made for posterity.

Management Recommendations for Items of Heritage Significance

The scope of recommendations for Council owned items is summarised in the table below, along with the potential implications of the respective recommendation. Please refer to Attachment 3 for details on the management recommendations provided for each individual item.

The following are recommendations which would *not* have significant resource and cost implications:

Recommendation	Implication
List on Local Environmental Plan	Local Listing would form part of the Comprehensive LEP process - cost/resource implications have already been accounted for.
Nominate for State Heritage Register	<p>Justification for State listing is to be provided as part of the Heritage Review, nomination would only require completing the relevant nomination form provided by the NSW Heritage Branch.</p> <p>Note: The NSW Heritage Branch currently considers those items which have Aboriginal Heritage, Convict, Governor Macquarie or World War I and II themes. Consideration of heritage items which are situated outside the scope of these themes will be assessed once a relevant theme emerges, and will remain 'catalogued' until this occurs.</p>

The following are recommendations which *may* have resource and cost implications:

Recommendation	Implication
Archaeological Assessment	<p>Council would need to engage a consultant to undertake an archaeological assessment.</p> <p><i>Typical archaeological assessments cost between \$5,000 – \$10,000 excluding excavations but vary according to the scope. Many Councils go years without the need for an archaeological assessment related to building sites.</i></p> <p><i>Archaeological assessments may and are also more likely to be required related to aboriginal cultural significance which is not covered in this Study.</i></p>

Recommendation	Implication
Develop a Statement of Heritage Impact	<p>Council would need to engage a heritage advisor or heritage consultant to prepare any Heritage Impact Statement for items of heritage significance which are owned by Council.</p> <p><i>Typical Heritage Impact Statement assessments cost between \$5,000 – \$10,000 for places where work is proposed. Similarly a Conservation Management Plan or Strategy should be prepared for Council owned listed heritage sites to allow future asset planning and maintenance. Typically these cost between \$7,500- \$15,000</i></p>
Document and prepare an archival record	<p>Council may prepare its own archival records in accordance with the NSW Heritage Branch guidelines or may choose to engage a consultant to prepare archival records. This may depend on the significance of the item and the level of assessment and research required. Records are usually prepared:</p> <ul style="list-style-type: none"> - when establishing heritage significance; - when preparing a conservation plan; - when developing or carrying out a maintenance and monitoring program; - before and during work to the item; - before full or partial demolition or relocation; - before and during archaeological investigations. <p><i>Photographic archival records cost between \$3,500 - \$7,500 for as typical building or site.</i></p>
Carry out interpretation, promotion and/or education	<p>This would form part of the role of Council's Heritage Advisor. If Council does not establish a heritage advisor service Council will need to engage a heritage consultant to undertake interpretation and promotion of heritage items.</p> <p><i>Allow for \$10-15,000 per annum for a consultant or combination of Consultant and staff time.</i></p>
Prepare a maintenance schedule or guidelines	<p>Council would need to develop maintenance schedules using the NSW Heritage Branch Maintenance Series templates and any other relevant guidelines set out by the Heritage Branch.</p>

Recommendation	Implication
	<i>These would be included with the Conservation Management Strategy or Conservation Management Plan note above.</i>

The Wyong Shire-wide Heritage Review recommends that Council develop asset management plans for items of heritage significance which are owned by Council (where these do not currently exist). In this regard, Council would aim to lead by example in relation to appropriate management of heritage items and administration of public policy.

Cost Breakdown for Council Owned Heritage Items

A cost breakdown of the recommendations for Council Owned items is summarised in the table below. Costs ranges are provided to indicate the likely minimum and maximum cost in implementing each recommendation, and an aggregate amount is provided for the following three categories; those items currently listed on Wyong Local Environmental Plan, 1991, those items recommended for listing on the Local Environmental Plan, and those items not recommended for listing but which are identified as having some heritage significance. A combined total of all three item categories is also provided. It should be noted that the recommendations will be implemented at Council's discretion, and are not required to be implemented immediately following adoption of the Wyong Shire-wide Heritage Review.

There are no funds proposed in our 4 year delivery plan to allow the undertaking of these studies.

Council Owned Properties Currently Listed on Wyong Local Environmental Plan, 1991			
Item	Recommended Management	Cost (Range)	Item Total (Range)
The Entrance Ocean Pools	Statutory Instrument : List on a Local Environmental Plan (LEP)	\$0	\$0
	Statutory Instrument : Nominate for State Heritage Register (SHR)	\$0	
Old Maitland Road	Statutory Instrument : List on a Local Environmental Plan (LEP)	\$0	\$5,000 - \$10,000
	Recommended Management : Notify Relevant organisations or agencies	\$0	
Long Jetty	Recommended Management : Carry out an Archaeological Assessment	\$5,000 - \$10,000	\$13,500 - \$27,500
	Statutory Instrument : List on a Local Environmental Plan (LEP)	\$0	
	Recommended Management : Notify Relevant organisations or agencies	\$0	
	Recommended Management : Develop a Statement of Heritage Impact	\$5,000 - \$10,000	
Wyong Public School (former)	Recommended Management : Carry out an Archaeological Assessment	\$5,000 - \$10,000	\$0
	Recommended Management : Document and prepare an archival record	\$3,500 - \$7,500	
Council Building (Civic Centre)	Statutory Instrument : List on a Local Environmental Plan (LEP)	\$0	\$0
	Recommended Management : Consult with owner and/or community	\$0	
	Statutory Instrument : List on a Local Environmental Plan (LEP)	\$0	
	Recommended Management : Carry out interpretation, promotion and/or education	\$10,000 - \$15,000 pa	
St Barnabas Church and Cemetery	Statutory Instrument : List on a Local Environmental Plan (LEP)	\$0	\$8,500 - \$17,500
	Statutory Instrument : Nominate for State Heritage Register (SHR)	\$0	
Brownlee Saw Mill	Recommended Management : Develop a Statement of Heritage Impact	\$5,000 - \$10,000	\$18,500 - \$32,500
	Recommended Management : Document and prepare an archival record	3,500 - \$7,500	
	Statutory Instrument : List on a Local Environmental Plan (LEP)	\$0	
	Recommended Management : Carry out an Archaeological Assessment	\$5,000 - \$10,000	
The Entrance Surf Club	Recommended Management : Document and prepare an archival record	\$3,500 - \$7,500	\$0
	Recommended Management : Carry out interpretation, promotion and/or education	\$10,000 - \$15,000 pa	
	Statutory Instrument : List on a Local Environmental Plan (LEP)	\$0	
Alison Homestead	Recommended Management : Consult with owner and/or community	\$0	\$0
	Recommended Management : Prepare a maintenance schedule or guidelines	\$0	
World War 1 and 2 Monument	Statutory Instrument : List on a Local Environmental Plan (LEP)	\$0	\$0
	Statutory Instrument : List on a Local Environmental Plan (LEP)	\$0	
Total			\$45,500 - \$87,500

Council Owned Properties Recommended for Listing on Council's Local Environmental Plan			
Item	Recommended Management	Cost (Range)	Item Total (Range)
Water Reservoir	Statutory Instrument: List on a Local Environmental Plan (LEP)	\$0	\$5,000 - \$10,000
	Recommended Management: Consult with owner and/or community	\$0	
	Recommended Management: Develop a Statement of Heritage Impact	\$5,000 - \$10,000	
Woodbury's Inn Park	Statutory Instrument: List on a Local Environmental Plan (LEP)	\$0	\$0
	Recommended Management: Notify Relevant organisations or agencies	\$0	
Yarramalong Cemetery	Statutory Instrument: List on a Local Environmental Plan (LEP)	\$0	\$12,500 - \$25,000
	Recommended Management: Notify Relevant organisations or agencies	\$0	
	Recommended Management: Produce a Conservation Management Plan	\$7,500 - \$15,000	
	Recommended Management: Carry out an Archaeological Assessment	\$5,000 - \$10,000	
Total			\$63,000 - \$122,500
Council Owned Properties Not Recommended for Listing That Have Some Heritage Significance			
Item	Recommended Management	Cost (Range)	Item Total (Range)
8 Norfolk Island Pines	Recommended Management: Consult with owner and/or community	\$0	\$0
	Recommended Management: No Action, follow existing management controls	\$0	
Arthur Mollet Reserve	Recommended Management: Consult with owner and/or community	\$0	\$0
	Recommended Management: Consult with owner and/or community	\$0	
Day-care Centre (The Entrance Community Centre)	Recommended Management: Develop a Statement of Heritage Impact	\$5,000 - \$10,000	\$8,500 - \$17,500
	Recommended Management: Document and prepare an archival record	\$3,500 - \$7,500	
Wyong Memorial Hall	Recommended Management: Consult with owner and/or community	\$0	\$0
	Recommended Management: Prepare a maintenance schedule or guidelines	\$0	
Total			\$8,500 - \$17,500
Combined Total			\$71,500 - \$140,000

Conservation Management Policies and Guidelines

The Conservation Management Policies and Guidelines make recommendations for the provision of incentive policies that support and promote items of heritage significance within Wyong Shire. These recommendations are not mandatory, but if implemented would assist with the preservation, management and promotion of heritage within the Shire. The incentive policies include:

- The establishment of a Local Heritage Advisory Service.
- The establishment of a Local Heritage Assistance Fund.
- The installation of interpretation devices in the vicinity of heritage places.
- The provision of a cast bronze plaque at individual heritage properties with the consent of the owner, to assist in conserving the significance and assist in heritage walks and trails.
- Develop Asset Management Plans for Council owned properties that are of heritage significance.
- Implement Conservation Areas within the localities of Wyong Town Centre, South Tacoma, and Oakland Avenue, The Entrance.

Heritage Controls

The planning controls put forward as part of the review focus on the use of Council's existing DCP Chapter 76 – Conservation of the Built Environment, and the ways this document can be improved. Key recommended changes to this document are:

- Renaming of the DCP Chapter heading to 'Heritage Conservation'.
- Removal of the term regional significance (this category no longer exists – items are either of local or State significance).
- The inclusion of Conservation Areas in the Shire.
- Changes to the existing objectives outlined in the DCP Chapter.
- New definition for 'places of heritage significance', and inclusion of additional definitions.
- The inclusion of a new clause describing Aboriginal Heritage and how this is protected in the Shire.
- Inclusion of development and performance criteria for commercial buildings, shop fronts, signs and heritage items within the Wyong Town Centre.

4.3 Wyong Shire-wide Heritage Review - Request Endorsement to Proceed to Public Exhibition (contd)

- Update of the DCP Chapter to include current legislation requirements and references (e.g. 'standard clauses') and any relevant guidelines released by the NSW Heritage Office.

General Recommendations

It should be noted that whilst the recommendations of Council's Heritage Consultant have been documented throughout the report, these are for Council's consideration and can be adopted in total or in part.

The review has identified a number of recommendations that need to be undertaken prior to the adoption of a Comprehensive Local Environmental Plan under the Standard Instrument Order 2006 No. 155. These include:

- A review of current heritage clauses within the WLEP including clauses 32-36 which would allow for:
 - Changes to the Heritage Schedule to include additional items, and remove the term regional significance.
 - A definition and standard clauses in relation to proposed Conservation Areas.
 - Update the WLEP to provide correct references i.e Department of Planning, NSW Heritage Branch, and NSW Heritage Council as relevant.

The following additional recommendations are put forward under the review to enhance the protection, management and promotion of heritage within the Shire:

- Council identify an Officer from staff responsible for heritage related issues, who would receive training through the Heritage Office.
- Council contract a Heritage Advisor to visit on a regular basis and administer standard duties relating to heritage.
- Council instigate a heritage committee to operate under the Local Government s355 guidelines and with the responsibilities established by the NSW Heritage Branch.
- Council, through appropriate staff and committees support the production of heritage publications, newspaper articles and walks brochures based on the heritage study information.

REMAINING STAGES OF THE PROJECT

Subject to Council endorsement to proceed, the review will be placed on public exhibition to invite feedback from the community. At the close of public exhibition, any necessary changes as a result of public submissions will be made, and the documentation finalised for review by the NSW Heritage Office. Once the Heritage Office is satisfied with the documentation the review will again be reported to Council with an opportunity provided to the Councillors to make changes to the recommendations prior to adoption.

IMPLICATIONS FOR THE COMPREHENSIVE LOCAL ENVIRONMENTAL PLAN

Once the Shire-wide Heritage review has been finalised, the recommended statutory listings will be included in the schedule of heritage items contained within WLEP 2011. Where

appropriate, the conservation management guidelines and heritage controls will be incorporated into the relevant chapters of Wyong DCP 2011.

OPTIONS

The Wyong Shire-wide Heritage Review has been undertaken in accordance with the NSW Heritage Branch 'Community Based Heritage Series Guidelines' as per the requirements set out in the grant funding Letter of Offer. In order to fulfil the requirements for grant funding, the Wyong Shire-wide Heritage Review is required to be placed on public exhibition to enable public comment.

In addition, it is considered that public exhibition is the best option to invite community feedback, and where necessary, review the recommendations in light of the feedback received.

STRATEGIC LINKS

Annual Plan

<i>Principal Activity</i>	<i>Strategy or Program</i>	<i>Financial Line Item No and Description</i>
A More Sustainable Community	Facilitate events and activities that create a sense of community and increase local awareness and knowledge of the Shire	N/A
A More Sustainable Economy	None.	N/A
A More Sustainable Environment	None.	N/A
Infrastructure	None.	N/A
Organisation	None.	N/A

Contribution of Proposal to the Principal Activity

The Wyong Shire-wide Heritage Review will increase the community's knowledge of heritage within Wyong Shire and encourages community participation in conserving heritage.

Link to Shire Strategic Vision

<i>Priority Objective</i>	<i>How the proposal contributes or links to the Priority Objectives in Shire Strategic Vision and Annual Plan</i>
Communities - Communities will be vibrant, caring and connected with a sense of belonging and pride in their local neighbourhood.	<p>'Continue work on Council's Comprehensive LEP to meet the timeframes of the Department of Planning.'</p> <p>The Wyong Shire-wide Heritage Review meets some of the priority objectives within the Shire Strategic Vision as it will inform Council's Comprehensive LEP.</p>

Priority Objective	How the proposal contributes or links to the Priority Objectives in Shire Strategic Vision and Annual Plan
Travel - There will be ease of travel within the Shire, and to other regional centres and cities. Travel will be available at all hours and will be safe, clean and affordable.	Nil impact.
Facilities and Services - Communities will have access to a diverse range of affordable and coordinated facilities, programs and services.	Nil impact.
Education - The community will be well educated, innovative and creative. People will attain full knowledge potential at all stages of life.	The Wyong Shire-wide Heritage Review will increase the community awareness and knowledge of heritage within Wyong Shire.
Employment - There will be a strong and sustainable business sector and increased local employment built on the Central Coast's business strengths.	Nil impact.
Telecommunications - Information communication technology will be consistent with world's best practice and adaptive to technological advances across all sectors.	Nil impact.
Natural Areas - Areas of natural value in public and private ownership will be enhanced and retained to a high level in the context of ongoing development.	Nil impact.
Environmental Programs - There will be a sense of community ownership of the natural environment through direct public involvement with environmental programs.	Nil impact.

Financial Implications

Funds have been allocated within the current budget for the heritage review project, and no additional funds or resources are required to proceed to public exhibition. Please refer to the Council Owned Properties section of the report for a cost breakdown of the recommendations for Council owned properties.

Principles of Sustainability

The Wyong Shire-wide Heritage Review encourages a more sustainable Shire by conserving items of heritage significance into the future. The heritage review project will have a positive impact on the community and environment in terms of promoting conservation and fostering community identity and engagement. The review project will benefit the Shire's economy through heritage tourism, and is adaptable and responsive to local business needs.

CONSULTATION

Council has already invited the public to nominate items of heritage significance as part of the consultation process between July and October 2009. Further extensive consultation is proposed to be undertaken during public exhibition. The following groups are to be consulted directly during this time:

- Owners of existing and proposed heritage items including those who submitted nomination forms.
- Darkinjung LALC, Guringai Tribal Link, other known local aboriginal groups on DECCW register.
- Wyong Historical Society.

A briefing to the Councillors was provided 22 September 2010. The Councillors requested that the recommendations be presented at the Council Meeting.

GOVERNANCE

The recommendations are subject to the requirements of the Heritage Act 1977 and should generally be in accordance with the principles set out in the International Council on Monuments and Sites (ICOMOS) Burra Charter 1999.

The Wyong Shire-wide Heritage Review provides recommendations for implementation via the WLEP 2011 and Wyong DCP 2005 Chapter 76 – Conservation of the Built Environment (DCP Chapter 76).

CORPORATE RISKS

There are no identified corporate risks.

CONCLUSION

It is recommended that Council endorse the Wyong Shire-wide Heritage Review draft report and draft recommendations for the purposes of placing the Heritage Review on public exhibition. It is also recommended that the Heritage Review be placed on public exhibition for a period of six weeks.

ATTACHMENTS

- | | | |
|---|--|-----------|
| 1 | Council Report Attachment - Items to be De-Listed | D02393711 |
| 2 | Council Owned Properties with Potential Heritage Significance | D02393724 |
| 3 | Wyong Shire-wide Heritage Review Draft Report November 2010 - D02425331 (Distributed Under Separate Cover) | Enclosure |
| 4 | Thematic History Final D02409296 (To Be Distributed under Separate Cover) | Enclosure |

Wyong Shire-wide Heritage Review

LEP items to be de-listed

- Dwelling
34 Hope Street, Wyong

- Dwelling
33 Hutton Road, The Entrance North

LEP items to be de-listed due to demolition/fire/dilapidation

- Dwelling - 710 Yarramalong Road, Wyong Creek

- All Saints Church - Anzac Road, Tuggerah

- Methodist Church (Former) - 19 Rankens Court, Wyong

- Dwelling - 21 Hargraves Street, The Entrance North

Council Owned Properties with Potential Heritage Significance		
Heritage Significance – Recommended for Listing		
Item	Location	Recommended Management
The Entrance Ocean Pools	Ocean Parade, The Entrance	Statutory Instrument : List on a Local Environmental Plan (LEP) Statutory Instrument : Nominate for State Heritage Register (SHR)
Old Maitland Road	Old Maitland Road, Kangy Angy Mountain	Statutory Instrument : List on a Local Environmental Plan (LEP) Recommended Management : Notify Relevant organisations or agencies Recommended Management : Carry out an Archaeological Assessment
Long Jetty	Tuggerah Parade, Long Jetty	Statutory Instrument : List on a Local Environmental Plan (LEP) Recommended Management : Notify Relevant organisations or agencies Recommended Management : Develop a Statement of Heritage Impact Recommended Management : Carry out an Archaeological Assessment Recommended Management : Document and prepare an archival record
Wyong Public School (former)	8 Rankens Court, Wyong	Statutory Instrument : List on a Local Environmental Plan (LEP) Recommended Management : Consult with owner and/or community
Council Building (Civic Centre)	2 Hely Street, Wyong	Statutory Instrument : List on a Local Environmental Plan (LEP) Recommended Management : Carry out interpretation, promotion and/or education
St Bamabas Church and Cemetery	1669 Yarramalong Road, Yarramalong	Statutory Instrument : List on a Local Environmental Plan (LEP) Statutory Instrument : Nominate for State Heritage Register (SHR) Recommended Management : Develop a Statement of Heritage Impact Recommended Management : Document and prepare an archival record
Brownlee Saw Mill	2 Brownlee Street, Ourimbah	Statutory Instrument : List on a Local Environmental Plan (LEP) Recommended Management : Carry out an Archaeological Assessment Recommended Management : Document and prepare an archival record Recommended Management : Carry out interpretation, promotion and/or education

Item	Location	Recommended Management
The Entrance Surf Club	44 Marine Parade, The Entrance	Statutory Instrument : List on a Local Environmental Plan (LEP) Recommended Management : Consult with owner and/or community Recommended Management : Prepare a maintenance schedule or guidelines
Alison Homestead	1 Cape Road, Wyong	Statutory Instrument : List on a Local Environmental Plan (LEP)
World War 1 and 2 Monument	Wyong Town Park, 10 Rankens Court, Wyong	Statutory Instrument : List on a Local Environmental Plan (LEP)
Dwelling (Wyong Historical Society)	12 Church Street, Wyong	Statutory Instrument : List on a Local Environmental Plan (LEP)Recommended Management : Consult with owner and/or community
Water Reservoir	61-65 Gilbert Street, Long Jetty	Statutory Instrument : List on a Local Environmental Plan (LEP) Recommended Management : Consult with owner and/or community Recommended Management : Develop a Statement of Heritage Impact
Woodbury's Inn Park	62 Yarramalong Road, Wyong Creek	Statutory Instrument : List on a Local Environmental Plan (LEP) Recommended Management : Notify Relevant organisations or agencies
Yarramalong Cemetery	1474 Yarramalong Road, Wyong Creek	Statutory Instrument : List on a Local Environmental Plan (LEP) Recommended Management : Notify Relevant organisations or agencies Recommended Management : Produce a Conservation Management Plan Recommended Management : Carry out an Archaeological Assessment
8 Norfolk Island Pines	Waterfront Plaza, The Entrance	Recommended Management : Consult with owner and/or community
Arthur Mollet Reserve	6 Rankens Court, Wyong	Recommended Management : No Action, follow existing management controls Recommended Management : Consult with owner and/or community
Day-care Centre (The Entrance Community Centre)	15 Battley Avenue, The Entrance	Recommended Management : Develop a Statement of Heritage Impact Recommended Management : Document and prepare an archival record
Wyong Memorial Hall	19 Margaret Street, Wyong	Recommended Management : Consult with owner and/or community Recommended Management : Prepare a maintenance schedule or guidelines

5.1 University of Newcastle Ourimbah Campus - Proposed Extension of Lease for Playing Fields Part Lot 1 DP 837937 Chittaway Road Ourimbah

TRIM REFERENCE: F2009/00893 - D02025084

AUTHOR: Paul Forster, Services Co-ordinator, Property
MANAGER: Lesley Crawley, Manager Governance and Administration

SUMMARY

Approval is sought to enter into a lease of part of Lot 1 DP 837937 Chittaway Road Ourimbah being part of the University of Newcastle Ourimbah Campus from the Minister for Education and Training for a period of 50 years at nominal rent.

RECOMMENDATION

- 1 That Council agree to lease from the Minister for Education and Training part of Lot 1 DP 837937 Chittaway Road Ourimbah, being part of the University of Newcastle Ourimbah Campus for a period of fifty (50) years at nominal rent for the purpose of community playing fields.***
- 2 That Council authorise the Mayor and General Manager, to execute all documents, including the affixation of the Council Seal (as required), relating to the lease between the Wyong Shire Council and the Minister for Education and Training.***

BACKGROUND

Council currently leases part of Lot 1 DP 837937 from the Minister for Education and Training.

The facility, located at Chittaway Road, Ourimbah, consists of soccer and rugby union playing fields, associated amenities and club houses and a neighbourhood centre. The amenities and club house associated with the soccer fields are in a poor state of repair and upkeep.

The sportsgrounds are used by the Ourimbah Rugby Club and Ourimbah University Soccer Club throughout the annual winter seasonal use period. Local primary schools also use the facilities occasionally. Over the years Council has considered these grounds to be important for providing sports facilities to the Ourimbah area.

The current lease expires in 2016.

Council has been in negotiations with University of Newcastle since 2004 to secure an extension of the current lease for playing fields.

The University administration had expressed concern about extending Council's lease due to a projected growth of programs offered by the University, the Community College and TAFE.

By 2020, the University expects the total student population to increase from the current 5,000 students to over 20,000 students, creating additional pressure for space and recreational facilities on the Ourimbah Campus site for the students.

5.1 University of Newcastle Ourimbah Campus - Proposed Extension of Lease for Playing Fields Part Lot 1 DP 837937 Chittaway Road Ourimbah (contd)

An intention to proceed with a fifty year lease has been WSC's objective for some time but previous business papers have been held back (Sept/Oct 2009) pending the outcome of RTA

The latest plans for the proposal by the NSW Roads and Traffic Authority to re-align Brownlee Street as part of the Pacific Highway upgrade indicates that future road work will be outside the area of the land leased by Council and on which will be the final location of the playing fields.

THE PROPOSAL

The University Administration has now agreed to grant WSC a new lease for a term of 50 years at nominal rent. The Department of Education and Training has provided an "in-principle" approval as the owner of the land.

Significant capital improvements are underway to the playing fields and facilities to bring them up to an acceptable standard. These works have been programmed to occur at this time of year to minimise their impact on the sporting seasons. Improvements are scheduled in the rolling works programme and include:

- upgrading the playing fields and floodlights;
- expansion of the junior soccer fields; and
- improvements to the oval drainage.

WSC has already completed the playing field upgrade and floodlights and the installation of the improved drainage is currently being undertaken. These works will improve the utilisation of the fields and the participation of the associated sporting clubs.

The provision of these important upgraded community facilities will involve a substantial commitment of Council funds and certainty of long term tenure of the site is essential to warrant and protect the capital investment.

Representations are expected from the sporting clubs to improve the current built facilities on the ovals in the future however Council is not in a position to consider such request without long-term tenure guarantees – as the proposed lease will provide. Improvements to the built facilities will in any event, be considered as part of Councils overall asset management plan and the precinct planning for this area.

OPTIONS

- 1 Accept a new lease from the Minister for Education and Training for a period of 50 years at nominal rent to secure the long term future of the soccer and rugby playing fields and enable infrastructure spending on improvements to the facility.
- 2 Council allow the current lease to expire in 2016 without the benefit of tenure after that and at that time hand to the university the management of the site thereby removing same from use by the community at large.

The capital improvement needs of the rugby and soccer clubs are pressing and the ongoing improvement will be important to facilitate the continued growth of participation in these field activities.

5.1 University of Newcastle Ourimbah Campus - Proposed Extension of Lease for Playing Fields Part Lot 1 DP 837937 Chittaway Road Ourimbah (contd)

The University playing fields play an important role in meeting the recreational needs of the local Ourimbah community. The geographical characteristics of the district and the subsequent limited availability of flat open space land which can be developed into playing fields place significant importance on the long term retention of the existing facilities.

Should the local sporting community be unable to access these playing fields it is unlikely Council will be able to provide alternative facilities.

STRATEGIC LINKS

Annual Plan

Contribution of Proposal to the Principal Activity

On the basis that the facility is proposed to provide recreation opportunities for youth and other residents of Wyong Shire, the proposal is likely to contribute to a more sustainable community.

Link to Shire Strategic Vision

Facilities and Services - Communities will have access to a diverse range of affordable and coordinated facilities, programs and services. The proposal will continue the provision of an effective local facility for the recreation, health and education of youth and other shire residents.

FINANCIAL IMPLICATIONS

This report relates to the lease only and there is no additional cost to Council of entering into the lease for a term of 50 years at nominal rent outside of the long-term commitment to operating expenditure. Ongoing operational expenditure paid by Council, is expected to remain at current levels \$25,000 - \$30,000 p.a. for the maintenance of the playing surface and surrounds.

The term of the lease will dictate the extent of Council's financial obligation to continue the maintenance and development of the sporting facilities over time. If Council wishes to invest in capital development of such facilities, then an adequate period of return must be a consideration.

CONSULTATION

Instructions provided by Manager Customer and Community Services. Negotiation with the University of Newcastle and Department of Education and Training.

GOVERNANCE

The Conveyancing Act 1919 applies in respect of leases. The Local Government Act 1993 enables Council to enter into a lease. Council currently leases playing fields located at Chittaway Road Ourimbah from the Minister for Education and Training.

Significant capital improvements are necessary to these playing fields and associated facilities to meet the growing needs of the local community.

Prior to committing public funds to these works, Council has proposed a 50 year extension to the current lease to ensure the long term tenure of the site by the community is assured. Plan showing the proposed lease area outlined in red.

5.1 University of Newcastle Ourimbah Campus - Proposed Extension of Lease for Playing Fields Part Lot 1 DP 837937 Chittaway Road Ourimbah (contd)

CONCLUSION

Council currently leases and operates the playing fields which are used for a considerable amount of community sports and recreation. Council's termination of the lease in 2016 would remove significant sports and recreation capacity for the local community.

Significant capital improvements are necessary to ensure the playing fields and associated facilities meet the growing needs of the local community.

Council needs the certainty of long term tenure before committing any further capital investment.



ATTACHMENTS

Nil.

6.1 Contract CPA/182955 - Supply and Delivery of Ready Mix Concrete

TRIM REFERENCE: CPA/182955 - D02413577

AUTHOR: John McCarthy, Co-ordinator Supply
MANAGER: Lesley Crawley, Manager Governance and Administration

SUMMARY

Evaluation and selection of tenders for Contract CPA/182955 – Supply and Delivery of Ready Mix Concrete.

RECOMMENDATION

- 1 That Council accept Tender No 1 from Boral Resources (Country) Pty Ltd as the preferred supplier of Ready Mix Concrete for a period of 36 months commencing on 1 December 2010.**
- 2 That Council accept Tender No. 5 from Hanson Construction Materials Pty Ltd as the second ranked supplier of Ready Mix Concrete for a period of 36 months commencing on 1 December 2010.**
- 3 That Council note the estimated annual expenditure against both contracts is \$525,000 excluding GST. Actual expenditure may vary with fluctuations in demand.**

BACKGROUND

Wyong Shire Council (WSC) consumes approximately 3,800 cubic metres of ready mix concrete on an annual basis. In total, Council orders over 800 deliveries of ready mix concrete per annum to various locations across the Shire for engineering works. Annual expenditure is in the vicinity of \$525,000 per annum. These costs include both products and associated haulage charges.

WSC's current contracts expire at the end of November 2010 and have run for three year duration. The current incumbent contractors are: Boral Resources (Country) Pty Ltd (Preferred), Hanson Construction Materials Pty Ltd (second ranked), Ritemix P/L trading as Coastwide Readymix Concrete P/L (third ranked) and Readymix Holdings Pty Ltd (fourth ranked)

Tenders were invited for the Supply and Delivery of Ready Mix Concrete for a period of up to a maximum of thirty-six (36) months. WSC's Conditions of Contract required fixed rates for the initial 12 month period of the contract allowing rates for years 2 & 3 to be varied in accordance with the Consumer Price Index (CPI) variation clause.

A contract period of thirty-six (36) months provides a risk-balance for Council and the contractor by way of the contractors' ability to amortise operating costs over an extended period. The benefit of this term efficiency is passed on to WSC in the form of more competitive rates.

The extended period of contract operation also enables further efficiencies to be developed over the course of the contract in improved trading relationships, communications lines and provisioning requirements.

The conditions of tendering set out Council's right to award the Contract to one or more tenderers and to obtain the materials from one or more sources of supply. Additionally, Council can rank tenders in order of price, quality, availability and conformance. This right has been enacted in the context of all recommendations.

Previous experience with the operation of contracts for the supply and delivery of ready mix concrete has shown that Council receives better value for money from suppliers when a formalised ranking system is in place.

CURRENT STATUS

Tenders

Tenders were publicly invited across eastern NSW by way of public invitation in mid-August 2010 closing 9 Sept. 2010. WSC required Schedule of Rates tenders, based on a detailed specification. Tenders received (see below) were evaluated by a panel of three staff members using standard threshold and weighted criteria.

Table #1 Tenders as Received

Tender No	Tender	Tendered Lump Sum * (Ex. GST).	Submission Status
1	Boral Resources (Country) Pty Ltd	Schedule of rates	On time
2	Holcim Australia Pty Ltd	Schedule of rates	On time
3	Hunter Coastwide Joint Venture Pty Ltd	Schedule of rates	On time
4	Redicrete Pty Ltd	Schedule of rates	On time
5	Hanson Construction Materials Pty Ltd	Schedule of rates	On time

*Line item pricing multiplied by estimated usage over 3 years

Assessment of Conformance

All tenderers were assessed against mandatory criteria and general conditions of tendering. A minor non conformance was identified with the tender from Redicrete Pty Ltd.

Redicrete Pty Ltd provided pricing based on zones from their batching plant as opposed to a rate/kilometre as requested in the tender documents. This departure was considered as minor by the tender assessment team and the offer was progressed to the weighted evaluation stage.

Pricing of Ready Mix Concrete

The pricing of ready mix concrete is subject to minimum load charges for quantities under three cubic metres and cartage rates relative to the suppliers batching plant.

6.1 Contract CPA/182955 - Supply and Delivery of Ready Mix Concrete (contd)

Due to the fact there is no one delivery point for Council’s concrete requirements, it is not possible to calculate an aggregated contract price per supplier. For the purpose of weighted evaluation scoring a price ranking has been applied against each supplier by assessing sample concrete prices for differing concrete types, load sizes and delivery distances.

Outside of price, it is in Council’s interest to contract to the suppliers with the most batching plants in the shire. The cost of ready mix concrete is calculated from the point of dispatch to the work site. The supplier with most centrally located batching plants is likely to provide the least cost option to Council. This criteria has been considered in the weighted evaluation scoring.

Weighted Evaluation

To establish the Preferred Offer, Tenders were scored against the weighted evaluation criteria incorporating Local Preference Policy application and are listed below in descending order of weighted evaluation.

Table #2 Weighted Evaluation and Post-Application of Local Preference

Tender No.	Tender	Tendered Lump Sum	Weighted Evaluation Score* Preferred Offer
1	Boral Resources (Country) Pty Ltd	Schedule of rates	91.4
5	Hanson Construction Materials Pty Ltd	Schedule of rates	88
4	Redicrete Pty Ltd	Schedule of rates	64
2	Holcim Australia Pty Ltd	Schedule of rates	61.8
3	Hunter Coastwide Joint Venture Pty Ltd	Schedule of rates	61.6

*Post application of Local Preference

Local Preference Policy

As all suppliers operate business premises on the central coast, they all equally benefited from the application of Council’s Local Preference Policy.

There was no change in the ranking order as a result of Council’s Local Preference Policy.

PROPOSAL

The Conditions of Tender allowed Council to accept and rank a panel of preferred suppliers, however analysis of Council’s previous usage of this product has indicated only two suppliers are required to meet all of Council’s requirements.

Given that Tenderer No.1 from Boral Resources (Country) Pty Ltd meets the requirements set by WSC, it is proposed that Council proceed to contract with Boral Resources (Country) Pty Ltd as the preferred supplier of ready mix concrete for a period of three years from when contract documents are executed.

Tender No.5 from Hanson Construction Materials Pty Ltd is the second ranked tenderer and meets the requirements set by WSC, it is proposed that Council proceed to contract with

6.1 Contract CPA/182955 - Supply and Delivery of Ready Mix Concrete (contd)

Hanson Construction Materials Pty Ltd as the second ranked supplier of ready mix concrete for a period of three years from when contract documents are executed.

Analysis of previous expenditure on ready mix concrete has indicated that the first ranked supplier can cater for approximately 94% of all Council requirements.

Annual expenditure on the supply and delivery of ready mix concrete is in the vicinity of \$525,000 ex GST however, these costs may vary depending on fluctuations in demand over the course of the contract.

Due Diligence

On the basis of the information provided by the tenderer, it is considered that Tender No. 1 from Boral Resources (Country) Pty Ltd and Tender No. 5 from Hanson Construction Materials Pty Ltd possess all of the technical, financial and managerial resources necessary to satisfactorily supply Council with ready mix concrete.

Both Boral Resources (Country) Pty Ltd and Hanson Construction Materials Pty Ltd have been long term suppliers of ready mix concrete to council. Contact with key construction and maintenance personnel have indicated a satisfactory performance standard from both suppliers.

Both companies have in place a fully documented Occupational Health Safety and Rehabilitation Management and Environmental Management systems.

Process Review

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

Contract Term

Existing contracts expire on the 30 November 2010. New contracts must be in placed for the commencement of December 2010.

APPROVALS

No approvals are required.

STRATEGIC LINKS

Contribution of Proposal to the Principal Activity

The products included in this contract will be used to undertake day to day Council operations and Council capital works projects. As such this contract will contribute to the achievement of programs and projects in each of Council's five Principal Activities. It is not possible to specifically link this contract to a specific Principal activity or Strategic Program as the contract products will be used on multiple projects and programs across Council for the term of the contract.

Shire Strategic Vision

The link to the SSV is related to the underlying principles of sustainability in terms of environmental, economic and social outcomes and fiscal responsibility in terms of transparency, good governance and value for money.

Financial Implications

Funding has previously been approved as a component of the Annual Plan within Roads and Drainage and Water and Waste various projects.

The contract is a standing-offer arrangement meaning purchases will be recorded against WSC responsibility centres as work demands and transactions are processed.

The estimated value of the arrangement is not a budget figure, but an indication of the scope of the purchase arrangement. Actual expenditure will depend on the quantities ordered as requirements arise over the life of the contract. The total amount ordered under this arrangement could therefore vary significantly if demand patterns alter for this product.

Principles of Sustainability

The material offered is the least cost option to Council and will be used to maintain shire roads. Both benefits address 2 of the 3 triple bottom line principals of sustainability (i.e. Economic - least cost option available to Council and Social benefits – a well maintained open space and recreational areas).

CONSULTATION

Consultation has occurred with Plant Pool, Roads and Drainage and Soil Laboratory staff to ensure the commodity offered is fit for purpose and addresses all Council technical and logistical requirements.

GOVERNANCE

The tender is above \$150,000 value and requires a Council resolution to proceed – in accordance with s.55 of the Act.

CORPORATE RISK

Risk Assessment is divided between those risks generally associated with contracting (generic) and those risk specific to the nature of the work to be done or material to be purchased.

Generic Risks

These risks and mitigation measures for this contract include:

- Contractor experiences financial difficulties or goes into liquidation, leading to non supply of materials. Mitigated through referee checks. Should Boral Resources (Country) Pty Ltd not be in a position to supply Council, the second rank supplier can be contacted.

6.1 Contract CPA/182955 - Supply and Delivery of Ready Mix Concrete (contd)

- 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.
- Disputes over the rights and obligations of each party to the contract. Mitigated through use of Australian Standards General Conditions of Contract, which include dispute resolution mechanisms.

Specific Risks

Significant risks that Council may encounter in relation to this contract:

- The quality of the product is sub-standard resulting in additional costs. Mitigated by demonstrated conformance that materials meet RTA specifications for ready mix concrete.
- The price of materials may increase significantly which will impact the Contractors price to Council for ongoing supply of ready mix concrete. The contract allows for the rise and fall in the price of materials to be passed on to Council.
- Quantities for work items under the contract are greater/lesser than pre-award estimates leading to variation claims by the contractor. Mitigated through tender conditions that stipulate requirements are an approximate quantity only and are not a commitment to buy.

Risk Materiality

Low - the above risks are considered to be unlikely or immaterial given the value of the contract and the nature of the work.

CONCLUSION

Tender No.1 from Boral Resources (Country) 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.

Tender No.5 from Hanson Construction Materials Pty Ltd is the second highest scoring tenderer and meets all of Council's requirements for this contract. This tender represents the second best value-for-money for Council.

It is recommended they both suppliers be contracted to Council in order of rank.

ATTACHMENTS

Nil.

6.2 Contract CPA/182958 - Supply and Delivery of Unbound and Modified Base and Sub Base for Surfaced Road Pavements

TRIM REFERENCE: CPA/182958 - D02421401

AUTHOR: John McCarthy, Co-ordinator Supply
MANAGER: Lesley Crawley, Manager Governance and Administration

SUMMARY

Evaluation and selection of tenders for Contract No CPA/182958 – Supply and Delivery of Unbound and Modified Base and Sub Base Materials for Surfaced Road Pavements.

RECOMMENDATION

- 1 That Council accept the tender from Hanson Construction Materials Pty Ltd at the tendered schedule of rates listed in attachment "A" for the supply and delivery of Unbound and Modified Base and Sub Base materials for a period of 36 months commencing from 1 December 2010.**
- 2 That Council notes annual expenditure against this contract is estimated at \$685,567 (excl GST). Actual expenditure may vary with fluctuations in demand.**
- 3 That Council accept the tender from Boral Resources (NSW) Pty Ltd at the tendered schedule of rates listed in attachment "A" for the supply and delivery of Unbound and Modified Base and Sub Base materials for a period of 36 months commencing from 1 December 2010.**
- 4 That Council notes annual expenditure against this contract is \$380,846 (excl. GST). Actual expenditure may vary with fluctuations in demand.**

BACKGROUND

Council uses approximately 47,000 tonnes of unbound and modified base and sub base materials for road construction and maintenance works per annum. Annual expenditure is in the vicinity of \$1.1 million ex gst. These costs include both product and associated haulage charges.

Council's current contracts expire at the end of November 2010 and have run for three years. The current incumbent contractors are: Boral Resources (NSW) Pty Ltd, Metromix Pty Ltd, Hanson Construction Materials Pty Ltd and Buttia Gravel Pty Ltd.

There is no state government, Local Government Procurement (LGP) or Hunter Council's Inc. period agreement in place for these items.

Tenders were invited for the Supply and Delivery of Unbound and Modified Bases and Sub Base Materials for Surfaced Road Pavements materials for a period of up to 36 months on a

6.2 Contract CPA/182958 - Supply and Delivery of Unbound and Modified Base and Sub Base for Surfaced Road Pavements (contd)

schedule of rates basis. The conditions of Contract required fixed rates for the initial 12 month period of the contract. Rates for each of the two subsequent 12 month periods may be varied in accordance with the Consumer Price Index (CPI) variation clause stipulated in the Conditions of Contract.

The contract period of 36 months provides a risk balance to both Council and the contractor(s) through the contractor(s)' ability to amortise operating costs over an extended period and pass onto Council those efficiencies via competitive rates. Additionally, the extended period of contract operation enables further efficiencies to be developed over the course of the contract in improved trading relationships, communications lines and provisioning requirements.

The conditions of tendering set out Council's right to award the Contract to one or more tenderers and to obtain the materials from one or more sources of supply. Additionally, tender conditions allow Council to rank suppliers in the instance where two or more products are directly comparable. Where products are not comparable, tender conditions allows Council to use the supplier who provides the most economical, compliant and suitable material as each situation demands. This right has been enacted in the context of all recommendations.

Tender Process

Tenders were invited by way of public invitation. Advertisements were placed in the Sydney Morning Herald on 17 August 2010 and the Central Coast Express Advocate on 18 August 2010. Tenders were also advertised on Council's e-Tender website. The advertised closing date was 9 September 2010.

The invitation documents called for schedule of rate tenders, based on a detailed specification.

Tenders closed at Council Chambers at 9 September 2010.

CURRENT STATUS

Tenders

Tenders were publicly invited across eastern NSW by way of public invitation in mid-August 2010 closing 9 Sept. 2010. WSC required Schedule of Rates tenders, based on a detailed specification. Tenders received (see below) were evaluated by a panel of three staff members using standard threshold and weighted criteria.

Assessment of Receipt

The following tenders were received.

Table #1 Tenders as Received

Tender No	Tender	Price Ex Gst	Status
1	Boral Resources (NSW) Pty Ltd	Schedule of rates	Submitted on time
2	H.B. Resources Pty Ltd	Schedule of rates	Submitted on time
3	John E Hogan Pty Ltd	Schedule of rates	Submitted on time
4	Buttai Gravel Pty Ltd	Schedule of rates	Submitted on time

6.2 Contract CPA/182958 - Supply and Delivery of Unbound and Modified Base and Sub Base for Surfaced Road Pavements (contd)

Tender No	Tender	Price Ex Gst	Status
5	Hanson Construction Materials Pty Ltd	Schedule of rates	Submitted on time

* See Assessment of Conformance below.

All tenders were progressed to the assessment of conformance.

Assessment of Conformance

All tenderers were assessed against mandatory criteria. A minor non conformance was identified with tenderer No. 1 from Boral Resources (NSW) Pty Ltd.

Tenderer No. 1 from Boral Resources (NSW) Pty Ltd included a departure indicating that annual CPI price provisions could not be sustained as the only price adjustment mechanism allowable under the contract. Boral Resources (NSW) Pty Ltd has offered an alternative price adjustment index referencing the Primary Producers Index (PPI). The PPI index operates in the same way as the CPI index but is more conducive to price movements specific to the transport industry. The tender evaluation panel considered the departure as minor, as it still provided a sound basis for future price adjustments and allowed Council to monitor the economic value of Boral's products over the course of the contract. The tender was therefore progressed through to the weighted evaluation stage of the tender assessment.

Tenderer No. 2 from H.B. Resources Pty Ltd only offered RTA compliant products but failed to provide a full set of RTA test results as required in the tender documents. Council's Soil Laboratory has previously tested samples of sub base offered by H.B. Resources Pty Ltd and found them not compliant to the RTA specification 3051. The tender was therefore considered non conforming and was not progressed to the weighted evaluation stage.

Tenderer No. 3 from John E Hogan Pty Ltd included a departure claiming CPI price provisions could not be sustained and wished to negotiate rates on an annual basis. This alternative is unacceptable as it provides no certainty of price control for Council over the period of the contract.

John E Hogan Pty Ltd is a transport company offering sub base acquired from Boral Resources' (NSW) quarry at Peats Ridge. Analysis of pricing offered indicates that rates offered are more expensive than those offered directly by Boral Resources (NSW) Pty Ltd.

In the absence of having an acceptable price variation mechanism and no commercial advantage to Council in securing supply, as product can be acquired directly from Boral, the tender was considered both non conforming (no price adjustment mechanism) and did not provided any commercial advantage to council. As such the tender was not progressed to weighted evaluation.

All other offers conformed to mandatory criteria and progressed to the weighted evaluation stage of the tender assessment.

Weighted Evaluation

Weighted evaluation scoring has been conducted without factoring the price component usually attributed to tender evaluations. The reason for this is base and sub base materials

6.2 Contract CPA/182958 - Supply and Delivery of Unbound and Modified Base and Sub Base for Surfaced Road Pavements (contd)

are delivered direct to site, so it is not possible to calculate the aggregated value of supply per supplier, as the delivery point is not known.

In addition, the condition of tender requested suppliers to provide all materials that are compliant to the RTA specification 3051 as well as any materials available for road building purposes. The lists of materials available for road building purposes varies from supplier to supplier and are not comparable, for instance Hanson Construction Materials Pty Ltd offered 25 types of road construction materials where as Boral Resources (NSW) Pty Ltd offered 8.

For weighted evaluation scoring purposes all conforming offers were ranked equal on price criteria. A detailed price comparison will occur after weighted evaluation scoring.

Evaluation scoring was conducted in two stages i.e.:

1. Prior to application of Council’s Local Preference Policy to establish the **Most Competitive Offer**, and;
2. Following application of the Local Preference Policy for the assessment of Local Content to establish the **Preferred Offer**.

1 - Scoring - Pre-Application of the Local Preference Policy

To establish the **Most Competitive Offer**, Tenders were firstly scored against the weighted evaluation criteria (other than Local Content and Price), and are listed below in descending order of weighted evaluation.

Table 2# Weighted Evaluation Score Pre Application of Local Preference Policy

Tender No.	Tender	Price (Ex. GST)	Weighted Evaluation Score* Most Competitive Offer
1	Boral Resources (NSW) Pty Ltd	Schedule of rates	90
5	Hanson Construction Materials Pty Ltd	Schedule of rates	86.5
4	Buttai Gravel Pty Ltd	Schedule of rates	80

*Pre application of Local Preference, note all offers rated equally on price

2 – Scoring Post Application of Local Preference Policy

Tenders were then assessed for Local Content in accordance with Council’s Local Preference Policy to identify the **Preferred Offer**.

The application of the Local Preference Policy to this tender imposed the following criteria in relation to the financial impact in considering a Preferred Offer:

(Refer to clause E.7 of policy)

Table 3# Local Preference Policy Limits

Policy Criteria	Criteria Applied to Tender Assessment
Category of Contract	Goods
Method to Determine Financial Impact Limitations	0.5% above the price component of the most Competitive Offer, up to a maximum of \$20,000
Price Component of Most Competitive Offer	\$1,800,000- value of Most Competitive Offer (assumed maximum estimated value allocated to any preferred supplier)
Financial Impact Limitation To Be Applied to Preferred Offer	\$9,000

The following summarises scoring for the assessed value of Local Content. Tenders are listed in descending order of **Preferred Offers** following assessment. For the purposes of assessing local content, the assumed median spend per tenderer was used.

Table 4# Weighted Evaluation Score Post Application of Local Preference Policy

Tender No	Tender	Value*	Weighted Evaluation Score Preferred Offer
1	Boral Resources (NSW) Pty Ltd	\$1,650,000	100
5	Hanson Construction Materials Pty Ltd	\$1,650,000	96.5
4	Buttai Gravel Pty Ltd	\$0	80

*Value of Assessed Local Content (Estimated value over 3 years Ex. GST)

Following assessment of Local Content, there was no change to the order of ranking for tenders. All offers were progressed to the due diligence stage of the evaluation.

The Proposal

In order for Council to obtain the maximum value from these tender, contracts may be awarded at line item level where Council believes the products offered are directly comparable. The scoring above does not reflect price and is a ranking order based on non price criteria and WSC Local Preference provisions.

Attachment "A" summarises line item pricing and highlights the least cost option for Council per line item.

The two highest ranked tenderers tendered the cheapest line item pricing to Council.

6.2 Contract CPA/182958 - Supply and Delivery of Unbound and Modified Base and Sub Base for Surfaced Road Pavements (contd)

It is therefore recommended that the tenders from Boral Resources (NSW) Pty Ltd and Hanson Construction Materials Pty Ltd be accepted and orders allocated according to the supplier who can provide the least cost option to Council as per attachment "A".

Both suppliers operate quarries on the Central Coast and have equally benefited from Council's Local Preference Policy.

Due Diligence

On the basis of the information provided by the tenderers, and independent referees, it is considered that Tender No. 1 from Boral Resources (NSW) Pty Ltd and Tenderer No. 5 from Hanson Construction Materials Pty Ltd possess all of the technical, financial and managerial resources necessary to satisfactorily supply Council with unmodified base and sub base products.

Tender No. 1 from Boral Resources (NSW) Pty Ltd operates out of Peats Ridge and Tender No. 5 from Hanson Construction Materials Pty Ltd operates out of Kulnurra on the Central Coast. Both suppliers have been long term suppliers of various bulk materials to Council over many years.

Both companies have in place fully documented Occupational Health Safety and Rehabilitation Management and Environmental Management systems.

PROCESS REVIEW

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

RISK ASSESSMENT

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 non supply of materials. Mitigated through referee checks. Should one supplier not be in a position to supply other suppliers can be commissioned.
- 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.

6.2 Contract CPA/182958 - Supply and Delivery of Unbound and Modified Base and Sub Base for Surfaced Road Pavements (contd)

- 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 product is sub-standard resulting in additional costs. Mitigated by demonstrated conformance that materials meet RTA specifications for unmodified base & sub base products.
- The price of materials may increase significantly which will impact the Contractors price to Council for ongoing supply of unmodified base & sub base. The contract allows for the rise and fall in the price of materials to be passed on to Council.
- Quantities for work items under the contract are greater/lesser than pre-award estimates leading to variation claims by the contractor. Mitigated through tender conditions that stipulate requirements are an approximate quantity only and are not a commitment to buy.

Risk Contingency

The above risks are considered to be Low for this contract given the value of the contract and the nature of the work.

BUDGET

As the contract is of the nature of a standing offer arrangement, purchases will be funded from responsibility centres as transactions are processed, rather than from an allocation made to this contract itself. The estimated value of the arrangement is therefore not a budget figure, but rather it is simply an indication of the overall scope of the arrangement. Although the estimated value of the arrangement is \$1,066,416 per annum, the actual value will depend on the quantities ordered as requirements arise over the life of the arrangement. The total amount ordered under this arrangement could therefore vary significantly if demand patterns alter for these products.

TIME-FRAME

Existing contracts expire on the 30 November 2010. New contract must be in place for the commencement of December 2010.

APPROVALS

No approvals are required.

CONCLUSION

Tender No. 1 from Boral Resources (NSW) Pty Ltd and tender No. 5 from Hanson Construction Materials Pty Ltd are the two highest scoring conforming tenderers and meet all of Council's requirements for this contract. On balance, they represent the best value-for-money to Council. It is recommended that both tenderers be accepted for the line items specified in attachment "A".

ATTACHMENTS

- 1 Confidential Attachment A - Price Comparison (Distributed under separate Enclosure cover D02420902)

6.3 Contract CPA/182963 - Supply and Delivery of General Bulk Garden Materials

TRIM REFERENCE: CPA/182963 - D02411559

AUTHOR: John McCarthy, Co-ordinator Supply
MANAGER: Lesley Crawley, Manager Governance and Administration

SUMMARY

Evaluation and selection of tenders for Contract CPA/182963 – Supply and Delivery of General Bulk Garden Materials.

RECOMMENDATION

- 1 That Council decline to accept all tenders for the supply and delivery of Hardwood Chip and Hardwood Fines (Category 1 and 2), in accordance with the Local Government (General) Regulation 2005 Clause 178 (1) (b).**
- 2 That Council cancel the proposal for the contract for the supply and delivery of Hardwood Chip and Hardwood Fines (Category 1 and 2), in accordance with the Local Government (General) Regulation 2005 Clause 178 (3) (a).**
- 3 That Council accept the tender from Australian Native Landscape Pty Ltd for the supply and delivery of Soft fall for a period of three years (Category 3).**
- 4 That Council note annual expenditure against this contract is \$39,432- excluding GST. Actual expenditure may vary with fluctuations in demand.**
- 5 That Council accept the tender from Australian Native Landscape Pty Ltd for the supply and delivery of Organic Garden Mix for a period of three years (Category 4).**
- 6 That Council notes annual expenditure against this contract is \$7,662- excluding GST. Actual expenditure may vary with fluctuations in demand.**
- 7 That Council accept the tender from Riverbend Quarry Pty Ltd for the supply and delivery of Course Washed River Sand for a period of three years (Category 5).**
- 8 That Council notes annual expenditure against this contract is \$6,400- excluding GST. Actual expenditure may vary with fluctuations in demand.**

BACKGROUND

WSC uses approximately 2,340 cubic metres of Hardwood Chip, 672 cubic metres of Hardwood Fines, 715 cubic metres of Soft fall, 218 cubic metres of Organic Garden Mix and 200 tonnes of Course Washed River Sand on an annual basis. The materials are predominantly used for various parks and gardens, play grounds and road construction and maintenance activities.

6.3 Contract CPA/182963 - Supply and Delivery of General Bulk Garden Materials (contd)

All materials are stocked at WSC stores and are distributed on an as required basis.

There are no incumbent contractors in place as the materials are acquired by WSC by calling quotations on a periodical basis.

Tenders were invited for the supply and delivery of general bulk materials for the first time for a period of up to a maximum of thirty-six (36) months. WSC's Conditions of Contract required fixed rates for the initial 12 month period of the contract allowing rates for years 2 & 3 to be varied in accordance with the Consumer Price Index (CPI) variation clause.

A contract period of thirty-six (36) months provides a risk-balance for Council and the contractor by way of the contractors' ability to amortise operating costs over an extended period. The benefit of this term efficiency is passed on to WSC in the form of more competitive rates.

The extended period of contract operation also enables further efficiencies to be developed over the course of the contract in improved trading relationships, communications lines and provisioning requirements.

CURRENT STATUS

Tenders

Tenders were publicly invited across eastern NSW by way of public invitation in mid-August 2010 closing 9 September 2010. WSC required Schedule of Rates tenders, based on a detailed specification. Tenders received (see below) were evaluated by a panel of three staff members using standard threshold and weighted criteria. Tenderes were divided in the following five categories.

Table #1 Tenders as Received Category 1 – Hardwood Chip

Tender No	Tender	Tendered Lump Sum* (Ex. GST).	Status
2	Australian Native Landscape Pty Ltd	\$232,713	Submitted on time
3	Oz Landscape Supplies	\$274,236	Submitted on time
NA	Vinci Bros Pty Ltd T/as Alexander Mulch & Soils Pty Ltd	\$168,480	Late – by 3 weeks

*Line item pricing multiplied by estimated usage over 3 years

The tender from Vinci Bros Pty Ltd T/as Alexander Mulch & Soils Pty Ltd arrived 3 weeks late and cannot be accepted.

6.3 Contract CPA/182963 - Supply and Delivery of General Bulk Garden Materials (contd)

Table #1 Tenders as Received Category 2 – Hardwood Fines

Tender No	Tender	Tendered Lump Sum* (Ex. GST).	Status
2	Australian Native Landscape Pty Ltd	\$70,860-	Submitted on time
3	Oz Landscape Supplies	\$78,853-	Submitted on time
NA	Vinci Bros Pty Ltd T/as Alexander Mulch & Soils Pty Ltd	\$48,384-	Late – by 3 weeks

*Line item pricing multiplied by estimated usage over 3 years

The tender from Vinci Bros Pty Ltd T/as Alexander Mulch & Soils Pty Ltd arrived 3 weeks late and cannot be accepted.

Table #1 Tenders as Received Category 3 – Soft fall

Tender No	Tender	Tendered Lump Sum (Ex. GST)	Status
2	Australian Native Landscape Pty Ltd	\$118,296	Submitted on time
3	Oz Landscape Supplies	\$136,818	Submitted on time

*Line item pricing multiplied by estimated usage over 3 years

Table #1 Tenders as Received Category 4 – Organic Garden Mix

Tender No	Tender	Tendered Lump Sum (Ex. GST)	Status
1	Riverbend Quarry Pty Ltd	\$29,430	Submitted on time
2	Australian Native Landscape Pty Ltd	\$22,986	Submitted on time
3	Oz Landscape Supplies	\$25,548	Submitted on time

*Line item pricing multiplied by estimated usage over 3 years

Table #1 Tenders as Received Category 5 – Course Washed River Sand

Tender No	Tender	Tendered Lump Sum (Ex. GST)	Status
1	Riverbend Quarry Pty Ltd	\$19,200-	Submitted on time
2	Australian Native Landscape Pty Ltd	\$29,070-	Submitted on time
3	Oz Landscape Supplies	\$22,767-	Submitted on time

*Line item pricing multiplied by estimated usage over 3 years

6.3 Contract CPA/182963 - Supply and Delivery of General Bulk Garden Materials (contd)

Assessment of Conformance

All tenderers were assessed against mandatory criteria and the general conditions of tender.

The result for tenders received for Hardwood Chip and Hardwood Fines (category 1 and 2) do not represent value for money to WSC.

WSC currently procures Hardwood Chip and Hardwood Fines on a quotation basis from Vinci Bros Pty Ltd T/as Alexander Mulch & Soils Pty Ltd.

The rates offered by the conforming tenderers are cost prohibitive to Council and if accepted, would result in WSC paying \$64K more for Hardwood Chip and \$22K more for Hardwood Fines over the next three years. This represents a 35% increase relative to current pricing.

Vinci Bros Pty Ltd T/as Alexander Mulch & Soils Pty Ltd have indicated they did not complete the tender documents in time but wished to continue to supply Council with Hardwood Chip and Hardwood Fines at the rate offered in their late tender.

Given there is no economical advantage in Council accepting any offer, it is recommended that Council decline all offers for category 1 and category 2 products.

Council will continue to source Hardwood Chip and Hardwood Fines by calling an annual quotation for these products.

Weighted Evaluation

Evaluation scoring was conducted in two stages i.e.:

- 1 Determining the Most Competitive Offer **prior** to application of Council’s Local Preference Policy, and;
- 2 Determining the Preferred Offer **after** application of the Local Preference Policy for the assessment of Local Content.

SCORING CATEGORY 3 – SOFT FALL

Pre-Application of the Local Preference Policy

To establish the Most Competitive Offer, Tenders were firstly scored against the weighted evaluation criteria (other than Local Content), and are listed below in descending order of weighted evaluation.

Table #1 Pre application of Local Preference (Soft Fall)

Tender No.	Tender	Tendered Lump Sum (Ex. GST)	Weighted Evaluation Score# Most Competitive Offer
2	Australian Native Landscape Pty Ltd	\$118,296	85
3	Oz Landscape Supplies Pty Ltd	\$136,818	77

*Line item pricing multiplied by estimated usage over 3 years

#Pre application of Local Preference

6.3 Contract CPA/182963 - Supply and Delivery of General Bulk Garden Materials (contd)

Post Application of Local Preference Policy

Tenders were then assessed for Local Content in accordance with Council's Local Preference Policy to identify the **Preferred Offer**.

The application of the Local Preference Policy to this tender imposed the following criteria in relation to the financial impact in considering a Preferred Offer:

(Refer to clause E.7 of policy)

Table #2 Local Preference Financial Limits

Policy Criteria	Criteria Applied to Tender Assessment
Category of Contract	Goods
Method to Determine Financial Impact Limitations	1.5% or \$2,250 above the price component of the Most Competitive Offer, whichever is the lower.
Price Component of Most Competitive Offer	\$118,296 value of Most Competitive Offer
Financial Impact Limitation To Be Applied to Preferred Offer	\$1,774

The following summarises scoring for the assessed value of Local Content. Tenders are listed in descending order of **Preferred Offers** following assessment.

Table #3 Post-Application of Local Preference (Soft Fall)

Tender No	Tender	Tendered Lump Sum* (Ex. GST)	Value of Assessed Local Content (Ex. GST)	Weighted Evaluation Score# Preferred Offer
2	Australian Native Landscape Pty Ltd	\$118,296	\$118,296	95
3	Oz Landscape Supplies Pty Ltd	\$136,818	\$0	77

*Contract estimated usage multiplied by price per tonne delivered into Wyong

#Post application of Local Preference

Following assessment of Local Content, there was no change in the ranking of suppliers. The tender from Australian Native Landscape Pty Ltd which is based on the Central Coast, is the highest ranked tender and was progressed to the Due Diligence stage of the tender evaluation.

SCORING CATEGORY 4 – ORGANIC GARDEN MIX

Pre-Application of the Local Preference Policy

To establish the Most Competitive Offer, Tenders were firstly scored against the weighted evaluation criteria (other than Local Content), and are listed below in descending order of weighted evaluation.

Table #1 Pre application of Local Preference (Organic Garden Mix)

Tender No	Tender	Tender Lump Sum (Ex. GST)	Weighted Evaluation Score# Most competitive Offer
2	Australian Native Landscape Pty Ltd	\$22,986	85
3	Oz Landscape Supplies Pty Ltd	\$25,548	80.2
1	Riverbend Quarry Pty Ltd	\$29,430	64.4

*Tendered price multiplied by estimated usage over 3 years.

#Pre application of Local Preference

Post Application of Local Preference Policy

Tenders were then assessed for Local Content in accordance with Council’s Local Preference Policy to identify the **Preferred Offer**.

The application of the Local Preference Policy to this tender imposed the following criteria in relation to the financial impact in considering a Preferred Offer:

(Refer to clause E.7 of policy)

Table #2 Local Preference Financial Limits

Policy Criteria	Criteria Applied to Tender Assessment
Category of Contract	Goods
Method to Determine Financial Impact Limitations	2% or \$1,000 above the price component of the Most Competitive Offer, whichever is the lower.
Price Component of Most Competitive Offer	\$22,986 value of Most Competitive Offer
Financial Impact Limitation To Be Applied to Preferred Offer	\$459.72

The following summarises scoring for the assessed value of Local Content. Tenders are listed in descending order of **Preferred Offers** following assessment.

Table #3 Post-Application of Local Preference (Organic Garden Mix)

Tender No	Tender	Tendered Lump Sum (Ex. GST)	Value of Assessed Local Content (Ex. GST)	Weighted Evaluation Score# Preferred Offer
2	Australian Native Landscape Pty Ltd	\$22,986	\$22,986	95
3	Oz Landscape Supplies Pty Ltd	\$25,548	\$0	80.2
1	Riverbend Quarry Pty Ltd	\$29,430	\$0	64.4

*Contract estimated usage multiplied by price per tonne delivered into Wyong
#Post application of Local Preference

Following assessment of Local Content, there was no change in the ranking of suppliers. The tender from Australian Native Landscape Pty Ltd is the highest ranked tender and was progressed to the Due Diligence stage of the tender evaluation.

SCORING CATEGORY 5 – COURSE WASHED RIVER SAND

Pre-Application of the Local Preference Policy

To establish the Most Competitive Offer, Tenders were firstly scored against the weighted evaluation criteria (other than Local Content), and are listed below in descending order of weighted evaluation.

Table #1 Pre application of Local Preference (Course Washed River Sand)

Tender No.	Tender	Tendered Lump Sum* (Ex. GST)	Weighted Evaluation Score Most Competitive Offer
1	Riverbend Quarry Pty Ltd	\$19,200	84
3	Oz Landscape Supplies Pty Ltd	\$22,767	75
2	Australian Native Landscape Pty Ltd	\$25,548	49

*Tendered price multiplied by estimated usage over 3 years.

Post Application of Local Preference Policy

The WSC Local Preference Policy applies to goods and services above 20K. As the lowest offer is below 20K, the proposal does not require assessment under the Local Preference Policy. The tender from Riverbend Quarry Pty Ltd is the highest ranked tender and was progressed to the Due Diligence stage of the tender evaluation.

PROPOSAL

Categories 1 and 2

In accordance with Clause 178 (1) (b) of the Local Government (General) Regulation 2005 a Council can accept or reject a tender. Given there is no economical advantage in Council accepting any offer for category 1 and 2 products and it is recommended that Council decline to accept any of the tenders. In accordance with Clause 178 (3) (a) it is recommended that Council cancel the contract. Instead WSC will continue to source Hardwood Chip and Hardwood Fines by calling an annual quotation for these products.

Categories 3, 4 and 5

Tenderer No. 3 from Australian Native Landscape Pty Ltd and Tenderer No. 1 from Riverbend Quarries Pty Ltd meets the requirements set by WSC for categories 3, 4 and 5 products, it is proposed that Council proceed to contract with Australian Native Landscape Pty Ltd for category 3 and 4 products and with Riverbend Quarries Pty Ltd for category 5 products for a period of three years from when contract documents are executed.

Annual expenditure on the supply and delivery of general bulk garden materials is:

- Category 1 – Hardwood Chip is in the vicinity of \$56,160 ex GST
- Category 2 – Hardwood Fines is in the vicinity of \$16,128 ex GST
- Category 3 – Soft fall is in the vicinity of \$39,432 ex GST
- Category 4 – Organic Garden Mix is in the vicinity of \$7,632 ex GST and
- Category 5 – Course Washed River Sand is in the vicinity of \$6,400 ex GST

However, these costs may vary depending on fluctuations in demand over the course of the contract.

Due Diligence

On the basis of the information provided by the tenderers, and independent referees, it is considered that Tender No. 3 from Australian Native Landscape Pty Ltd and Tenderer No. 1 from Riverbend Quarries Pty Ltd possess all of the technical, financial and managerial resources necessary to satisfactorily supply Council with top soil.

Both companies have in place a fully documented Occupational Health Safety and Rehabilitation Management and Environmental Management systems.

Process Review

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

Contract Term

Existing contracts expire on the 30 November 2010. New contract must be in placed for the commencement of December 2010.

APPROVALS

No approvals are required.

STRATEGIC LINKS**Contribution of Proposal to the Principal Activity**

The products included in this contract will be used to undertake day to day Council operations and Council capital works projects. As such this contract will contribute to the achievement of programs and projects in each of Council's five Principal Activities. It is not possible to specifically link this contract to a specific Principal activity or Strategic Program as the contract products will be used on multiple projects and programs across Council for the term of the contract.

Shire Strategic Vision

The link to the SSV is related to the underlying principles of sustainability in terms of environmental, economic and social outcomes and fiscal responsibility in terms of transparency, good governance and value for money.

Financial Implications

Funding has previously been approved as a component of the Annual Plan within Roads and Drainage and Customer and Community various projects.

The contract is a standing-offer arrangement meaning purchases will be recorded against WSC responsibility centres as work demands and transactions are processed.

The estimated value of the arrangement is not a budget figure, but an indication of the scope of the purchase arrangement. Actual expenditure will depend on the quantities ordered as requirements arise over the life of the contract. The total amount ordered under this arrangement could therefore vary significantly if demand patterns alter for this product.

Principles of Sustainability

The material offered is the least cost option to Council and will be used to maintain shire roads. Both benefits address 2 of the 3 triple bottom line principals of sustainability (i.e. Economic - least cost option available to Council and Social benefits – a well maintained open space and recreational areas).

CONSULTATION

Consultation has occurred with Plant Pool, Open Space & Recreation and Soil Laboratory staff to ensure the commodity offered is fit for purpose and addresses all Council technical and logistical requirements.

GOVERNANCE

In accordance with the Local Government (General) Regulation 2005 Clause 178 (1) (b) a Council can accept or reject a tender.

Further Clause 178 (3) requires that if Council rejects a tender it must do one of the following by resolution:

- (a) postpone or cancel the proposal for the contract,
- (b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,
- (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,

6.3 Contract CPA/182963 - Supply and Delivery of General Bulk Garden Materials (contd)

- (d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,
- (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,
- (f) carry out the requirements of the proposed contract itself.

In this instance, option "a", cancellation of the contract, is recommended.

CORPORATE RISK

Risk Assessment

Contracting work inherently contains generic risks found in most contracting situations. Specific risks related to individual contracts lead to variations in the work which may generate increased costs.

Generic Risks

These risks and mitigation measures for this contract include:

- Contractor experiences financial difficulties or goes into liquidation, leading to non supply of materials. Mitigated through referee checks. Should either company not be in a position to supply Council, other suppliers can be contracted.
- 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

Significant risks that Council may encounter in relation to this contract:

- The quality of the product is sub-standard resulting in additional costs. Mitigated by inspecting samples of product prior to acceptance.
- The price of materials may increase significantly which will impact the Contractors price to Council for ongoing supply of garden materials. The contract allows for the rise and fall in the price of materials to be passed on to Council.
- Quantities for work items under the contract are greater/lesser than pre-award estimates leading to variation claims by the contractor. Mitigated through tender conditions that stipulate requirements are an approximate quantity only and are not a commitment to buy.

Risk Materiality

Low - the above risks are considered to be unlikely or immaterial given the value of the contract and the nature of the work.

CONCLUSION

It is recommended that Council not accept any offers for category 1 and 2 products.

Tender No. 3 from Australian Native Landscape Pty Ltd and Tenderer No. 1 from Riverbend Quarries Pty Ltd are the highest scoring tenderers for their respective category. They meet all of Council's requirements for this contract. On balance, both tenders represent the best value-for-money for Council. It is recommended that both tenders are accepted.

ATTACHMENTS

Nil.

7.1 Annual Report 2009-10

TRIM REFERENCE: F2010/01510 - D02376817

AUTHOR: Melissa McKee, Corporate Planning Executive, General Manager's Unit
MANAGER: Bronwyn Rumbel, Manager Economic and Corporate Planning, General Manager's Unit

SUMMARY

Presentation of Council's 2009-10 Annual Report, incorporating 2009-10 Financial Reports, 2009-10 Management Plan and 2009-10 State of the Shire Report.

RECOMMENDATION

- 1 That Council adopt the 2009-10 Annual Report (including enclosures).**
- 2 That Council post a copy of the 2009-10 Annual Report (including enclosures) on Council's website.**
- 3 That Council advise the Minister for Local Government of Council's URL link to access the report.**

BACKGROUND

Section 428 of the Local Government Act 1993 requires councils within five months after the end of each year (by 30 November), to prepare an annual report. The report must contain a copy of Council's audited financial reports, achievements with respect to the objectives and performance targets set out in its Management Plan for that year, a report as to the State of the Environment (Council's State of the Shire Report) and other information as prescribed by the Act and Regulations.

A checklist of required information is included at the beginning of the Annual Report, indicating each separate requirement for the Annual Report under the legislation.

Council's Annual Report is enclosed. It incorporates Council's 2009-10:

- Financial Reports
- Management Plan
- State of the Shire Report

Council's 2009-10 Financial Reports and Management Plan have previously been reported and adopted by Council.

In accordance with the legislation, a copy of Council's 2009 -10 Annual Report and enclosures will be posted on Council's website and the Local Government Minister advised of the appropriate URL link to access the report on Council's website after adoption by Council.

State of the Shire Report

The State of the Shire (SoS) report is part of the feedback loop to assess whether our community is moving towards its 20-year vision, as outlined in the Shire Strategic Vision adopted in September 2009. It is one of the corporate reporting responsibilities of NSW council's under the Local Government Act 1993. It is intended to provide the community with a report as to what condition the environment is in, how it got that way and what is being done to address the issues. Historically the legislation has required that the SoS report:

- Address the environmental sectors of land, air, water, biodiversity, waste and heritage;
- Provide, as a basis of comparison in subsequent reports, a statement outlining the condition of each environmental sector at the date of the report and make the relevant comparison with the equivalent statement in the last SoS report;
- Report on all major environmental effects and related activities, including management plans relating to the environment; special Council projects relating to the environment; and the environmental effects of Council's activities.

Under amendments in October 2009, future State of the Environment reports are to be integrated with a new Community Strategic Reporting framework. However this report which reflects the financial year of 2009-10, retains the more prescriptive structure of the previous reporting requirements and should be viewed as a transitional document. The report builds upon the data reported in the previous years and each chapter has been generally constructed around the accepted standard of reporting known as the State-Pressure-Response model used by both Federal and State Governments in their respective State of Environment reports.

The report is presented in four main chapters representing the quadruple bottom line (and the new organisation structure) of:

- People;
- Assets;
- Environment; and
- Governance.

The report includes an assessment of the current state and predicted future trend for each environmental sector.

The report is also widely used as a source of valuable reference material by universities, schools, precinct committees, environmental groups and interested members of the community.

THE PROPOSAL

This report seeks approval for the adoption of Council's 2009 -10 Annual Report.

OPTIONS

Option 1

Adopt the 2009-10 Annual Report, including enclosures.

Option 2

Amend or modify the 2009-10 Annual Report, including enclosures.

STRATEGIC LINKS

Annual Plan

Contribution of Proposal to the Principal Activity

The Annual Report is a reporting mechanism and as such does not directly contribute to a Principal Activity. Council's 2009-10 Management Plan is included as an enclosure to Council's 2009 -10 Annual Report. The Management Plan describes the context in which Council operates and provides an overview of Council's five principal activities.

Link to Shire Strategic Vision

The State of the Shire report monitors progress and highlights those areas that are moving towards or away from the community's Shire Strategic Vision.

Financial Implications

The Annual Report contains the audited financial details of income and expenditure over the past 12 months.

Principles of Sustainability

This State of the Shire Report outlines the main changes and trends that have occurred over the past year. While some improvements have been made, there is always more that can be done to improve the Shire's quality of life and, in turn, be more sustainable. It is about doing the best we can with the resources we have. Often it is the small steps that make a difference and form a key part of the journey towards long-term sustainability. This State of the Shire Report forms part of that journey showing where we are at present.

CONSULTATION

All departments were involved in the preparation of this report.

GOVERNANCE

Council is required to prepare and adopt an Annual Report in accordance with relevant legislation.

CORPORATE RISKS

Nil impact.

CONCLUSION

The 2009-10 Annual Report has been developed to provide staff, Councillors and the community with a summary of the works completed by Council during the year. The report has been formulated to comply with Section 428 of the Local Government Act 1993 and it provides an insight into Council's operations and decision making processes.

ATTACHMENTS

- | | | |
|---|--|-----------|
| 1 | Annual Report 2009-10 (distributed under separate cover) | Enclosure |
| 2 | State of the Shire Report 2009-10 (distributed under separate cover) | Enclosure |