



As part of the Estuary Management Plan, Council is improving foreshore recreation areas around the Tuggerah Lakes for the community and visitors. Council recently completed a \$180,000 upgrade of McKenzie Reserve, on the foreshore of Lake Munmorah in Budgewoi. Pictured are Council staff installing the climbing net and soft fall in the playground.

# Business Paper

## ORDINARY COUNCIL MEETING

23 November 2011



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# MEETING NOTICE

The **ORDINARY COUNCIL MEETING**  
of **Wyong Shire Council**  
will be held in the **Council Chamber,**  
**Wyong Civic Centre, Hely Street, Wyong** on  
**WEDNESDAY 23 NOVEMBER 2011** at **5.00 pm,**  
for the transaction of the business listed below:

## OPENING PRAYER

## ACKNOWLEDGEMENT OF COUNTRY

## RECEIPT OF APOLOGIES

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**10 QUESTIONS ON 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 Disclosures of Interest

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TRIM REFERENCE: F2011/00027 - D02830880

AUTHOR: AUTHOR: Monica Redmond; Administration Assistant

MANAGER: Lesley Crawley; Manager Corporate Governance

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

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

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

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

### RECOMMENDATION

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

## 1.2 Proposed Inspections and Briefings

TRIM REFERENCE: F2011/00027 - D02830897

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Monica Redmond; Administration Assistant

### SUMMARY

There are no inspections listed for 7 December 2011.

Briefings proposed for this meeting to be held in the Wilfred Barrett and Tim Farrell Committee Rooms.

Date	Briefing	Description	Time	Presented by
23 November 2011	The Gosford Landing	The Central Coast Regional Development Corporation is the State Government's lead agency for developing government land on the Central Coast. The Briefing scheduled for the 23 November 2011, discusses the masterplan for 'The Landing at Gosford'. This is catalyst project for the revitalisation of Gosford CBD. The briefing will cover the key components of the masterplan and provide WSC Councillors with the opportunity to ask questions concerning the plan.	12.00 (noon) – 12.30pm	General Manager, Chairman and Board Member of CCRD  Chairman of The Landing at Gosford Project Control Group
23 November 2011	Review of Grants	To discuss key findings of Grants Review	12.30 pm – 1.00 pm	Manager Community and Cultural Development
23 November 2011	Annual Report/State of the Shire report	Briefing on the content and strategic issues arising in the Draft 2010/2011 Annual Report and State of the Shire Report. These documents are included in the Business Paper of 23 November 2011 for endorsement.	1.00 pm – 1.30 pm	Director Corporate Services
23 November 2011	Q1 Annual Plan and Budget	First Quarter Budget Review Reports – Presentation of highlights Annual Strategic Plan and Budget Update for 2011/12 first quarter	1.30 pm – 2.15 pm	Chief Financial Officer / Manager Workplace Change

## 1.2

## Proposed Inspections and Briefings (contd)

23 November 2011	RTA Upgrade wyong township	Two representatives from Roads and Maritime Services (formerly RTA) will brief Councillors on the preferred option for the upgrading of Pacific Highway through the Wyong Township	2.15 pm – 2.45 pm	Mr Craig Leckie - RTA
23 November 2011	Centennial Coal Mandalong South Exploration drilling program	A brief on the company, and the MS EDP, Mandalong mine (following the finalisation of the arbitration process)	2.45 pm – 3.00 pm	WSC's Senior Counsel
7 December 2011	New Applications Contract (Capgemini)	To brief Councillors on the negotiations and outcomes of the new Information Technology Applications contract between Capgemini and Council and seek endorsement at Council's meeting of 14 December 2011 to execute the contract (as per resolutions of Council meeting 14 September 2011)	12.00 noon – 12.30 pm	Director Corporate Services / Chief Information Officer
7 December 2011	Coastal Zone Management Plan	Following exhibition of the Coastal Zone Management Plan, amendments have been made to the document in line with comments received. The Plan is now being presented to Council for adoption prior to forwarding to the Minister for certification	12.30 pm – 1.00 pm	Manager Environment and Natural Resources
7 December 2011	LEP Briefing / Workshop	To brief Councillors on the provisions of draft LEP 2012 and the draft Settlement Strategy and seek endorsement (at Council meeting dated 14/12/2011) to the exhibition of the draft Plan and Strategy, subject to there being no significant changes in response to agency consultation.	1.00pm – 3.00pm	Director Environment and Planning/Manager Land Use Planning and Policy Development
7 December 2011	GM's Performance Appraisal	General Manager's Performance Appraisal	3.00pm – 4.00pm	GM's Unit/Corporate Services – HR Manager

**RECOMMENDATION**

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

**ATTACHMENT**

1 Proposed Inspections and Briefings Attachment - 23 November 2011 D02839838



PROPOSED DATE	AAA Briefing Title	Director
7th Dec	New Applications Contract (Capgemini)	Corporate Services
7th Dec	Coastal Zone Management Plan	Environment and Planning Services
7th Dec	LEP Briefing / Workshop	Environment and Planning Services
7th Dec	GM's Performance Appraisal	GM's Unit/Corporate Services
14-Dec	Community Facilities Strategy Part 1	Community & Recreation Services
14-Dec	The Entrance Town Centre Masterplan	Environment and Planning Services
14-Dec	Lakeside Plaza Iconic Development Site – 1 <sup>st</sup> presentation	Environment and Planning Services
14-Dec	Klumper Iconic development site - 2nd presentation	Environment and Planning Services
14-Dec	Service Priorities 2012/2016 and Strategic Plan (2hrs)	Corporate Services
2012	NSW Taxi Council and the Central Coast Taxis	Infrastructure Management
2012	Plan of Management Central Coast Caravan Parks	Community & Recreation Services
2012	Tuggerah Town Centre Masterplan	Environment and Planning Services
2012	Precinct 7A Masterplan - Feedback following exhibition	Environment and Planning Services
2012	Wyong town centre planning proposal and car parking study	Infrastructure Management
2012	Provide update of plans and financial viability of The Art House and Cultural Development	Community & Recreation Services
2012	2 day Councillor Weekend Workshop	Corporate Services
2012	response to Clr weekend workshop	corporate services
2012	Review of Grants Prt 2	Community & Recreation Services
2012	Community Facilities Strategy Part 2	Community & Recreation Services
2012	Greenhouse Mitigation Plan/Green Energy Funds Projects - May 2011	Infrastructure Management
2012	13 June, 2012 -- 1 hour briefing on submissions to the draft to the WSC SP	Corporate Services
2012	RZ/7/2009 Chittaway Point Rezoning	Environment and Planning Services
2012	Biodiversity Management Plan	Environment and Planning Services
2012	Committee structure	Corporate Services

PROPOSED DATE	AAA Briefing Title	Director
2012	Draft Shire-Wide Contributions Plan	Environment and Planning Services
2012	Retail Strategy Review	Environment and Planning Services
2012	Industrial Land and employment Lands study	Environment and Planning Services
2012	Wyong Employment Zone - results of DCP and S94 Contributions Plan/Biocertification update, DCP amendment update	Environment and Planning Services
2012	Affordable Housing Study	Environment and Planning Services
2012	DCP 113 - Flood Prone Land	Environment and Planning Services
2012	Sea Level Rise Notification & 149 Certificate	General Counsel/Environment and Planning Services
2012	Sustainability Update (Policy, Framework, Principles Review)	Environment and Planning Services
2012	Settlement Strategy	Environment and Planning Services
2012	Wyong Employment Zone – Results of exhibition of DCP & S94 Contributions Plan / Biocertification update,	Environment and Planning Services
2012	Comprehensive LEP	Environment and Planning Services
2012	DCP 2012	Environment and Planning Services
2012	Learning Community Strategies (Pt 2)	Community & Recreation Services

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

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TRIM REFERENCE: F2011/00027 - D02830917

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Monica Redmond; Administration Assistant

#### **SUMMARY**

Confirmation of minutes of the previous Ordinary Meeting and Confidential session of Council held on 9 November 2011.

#### **RECOMMENDATION**

*That Council confirm the minutes of the previous Ordinary Meeting of Council and Confidential session held on 9 November 2011.*

#### **ATTACHMENTS**

- |   |  |           |
|---|--|-----------|
| 1 | Minutes of Council's Ordinary Meeting held on 9 November 2011  | D02834065 |
| 2 | Minutes of Confidential Session of Council's Ordinary Meeting held on 9 November 2011 (distributed under separate cover) (D02834241) | Enclosure |

**WYONG SHIRE COUNCIL**

**MINUTES OF THE  
ORDINARY COUNCIL MEETING OF COUNCIL  
HELD IN THE COUNCIL CHAMBER  
WYONG CIVIC CENTRE, HELY STREET, WYONG  
ON 09 November 2011  
COMMENCING AT 5:00:00 PM**

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**PRESENT**

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

**IN ATTENDANCE**

General Manager, Director Environment and Planning Services, Director Infrastructure Management, Acting Director Corporate Services, Director Community and Recreation Services and General Counsel.

Manager Development Assessment, Manager Place Manager, Internal Auditor and two administration staff.

The Mayor, Councillor Graham, declared the meeting open at 5.00 pm and advised in accordance with the Code of Meeting Practice that the meeting is being recorded.

**Announcements**

Councillor Eaton presented to Council a framed certificate of appreciation for supporting Kids Day Out.

Councillor Best presented to Council a token of appreciation for supporting the work of the Central Coast Research Foundation as principal major sponsor for 2010/11.

Councillor Graham announced that it was Remembrance Day this Friday on 11 November 2011. The General Manager read the opening prayer and also a prayer for Remembrance Day for the fallen. The Council and gallery stood for a minutes' silence.

Councillor Matthews then read an acknowledgment of country statement .

**APOLOGIES**

There were no apologies.

At the commencement of the ordinary meeting report nos 1.1, 1.2, 3.1, 4.3, 1.3, 1.4, 1.5 and 2.1, 4.8, 6.3 and 4.1 were dealt with first then the remaining reports in order. However for the sake of clarity the reports are recorded in their correct agenda sequence.

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**1.1 Disclosures of Interest**

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**3.1 - Proposed Development Application and Lease of part of Lot 6, DP 863731 at 2 Mingara Drive, Tumbi Umbi to Mingara Leisure Group**

Councillor Matthews declared a non-pecuniary significant interest in the matter for the reason that she has been nominated for a position of Director on the Board of Mingara left the chamber at 5.12 pm, took no part in discussion, did not vote and returned to the chamber at 5.29 pm.

**4.2 - Proposed Councillors' Community Improvement Grants**

Councillor Vincent declared a non-pecuniary insignificant interest in the matter for the reason that he is a member of Budgewoi Scouts and participated in consideration of this matter.

Councillor Vincent stated:

*"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because I am not a member of Gwandalan or Tuggerah Lakes Scouts."*

**4.3 - Request for Funding – GOATS Family Festival 2011 – 2012**

Councillor Vincent declared a non-pecuniary insignificant interest in the matter for the reason that he is a volunteer at the Festival and participated in consideration of this matter.

Councillor Vincent stated:

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

**5.4 - Lake Munmorah Power Station**

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 7.38 pm, took no part in discussion, did not vote and returned to the chamber at 7.42 pm.

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

***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**

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

- 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 Proposed Inspections and Briefings**

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

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

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

AGAINST: NIL

**1.4 Notice of Intention to Deal with Matters in Confidential Session**

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

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

**Item 8.1 – CPA/199890 – Enterprise Risk Management Strategy Project Facilitator**

- 2 That Council note its reason for considering Item No 8.1 as it may confer a commercial advantage (Section 10A(2)(d) should the discussions be held in a non-confidential environment.**
- 3 That Council request the General Manager to report on this matter in open session of Council.**

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

AGAINST: NIL

**1.5 Confirmation of Minutes of Previous Meeting**

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

**That Council confirm the minutes of the previous Ordinary Meeting and Confidential Meeting of Council held on 26 October 2011 with the following amendment;**

- **Councillor Graham as Chairperson and Councillor Eaton listed as present.**

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

AGAINST: NIL

**Business Arising**

There was no business arising.

**2.1 DA 772/2011 - Proposed Strata Subdivision of an Approved Residential Flat Building at Ourimbah**

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

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

AGAINST: NIL

**PROCEDURAL MOTION**

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

**That Council allow meeting practice to be varied to consider item 4.8 – Lakes Beach Eco-Tourism Proposal as the next item due to the number of people present in the gallery for this particular item.**

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

AGAINST: NIL

**3.1 Proposed Development Application and Lease of part of Lot 6 DP 863731 at 2 Mingara Drive, Tumbi Umbi to Mingara Leisure Group**

Councillor Matthews declared a non-pecuniary significant interest in the matter for the reason that she has been nominated for a position of Director on the Board of Mingara left the chamber at 5.12 pm, took no part in discussion, did not vote and returned to the chamber at 5.29 pm.

Mr Paul Barnett, CEO of Mingara Recreation Club, against the recommendation printed in the business paper, addressed the meeting at 5.13 pm, answered questions and retired at 5.17 pm.

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

- 1 That Council grant owner's consent for the lodgement of a Development Application and Construction Certificate by Mingara Leisure Group for the renovations to the existing pylon advertising sign.**
- 2 That Council lease part of Lot 6 DP 863731, 2 Mingara Drive, Tumbi Umbi to Mingara Leisure Group for the purpose of advertising for a term of 10 years plus a further 10 year right of renewal, subject to a development consent being granted and Mingara's partnership with Council being recognised on the sign.**
- 3 That Council set an annual rental of \$5,000 per annum subject to review every five years.**
- 4 That Council grant \$5,000 per year to an agreed community development grants program that is jointly managed by Wyong Shire Council and Mingara Leisure Group.**
- 5 That Council authorise the Common Seal of Wyong Shire Council to be affixed to the Lease between Wyong Shire Council and Mingara Leisure Group.**
- 6 That Council authorise the Mayor and the General Manager to execute all documents relating to the Lease between Wyong Shire Council and Mingara Leisure Group.**

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

AGAINST: NIL

**PROCEDURAL MOTION**

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

***That Council allow meeting practice to be varied to consider item 6.2 – Notice of Motion – Popularly elected Mayor in conjunction with Item 4.1 – Conduct of the 2012 Local Government Election.***

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

AGAINST: NIL



**4.1 Conduct of the 2012 Local Government Election**

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A MOTION was MOVED by Councillor EATON and SECONDED by Councillor WYNN:

- 1 That Council engage the NSW Electoral Commission to conduct the Local Government Election and any referendums or polls for Wyong Shire up to and including 2012.
- 2 That Council minimise the cost of the election by working cooperatively with Gosford City Council and other savings as outlined in this report.
- 3 That Council reaffirm its previous decision to provide our residents and ratepayers the opportunity at the upcoming Council elections to also vote on whether they support a popularly elected mayor or not.
- 4 That Council request the General Manager to report on any progress to date with regard to this issue and what further processes and time frames are required to achieve this outcome.
- 5 That Council retain its current wards and Councillor numbers, such that a popularly elected Mayor becomes the eleventh Councillor and forms Wyong Shire Council, subject to constitutional referendum being passed.
- 6 That Council conduct a constitutional referendum on a popularly elected Mayor and 11 Councillors; being the number to form Wyong Shire Council, be held in conjunction with the 2012 Wyong Shire Council Local Government Elections.
- 7 That Council request the NSW State Government return on a equitable basis to Councils across the state the amount collected in the form of fines imposed on the population that didn't vote to defray the cost of the Council election on ratepayers.
- 8 That the General Manager approach Gosford City Council to seek an agreement to share costs on common matters for the Central Coast region in the lead up to the 2012 Wyong Shire Council Local Government Elections.

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

- 1 That Council engage the NSW Electoral Commission to conduct the Local Government Election and any referendums or polls for Wyong Shire up to and including 2012.
- 2 That Council minimise the cost of the election by working cooperatively with Gosford City Council and other savings as outlined in this report.
- 3 That Council reaffirm its previous decision to provide our residents and ratepayers the opportunity at the upcoming Council elections to also vote on whether they support a popularly elected mayor or not.
- 4 That Council request the General Manager to report on any progress to date with regard to this issue and what further processes and time frames are required to achieve this outcome.
- 5 That Council request the NSW State Government return on a equitable basis to Councils across the state the amount collected in the form of fines imposed on the population that didn't vote to defray the cost of the Council election on ratepayers.
- 6 That the General Manager approach Gosford City Council to seek an agreement to share costs on common matters for the Central Coast region in the lead up to the 2012 Wyong Shire Council Local Government Elections.

- 7 That Council undertake a constitutional referendum on a popularly elected mayor and the creation of three wards with three Councillors in each ward thus making 10 Councillors in total to form Wyong Shire Council.
- 8 That Council conduct the constitutional referendum in conjunction with the 2012 Wyong Shire Council local government elections.

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

FOR: COUNCILLORS MATTHEWS, MCBRIDE, SYMINGTON AND VINCENT

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

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

- 1 That Council engage the NSW Electoral Commission to conduct the Local Government Election and any referendums or polls for Wyong Shire up to and including 2012.
- 2 That Council minimise the cost of the election by working cooperatively with Gosford City Council and other savings as outlined in this report.
- 3 That Council reaffirm its previous decision to provide our residents and ratepayers the opportunity at the upcoming Council elections to also vote on whether they support a popularly elected mayor or not.
- 4 That Council request the General Manager to report on any progress to date with regard to this issue and what further processes and time frames are required to achieve this outcome.
- 5 That Council retain its current wards and Councillor numbers, such that a popularly elected Mayor becomes the eleventh Councillor and forms Wyong Shire Council, subject to constitutional referendum being passed.
- 6 That Council conduct a constitutional referendum on a popularly elected Mayor and 11 Councillors; being the number to form Wyong Shire Council, be held in conjunction with the 2012 Wyong Shire Council Local Government Elections.
- 7 That Council request the NSW State Government return on a equitable basis to Councils across the state the amount collected in the form of fines imposed on the population that didn't vote to defray the cost of the Council election on ratepayers.
- 8 That the General Manager approach Gosford City Council to seek an agreement to share costs on common matters for the Central Coast region in the lead up to the 2012 Wyong Shire Council Local Government Elections.

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

AGAINST: NIL

**PROCEDURAL MOTION**

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

- 1 That Council allow meeting practice to be varied.**
- 2 That Council use the exception method to deal with the balance of the Agenda.**

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

AGAINST: NIL

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

**That with the exception of report numbers 4.2, 4.5, 4.6, 5.4, 5.5, 5.6, 6.1, 6.4, 6.5 and 7.1, Council adopt the recommendations contained in the remaining reports.**

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

AGAINST: NIL

**4.2 Proposed Councillors' Community Improvement Grants**

Councillor McBride left the meeting at 7.18 pm and returned to the meeting at 7.24 pm during consideration of this item and as a result took no part in voting.

Councillor Vincent declared a non-pecuniary insignificant interest in the matter for the reason that he is a member of Budgewoi Scouts and participated in consideration of this matter.

Councillor Vincent stated:

*"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because I am not a member of Gwandalan or Tuggerah Lakes Scouts."*

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

**That Council allocate an amount of \$3,665.00 from the 2011-12 Councillors' Community Improvement Grants as follows:**

<b>1st Gwandalan Scout Group (\$1800) (\$1400 already allocated)</b>	<b>To assist with minor purchases to complete the fit out of our new hall. These purchases will include items for the kitchen being fridge and stove.</b>	<b>400</b>
<b>1st Tuggerah Lakes Scout Group (\$4500)</b>	<b>To purchase a safety boat for water activities.</b>	<b>1,000</b>
<b>Lions Club of Gwandalan Inc (\$165)</b>	<b>Request waiving of Council fees for the Annual Christmas Carols by the Lake.</b>	<b>165</b>
<b>The Entrance Amateur Swimming Club (\$2000)</b>	<b>To purchase a projector &amp; screen, stopwatches &amp; umbrellas.</b>	<b>1,550</b>
<b>Toowoona Bay Ocean Swim 2011 (\$500) (\$100 already allocated)</b>	<b>To purchase two shade gazebos and administration costs.</b>	<b>150</b>
<b>Toukley Adult Day Care (\$150)</b>	<b>Christmas Party and hamper distribution to each member.</b>	<b>150</b>
<b>Toukley Swimming Club Inc (\$3100) (\$2000 already allocated)</b>	<b>To purchase electronic timing equipment.</b>	<b>250</b>

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

AGAINST: NIL

#### **4.3 Request for Funding - GOATS Family Festival 2011 - 2012**

Ms Jillian Hogan, representing San Remo Neighbourhood Centre, in favour of the item, addressed the meeting at 5.30 pm, answered questions and retired at 5.45 pm.

Councillor Vincent declared a non-pecuniary insignificant interest in the matter for the reason that he is a volunteer at the Festival and participated in consideration of this matter.

Councillor Vincent stated:

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

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

- 1 That Council refer the application to the Grants Committee on 10 November 2011 and the item be submitted for consideration at Council's meeting of 23 November 2011.**
- 2 That Council consider the GOATS festival for recurrent funding in conjunction with the 2012/2013 strategic planning workshop.**

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

AGAINST: NIL

#### 4.4 Works on Private Land as part of the Tuggerah Lakes Estuary Management Plan

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

**That Council approve the works detailed in Table A to be carried out on the following properties under the Tuggerah Lakes Estuary Management Plan. All works are to be at no cost to the property owner, being funded by the Federal Government's "Caring for our Country" grant :**

- **Lot 42 DP 75524, 26 Platypus Creek Lane, Palm Grove**
- **Lot 43 DP 75524, 21 Platypus Creek Lane, Palm Grove**
- **Lot 1 DP 774021, 153 – 175 Hakone Road, Woongarah**

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

AGAINST: NIL

#### 4.5 Warnervale Town Centre August/September 2011 Progress Report

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Councillor McBride returned to the chamber at 7.20 pm during consideration of this item.

Councillor Webster left the meeting at 7.20 pm and returned at 7.23 pm during consideration of this item.

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

- 1 **That Council receive the report on Warnervale Town Centre August/September 2011 Progress Report.**
- 2 **That Council endorse the Warnervale Town Centre Biodiversity Certification Assessment report**
- 3 **That Council formally request the Office of Environment and Heritage to Biocertify the Warnervale Town Centre and authorise the General Manager to sign any relevant documentation required to support the application.**
- 4 **That Council exhibit the Biodiversity Certification Application for 28 days upon acceptance of the report by the Office of Environment and Heritage.**
- 5 **That Council refer to the Office of Environment and Heritage requesting the endorsement of the Minister for the Environment, subject to no significant objections being received the Warnervale Town Centre Biodiversity Certification proposal.**
- 6 **That Council request the General Manager to seek assurance from the Office of Environment and Heritage that the biodiversity certification process will result in a net gain of protected bushland area and that appropriate relocation strategies for affected wildlife will be implemented where possible.**

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

AGAINST: NIL

#### 4.6 Implementation of the Memorandum of Understanding between WSC, Newcastle University and Hunter TAFE

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

- 1 That Council request the General Manager to determine membership and implement the Project Steering Group.
- 2 That Council endorse the Project scope, management framework and milestones as detailed in this report.

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

AGAINST: NIL

#### 4.7 Conference Attendance - Hunter Social Enterprise Forum 2011

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

- 1 That Council authorise Councillor Symington, and any interested Councillor/s, to attend the Hunter Social Enterprise Forum 2011 being held in Newcastle on Friday, 11 November 2011.
- 2 That Council endorse reasonable expenses incurred by Councillors attending the above conference in accordance with Council's Facilities and Expenses Policy for Councillors.

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

AGAINST: NIL

#### 4.8 Lakes Beach Eco-Tourism Proposal

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

- 1 That Council resolve not to support any development, including an eco resort on this Crown land as a result of the findings of the ecological studies undertaken by Conacher Environmental Group at Lakes Beach.
- 2 That Council refer the final Ecological Report be referred to Council's Environment and Natural Resource Section for consideration and appropriate action.
- 3 That Council request the Director of Environment and Planning to seek out investigate and report back to Council on other areas in Wyong Shire that would support Eco-Tourism developments including the possibility of a joint venture with the Darkinjung Local Aboriginal Land Council.
- 4 That Council re-endorse the unanimous Council resolution from August 2009, supporting that the area between Werepi St Noraville and the Munmorah State Recreation park be placed under E2 (Environmental Conservation) in the current LEP review.

- 5 That Council **thank** Hargraves Beach Dunecare, Budgewoi Beach Dunecare, & Lakes Beach Dunecare for their many hours of dune rehabilitation work on the Lakes Beach site and acknowledge objections and outrage of many local community groups to the Eco Tourism resort proposal on the established Lakes Beach Dunecare site.
- 6 That Council **request** that the Land and Property Management revoke the license to investigate the development of Lot 7318 DP 1148096 from Werepi St Noraville to the Munmorah State Recreation park.
- 7 That Council **refer** the final Ecological Report to be distributed to the Tuggerah Lakes Estuary, Coastal and Floodplain Management Committee.

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

### **PROCEDURAL MOTION**

Councillor Vincent left the chamber at 6.23 pm and as a result did not vote.

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

***That Council allow meeting practice be varied to consider item 6.3 – Notice of Motion – White Ribbon in Wyong, say NO to Domestic Violence after item 4.8 – Lakes Beach Eco-Tourism Proposal, to enable the speaker to address the meeting.***

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

### **5.1 Information Reports**

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

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

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

**5.2 Central Coast Tourism Inc - Update**

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

***That Council receive the report on Central Coast Tourism Inc - Update.***

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

AGAINST: NIL

**5.3 Mardi to Mangrove Link Project Status**

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

***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

**5.4 Lake Munmorah Power Station**

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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 7.38 pm, took no part in discussion, did not vote and returned to the chamber at 7.42 pm.

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

***That Council receive the report on Lake Munmorah Power Station.***

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

AGAINST: NIL

**5.5 Conference Attendance - Tidy Towns**

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Councillor McNamara left the meeting at 7.42 pm and returned to the meeting at 7.44 pm during consideration of this item.

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

**1 *That Council note the approval given by the Mayor and Acting General Manager for Councillor Symington and partner to attend the Tidy Towns Awards Event in Lithgow held on 4 – 6 November 2011.***



- 2 That Council note that reasonable expenses incurred by Councillor Symington and his partner in attending the above event will be reimbursed in accordance with the WSC Policy on Facilities and Expenses for Councillors.**

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

AGAINST: NIL

**5.6 Study Tour - Townsville City Council - The Strand Development - 23 and 24 October 2011**

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

**That Council receive the report on Study Tour - Townsville City Council - The Strand Development - 23 and 24 October 2011.**

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

AGAINST: COUNCILLOR VINCENT

**5.7 Outstanding Questions without Notice and Notice of Motions**

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

**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

**6.1 Notice of Motion - Assisting Community Events**

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

- 1 That Council support in principle making smaller scale community events as exempt development.**

- 2 That Council delegate to the General Manager authority to determine small scale community events and further report back to Council how best to achieve this principle.**

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

AGAINST: COUNCILLOR WYNN

**6.2 Notice of Motion - Popularly Elected Mayor - Referendum**

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

***That Council consider this item in conjunction with 4.1 – Conduct of the 2012 Local Government Election.***

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

AGAINST: NIL

**6.3 Notice of Motion - White Ribbon in Wyong, say NO to Domestic Violence**

Sergeant John Dooley, Wyong Area Command, in favour of the item, addressed the meeting at 6.24 pm, answered questions and retired at 6.42 pm.

Councillor Vincent returned to the meeting at 6:26 pm during consideration of this item.

Councillor Symington left the meeting at 6:25 pm and returned to the meeting at 6:27 pm during consideration of this item.

Councillor Graham vacated the chair at 6:48 pm and Councillor Wynn assumed the chair.

Councillor Graham resumed the chair at 6:49 pm during consideration of this item.

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

- 1 That Council note with concern that Wyong Shire is now approaching the highest level of domestic violence in NSW.**
- 2 That Council recognise the contribution already made by WSC staff to previous White Ribbon Events and the efforts of the Tuggerah Lakes Area Command in its endeavours to battle this unacceptable behaviour.**
- 3 That Council acknowledge that a more community wide inclusive approach, which includes all levels of government, is needed to take a stand and reject this social scourge.**
- 4 That Council note that the upcoming White Ribbon Event/Program commences on 25 November 2011 and continues for 16 days.**
- 5 That Council request the General Manager to review the request for assistance from the Tuggerah Lakes Area Command to resource the White Ribbon Event/Program.**
- 6 That Council encourage the community, individual Councillors and WSC staff to join the current 14,932 Australians who have pledged an oath of support to the White Ribbon Campaign.**
- 7 That Council, through the Shire's community groups network and other education institutions seek to encourage their support of the White Ribbon initiative particularly, the adoption of the ambassador program.**

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

AGAINST: NIL

#### **6.4 Notice of Motion - Enforcement Policy for Control of Vehicles and Parking Around Schools**

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Councillor Best left the meeting at 8:39 pm and returned to the meeting at 8:41 pm during consideration of this item.

Councillor Matthews left the meeting at 8:44 pm and returned to the meeting at 8:47 pm during consideration of this item.

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

- 1 That Council request the General Manager to report on Wyong Shire Council's enforcement policy for the control of vehicles and parking around schools in Wyong Shire.**
- 2 That Council request the General Manager to include in the report:**
  - a Information including the guidelines, training and management directions provided to staff to ensure the balance between education of drivers, safety of children, and the issuing of Personal Infringement Notices.**
  - b Details in relation to the frequency of Wyong Shire Council staff being present at schools for enforcement purposes and the management triggers to allocate staff resources to undertake enforcement operations at a particular school.**

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

AGAINST: NIL

#### **6.5 Notice of Motion - Independent Legal Advice**

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

- 1 That Council propose an amendment to the Wyong Shire Council's Policy on Facilities and Expenses for Councillors as follows:**

**Insert new clause:**

**"1 A Councillor/s may be reimbursed up to \$1,500 (including GST) for external legal services only where all of the following circumstances exist:**

**(a) the legal advice is not on a matter excluded from being reimbursed by the Local Government Act and/or Regulations, or any other clause in this Policy; and**

**(b) the matter about which advice has been sought is a serious matter affecting the proper administration of Wyong Shire Council; and**

- (c) *more than 4 Councillors have requested that Council staff provide legal advice on the subject matter of the advice, and Council staff have been unable to provide those councillors with legal advice, due to a conflict of interest or similar prohibition that precludes those staff from providing that advice, or where staff are unwilling to obtain independent legal advice; and*
- (d) *the matter had not already been the subject of independent legal advice to Council; and*
- (e) *the legal advice is proven to be valuable towards Council's decision making; and*
- (f) *no more than one payment is to be paid to any one or more of the councillors in respect to advice provided by councillors on the subject matter; and*
- (g) *the request for reimbursement, under this clause, has been authorised by the Council.*

2 *The written brief, original written legal advice and tax receipt will need to be provided to Council as its record to allow consideration of payment."*

- 2 *That Council acknowledge that the proposed amendment is substantial and give public notice of its intention to amend its policy for the Payment of Expenses and Provision of facilities allowing 28 days for the making of public submissions.*
- 3 *That Council adopt the amended Wyong Shire Council's Policy on Facilities and Expenses for Councillors should no significant objection be received to the proposed amendment.*
- 4 *That Council forward the amended policy to the Director General in accordance with Section 253 of the Local Government Act, 1993.*

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

#### **7.1 Rescission Motion - DA/1486/2010 Proposed Restaurant and Drive-Through Facility at Ourimbah**

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

*That the following resolution carried at the Ordinary Meeting of Council held on 26 October 2011 be rescinded:*

- 1 *That Council grant consent subject to the conditions as amended in the schedule attached to the report having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues.*
- 2 *That Council vary Development Control Plan 2005 Chapter 61 and 65 to permit the development.*

- 3 That Council delete, from the list of proposed conditions attached to the report, the second bullet point under Condition 11 – Landscaping Design Requirements which states:

*“The landscape architect is to nominate trees and shrubs that will provide a dense screen to the front of the property. The planting is to achieve tree heights greater than 10 metres and shrubs that will achieve a height greater than 2 metres upon maturity.”*

**The MOTION was put to the vote and declared LOST on the casting vote of the Mayor.**

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

## QUESTIONS ON NOTICE

**Q28/11 Dangerous Driveway at Ruttleys Road**  
**Councillor Greg Best**  
P2008/00677

*“Mr General Manager, my question is to you. You will recall I raised a safety issue on another property on the same road at our last meeting, it has now been drawn to my attention that there is another even more dangerous driveway on this road. The site in question is at the model aero club, I am particularly concerned as I understand this land may be owned by Council. Please advise what Council can do with this gravel driveway, on an almost blind corner, to assist the safety of club members and the community at large?”*

**Q29/11 Carbon Tax on Council**  
**Councillor Greg Best**  
F2004/06579

*“Mr General Manager, now that the Federal Government has levied its new carbon tax and that the costing methodology is clearer, could staff please update Council on what extra costs will now likely be passed on to the ratepayers and also as to what compensation is available to offset this new tax on Council?”*

**Q30/11 Wyong Swimming Pool Grandstand**  
**Councillor Emma McBride**  
DA/932/2011

*“Could staff please advise of the plans for the Wyong Swimming Pool Grandstand?”*

**Q31/11 Status of Community Park at Killarney Vale**  
**Councillor Emma McBride**  
DA/1572/2007

*“Could staff please advise of the status of the Community Park on Wyong Road, Killarney Vale?”*

**OPEN SESSION**

The General Manager reported on proceedings of the confidential session of the ordinary meeting of council as follows:

**CONFIDENTIAL****8.1 CPA/199890 Enterprise Risk Management Strategy Project Facilitator**

- 1 That Council reject all tenders for Contract CPA/199890 Enterprise Risk Management Strategy Project Facilitator.**
- 2 That Council enter into negotiations with the two highest rated tenderers identified in the General Manager's Report**
- 3 That Council delegate to the General Manager (or his delegate) the function of undertaking those negotiations.**
- 4 That Council authorise the General Manager to execute any contract resulting from those negotiations to a maximum of \$165,000 including GST.**
- 5 That Council note the following for the purposes of cl. 178(4) of the Local Government (General) Regulation 2005:**
  - a The reasons for not inviting fresh tenders in accordance with cl. 178(3)(b)-(d) (inclusive) of the Local Government (General) Regulation 2005 are:**
    - (i) Council has already undertaken a robust competitive tender process with twenty respondents; and**
    - (ii) Council will incur significant additional costs and delay if it invites fresh tenders or applications from interested persons, and those additional costs and delay will prejudice the timely and cost efficient delivery of the Enterprise Risk Management Strategy.**
  - c The reasons for determining to enter into negotiations with the two highest rated tenderers is that those two tenderers are considered to have provided high quality tenders and that direct negotiation with them will allow for a contract to be entered in to that will provide a closer alignment with Council's needs.**

**THE MEETING** closed at 9.17 pm.

## **1.4 Address By Invited Speakers**

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TRIM REFERENCE: F2011/00027 - D02830884

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Monica Redmond; Administration Assistant

### **SUMMARY**

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

### **RECOMMENDATION**

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

23 November 2011

To the Ordinary Council Meeting

Councillor

## **2.1 Mayoral Minute - Amendment to WSC Code of Meeting Practice**

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TRIM REFERENCE: F2004/06502 - D02837693

AUTHOR: Bob Graham; Councillor

The role of Councillors in the community is evolving with higher community expectations demanding a significant amount of consultation and interaction.

Governance requirements continue to escalate as Councillors meet their civic responsibilities in an era of new systems and standards designed to ensure transparency, accountability and sustainability. Councillors are increasingly managing complex and diverse constituencies and must lead by example to integrate ecological, social and economic sustainability. They must build partnerships by engaging with and listening to the community in a manner and level not previously experienced. Councillors are also required to research, consult and deliberate on a wide range of matters while still maintaining their role as an advocate for individual community areas.

Councillors also need to balance their civic duties with their professional and personal roles.

The business before Council is becoming increasingly complex and varied, with the number of matters requiring Council attention also increasing.

The Council has the responsibility to consider all items on its business papers.

As Chairperson of the Ordinary Meetings of Council it is my responsibility to ensure that the meetings are conducted in accordance with the provisions of the Local Government Act, 1993, the Regulations and the WSC Code of Meeting Practice.

I am concerned that the Ordinary Meetings of Council have the potential to extend to late in the evening on a regular basis and that appropriate attention will be paid to matters appearing later on the business papers, given that Councillors have already conducted a full day of business on meeting days.

Accordingly I propose that Council amend its Code of Meeting Practice to ensure that the Ordinary Meetings of Council conclude at a reasonable time and that if any business remains that the meeting is rescheduled to a future appropriate date and time.

*I formally move:*

**1 That Council amend the Wyong Shire Council Code of Meeting Practice as follows:**

**a Insert New Clause 2.1.11**

***“Ordinary Meetings of Council will conclude at 9pm.”***



**2.1 Mayoral Minute - Amendment to WSC Code of Meeting Practice (contd)**

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***b Insert New Clause 2.1.12***

***“The Chairperson will set a date and time to reconvene the meeting where any remaining business scheduled for that Ordinary Meeting has not been completed by the scheduled conclusion time.”***

- 2 That Council give public notice of its intention to amend its Code of Meeting Practice allowing 42 days for the making of public submissions.**
- 3 That Council adopt the amended WSC Code of Meeting Practice should no significant objection be received to the proposed amendment.**

### 3.1 DA/200/2011 - Residential Flat Building Comprising Three (3) Townhouses and Separate Dwelling-House at North Entrance

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TRIM REFERENCE: DA/200/2011 - D02797414

MANAGER: Peter Fryar, Manager Development Assessment

AUTHOR: Jenny Webb; Senior Development Planner

#### SUMMARY

An application has been received for the demolition of an existing dwelling-house and the construction of a residential flat building containing three (3) x 2 storey split level townhouses as well as a separate 2 storey split level dwelling-house with boat shed. 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.

<b>Applicant</b>	SJH Planning and Design
<b>Owner</b>	Mr A A Sammut
<b>Application No</b>	DA/200/2011
<b>Description of Land</b>	4 Brogden Road, The Entrance North
<b>Proposed Development</b>	Demolition of the existing dwelling house and construction of a residential flat building containing three (3) x 2 storey split level townhouses as well as a separate 2 storey split level dwelling house with boat shed.
<b>Site Area</b>	1024m <sup>2</sup>
<b>Zoning</b>	2(b) Multiple Dwelling Zone
<b>Existing Use</b>	Dwelling house
<b>Estimated Value</b>	\$875,000
<b>Employment Generation</b>	N/A

- 1 ***That Council, refuse development application DA/200/2011, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act 1979 and other relevant issues, for the following reasons:***
  - a ***Pursuant to Section 79C (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the development fails to comply with Clause 15 of Wyong Local Environmental Plan as no assessment of the proposed development has been undertaken in accordance with the Acid Sulphate Soils Assessment Guidelines.***
  - b ***Pursuant to Section 79C (1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with Wyong Development Control Plan 2005 Chapter 64 – Multiple Dwelling Residential Development in terms of building height, rear setback, carparking, driveway design, floor space ratio, private open space and fencing .***

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

**PRECIS**

- The application is reported to Council in accordance with Council's resolution of 10 March 2010 regarding applications affected by the State Government's Sea Level Rise Policy.
- The application seeks approval for the demolition of an existing dwelling house and the construction of a residential flat building containing three (3) townhouses as well as a separate dwelling house.
- The site is zoned 2(b) - Multiple Dwelling Residential Zone under the provisions of Wyong Local Environmental Plan 1991 (WLEP 1991). In accordance with WLEP 1991, both a residential flat building and dwelling-house are permissible with consent.
- The Entrance Peninsula Planning Strategy (TEPPS) identifies that a public foreshore pathway should be located partially within the subject site. The current Masterplanning process being undertaken by Council supports the proposal for a public pathway in this location.
- A number of variations to DCP 2005 Chapter 64 - Multiple Dwelling Residential Development are proposed and as a result, the proposal is considered to be an overdevelopment of the site.

- The subject property is fully flood affected during a 1% Annual Exceedance Probability (AEP) flood event by flood water originating from Tuggerah Lakes. The 1% AEP flood level for this development is RL 2.2m Australian Height Datum (AHD). Existing ground levels range between 1m AHD and 2m AHD, which results in flood depths between 0.2m and 1.2m across the site during the 1% AEP design flood event. The site is also affected by velocities from The Entrance Channel.
- The NSW Sea Level Rise Policy Statement and supporting documents apply to the development. The higher sea level rise bench mark of 0.9m has been added to the 1% AEP flood level, which yields a design flood level of 3.1m AHD and a sea level rise flood planning level of 3.6m AHD.
- The flood hazard category applicable to the development is a combination of “High Hazard Floodway” and “High Hazard Flood Storage” and the application is recommended for refusal.

## **INTRODUCTION**

### **The Site**

The site comprises a single parcel of land known as Lot 21 DP 11682, No 4 Brogden Road, The Entrance North. It is adjacent to The Entrance Bridge and is separated from The Entrance Channel by a thin strip of reclaimed land, which is owned by the Crown and leased to the current owner of the site. The site has an area of 1024m<sup>2</sup> with a 15.24 metre frontage to Brogden Road and an average depth of 66 metres.

The site has an east-west orientation and from the rear of the site or from an elevated position, enjoys expansive views to the south west across The Entrance Channel to The Entrance. Views to the west across Tuggerah Lakes are interrupted by The Entrance Bridge.

There is an existing single storey fibre-cement clad dwelling house, which is proposed to be demolished, and an existing timber jetty on the leased Crown Land, which is to remain. Surrounding development typically comprises single dwellings of various ages and there is a contemporary residential flat building containing 3 units immediately to the south of the subject site.

The site is fully flood affected and is generally flat, with a slight fall toward The Entrance Channel.

### **The Proposed Development**

It is proposed to demolish the existing dwelling house and construct a residential flat building containing three (3) x 2 storey split level townhouses as well as a separate 2 storey split level dwelling house with boat shed at the rear of the site. Each of the townhouses and the dwelling house contain two (2) bedrooms as identified on the plans, although Council's Development Control Plan (DCP) states that 'any room that can be adapted for use as a bedroom, whether or not building alterations are involved' is to be considered as a bedroom. As such, each of the townhouses and the dwelling house contain three (3) bedrooms for assessment purposes.

**3.1 DA/200/2011 - Residential Flat Building Comprising Three (3) Townhouses and Separate Dwelling-House at North Entrance (contd)**

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The proposed development comprises:

Unit 1 (dwelling house) - Adjacent to the site's water frontage, a two (2) storey dwelling house comprising a boatshed at RL 1.20; recreational storage and garaging together with a laundry space, 'mudroom', wine cellar and deck at RL 2.30; kitchen, living, dining and bathroom at RL 3.90 and two (2) bedrooms plus a lounge room space (considered to be a third bedroom for assessment purposes) at RL 5.0.

Unit No's 2, 3 and 4 (townhouses) comprise lock-up garages, entry foyers and powder rooms at RL 2.20; kitchen, living, dining and decks at RL 2.70 and first floor bedrooms, lounge space (considered to be a bedroom for assessment purposes) and bathrooms at RL 4.9 and RL 5.7.

The townhouses vary in height from approximately 6.6m to 7.2 m to the ceiling and overall up to 9 m to the top of the roof structure. Proposed finishes include texture coated masonry/brickwork, selected weatherboard cladding and "colourbond" roof, gutter and downpipe.



**Street Elevation**



**Lake Elevation**



**South Elevation**

**Summary**

The main issues associated with proposed development relate to the number of variations to DCP 2005 Chapter 64 and the flood prone nature of the site. The Entrance Peninsula Planning Strategy identifies a public pathway across the rear of the site, adjacent to The Entrance Channel. In this regard, the applicant has made some provision for the future acquisition of land by Council and therefore, while not ideal, this issue could be dealt with should consent be granted.

However, the proposal is considered to be an over development of the site, resulting in a number of non-compliances with the DCP. In addition, the flood affectation of the site is a considerable constraint and the true flood hazard category applicable to the development has been identified during the assessment as a combination of High Hazard Floodway and High Hazard Flood Storage. The development controls under Council's Flood Prone Land Development Policy specify that 'New Development' in the high hazard flooding categories will not be approved.

Based on the non-compliances with DCP 2005 Chapter 64 and the Flood Prone Land Development Policy, it is considered that the site is unsuitable for the density of development proposed and the application is recommended for refusal.

### **VARIATIONS TO POLICIES**

The following variations to Council policy are proposed:

Clause	4.2(b)
Standard	7 metre height limit exceeded by 0.2 m (2.9% variation)
LEP/DCP	DCP Chapter 64
Departure basis	N/A (Application recommended for refusal)

Clause	5.3.2
Standard	4.5 m rear setback varied by up to 2.3 m (51% variation)
LEP/DCP	DCP Chapter 64
Departure basis	N/A (Application recommended for refusal)

Clause	5.4.2
Standard	Resident parking varied by 1 space (16.6% variation)
LEP/DCP	DCP Chapter 64
Departure basis	N/A (Application recommended for refusal)

Clause	5.5.2(d)
Standard	2 m driveway offset varied by 1.5 m (75% variation)
LEP/DCP	DCP Chapter 64
Departure basis	N/A (Application recommended for refusal)

Clause	6.1(a)
Standard	0.6:1 FSR exceeded by 0.1 (1.4% variation)
LEP/DCP	DCP Chapter 64
Departure basis	N/A (Application recommended for refusal)

Clause	9.1.1
Standard	45 m <sup>2</sup> private open space with minimum dimension of 4.5 m varied by 1.2 m <sup>2</sup> for units 2 and 3 (2.7% variation)
LEP/DCP	DCP Chapter 64
Departure basis	N/A (Application recommended for refusal)

Clause	12.1.1(h)
Standard	Courtyards not to be within front setback (100% variation for unit 4)
LEP/DCP	DCP Chapter 64
Departure basis	N/A (Application recommended for refusal)

Clause	3.1
Standard	20 m setback to high water mark (79% variation)
LEP/DCP	DCP Chapter 99
Departure basis	N/A (Application recommended for refusal)

Clause	N/A
Standard	No New Development in High Hazard Flood Areas
LEP/DCP/Policy	F5 – Flood Prone Land Development Policy
Departure basis	N/A (Application recommended for refusal)

**HISTORY**

Development Application No 484/2008 for the demolition of structures and the construction of a residential flat building containing 12 units at No's 2 and 4 Brogden Road and No' 2A and 6 Hargraves Street was refused in September 2009. The application was refused for a number of reasons including carparking issues; non-compliance with the Urban Design and Planning Principles of TEPPS; non-compliance with setback requirements, non-compliance with the design quality principles of SEPP 65 - Design Quality of Residential Flat Development; privacy, overshadowing and noise concerns; and insufficient information being provided in relation to future site inundation due to climate change, sea level rise and storm surge scenarios.



**Site subject to refusal of DA/484/2008**

An appeal against the refusal of DA/484/2008 was heard in the Land and Environment Court (LEC) in September 2009. Council contended that no provision was made for public access along the foreshore to link areas of open space as identified in TEPPS and that the proposal did not appropriately respond to its prominent location on the foreshore and as a gateway site to The Entrance through its scale, form and massing. The proposed development also did not properly respond to its contextual setting and site opportunities and constraints through design features such as the carparking, building lines, setbacks, lack of landscaping and poor internal amenity.

In conjunction with the Appeal, Council also considered a report on the potential acquisition of some of the subject site for the purpose of the public pathway at the Ordinary Meeting of Council on 23 September 2009. Council resolved as follows:

1. *“That Council seek the dedication of approximately 200m<sup>2</sup> of land to be bought into Council’s public ownership.*
2. *That Council authorise the proposed draft condition of consent to facilitate Item 1.*



3. That Council authorise the payment of reasonable compensation for the acquisition of land as outlined in Item 1. This should be guided by the principles of the Land Acquisition (Just Terms Compensation) Act 1991 and be based on assessment by a qualified valuer.
4. The Council authorise the Mayor and General Manager to negotiate and execute all documents relating to the Transfer.”
5. That Council provide a further report on this land, if the current development application is refused by the Court and in any event on the other lands potentially necessary for the waterfront promenade. Such report to include description of existing development and development potentials, options re costings and physical works necessary as well as comments from affected owners.
6. That Council exempt this motion from the provisions of the Code of Meeting Practice to allow the motion to be actioned from 9.00am on Thursday 24 September 2009 for the reason that the matter will form part of the Land and Environment Court proceedings to be held on 24 September 2009.

The Appeal was dismissed and DA/484/2008 for the demolition of all existing structures and the construction of a residential flat building containing 12 units at No's 2-4 Brogden Road and No's 2A and 6 Hargraves Street, The Entrance North was refused. Importantly, TEPPS was given considerable weight in deciding to refuse the application particularly in relation to the provision of public access along the foreshore. The implementation of TEPPS is currently progressing through the Masterplan process.

Following the lodgement of the current development application, concerns were again raised in relation to the provision of future public access. Various meetings were held between Council staff, the applicant and the applicant's planning consultant. As a result of these discussions, it was suggested that provision be made for a future public footpath with a minimum width of 5 metres adjacent to the lake foreshore.

#### **PERMISSIBILITY**

The site is zoned 2 (b) -Multiple Dwelling Residential Zone pursuant to WLEP 1991. The development comprises two separately defined uses, being a 'residential flat building' and a 'dwelling house', both of which are permissible with consent in the 2(b) zone.

***“residential flat building*** means a building containing 3 or more dwellings.

***dwelling-house*** means a building containing one, but not more than one, dwelling.”

While the proposed development is permissible with consent, Clause 10 of WLEP 1991 states 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 2(b) - Multiple Dwelling Residential Zone are:

- (a) *to cater for a wide range of housing types essentially domestic in scale and character and generally not exceeding a height of 2 storeys, and*
- (b) *to provide for other uses which:*
  - (i) *are compatible with the residential environment and afford services to residents at a local level, and*
  - (ii) *are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for residential uses, and*
- (c) *to provide home-based employment where such will not:*
  - (i) *involve exposure to view from any public place of any unsightly matter, or any raw material, equipment, machinery, product or stored finished goods, or*
  - (ii) *have a material adverse impact on residents.*

The proposed development is consistent with objective (a) of the 2(b) Multiple Dwelling Residential Zone in terms of providing for a range of housing types, and not exceeding 2 storeys in height. Objective (b) is to provide for other uses within the 2(b) Multiple Dwelling Residential zone that are compatible with the residential environment and objective (c) seeks to provide for home-based employment that will not impact on residents. As the development only proposes residential housing, objectives (b) and (c) are not considered relevant to the application.

#### **RELEVANT STATE/COUNCIL POLICIES AND PLANS**

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

- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No 71 – Coastal Protection
- State Environmental Planning Policy No 55 – Remediation of Land
- State Environmental Planning Policy (Building Sustainability Index: BASIX)
- Wyong Local Environmental Plan 1991
- Wyong Shire Development Control Plan 2005
  - Chapter 60 – The Entrance District
  - Chapter 64 – Multiple Dwelling Residential Development
  - Chapter 67 – Engineering Requirements for Development
  - Chapter 69 – Waste Management
  - Chapter 70 – Notification of Development Proposals
  - Chapter 99 – Building Lines
  - Chapter 100 – Quality Housing

- Council Policy F5 – Flood Prone Land Development
- Council Policy L1 – Landscape Policy and Guidelines
- The Entrance Peninsula Planning Strategy
- Shire Wide S94 Contribution Plan
- The Entrance District S94 Contribution Plan
- NSW Sea Level Rise Policy Statement
- NSW Coastal Planning Guideline: Adapting to Sea Level Rise
- Flood Risk Management Guide: incorporating sea level rise benchmarks in flood risk assessments.

### **ECOLOGICALLY SUSTAINABLE PRINCIPLES**

The development does not consider the predicted affects of sea level rise. As a result future generations are likely to be burdened with a development that would be highly vulnerable to risk of flooding, which would potentially result in damage to the built environment and environs. In addition, the development may not achieve the expected asset or economic life and is considered to contravene the sustainable development principles of intergenerational equity and application of the precautionary principle.

### **Climate Change**

The potential impacts of climate change on the proposed development have been considered as part of the assessment of the application. This assessment has included 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, rising sea levels are of particular importance and are discussed in detail further in the report as part of the flooding assessment of the application.

### **ASSESSMENT**

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

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

#### **State Environmental Planning Policy No 71 – Coastal Protection**

SEPP 71 – Coastal Protection applies to the development and the site is identified as being within a sensitive coastal location as it is less than 100 metres from The Entrance Channel. In accordance with SEPP 71, the proposal has been assessed against the matters for consideration outlined under Clause 8 and found to be unsatisfactory, with respect to its suitability due to the flooding characteristics. The proposal has also been considered under Part 4 of SEPP 71 relating to public access, effluent disposal and stormwater and is consistent with the requirements identified under this part. A copy of the assessment table is included as an attachment.

**State Environmental Planning Policy (Infrastructure) 2007**

Clause 102 of SEPP (Infrastructure) includes provisions to ensure that noise sensitive development proposed adjacent to road corridors which carry considerable traffic volumes are not adversely affected by road noise or vibration.

The clause applies to development adjacent to roads with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of the Roads and Traffic Authority (RTA)), and development that the consent authority considers likely to be adversely affected by road noise or vibration. Where residential development is proposed, appropriate measures must be taken to ensure that the following internal noise levels are met:

- The LAeq noise level between the hours of 10.00 pm and 7.00 am shall not exceed 35 dBA within a bedroom, and
- The LAeq noise level within any other habitable room (excluding a garage, kitchen, bathroom or hallway) shall not exceed 40 dBA at any time.

(NB: LAeq is the equivalent continuous level which refers to when a noise varies over time, the LAeq is the equivalent continuous sound which would contain the same sound energy as the time varying sound)

Wilfred Barrett Drive is estimated to carry around 16,700 vehicles per day and therefore the provisions of Clause 102 of SEPP (Infrastructure) are not mandatory for this development. However, the relevant noise criteria is still considered relevant given the proximity of the development to The Entrance Bridge. The applicant has submitted an Acoustic Assessment which recommends using various glazing thicknesses to all windows to ensure that the noise criteria is complied with. If consent is granted, conditions requiring compliance with the Acoustic Assessment Report would need to be imposed.

**State Environmental Planning Policy No 55 – Remediation of Land**

Clause 7 of SEPP 55 specifically relates to the consideration of contamination and remediation prior to a consent authority granting consent to the carrying out of any development. Specifically, Clause 7 states that:

*(1) A consent authority must not consent to the carrying out of any development on land unless:*

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

Having regard for the previous use of the site, being for the purpose of a dwelling house, it is considered unlikely that the site would be contaminated and therefore no further assessment is necessary.

**Wyong Local Environmental Plan 1991***Clause 15 – Development on land containing acid sulphate soils*

WLEP 1991 requires special assessment to be given to development on land subject to actual or potential acid sulphate soils. The site is identified as Class 2 on the Acid Sulphate Soils Planning Map. For Class 2 land, a preliminary assessment for acid sulphate soils should be prepared where any works below the natural ground surface would disturb more than 1 tonne of soil. Although requested, the Applicant has not provided a preliminary assessment and therefore the impact that the proposal would have on acid sulphate soils, has not been able to be assessed.

*Clause 19 – Development near lakes, rivers and creeks*

As the site is located adjacent to The Entrance Channel (Tuggerah Lake), Council must take the following 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 proposal is considered acceptable in terms of the matters listed in above.

*Clause 28 – Tree Management*

Clause 28 of WLEP 1991 requires development consent for the removal of trees and states that Council shall not grant such consent unless:

- “(a) such works are ancillary to or necessary to undertake a use permitted on the land, and*
- (b) the Council has made an assessment of the importance of the vegetation in relation to:*
  - (i) soil stability and prevention of land degradation, and*
  - (ii) water quality and associated ecosystems, such as streams, estuaries and wetlands, and*
  - (iii) scenic or environmental amenity, and*
  - (iv) vegetation systems and natural wildlife habitats.”*

The site is mainly cleared, although there are two (2) trees that are proposed to be removed. The tree removal is ancillary to the proposed construction of the residential flat building and dwelling house and is therefore permissible with consent. It is unlikely that the removal of these trees would have a significant impact on soil stability, water quality or scenic or environmental amenity. The site does not contain any hollow-bearing trees and the removal of the trees is unlikely to impact on vegetation systems and natural wildlife habitats. As such, Council is able to grant consent to the removal of the trees, should the application be supported.

*Clause 29 – Services*

This clause requires all new development to have an adequate water supply and facilities for the removal or disposal of sewage and drainage. Water and sewer connections are available to the site from Brogden Road. Stormwater is also proposed to discharge to Brogden Road.

**Wyong Development Control Plan 2005**

*Chapter 60 – The Entrance District*

The site is identified in DCP 2005 Chapter 60 as being within Precinct 8 – The Entrance North. The intent of the Precinct is for the "holiday village" environment of The Entrance North to be retained with a mix of low scale residential, convenience retail and tourist accommodation.

The application has been assessed against the provisions of DCP Chapter 60 and is generally consistent with its requirements. An assessment table relating to the design principles for the precinct is included as an attachment. The prescriptive requirements are replicated within DCP 2005 Chapter 64 and are considered below.

*Chapter 64 – Multiple Dwelling Residential Development*

The development proposes a number of variations to DCP Chapter 64 as detailed in the assessment table included as an attachment. This includes variations to building height, rear setback, carparking, driveway design, floor space ratio, private open space, and fencing. Whilst in isolation, some of the variations maybe considered minor, given the number of variations proposed and the site constraints, the cumulative impact means that the development represents an overdevelopment of the site.

Most importantly, the proposed variations to the rear setback and areas of private open space have the potential to have a detrimental impact on the enhancement of the public domain and desired street character as well as the future occupants of the development. Specifically, the courtyard to Unit 4 is located within the front setback, which is contrary to the DCP requirement and results in a 1.8 metre high fence along the front boundary. Typically, front fences are restricted to a height of 1.2 metres, or 1.5 metres if a suitable setback for landscaping is provided so as to not impact on the streetscape. For Unit 1 (dwelling house), which fronts The Entrance Channel, a generous area of private open space is indicated on the plans. However, once land is acquired for the public pathway, the area of usable open space would be reduced to approximately half the minimum required under DCP Chapter 64 and privacy would also become an issue at the public/private domain interface.

The close proximity of the proposed boat shed, deck and steps to the future public pathway is therefore likely to create a conflict between maintaining privacy to the occupant of the dwelling house and maintaining and enhancing the public domain in this location.

The above issues could be avoided or minimised and compliance with the DCP achieved if the extent of the development was reduced and therefore it is considered that the proposal is an overdevelopment of the site.

*Chapter 67 – Engineering Requirements for Development*

### 3.1 DA/200/2011 - Residential Flat Building Comprising Three (3) Townhouses and Separate Dwelling-House at North Entrance (contd)

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Civil works including work within the road reserve and stormwater drainage need to be undertaken in accordance with Council's DCP Chapter 67. This can be imposed through conditions of consent, should consent be granted.

#### *Chapter 69 – Waste Management*

A Waste Management Plan has been submitted in accordance with DCP Chapter 69.

#### *Chapter 99 – Building Lines*

DCP Chapter 99 contains provisions for foreshore building lines. While clause 31 of WLEP 1991 fixes a 20 metres foreshore building line in some areas of the Shire, the subject site is not affected by this clause. The foreshore building lines fixed by WLEP 1991 are also replicated in DCP Chapter 99, together with a 20 metre building line for other non-habitable buildings and structures along the foreshore, which would apply to the proposed boat shed. The setback to the boat shed varies from 4.8 m to 4.2 m and represents a variation of up to 79%. However, other development in the immediate vicinity is also non-compliant with this setback provision.

#### *Chapter 100 – Quality Housing*

Dwelling houses are typically assessed against the provisions of DCP Chapter 100. However, as the proposed dwelling house forms part of a multi unit development, the proposed development has been assessed in accordance with DCP Chapter 64 - Multiple Dwelling Residential Development.

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

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

Existing development at The Entrance North comprises a mix of, tourist, recreational and residential areas of generally low scale. Land to the east of Hutton Road and fronting North Entrance Beach has largely undergone redevelopment in the form of 2-3 storey unit blocks. There has been less redevelopment to the west of Hutton Road with the majority of the existing housing stock in the immediate area being pre 1950's, although a 2 storey residential flat building containing 3 units, plus roof terrace, has recently been completed immediately to the south of the subject site.



***Brogden Road streetscape with the recently completed residential flat building in the centre background***

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

The proposed development would be accessed from Brogden Road, which has a 'lane' like width of approximately 10 metres. Brogden Road is sealed, although there is no kerb, guttering or footpath. Should consent be granted, conditions of consent would be required in relation to works within Brogden Road.

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

Two (2) of the objectives of TEPPS are to:

- Improve and encourage public access to waterfront areas, including The Entrance Channel, The North Entrance Beach, Karagi Reserve and Dunleith Point; and
- Improve pedestrian and cycling facilities, including improved and safer links across or under The Entrance Bridge to/from the existing pedestrian/cycleway network and access to The Entrance Channel foreshore.

To support this, TEPPS recommends that Council negotiate with property owners fronting The Entrance Channel in regard to the provision of a public continuous waterfront shared pedestrian and bicycle path. This path should link under The Entrance Bridge to the existing pedestrian and bicycle path facilities in Terilbah Reserve. TEPPS further identifies that such a facility will improve the physical connection between the Pacific Ocean coast, The Entrance Channel and other areas of the Peninsula. A plan that identifies the location of the public access is provided below.

TEPPS does not provide any further guidance on the exact location, width or type of public access. However, the draft Entrance Masterplan which is currently on public exhibition has identified a preference for a 5 metre wide public pathway across the back of the subject site. It is therefore important to preserve the opportunity for the pathway to be constructed.

During the LEC hearing in relation to Council's refusal of DA/484/2008 for 12 units over part of the subject site, the Commissioner gave considerable weight to TEPPS and was satisfied that

*"the opportunity for public access along the foreshore is an important planning consideration in the context of the Strategy. The approval of the proposed development will, in my view, frustrate an important feature of the Strategy. In my opinion, the provision of a public access way along the foreshore is a legitimate and valuable public asset and appropriate for inclusion in a strategic planning document such as the Strategy.*

*The approval of the proposed development would unacceptably frustrate the achievement of an important component of the Strategy and is a sufficient reason to refuse the application."*

Having regard for the outcome of the previous Court case, the building has been set back 5.5 m from the rear boundary with the proposed deck being approximately 2.5 m from the property boundary. These setbacks, together with the reclaimed Crown Land would provide for a 5 metre wide pathway to be acquired by Council, although would impact on the area of private open space available to the dwelling house.





Extract from The Entrance Peninsula Planning Strategy showing the location of the proposed pathway



*View from under The Entrance Bridge looking south toward  
the subject site and reclaimed Crown Land*



*View from under The Entrance Bridge looking south toward  
the subject site and reclaimed Crown Land*



***View from The Entrance Bridge looking east toward the subject site and reclaimed Crown Land***

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

The existing water and sewer systems are capable of servicing the proposed development. Should consent be granted, contributions and conditions would need to be imposed under the Water Management Act, 2000.

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

There are two (2) items of local heritage significance at The Entrance North, which are located at No 21 Hargraves Street and No 33 Hutton Road. The subject site is sufficiently separated from both these items so as to not have any impact on them.



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

The site is not known to contain any valuable land resources.

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

A BASIX Certificate has been submitted with the development application which demonstrates compliance with the appropriate water targets. A 1,500 litre rainwater tank is proposed to be located under the deck of each unit.

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

Should consent be granted, conditions relating the preparation of an Acid Sulphate Soils Assessment and/or Management Plan and erosion and sedimentation controls would need to be imposed.

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

No detrimental impacts on air quality or microclimate conditions are anticipated.

***Any effect on the flora and fauna.***

The site contains two (2) trees (Tuckeroo), which are proposed to be removed. Should consent be granted, replacement trees would need to be incorporated into the landscape plan.

***The provision of waste facilities.***

Should consent be granted, the development can be serviced by Council's domestic waste contractor.

***Whether the development will be energy efficient.***

A BASIX Certificate has been submitted with the development application which demonstrates compliance with the thermal comfort and energy targets.

***Whether the development will cause noise and vibration.***

Should consent be granted, appropriate conditions would be required to address noise generated during the construction period. As the site is affected by noise from The Entrance Bridge, conditions relating to compliance with the Acoustic Assessment Report would need to be included.

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

The subject property is fully flood affected during a 1% Annual Exceedance Probability (AEP) flood event by flood water originating from Tuggerah Lakes. The Tuggerah Lakes Flood Study identifies that the 1% AEP flood level for this development is RL 2.2m Australian Height Datum (AHD). The development plans indicate that existing ground levels generally

### 3.1 DA/200/2011 - Residential Flat Building Comprising Three (3) Townhouses and Separate Dwelling-House at North Entrance (contd)

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range between 1m AHD and 2m AHD, which result in flood depths between 0.2m and 1.2m across the site during the 1% AEP flood event.

An analysis of flood characteristics within The Entrance Channel was completed in 1992 and findings are summarised in the table below.

<b>Flood</b>	<b>50% AEP</b>	<b>5% AEP</b>	<b>1% AEP</b>	<b>PMF</b>
<b>Level (AHD)</b>	0.91	1.8	2.2	2.7
<b>Velocity (m/s)</b>	2.1	2.6	3.0	6.1

#### *Sea Level Rise*

The NSW Sea Level Rise Policy Statement (2009) was prepared to support consistent adaptation to projected sea level rise impacts. The policy statement included sea level rise planning benchmarks for use in assessing potential impacts of sea level rise in coastal areas, including use in flood risk assessments. The benchmarks are for a projected rise in sea level, relative to the 1990 mean sea level, of 0.4 metres by 2050 and 0.9 metres by 2100.

The Flood Risk Management Guide - Incorporating Sea Level Rise Benchmarks in Flood Risk Assessments (the guide) published by the NSW Government in 2009 was prepared to assist stakeholders to incorporate the sea level rise planning benchmarks in floodplain risk management planning and flood risk assessments for new development. The guide updates the sea level rise information in the NSW Floodplain Development Manual published by the NSW Government in 2005.

Considering the significance of the development in terms of population intensification, expected asset life and financial investment proposed by the applicant, it is considered appropriate to apply the higher sea level rise benchmark for the proposed development. The application of this benchmark has the affect of increasing the initial water level of Tuggerah Lakes and the Pacific Ocean analysed in the Tuggerah Lakes flood study.

The guide states that “where the site is below 4 metres AHD, an appropriate conservative assumption to estimate the 1% AEP flood level considering sea level rise is to add the sea level rise planning benchmarks to the 1% AEP flood level relevant to the site”. As stated previously, the development plans indicate existing ground levels generally ranging between 1m AHD and 2m AHD.

The higher sea level rise benchmark has been added to the 1% AEP flood level, which results in a “design flood level” of 3.1m AHD and a sea level rise flood planning level of 3.6m AHD. For the purpose of the assessment of this application, the higher sea level rise bench mark has been used.

#### *Flood Assessment*

Under the NSW State Government’s Flood Policy, the management of flood liable land remains the responsibility of local government. Accordingly, Council has a duty of care to ensure flood liable lands in the Wyong Shire are managed in accordance with their flood hazard and flood risk. Council’s Flood Prone Land Development Policy (the policy) outlines Council’s current development controls applicable to the development and has been continually applied for a period exceeding 20 years.

The application of the policy requires the categorisation of 'Type of Development' and 'Flood Hazard' to determine suitability of the proposed development. The 'Type of Development' for the purpose of this policy meets the category of 'New Development' due to the proposed population intensification, although the determination of 'Flood Hazard' requires further consideration.

The policy requires categorisation of flood hazards in accordance with the NSW Floodplain Development Manual, which details the process to determine flood hazard category. The process involves the evaluation of hazard level from pure hydraulic principles, and then refining the hydraulic hazard category in light of other relevant factors affecting the safety of individuals to establish the true flood hazard category.

The hydraulic categories of flood prone land applicable to the development are flood storage and floodway. A multi-variable analysis was undertaken to determine the provisional hydraulic category owing to the varying ground levels over the development and uncertain changes in channel velocity associated with the changing topography. The analysis is presented below using the design flood Level of 3.1 m AHD.

<b>Flood Depth (m)</b>	<b>Velocity (m/s)</b>	<b>Provisional Hydraulic Category</b>
1.1 (Natural surface of 2m AHD Brogden Road)	3.0	High Hazard
	2.5	High Hazard
	2.0	High Hazard
	1.5	High Hazard
	1.0	High Hazard
	0.5	High Hazard
	0.0	High Hazard
2.1 (depth adjacent to the channel)	3.0	High Hazard
	2.5	High Hazard
	2.0	High Hazard
	1.5	High Hazard
	1.0	High Hazard
	0.5	High Hazard
	0.0	High Hazard

The hazard category from pure hydraulic principles is considered to be a combination of high hazard floodway towards The Entrance Channel and high hazard flood storage locally around Brogden Road.

The determination of true flood hazard category was undertaken by refining the hydraulic hazard category and considering the following factors:

**Risk to Life**

- *The proposed development should not result in any increased risk to human life*

The existing site contains a single residential dwelling approximately 50 years old with existing habitable floor level below the design flood level (approximately 2.45m AHD).

The proposed development is likely to result in structurally superior dwellings. However, the habitable floors have not been proposed above the sea level rise flood planning level. As a result, the development is predicted to be susceptible to flood damage within the expected life of the development. The future occupants of the development may therefore be under the false assumption that the development provides safe harbourage when deciding on the appropriate time to effect evacuation.

The proposed development seeks approval for a dwelling house and residential flat building, which will increase population density in an area established to be hydraulically affected by high hazard flooding.

Additionally, self sufficient low hazard evacuation is not available from the development, and future occupants will be reliant on emergency services for evacuation in high hazard conditions. Emergency service personnel conducting rescue/evacuations are placed at risk in addition to the future occupants.

- *Consequences for risk to life for floods up to the Flood Planning Level*

Occupants are predicted to be subject to prolonged flooding with the historical data and flood modelling indicating flood characteristics inhibiting access may be present for numerous days, with conditions close to peak remaining for approximately 24 hours. Assuming safe harbourage is provided; occupants will need to manage reduced or total unavailability of essential services and access to supplies, including medical services, electricity, sewerage, gas, telecommunications and potentially potable water.

- *Consequences for risk to life for floods greater than the Flood Planning Level*

The development is likely to sustain structural damage, and occupants will no longer have a safe place of refuge. Evacuation will be solely reliant on emergency services employing higher risk methods for any remaining occupants.

### The Cost

- *The additional economic and social costs that may arise from damage to property from flooding should not be greater than that which can reasonably be managed by the property owner nor in addition to those experienced by the general community.*

Flood insurance coverage is likely to be accessed by the future owners and damage is likely to be less than the general community given the access to modern construction techniques and materials. Flood insurance does not reduce flood damages but transforms the random sequence of losses into a regular series of payments. Further, given the risk and severity of flooding, insurers may not always offer flood insurance.

Should the development be approved without adequately considering sea level rise, it is anticipated the economic and social costs that may arise from damage to property from flooding will be exacerbated.

- *Economic factors with regard to not undertaking the development.*

The property is currently occupied by a single storey, timber framed fibro cement clad dwelling approximately 50 years old, and nearing achievement of reasonable estimates of asset and economic life. Council records indicate the property has been in the current ownership since September 1993.

- *The cost to both the public and private sectors to service the development safely before and after in flood*

The proposed development is located within an existing residential area with existing public and private infrastructure. The proposed development is not anticipated to generate significant additional servicing costs before or after floods.

Upgrading of the 'floodgates' on the existing drainage pipelines under Wilfred Barrett Drive, and provision of additional culverts beneath Wilfred Barrett Drive will be required in the future with further development in The Entrance North. These works form part of the established s94 Contributions Plan for the locality.

### Warning and Evacuation

- *The availability of accurate information during a flood event on which evacuation strategies can be formulated. This must include consideration of loss of power and telephone landlines.*

The Tuggerah Lakes system is closely monitored during flood events, with updates regularly provided by the emergency management authorities. Access to accurate information is not anticipated to be an issue with current technology, surrounding community and adequate flood preparedness.

- *Available effective warning time and reliable access for the evacuation of an area potentially affected by floods up to the 1% AEP flood event for the proposed development.*



Flooding from Tuggerah Lakes generally features a relatively slow rate of rise over a number of days to produce severe flood characteristics. Effective warning time is available; however the 'last chance' for self-sufficient low-hazard evacuation (by able-bodied adults) passes significantly before peak conditions arrive.

The applicant has attempted to demonstrate low-hazard evacuation, however the design flood level (3.1m AHD) used does not consider velocity or predicted sea level rise and is not considered to be feasible during the design flood event.

- Available effective warning time and reliable access for the evacuation of an area potentially affected by floods larger than that which the proposed development has been designed for. This includes consideration of floodwater depth and velocity.

Similar to the above, a relatively slow rate of rise is applicable to floods in excess of the design flood level flood event. However, floods in excess of the design flood would further inhibit evacuation.

- The development should not create land that will become isolated in the floodplain

The applicant is seeking to raise the development above the natural ground level to the current flood planning level (2.7m AHD excluding sea level rise). This level is not considered high enough to protect people or property now and in the future.

#### Cumulative Effects of the Development

- Evidence that the development does not detrimentally increase the potential flood affectation on other development or properties or infrastructure, either individually or in combination with the cumulative impact of development that is likely to occur in the same floodplain.

The development proposes fill in excess of 1 metre which is not supported on the basis of cumulative impact on the floodplain. The effect has not been quantified by the applicant.

- Potential cumulative effects of approval of the development and precedents created for further cumulative development in the floodplain

To date, no development approvals have been granted for intensification in high hazard flooding conditions including the predicted effects of sea level rise. As mentioned previously, Council's Development of Flood Prone Land policy has been consistently applied in excess of 20 years by precluding population intensification in high hazard areas.

#### Ecologically Sustainable Development

- Proposed development must be consistent with ecologically sustainable development principles

The development does not consider the predicted affects of sea level rise. As a result future generations are likely to be burdened with a development that may not achieve the expected asset or economic life. This contravenes the sustainable development principles of intergenerational equity and application of the precautionary approach.

#### Climate Change

- The proposal adequately considers the impact of climate change.

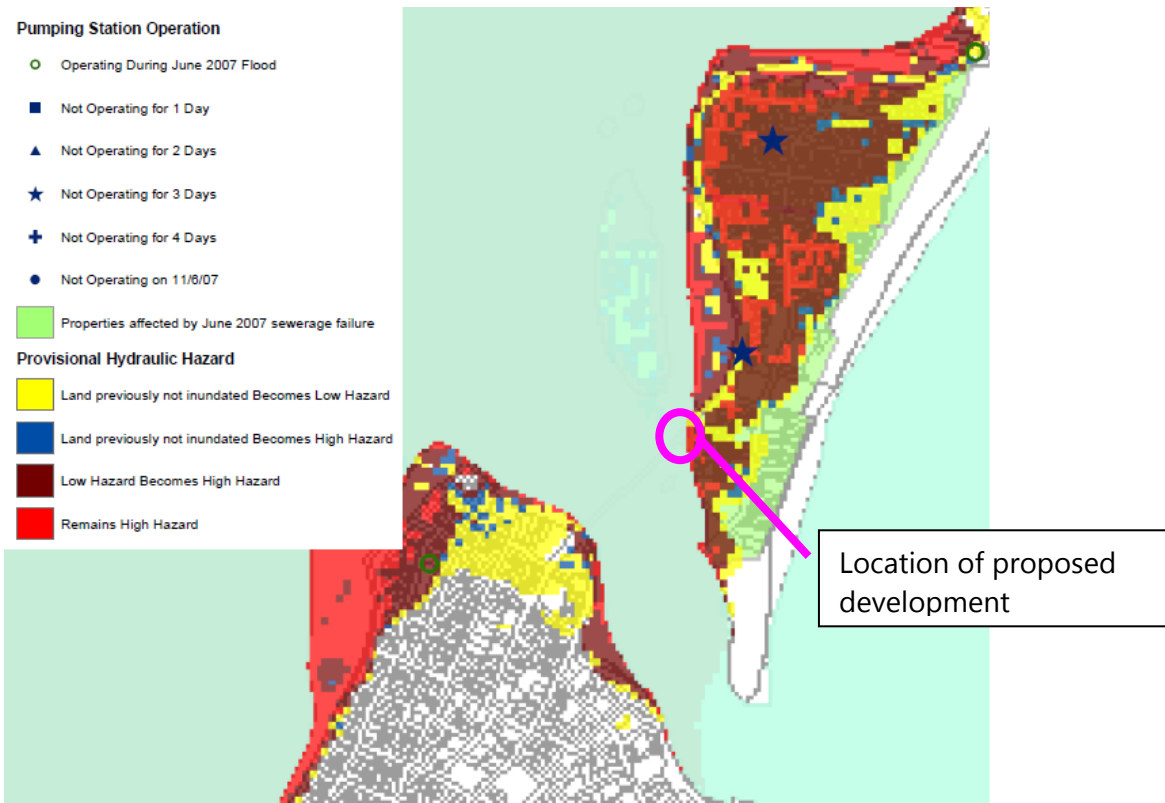
The development has not considered the impact of climate change. Sea level rise is one aspect that has been discussed separately in this report, however other effects such as increased temperatures, changes in rainfall and increased frequency of extreme wind and storm events have been considered.

In a flooding context the probability of experiencing severe flooding is predicted to increase. A widely accepted theory is that the current 1% AEP flood event will increase in likelihood to 5.9% AEP (1:17).

Based on the above flood assessment, none of the factors suggest a decrease in flood hazard. The true flood hazard category applicable to the development is therefore a combination of High Hazard floodway and High Hazard Flood Storage. The development controls under Council's Flood Prone Land Development Policy for 'New Development' in High Hazard category flooding recommends that the application be refused.

#### *Verification*

The contents of the Tuggerah Lakes Floodplain Risk Management Study have been reviewed to verify the flood assessment completed above. This map confirms that the proposed development is fully affected by high hazard flooding and is generally located on land identified as remaining high hazard, indicating that even without sea level rise implications, the land would be considered high hazard.



**Extract from Tuggerah Lakes Floodplain Risk Management Study - 100 year ARI Hydraulic Hazard with 0.9m Sea Level Rise and Sewerage System Impact South and East Tuggerah Lakes.**

Council has a duty of care to consider the residual risk to a development once any proposed flood modification measures have been introduced. Council must also consider the NSW Coastal Planning Guideline: Adapting to Sea Level Rise (August 2010), which supports NSW Government policy in relation to sea level rise.

More specifically, the Guideline states that when assessing development applications in coastal areas, consent authorities must have regard to the Coastal Planning Principle 5 and Principle 6 of the Guideline.

*Principle 5 – Minimise the exposure of development to coastal risks.*

*Principle 6 – Implement appropriate management responses and adaptation strategies, with consideration for the environmental, social and economic impacts of each option.*

In considering the above, the development application has been demonstrated to be contrary to development controls under Council's Flood Prone Land Development Policy and is considered unsuccessful in adequately managing or reducing flood risks to life and property to an acceptable and sustainable level.

***Any risks from technological hazards.***

There are no known technological hazards associated with the development or the site. As of 1 July 2010, it is mandatory to confirm with a designated information provider, the location and type of any underground electricity power lines or gas pipelines prior to any excavation or digging.

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

It is not anticipated that the development would create any issues with safety, security or crime prevention.

***Any social impact in the locality.***

It is not anticipated that the development would have any social impact in the locality.

***Any economic impact in the locality.***

The proposed development is unlikely to have a negative economic impact.

***Any impact of site design and internal design.***

No further issues to report.

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

Should consent be granted, conditions relating to traffic management plans and the protection of adjoining properties would need to be imposed.

***Any cumulative impacts.***

No further issues to report.

**THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT (s79C(1)(c)):*****Whether the proposal fits in the locality.***

The construction of multi unit development incorporating a two storey residential flat building is consistent with the type of development in the area. However, the proposal does not comply with a number of the controls in DCP Chapter 64 and therefore would have a detrimental impact on the locality.

***Whether the site attributes are conducive to development.***

As discussed previously in the report, the flood hazard category applicable to the development is a combination of High Hazard floodway and High Hazard Flood Storage and is therefore unsuitable for redevelopment at a higher density.

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

***Any submission from the public.***

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

***Any submission from public authorities.***

*NSW Office of Water*

The development application was referred to the NSW Office of Water as 'integrated development' under the EP&A Act as works are proposed within 40 metres of The Entrance Channel. However, the Office of Water has advised that a Controlled Activity Approval is not required and no further assessment is necessary as the proposed works are not likely to exceed minimal harm.

*NSW Roads and Traffic Authority*

The development application was also referred to the RTA due the proximity of the development to The Entrance Bridge. The RTA recommended a number of conditions regarding the access, parking and stormwater requirements as well as making reference to traffic noise and mitigation measures in accordance with the NSW Road Noise Policy – July 2011.

Although the RTA's response did not make any comment in relation to the separation between the development and The Entrance Bridge, previous correspondence received from the RTA during the assessment of DA/484/2008 required a minimum of 5 metres clearance from any structure to the edge of The Entrance Bridge for the purpose of dimensional clearance for maintenance. This requirement has been accommodated in the design with only fencing and steps located within 5 metres of The Entrance Bridge.

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

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

Approval of a development application that would increase residential densities in a high hazard flood area is contrary to the NSW Coastal Planning Guideline: Adapting to Sea Level Rise, the NSW Floodplain Development Manual and Council's Flood Prone Land Development Policy – F5. Approval of the development would also undermine the controls contained within DCP Chapter 64 and set an undesirable precedent for development in the area.

**OTHER MATTERS FOR CONSIDERATION**

***Section 94 Contributions***

The Entrance District Development Contributions Plan No 3 and the Shire Wide Contribution Plan are applicable to the proposed development and therefore contributions based on four (4) x 3 bedroom units, with a credit of 1DU for the existing dwelling would apply, should consent be granted.

**CONCLUSION**

The proposed development is for the demolition of the existing dwelling house and the construction of a residential flat building containing three (3) x 2 storey split level townhouses as well as a separate 2 storey split level dwelling house with boat shed. The development proposes a number of variations to Council's DCP and the site has been identified as being affected by high hazard flooding, with predicted sea level rise further exacerbating the severity. The flood characteristics over the site and surrounding areas cannot be mitigated to reduce the residual risk to an appropriate and sustainable level and as a result, the site is considered unsuitable for the development and refusal of the application is recommended.

**ATTACHMENTS**

- |   |                              |           |           |
|---|------------------------------|-----------|-----------|
| 1 | Development Plans (A3 plans) | Enclosure | D02808638 |
| 2 | SEPP 71 Assessment Table     |           | D02808641 |
| 3 | DCP 60 Assessment Table      |           | D02808642 |
| 4 | DCP 64 Assessment Table      |           | D02808643 |

### State Environmental Planning Policy 71 – Coastal Protection

Cl.8	Matters for Consideration	Proposed
a	The aims of the Policy	The proposal is consistent with the aims of the Policy in terms of protection of the coastal zone and environment; and the provision of new pedestrian access to foreshore areas.
b	Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved.	There is no existing public access to the foreshore from the subject site.
c	Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.	The Entrance Peninsula Planning Strategy includes objectives to improve and encourage public access to waterfront areas and to improve pedestrian and cycling facilities, including improved and safer links across or under The Entrance Bridge to/from the existing pedestrian/cycleway network and access to The Entrance Channel foreshore. To achieve this objective it is likely that the pedestrian/cycleway network would need to pass across the rear of the subject site. The proposed dwelling house has been set back approximately 5.5 metres from the rear boundary to enable a public path to be constructed in the future if necessary.
d	The suitability of development given its type, location and design and its relationship with the surrounding area.	The proposed development of three townhouses and a dwelling house is in keeping with existing development. However, the site is affected by flooding and is not considered to be suitable for new housing at an increased density.
e	Any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore.	The proposal is not expected to result in any significant overshadowing or view loss.
f	The scenic qualities of the New South Wales coast, and means to protect and improve these qualities.	The proposal will have no adverse impact on the scenic qualities of the coastline.
g	Measures to conserve animals (within the meaning of the <u>Threatened Species Conservation Act 1995</u> ) and plants (within the meaning of that Act), and their habitats.	The subject site does not contain any threatened species or habitat.
h	Measures to conserve fish (within the meaning of Part 7A of the <u>Fisheries Management Act 1994</u> ) and marine vegetation (within the meaning of that Part), and their habitats.	The proposal has no impact on the conservation of fish and marine vegetation.
i	Existing wildlife corridors and the impact of development on these corridors.	The proposal will not affect any identified wildlife corridor.
j	The likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards.	The subject site is not identified within the Draft Wyong Shire Coastal Hazard Management Plan as being subject to coastal hazards. However, the site is affected by flooding in terms of the both depth and velocity of flood waters.
k	Measures to reduce the potential for conflict between land-based and water-based coastal activities.	The proposal has no impact on water-based coastal activities.

<b>Cl.8</b>	<b>Matters for Consideration</b>	<b>Proposed</b>
l	Measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals.	The subject site does not contain any aboriginal sites or relics, and there are no known sites within the immediate locality.
m	Likely impacts of development on the water quality of coastal waterbodies.	The proposal would not adversely affect water quality, subject to compliance with conditions.
n	The conservation and preservation of items of heritage, archaeological or historic significance.	The proposal has no impact on items of heritage, archaeological or historic value.
o	Only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities.	Not applicable.
p(i)	The cumulative impacts of the proposed development on the environment.	The proposal is not considered to have any adverse cumulative impacts on the environment.
p(ii)	Measures to ensure that water and energy usage by the proposed development is efficient.	A BASIX Certificate has been submitted with the application to demonstrate satisfactory water and energy efficiency.
<b>Cl.13</b>	A provision of an environmental planning instrument that allows development within a zone to be consented to as if it were in a neighbouring zone, or a similar provision, has no effect.	The application does not propose to utilise such a clause.
<b>Cl.14</b>	A consent authority must not consent to an if, in the opinion of the consent authority, the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.	There is currently no public access to the site. As part of The Entrance Peninsula Planning Strategy a public foreshore promenade is identified across the subject site. While details have not been investigated as part of Council's Masterplanning exercise, provision has been made for a future 5 metre wide pathway along the foreshore, which would be partly located within the subject site. This would facilitate public access from Terilbah Reserve through to Karagi Reserve and Dunleith Point.
<b>Cl.15</b>	The consent authority must not consent to a development application in which effluent is proposed to be disposed of by means of a non-reticulated system if the consent authority is satisfied the proposal will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform.	The development can be connected to the existing reticulated sewer system located in Brogden Road.
<b>Cl.16</b>	The consent authority must not grant consent to a development application if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.	Should consent be granted, standard conditions relating to stormwater treatment and quality would need to be imposed.



**Development Control Plan Chapter 60 – The Entrance Precinct  
(Precinct 8: Development Principles)**

DCP Requirement	Comment
Development should be of a scale and character compatible with surrounding development. Development in excess of 2 storeys in prominent locations is to be avoided so as to limit the level of intrusion into the skyline when viewed from The Entrance.	Proposed development is two storeys in height and is consistent with the scale and character of the area.
Those properties within the coastal zone as identified by Development Control Plan No. 77 -'Coastal Hazards' will be restricted in location and method of construction as specified in the DCP.	The site is not affected by DCP 77 – Coastal Hazards nor identified within the Draft Wyong Shire Coastal Hazard Management Plan.
The design of any development shall have regard to:	
(i) the relationship of the proposed building(s) with adjoining and surrounding development in the locality (existing and future);	The proposed development fits within the existing character of the area and is unlikely to detrimentally impact adjoining development.
(ii) the impacts on privacy within surrounding properties;	Opportunities for overlooking from the proposed decks is proposed to be mitigated through the use of privacy screens. The decks are elevated in an attempt to comply with flood levels.
(iii) the impacts of overshadowing from buildings greater than 1 storey in height;	Shadow diagrams have been provided and the potential impact is considered reasonable.
(iv) options for the on-site disposal of stormwater and the provision of sediment and nutrient control devices in the case of off-site disposal;	On-site detention, rainwater reuse tanks and water quality control facilities are incorporated into the Stormwater Management Plan.
(v) siting, layout and construction methods that encourage long term energy efficiency in buildings;	Main living areas and open space face north. A BASIX Certificate has been submitted to address water and energy efficiency.
(vi) compliance with the requirements of the Building Code of Australia including fire risk; and,	The proposed development is capable of complying with the deemed to satisfy provisions of the BCA.
(vii) the minimisation of cut and fill within a site, particularly along adjoining boundaries, and the method of construction and stability of retaining walls in the long term.	Filling of up to 1m is proposed for the driveway and under the garage slabs.
Carparking requirements are to be provided on-site with carpark areas positioned so as not to dominate the streetscape.	On-site parking is proposed, and is located so as to not be visually dominant from the street.
Facilities for the storage of waste are to be designed so that their contents are not visually intrusive from the street.	Bin storage is provided within individual courtyards.
Due regard should be given to the potential impacts of plant species at maturity on proposed buildings, adjoining properties and utility services (above and below ground). It is recommended that native plant species are used in preference to exotic species.	The landscape plan includes a mix of native and exotic species.

## Development Control Plan Chapter 64 – Multiple Dwelling Residential Development

	REQUIREMENT	PROPOSED	COMPLIANCE
<b>2.0 APPLICATION REQUIREMENTS</b>			
<b>Required Information</b>	Required information submitted?	Sufficient information provided.	Yes
<b>Services</b>	Any impact on drainage, water or sewer?	No impact subject to conditions.	Yes
	Kerb and guttering existing?	No existing kerb and guttering. This would be a condition requirement, should consent be granted.	Subject to condition
<b>3.0 CONTEXT</b>			
<b>Site and Local Context Analysis</b>	Submit site and contextual analysis	Site analysis provided.	Yes
<b>4.0 SCALE</b>			
<b>Residential Development by Zone</b>	Compatible with objectives of the zone 2(b)	Townhouse development consistent with the zone objectives.	Yes
<b>Building Height</b>	2 storey and 7 metres	6.6-7.2m	Partial 2.9% variation.
<b>Site Coverage</b>	Minimum 25% site area as 'soft' landscaping = 1024 x 0.25 = 256m <sup>2</sup>	Approx 305 m <sup>2</sup> or 29%.	Yes
<b>5.0 BUILT FORM</b>			
<b>Construction and Appearance</b>	Respond sensitively to context in terms of scale, functionality and sustainability.	Development of suitable scale and functionality. Complies with BASIX in terms of water and energy efficiency. Issues with sustainability in terms of flood impacts.	Yes  No
Building Design	High architectural quality	Suitable for type and scale of development.	Yes
	Facades to be articulated in length and height.	All facades articulated in length and height.	Yes
	Garages not to dominate street elevations.	No garages facing the street.	Yes
	Suitable architectural features to provide visual relief and to minimise bulk and scale.	Range of material including masonry and weatherboard cladding, wall projections and open pergola's.	Yes
Roof Design	Relate roof design to desired built form and the size and scale of the building.	Roof design appropriate for scale of development. Turrets/cupolas included to break up roof form.	Yes
	Minimise intrusiveness of service elements.	No services proposed on roof.	Yes
	Roof terraces to be setback from building edge.	N/A	N/A
<b>Cut and Fill</b>	Minimise cut and fill by stepping building.	Building is stepped. Although filling is still proposed under driveway and garages due to flooding issues.	Yes. However the extent of fill is unsatisfactory in a flood prone area.

<b>5.0 BUILT FORM</b>			
<b>Building Lines</b>			
<b>Setbacks</b>			
<i>Front</i>	4.5m, 6m to garage	6.2m	Yes
<i>Side (north)</i>	0.9m	1 to 4.5m	Yes
<i>Side (south)</i>	0.9m	1.5 to 6.5m	Yes
<i>Rear</i>	4.5m	2.2 to 4.8m	No (partial 51% variation to deck only)
<b>Car Parking</b>			
Resident Parking	4 x 3 beds @ 1.5/unit = 6 Spaces(based on 2 <sup>nd</sup> lounge being counted as a bedroom)	5	No
Visitor Parking	1 space per 3 units = 1.3 spaces	2	Yes
	Setback minimum 3m from category B or C roads, only where suitably screened by landscaping	3 m landscaped setback	Yes
<b>Vehicular Access Design</b>	Minimum driveway pavement width 3m for developments up to 4 dwellings.	3 m	Yes
	Driveway offset 2m from side boundary at front boundary, may taper back to 0.5m at front building line	0.5m	No (75% variation)
	Screening cars from view of street and building	Garages setback behind main building façade.	Yes
<b>Pedestrian Access Design</b>	Clear pedestrian access to development	Pedestrian Access via driveway.	Yes
	Consider public through-site access ways in larger developments.	Potential for future public foreshore pathway, subject to The Entrance Masterplan and acquisition by Council. Foreshore access to all residents is proposed.	Yes
<b>6.0 DENSITY</b>			
<b>Floor Space Ratios</b>	2(b) zone = 0.6:1 1024 x 0.6 = 614.4m <sup>2</sup>	623.1m <sup>2</sup> or 0.61:1	No (1.4% variation)
<b>7.0 SUSTAINABILITY</b>			
<b>BASIX</b>	BASIX Certificate.	Submitted.	Yes
<b>Waste Management</b>	WMP submitted.	Submitted.	Yes
	Location of bins to be accessible and not visually intrusive.	Individual bins located within private courtyards.	Yes
	Method of collection.	Collection at kerb by Council contractor.	Yes
<b>Stormwater Management</b>	SWMP submitted	Submitted.	Yes
<b>8.0 LANDSCAPE</b>			
<b>Landscape Design</b>	Category 2 Landscape design.	Submitted.	Yes
Deep Soil Zones	50% of required 'soft' landscaped area to be deep soil = 128m <sup>2</sup> .	>150 m <sup>2</sup>	Yes
Street Trees	2 semi advanced trees per 15 m frontage = 2 trees.	Can be conditioned.	Subject to condition

<b>9.0 AMENITY</b>			
<b>Private Open Space</b>	Grade not to exceed 1:14	Decks provided to create two separate level areas.	Yes
	45m with minimum dimension 4.5m directly accessible from general living areas.	Minimum area provided, although minor variations to dimension and the courtyard to Unit 4 is located within the front setback.	No
<b>Solar Access</b>	All dev to have 75% of each req o/space to have unobstructed sunlight for minimum 3 hours between 9.00 am and 3.00pm June 21.	Each open space area is north facing.	Yes
	Shadow diagrams to be submitted for 2+ storeys. Development not to unreasonably impact adjoining properties.	Shadow diagrams submitted and considered satisfactory.	Yes
<b>Privacy</b>	Building layout (windows, balconies, screening & l/scaping) to min direct o/looking of internal living areas & private o/space.	Privacy screens are proposed to the decks on northern side of building. Windows are appropriately setback and face away from adjoining property where possible.	Yes
Acoustic Privacy	Site layout should separate active rec areas, parking areas, vehicle access ways etc from bedrooms.	Appropriate for type and scale of development.	Yes
<b>Views</b>	Minimise loss of views.	The site is very flat and surrounding development is primarily single storey. The proposal would have minimal impact on views.	Yes
	Public views and vistas retained.	There are no current views or vistas.	N/A
<b>10.0 SAFETY AND SECURITY</b>			
Crime Prevention	Crime Risk Assessment (CPTED)	Design acceptable in terms of territorial re-enforcement, natural surveillance, access control and space management.	Yes
<b>11.0 SOCIAL DIMENSIONS</b>			
Housing Choice	Mix of 1, 2 and 3 bedroom units	Units can be used as 2 or 3 bedroom units	Yes
	10% of units to be suitable for adaptation for disabled/elderly persons.	Due to split levels and second storey, no units are suitable for adaptation.	No (10% of 4 is 0.4 units and therefore when rounded to nearest whole number, no adaptable units are required.
Facilities and Amenities	Each dwelling to have individual laundry.	Laundry provided within garage area.	Yes

<b>11.0 SOCIAL DIMENSIONS</b>			
	Car wash facility 5m x 2.7m, drain to grassed common area, may be a visitor space	No car wash incorporated, although can be conditioned to be within a visitor space.	Subject to condition
	Mailboxes	Located at street frontage adjacent o driveway.	Yes
	Storage: 1-2 beds - 3m <sup>2</sup> 3+ beds - 6m <sup>2</sup>	Storage, linen cupboards and built in robes provided.	Yes
<b>12.0 AESTHETICS</b>			
Fencing	Details to be provided. Max 1.2 m along front boundary.	1.2 m masonry and slatted front fence proposed.	Yes
	1.8 around courtyards	Courtyard fencing proposed.	Yes
	Courtyard fencing only in front setback for category A or B road for noise attenuation or to optimise solar access. Must be no closer than 1.5m from front boundary and 1.5m must be landscaped	Brogden Road is Category C and therefore no courtyards are permitted within front setback. However, the courtyard for Unit 4 is proposed to extend to the property boundary.	No
Streetscape	Development is to enhance streetscape character.	Streetscape impacted by courtyard fencing and lack of suitable driveway offset. Design of building and street façade considered acceptable.	No
	Provide separate entry from street for pedestrians and cars	No separate pedestrian access provided.	No
<b>13.0 ADDITIONAL PROVISIONS FOR SPECIFIC AREAS</b>			
Warnervale East / Wadalba Northwest	N/A	N/A	N/A
<b>14.0 CONTRIBUTIONS</b>			
Section 94 – The Entrance District	Contributions applicable based on 4 x 3 bedroom (counting 2 <sup>nd</sup> lounge as a bedroom)	To be paid prior to Construction Certificate if consent granted.	Subject to condition
Water Management Act	Contributions applicable based on 4 x 3 bedroom (counting 2 <sup>nd</sup> lounge as a bedroom)	To be paid prior to Construction Certificate if consent granted.	Subject to condition

### **3.2 RZ 17/2009 - Glenning Valley Rezoning Proposal**

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TRIM REFERENCE: RZ/17/2009 - D02821547

MANAGER: Martin Johnson; Manager

AUTHOR: Graham Pascoe, Planner, Land Use Planning and Policy Development

#### **SUMMARY**

Council is in receipt of a rezoning application (Planning Proposal) which seeks to rezone an area of land totalling 52.9 hectares for residential and conservation purposes. A review of the proposal has established that the proposal has merit and should be advanced to the "Gateway" (Department of Planning and Infrastructure); it being noted that further investigations and extensive consultation will be required.

<b>Applicant:</b>	Glenning Valley Partnership Pty Ltd
<b>Owners:</b>	Glenning Valley Partnership Pty Ltd and Others
<b>Proposal No.:</b>	R7/17/2009
<b>Description of Land:</b>	Lot 2 DP110081, Lot 4 DP1078468, Lot 455 DP786675, Lots 414 and 413 DP868340, Lot 52 DP 1039187, Lots 1111 and 1112 DP1143167, Lots 21 and 22 DP740435, Lots 513 DP500951 and Lot 511 DP205919
<b>Zoning:</b>	Part 7(a) Conservation, Part 7(f) Environmental Protection, Part 7 (g) Wetlands Management.
<b>Existing Use:</b>	Vacant generally wooded land (Northern - Bundeena Road/ Bottlebrush Drive precinct) and rural residential development (Southern – Berkeley Road Precinct).
<b>Employment Generation</b>	Subdivisional Works, bushland regeneration, dwelling construction and on-going maintenance.
<b>Estimated Value:</b>	\$54 million approx.

#### **RECOMMENDATION**

- 1 That Council initiate the Local Environmental Plan "Gateway" process, pursuant to Section 55 Environmental Planning and Assessment Act 1979 by endorsing the preparation of a Planning Proposal.**
- 2 That Council forward the Planning Proposal to the Department of Planning and Infrastructure requesting a "Gateway" determination, pursuant to Section 56 (1) Environmental Planning and Assessment Act.**
- 3 That Council undertake community consultation regarding the planning proposals, subject to the determination of the Gateway Process and Director General's approval,.**

- 4** *That a further report be submitted to Council to report on results of the community consultation.*

## **BACKGROUND**

The site has been the subject of residential development aspirations for several decades. The most recent trigger for submission of a rezoning request (in June, 2009) was a negotiated Agreement with one of the landowners (The Glenning Valley Partnership) as part of an Out of Court Settlement. This Agreement had at its foundation the cessation of legal proceedings before the Land and Environment Court and a Section 82A review in respect of a large wholesale/retail plant nursery and associated infrastructure.

The Agreement (in respect of part of the land) broadly considered the prospects of possible future urban development (approximately 18 hectares) and the conservation of land exhibiting significant ecological qualities (approximately 2.0 hectares) and in the latter case potential integration with Council's existing reserve system and creation of corridor linkages.

In March, 2010 Council communicated its preparedness to progress the Planning Proposal after receiving a request through the Rezoning Request Strategy process which formed part of the process of informing Council's Draft Settlement Strategy.

## **CURRENT STATUS**

### **The Site**

The subject site has frontage to Berkeley Road, Bundeena Road and Bottlebrush Drive (Glenning Valley) and comprises 12 separate parcels totalling approximately 52.9 hectares. It has moderate topographical variation (slopes of approximately 5-10%) and significant tracts of vegetation of variable quality.

The site comprises bushland, wetland, cleared rural land and some large lot/rural residential and low density residential development. (Refer to Site Plan)

The site is predominately zoned 7(f) Environment Protection pursuant to Wyong Local Environmental Plan, 1991 (WLEP). Portions of the central area are, however, zoned 7(g) Wetlands Management and 7(a) Conservation (aligning with an existing wetland/wetland Buffer). (Refer to Attachment 1)



Site / Locality Plan



### Site History

The most recent site history is summarised in the Background to the Report (i.e. the Nursery related proposal). Other salient elements include;

- Land generally to the east of the subject site (the Bottlebrush Drive and Bundeena Road area) was rezoned for residential purposes in the early 1980s.
- The land currently zoned 7(f) and other similarly positioned land was the subject of a Council Local Environmental Study (LES) in the early 1990s. Nearby employment land related noise considerations were a key determinant Council deciding not to proceed with a partial residential zoning.
- In mid 1990 a portion of the former holding along the northern boundary (fronting Enterprise Drive) was zoned (and subsequently partially developed) for industrial purposes.

### LOCAL CONTEXT AND SURROUNDING DEVELOPMENT

The subject site is generally contiguous with an existing residential estate largely to the east of Bundeena Road and Bottlebrush Drive and the radiating small residential precincts.

To the north is a small developing industrial precinct. The middle of the site abuts a significant wetland whilst to the south is rural residential and small scale community facility.

More broadly, it forms part of a precinct that "circumnavigates" the southern end of Tuggerah Lake and crosses Wyong Road into Berkeley Vale, Glenning Valley. At this broader scale it is proximate to the significant industrial and employment lands of Berkeley Vale and Tuggerah.

It has good access to Wyong Road and good regional connections principally via the F3 Freeway. Furthermore, it forms part of a network connecting the regionally significant Rumbalara/Katandra Reserves wildlife corridor network. (Refer to Attachment 2)

### THE PROPOSAL

The planning proposal before Council seeks a modification to Council's prevailing planning instrument, namely, WLEP 1991 to facilitate residential development in the less constrained areas of the site and the conservation of the balance of the site. A low density residential zone and conservation zone are proposed (Refer to Attachment 3). The likely zones under the Standard Instrument would be R2 (low density residential) and E2 (environmental conservation).

A conceptual layout plan is produced as Attachment 4. In accordance with this plan a projected residential yield of 280 – 310 residential allotments has been proposed by the proponents. More detailed investigations, including design and conservation considerations, could potentially lead to amendments to the conceptual layout plan and a reduction in the projected yield. (Refer to Enclosure 1 for reference to some of the amending principles).

Other features of the proposal include:

- Adoption of buffer zones to assist in managing the interface between the residential and conservation areas.
- Conservation/integration of habitat trees.
- Implementation of Bushfire Asset Protection zones.
- Comprehensive management of water onsite/offsite impacts through the adoption of Water Sensitive Urban Design (WSUD) techniques.
- Rehabilitation and long term conservation of highly modified remnant Endangered Ecological Communities (EECs).
- The proposed dedication of approximately 14.8 hectares of rehabilitated ecologically sensitive land. (It is noted that care and control management options need to be further investigated).
- A proposal to introduce comprehensive site specific design requirements via an amendment to DCP, 2005. (These are considered fundamental to the prospects of a sustainable outcome).
- Off-site compensatory biocertification “credits”, for significant habitat impacted by the proposal.

## **OVERVIEW**

The planning proposal had been developed by the proponents over a period of time, informed by a series of diverse specialist studies/investigations and discussions with Council staff and statutory Authorities including the Office of Environment and Heritage (OEH).

Many of the background studies/investigations are not exhaustive and require further detailed work and in some instances the resolution of key issues before any final assessment of the planning proposal. The identified deficiencies are detailed in Enclosure 1. The submitted planning proposal has been reviewed and modified by Council and is presented as Enclosure 2.

The planning proposal and the studies/investigations are, however, sufficient to support the compilation of a relevant submission to the Department of Planning and Infrastructure (DOPI) “Gateway” process. (Refer to Enclosure 2).

## **REVIEW OF THE PROPOSAL**

### **STRATEGIC CONTEXT (GENERALLY)**

The proposal is not expressly identified in any existing strategic plans or reports. It does, however, assist Council in providing additional serviced residential land, and generally meets the Sustainability Criteria for NSW Land Releases contained in the Central Coast Regional Strategy 2006 – 2031 (refer to Enclosure 3), subject to final resolution of the environmental footprint, offsetting and biodiversity management considerations.

### Community Benefit

The proposal, subject to refinement, is considered on balance to produce a net community benefit, as follows: ‘

- It will lead to the conservation of bushland areas and enhanced public access to such areas in perpetuity (upon further refinement of the conceptual layout plan). Additionally, the projected biodiversity losses are to be “made good” in the sub region.
- Satisfactory access is available for transport infrastructure and service infrastructure can be satisfactorily augmented.
- Integration with surrounding land uses is possible but will require sensitivity in respect of the natural environment, bushfire hazards, the amenity of nearby residential areas and to a lesser extent the small Blade Close employment precinct (off Enterprise Drive).
- Positive development-related employment prospects will occur in the short term and Incidental employment prospects will exist in the post development phase. Further, no potential employment lands will be adversely impacted by the proposal.
- The additional supply of a potential range of residential dwellings will assist in meeting Council’s housing supply objectives in an appropriate context.
- The proposal is situated in close proximity to the village of Chittaway Bay and locality of Berkeley Vale related lower order retail/commercial and community facilities (including schools, community centre and playing fields) and will capitalise upon the same. The additional residents will create additional demand for support facilities and services. Such demand is to be quantified and addressed in a relevant Voluntary Planning Agreement (VPA) (which will be exhibited concurrently with the final planning proposal.
- The proposal is unlikely to create a precedent. Further, it is unlikely to have an adverse cumulative impact. The other rezoning proposals noted in the locality are smaller and of far less intensity.

### Ecological Impacts

The site is heavily vegetated with some lower quality vegetation present on the southern part of the study area, especially within an area that was previously planted as a pine forest. Large tracts of native vegetation are also proposed for removal. The proposal, notwithstanding the proposed dedication of 14.8 hectares of rehabilitated significant habitat produces a net loss of on-site biodiversity. However, with an appropriate “offsetting strategy” (compensatory off-site conservation) the proposal is considered on balance to have an acceptable and sustainable ecological outcome. The final off-setting strategy is, however, yet to be detailed.

It is considered imperative, however, that the principles of the final biodiversity strategy are agreed to by Council and OEH. The final strategy will need to be incorporated in a Draft Voluntary Planning Agreement (VPA) prior to the land being rezoned. This is especially important, as the proponent has indicated that there is the possibility that they might purchase land for conservation offsets and intend to transfer the land to Council for ultimate management.

Additional ecological investigations and management principles will also importantly inform the final Concept Layout Plan, particularly in respect of the treatment and management of the urban interface and “edge” effects and clearing requirements to create Asset Protection Zones which are of sufficient width to manage bushfire planning risks.

### **Infrastructure Impacts**

The rezoning proposal will form an extension of the existing Bundeena Road/Bottlebrush Drive residential community. As such, it falls within the Southern Lakes Section 94 Contribution Plan catchment. This plan, however, did not anticipate the development of the subject site and accordingly made no provision for contributions to local engineering and social infrastructure.

The proposed development will increase demand on water, sewer, storm water drainage, elements of the immediate road network and community and recreation facilities. These impacts should be fully quantified as the planning proposal progresses and by way of a VPA.

### **Other Impacts Generally**

Further discussion in respect of environmental, social and economic impacts flowing from the planning proposal is detailed in Enclosure 2 at Sections 4.3 and 4.4; including land contamination, bushfire hazard, indigenous and non-indigenous heritage, traffic and transport, visual, acoustic, geotechnical, stormwater management, community and physical infrastructure.

Additional investigations required to further resolve the final nature of the planning proposal are detailed in Enclosure 1 to this Report.

### **Concept Layout Plan/Urban Design**

As referenced previously the Concept Layout Plan will be further refined as:

- the final ecological footprint is defined.
- the buffer/edge treatment is resolved, including the final stormwater management design.
- the final perimeter bushfire management strategy is adopted.
- potential additional points of vehicle access to the surrounding road network and enhanced on-site connectivity are addressed.
- geotechnical influences and visual and acoustic impacts are responded to.

Additionally, design parameters will inform the prevailing DCP controls.

## **STATUTORY COMPLIANCE**

### **State Environmental Planning Policy No 14 – Coastal Wetlands**

This SEPP aims to ensure that coastal wetlands are preserved and protected in the environmental and economic interests of the State.

A Coastal Wetland is located down slope of the subject land (to the immediate north-west) within a Council owned and managed conservation reserve (Refer to Site Plan).

Notwithstanding, the wetland is not on the subject site and works are not proposed in respect of the wetland. However, inappropriate management of subdivisional works and/or stormwater management associated with this development (should they occur) could adversely impact the wetland.

Measures to address this potential issue include:

- Enhanced separation (setback) of the developable land.
- Identification and dedication/management of the significant remnant vegetation conservation precinct.
- A perimeter vegetated buffer area.
- Implementation of advanced WSUD technology.

### **State Environmental Planning Policy No 44 – Koala Habitat Protection**

This SEPP aims to encourage the proper conservation and management of koala habitat in areas in order to maintain the viability of koala populations.

A Koala Survey (Biolink, 2008 – SEPP44 Assessment) in November 2008 was conducted and concluded that there was no evidence to suggest that “Core Koala Habitat” exists on the site and hence there was no need for a Plan of Management.

The majority of the potential Koala Habitat will be preserved in the proposed conservation areas on site. Smaller, highly disturbed areas of potential habitat are dispersed through the proposed residential precincts and are likely to be removed.

### **State Environmental Planning Policy No 55 – Remediation Of Land**

This SEPP introduces state-wide planning controls for the remediation of contaminated land. It establishes that land must be remediated if contaminated, to a standard suitable for the end land use. The Policy is particularly relevant where it is proposed to rezone land for residential purposes. In such instance Council must have regard initially to a preliminary investigation given; inter alia, the past agricultural use of limited areas of the land and limited rubbish/spoil dumping.

**Ministerial Directions (Section 117 EP& A Act)**

These directions issued by the Minister for Planning and Infrastructure must be addressed, where relevant, in Planning Proposals.

The following table identifies the applicability and consistency of the proposed rezoning with the current Section 117 Directions:

Number	Direction	Applicable	Consistent
<b>Employment and Resources</b>			
1.1	Business and Industrial Zones	No	N/A
1.2	Rural Zones	No	N/A
1.3	Mining, Petroleum production and Extractive Industries	No	N/A
1.4	Oyster Aquaculture	No	N/A
1.5	Rural Lands	No	N/A
<b>Environment and Heritage</b>			
2.1	Environment Protection Zones	Yes	No
2.2	Coastal Protection	No	N/A
2.3	Heritage Conservation	Yes	Yes
2.4	Recreation Vehicle Areas	Yes	Yes
<b>Housing, Infrastructure and Urban Development</b>			
3.1	Residential Zones	Yes	Yes
3.2	Caravan Parks and Manufactured Home Estates	Yes	Yes
3.3	Home Occupations	Yes	Yes
3.4	Integrating Land Use and Transport	Yes	Yes
3.5	Development Near Licensed Aerodromes	No	N/A
<b>Hazard and Risk</b>			
4.1	Acid Sulphate Soils	No	N/A
4.2	Mine Subsidence and Unstable Land	No	N/A
4.3	Flood Prone Land	No	N/A
4.4	Planning for Bushfire Protection	Yes	Yes
<b>Regional Planning</b>			
5.1	Implementation of Regional Strategies	Yes	Yes
5.2	Sydney Drinking water Catchments	No	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North coast	No	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	No	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked)	No	N/A
5.6	Sydney to Canberra Corridor (Revoked)	No	N/A
5.7	Central Coast (Revoked)	No	N/A
5.8	Second Sydney Airport: Badgerys Creek	No	N/A
<b>Local Plan Making</b>			
6.1	Approval and Referral Requirements	Yes	Yes
6.2	Reserving Land for Public Purposes	Yes	Yes
6.3	Site Specific Provisions	No	N/A

An expanded commentary in respect of compliance is produced as Enclosure 4.

**OPTIONS****Option 1**

The planning proposal is considered to present a substantive case for rezoning and as such the progression of the planning proposal presented in Enclosure 2 to the "Gateway" determination.

**Option 2**

Council if it were to choose to not progress the planning proposal, to a "Gateway" determination, it may again be confronted with the submission of an "inappropriate" development application for the land with potentially greater environmental and community impacts and possible litigation as evidenced from the landowner's previous Land and Environment Court action over the refusal of the DA for a plant nursery.

**STRATEGIC LINKS****Annual Plan**

<u>Principal Activity</u>	<u>Strategy or Program</u>	<u>Financial Line Item No. and Description</u>
A More Sustainable Community	Nil Impact	Nil Impact
A More Sustainable Economy	Nil Impact	Nil Impact
A More Sustainable Environment	Nil Impact	Nil Impact
Infrastructure	Nil Impact	Nil Impact
Organisation	Nil Impact	Nil Impact

**Link to Shire Strategic Vision (Community Strategic Plan – 2030)**

The following comments are made with respect to the 8 priority objectives:-

- Communities will be vibrant, caring and connected.
- There will be ease of travel.
- Communities will have a range of facilities and services.
- Areas of natural value will be enhanced and maintained.
- There will be a sense of community ownership of the natural environment.
- There will be a strong sustainable business sector.
- Information and communication technology will be world's best.
- The community will be educated, innovative and creative.

**Travel***Access to public and private bus services*

Access is available to the local bus service, with opportunities for enhanced services to be further pursued.

*Enhancement of local bicycle/shared pathway and on-road cycle way opportunities.*

Opportunities for linkages to existing pedestrian and cycleway networks should be further explored as the proposed residential subdivision design is revised.

**Facilities and Services***Maximising access to, and potential for, new and existing facilities/infrastructure to support growth.*

The potential exists to capitalise on existing community infrastructure and provide an opportunity for enhancement funded by increased demand.

**Education***Creating programs that encourage lifelong learning for everyone.*

The conservation initiatives to accompany the proposed development will provide wide ranging opportunities for an expansion of the broader community's understanding of biodiversity and conservation initiatives.

**Natural Areas***Preserving threatened and endangered species as well as ecological communities and biodiversity.*

The proposal will provide for the rehabilitation and long-term conservation of bushland and enhanced access to such areas (upon refinement of the planned layout). Additional offsite conservation commitments will need to be identified to support the proposal as it progresses through the rezoning assessment process.



*Expanding and continuing programs focused on restoring degraded natural areas.*

The proposed conservation initiatives will lead to the enhancement of the retained bushland, whilst that removed will be compensated for in the adopted offsetting strategy.

*Ensuring all development areas create or maintain tree covered ridgelines and waterways.*

The dominant local ridgeline has been partially developed for residential purposes (ridge, plus east facing slope – Bottlebrush Drive/Bundeena Road). The subject proposal largely involves the west facing slope as opposed to the ridge proper. Further, the retention of bushland, buffers and street plantings, together with final urban design parameters will diminish any visual impact created by new residential development.

*Developing and introducing strategies to reduce the Shire's Environmental Footprint.*

The proposal represents a logical extension of the existing urban footprint in the Glenning Valley neighbourhood. Expected native vegetation losses are projected to be addressed through the development of biodiversity offsets to minimise impact on Wyong Shire's Environmental Footprint.

### **Environmental Programs**

*Improving and promoting public access to environmental areas.*

The significant conservation and proposed public dedication initiatives which will be provided by the proposal will reflect positively in this regard, particularly if enhanced access to the conserved remnant is provided from Bottlebrush Drive(it being noted that the conceptual layout plan will need to be modified to facilitate enhanced accessibility-Refer to Enclosure 1)

### **Employment**

*There will be a sustained increase in local jobs.*

Short term employment opportunities will be provided during the development phase, whilst incidental job and home occupation opportunities will exist in the post development phase. Further, no potential employment lands will be adversely impacted by the proposal.

### **Asset Management Strategy**

There are no immediate implications for the Asset Management Strategy. Ultimately the servicing strategy and design and dedication of public infrastructure will need to observe Council's relevant standards and integrate with the Asset Management Strategy

### **Workforce Management Strategy**

The advancement of the planning proposal is being funded by the proponents., Future workforce implications beyond the processing phase will be addressed as Council reviews its Revenue Policy annually and the Unit Business Plan.

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

An overview assessment against the Community Strategic Plan is provided at the “Strategic Links” section of this report and reflects general consistency.

### **Budget Impact**

There are no immediate budget impacts.

### **FINANCIAL IMPLICATIONS**

Advancement of the planning proposal will continue to be fully funded by the proponents (in accordance with Section 54(3) of the EP&A Act and Council’s Planning Proposal Procedure).

Should the land ultimately be rezoned for residential purposes it will attract development generated Application Fees, Section 94 and Developer Servicing Charges and Residential Rates from future residential property owners.

The proposed dedication of land (principally the conservation precinct and wildlife corridor) will attract future management/maintenance responsibilities and related costs, which could potentially be offset in a “sinking fund” commitment in a VPA.

Council will ultimately be assuming a management/maintenance responsibility also for the publicly dedicated roads and stormwater management systems.

### **PRINCIPLES OF SUSTAINABILITY**

The planning proposal has the potential, subject to necessary refinements and adjustments, of producing a sustainable development/conservation outcome. The finalisation and implementation of a Biodiversity Conservation Strategy will, however, be critical.

A comprehensive stormwater management system based upon WSUD principles including some of the design elements communicated to date will be critical to ensuring appropriate offsite impacts and sustainable stormwater management principles generally.

The siting of the precinct and its inherent environmental sensitivity establish a context for the attainment of a high quality residential environment that showcases sustainability principles beyond the environmental management outcomes alluded to above.

Other sustainability principles contained within existing Council policy will be incorporated in the final design outcome include:

- optimisation of lot layout and dwelling orientation having regard to the principles of passive solar design.
- pursuit of energy efficient dwelling design generally.
- adoption of waste minimalisation and management practices.
- application of principles of Crime Prevention through Environmental Design (CPTED).

- adoption of water conservation practices (including fittings/appliances) and landscape design.
- optimisation of renewable energy utilisation.
- consideration of principles of adaptable housing design.
- biodiversity enhancement/conservation.

Finally, the proposal will be subject to extensive consultation subject to a favourable "Gateway" determination. (Refer to Enclosure 2)

## **MATERIAL RISKS AND ISSUES**

### **CORPORATE RISKS**

Corporate exposure to Council would potentially occur if all relevant planning issues associated with the planning proposal are not resolved prior to the rezoning being finalised. In particular it is considered imperative that a Draft VPA is developed and exhibited concurrently with the planning proposal.

### **CONCLUSION**

The subject land, is well placed to potentially leverage off its the underlying positive attributes and provide a sustainable extension to the existing residential community. The proposal provides conservation of bushland areas, enhanced public access to the same and appropriately secured off-site "bio-diversity offsets". The Proposal will also assist Council and the State Government in addressing its housing supply targets. Further investigations will be required to progress the planning proposal, including additional work on the biodiversity strategy, development of a VPA, refinement of the conceptual subdivision layout plan and broad ranging consultation with the State Government agencies and the community.

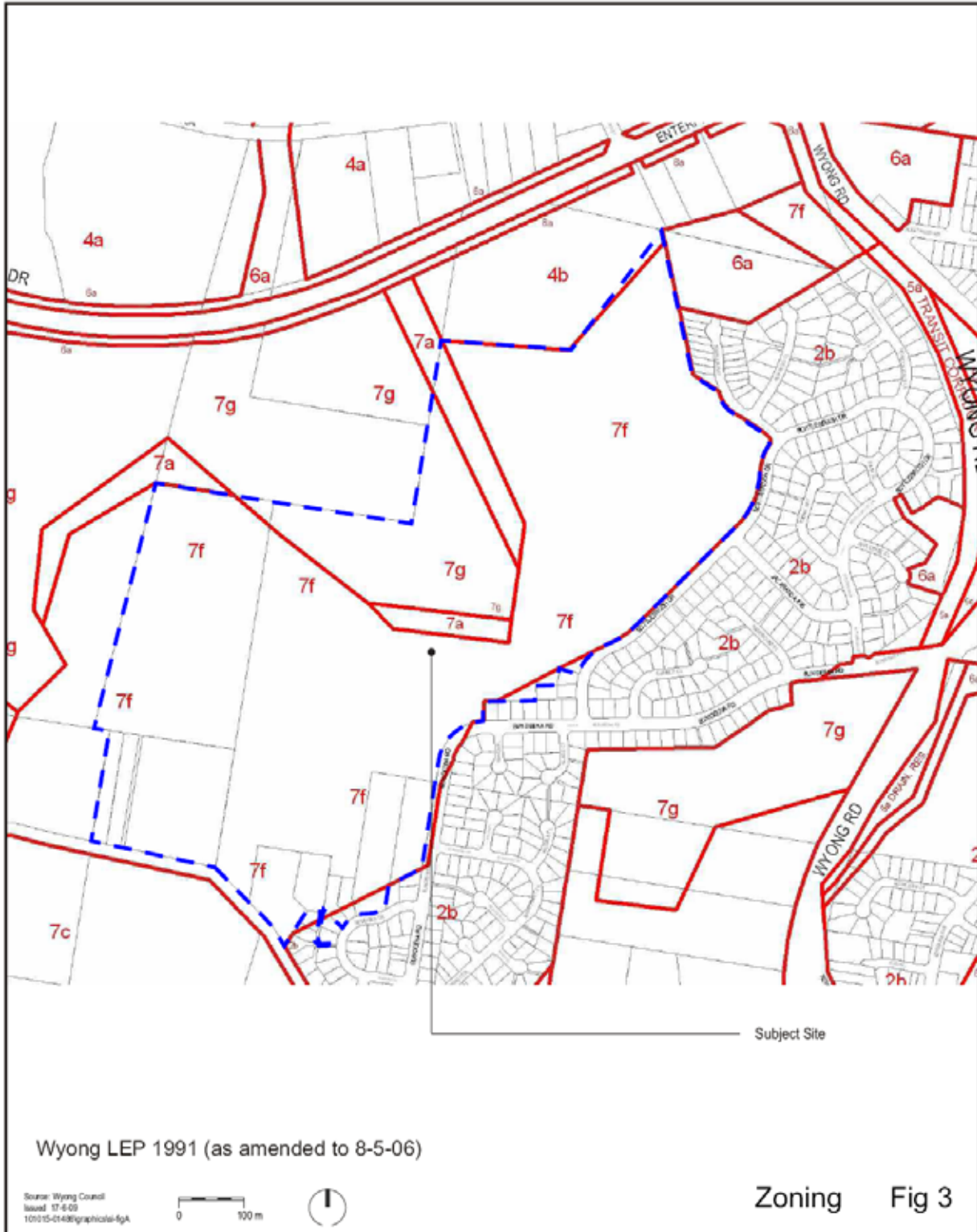
It is recommended that the planning proposal be endorsed by Council for submission to the DOPI, accompanied by a request for a "Gateway" determination.

### **ATTACHMENTS**

1	ATTACHMENT 1 - Existing Zone (A4-Colour)		D02824004
2	ATTACHMENT 2 - The Context (A4-Colour)		D02824006
3	ATTACHMENT 3 - Indicative Zoning Plan		D02824008
4	ATTACHMENT 4 - Conceptual Layout Plan		D02824010
5	ENCLOSURE 1 - Overview Background Investigations (A4 Colour)	Enclosure	D02824012
6	ENCLOSURE 2 - Planning Proposal (A4 - Colour)	Enclosure	D02824013
7	ENCLOSURE 3 - Sustainability Criteria for New Land Releases	Enclosure	D02824015
8	ENCLOSURE 4 - Consistency with Ministerial Directions - Section 117	Enclosure	D02824018

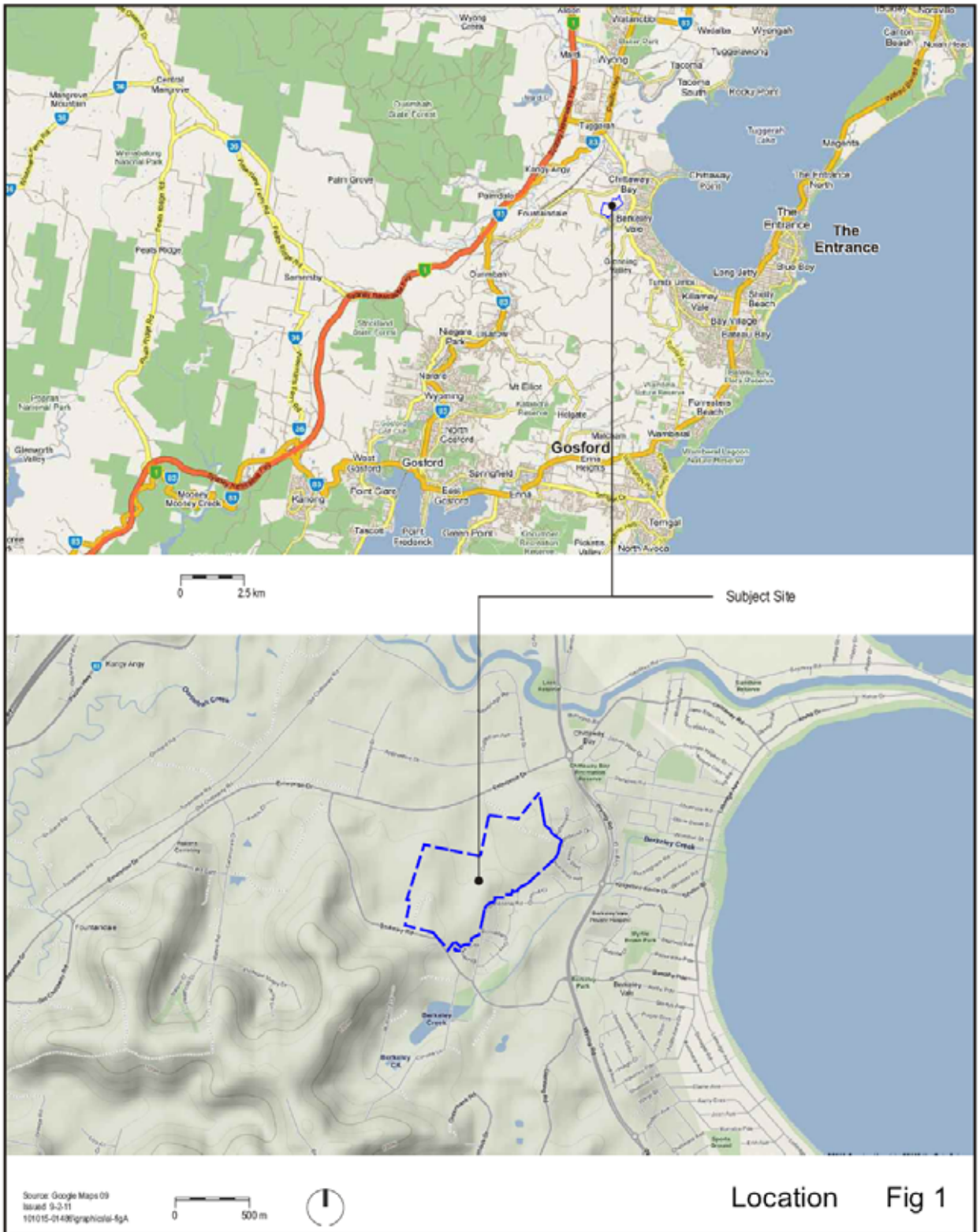
# ATTACHMENT 1

## EXISTING ZONING



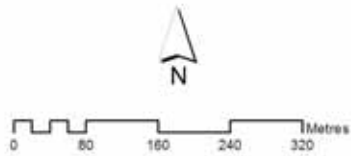
# ATTACHMENT 2

## THE CONTEXT






# ATTACHMENT 3

## INDICATIVE ZONING PLAN



### Legend

-  R2 Low Density Residential Zone
-  E2 Environmental Conservation Zone
-  \* To be rationalised



Proposed Zonings (Wyong LEP 2012)

# ATTACHMENT 4

## CONCEPTUAL LAYOUT PLAN



### Legend

-  Collector Roads proposed within R(2) zoned land
  -  Developable land proposed for rezoning to R(2) Residential Zone
- (Subject to Future Amendments)

Conceptual Layout (Draft)