



Pictured: Tuggerah Lakes Mardi Gras Queen, Stephanie Zalfelds, sponsored by Radio 2GO and Tuggerah Lakes Mardi Gras Queen Runner Up, Megan Cooper, sponsored by Wyong Shire Council

Wyong Shire Council

# Business Paper

## ORDINARY COUNCIL MEETING

12 December 2012

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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 12 DECEMBER 2012 at 5.00 pm,**  
for the transaction of the business listed below:

## OPENING PRAYER

## ACKNOWLEDGEMENT OF COUNTRY

## RECEIPT OF APOLOGIES

### 1 PROCEDURAL ITEMS

|     |  |    |
|-----|--|----|
| 1.1 | Disclosure of Interest.....                      | 5  |
| 1.2 | Proposed Inspections and Briefings.....          | 6  |
| 1.3 | Address by Invited Speakers.....                 | 9  |
| 1.4 | Confirmation of Minutes of Previous Meeting..... | 10 |

### 2 MAYORAL MINUTES

|     |  |    |
|-----|--|----|
| 2.1 | Mayoral Minute - Tuggerah Lakes Reserve Trust (Pioneer Dairy)..... | 35 |
|-----|--|----|

### 3 KEY ISSUES

|     |   |    |
|-----|---|----|
| 3.1 | Deferred Payment of Section 94 Contributions..... | 36 |
|-----|---|----|

### 4 PLANNING REPORTS

|      |   |     |
|------|---|-----|
| 4.1  | Proposed purchase of Lot 3 DP 657514 - 30 Manns Rd, Fountaindale.....   | 56  |
| 4.2  | DA/48/2012 - Proposed Demolition of Existing Structures and Construction of<br>Two Dual Occupancy Buildings at North Entrance .....               | 60  |
| 4.3  | DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings<br>at Wadalba.....   | 107 |
| 4.4  | DA/125/2012 - Proposed Rural Subdivision at Jilliby .....   | 153 |
| 4.5  | DA/222/2012/A - Dwelling & Inground Pool including Demolition of Existing<br>Dwelling at Wyong<br><i>(to be distributed under separate cover)</i> |     |
| 4.6  | DA/322/2012 - Proposed Supermarket at Wyong.....  | 168 |
| 4.7  | DA/686/2012 Proposed Dwelling and an Attached Secondary Dwelling at<br>Wyong.....   | 215 |
| 4.8  | DA/717/2012 Proposed Secondary Dwelling at Wyong.....   | 233 |
| 4.9  | Draft Contributions Plan for the Warnervale Town Centre .....   | 247 |
| 4.10 | Public Exhibition of Draft Wyong Local Environmental Plan 2012, Draft<br>Settlement Strategy and Draft Wyong Development Control Plan 2012 .....  | 257 |

### 5 PROPERTY REPORTS

|     |  |     |
|-----|--|-----|
| 5.1 | Classification of Land, Lot 229 DP 1175020 at Grasstree Avenue, Woongarra..... | 273 |
|-----|--|-----|

### 6 CONTRACT REPORTS

|     |   |     |
|-----|---|-----|
| 6.1 | CPA/185309 - Provision of Routine Tree Services .....   | 277 |
| 6.2 | CPA/186620 - Construction of a Solar Tower at Scaddens Ridge.....   | 281 |
| 6.3 | CPA/199536 - In Situ Stabilisation Works .....  | 285 |
| 6.4 | CPA/213807 - Provision of effluent and sludge removal and disposal services .....   | 289 |
| 6.5 | CPA/186318 - Inspection, Testing, Maintenance, Survey and Reporting of<br>Council's Fire Protection Systems and Equipment ..... | 292 |

**7 GENERAL REPORTS**

|      |   |     |
|------|---|-----|
| 7.1  | Minutes and Membership of the Employment and Economic Development Committee .....                                       | 296 |
| 7.2  | The Entrance, Toukley and Wyong Town Centres Funding Agreements Extension .....   | 303 |
| 7.3  | Investigation of Recreational Vehicle Dump Points.....  | 322 |
| 7.4  | Draft Wyong Shire Employment Land Study and Industrial Land Audit.....  | 332 |
| 7.5  | Grants Advisory Group - 22 November 2012.....   | 350 |
| 7.6  | Central Coast Joint Service Project October Status Report.....  | 362 |
| 7.7  | Community Strategic Plan review.....  | 370 |
| 7.8  | Enterprise Risk Management Framework .....  | 374 |
| 7.9  | Iconic Development Sites - Maximum Building Heights in Wyong Local Environmental Plan 2012 .....                        | 487 |
| 7.10 | Modification to The Art House Wyong Shire Performing Arts and Conference Centre Concept Design and Capital Cost .....   | 491 |
| 7.11 | Central Coast Regional Cultural Framework.....  | 496 |
| 7.12 | Australian Chinese Theme Park Purchase of Council Land .....  | 508 |
| 7.13 | Proposed Councillors' Community Improvement Grants .....  | 512 |
| 7.14 | Service Standards Review - Results of Stage 2 Community Consultation<br><i>(to be distributed under separate cover)</i> |     |

**8 INFORMATION REPORTS**

|     |  |     |
|-----|--|-----|
| 8.1 | Information Reports .....  | 515 |
| 8.2 | Road Capital Works Program.....  | 516 |
| 8.3 | Minutes of the Estuary Management, Coastal and Floodplain Management Committee ..... | 518 |
| 8.4 | Investment Report for November 2012 .....  | 525 |
| 8.5 | Outstanding Questions on Notice and Notices of Motion.....                           | 532 |

**9 ANSWERS TO QUESTIONS ON NOTICE**

|     |  |     |
|-----|--|-----|
| 9.1 | Q40/12 - Disorder at Reserve Opposite Wyong Public School..... | 551 |
|-----|--|-----|

**10 NOTICES OF MOTION**

|      |  |     |
|------|--|-----|
| 10.1 | Notice of Motion - Council to Purchase Land in Wadalba Hill Wildlife Corridor Area .....                     | 552 |
| 10.2 | Notice of Motion - Council to Investigate Dog Poo Bag Dispensers for Local Beaches and Shared Pathways ..... | 555 |

**11 RESCISSION MOTIONS**

|      |  |     |
|------|--|-----|
| 11.1 | Notice of Rescission - Disability Friendly Miniature Railway in the North of the Wyong Shire ..... | 556 |
|------|--|-----|

**12 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 Disclosure of Interest

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TRIM REFERENCE: F2012/00026 - D03199889

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Jacquie Elvidge; Councillor Services Officer

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: F2012/00026 - D03199891

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Jacquie Elvidge; Councillor Services Officer

### SUMMARY

There were no inspections scheduled for the 12 December 2012 Ordinary Meeting at the time of printing the business paper.

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

| Topic   | Summary   | Presented by  |
|---|---|---|
| Sustainable Improvement Strategy and Master Plan for Central Coast Holiday Parks  | To present the Sustainable Improvement Strategy for the Central Coast Holiday Parks for endorsement.  | Manager Sport and Leisure Recreation                                    |
| Positive Ageing Strategy  | To provide a background prior to the development of the Positive ageing Strategy  | Manager Community and Cultural Development                              |
| The Art house \$12M proposal  | To brief Councillors on status of The Art House project and options for a \$12m alternative   | Manager Community and Cultural Development                              |
| Affordable Housing Study - Pre Exhibition   | The Affordable Housing Study provides the evidence based rationale for Council's involvement in affordable housing, together with recommendations for the range of affordable housing strategies and mechanisms that are likely to be most effective in Wyong, the way in which these strategies and mechanisms may be practically applied, and a clear rationale for the strategies and mechanisms recommended | Acting Manager Sustainability and Strategic Planner - Land Use Planning |
| Retail Strategy Review  | To present the final findings and recommendations in the retail review which will inform the final retail strategy  | Acting Manager Sustainability and Strategic Planner - Land Use Planning |
| Service Standards Review  | Community consultation update   | Darryl Rayner<br>Maxine Kenyon  |
| <b>CONFIDENTIAL</b><br>Councillor Update<br>'Local Government Legal' legal advise | This Councillor Update was sent to Councillors on 30 Nov. This will provide an opportunity for Councillors to ask questions.  | General Counsel   |

Briefings proposed for future meetings of Council are attached.

## **1.2 Proposed Inspections and Briefings (contd)**

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### **RECOMMENDATION**

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

### **ATTACHMENTS**

- 1 Proposed Briefing Schedule - 12 December2012      D03208105

| <b>Briefing Status</b> | <b>Briefing Title</b>   | <b>Directorate</b>                | <b>Proposed Date</b> |
|------------------------|---|-----------------------------------|----------------------|
| Proposed               | Capital Expeniture Proposals - 1st Stage consideration business                           | GM Unit                           | 13/02/2013           |
| Proposed               | COUNCILLOR WORKSHOP DAY 1   | GM Unit                           | 15/02/2013           |
| Proposed               | COUNCILLOR WORKSHOP DAY 2   | GM Unit                           | 16/02/2013           |
| Proposed               | COUNCILLOR WORKSHOP DAY 3   | GM Unit                           | 17/02/2013           |
| Proposed               | Q2 2012/13  | GM Unit                           | 27/02/2013           |
| Proposed               | Draft Stategic Plan #2 Briefing   | GM Unit                           | 13/03/2013           |
| Proposed               | Q3 2012/13  | GM Unit                           | 22/05/2013           |
| Proposed               | Q4 2012/13  | GM Unit                           | 28/08/2013           |
| Proposed               | Q1 2013/14  | GM Unit                           | 27/11/2013           |
| Proposed               | Azzurro Blu Lease   | GM Unit                           |                      |
| Proposed               | Comprehensive LEP, DCP & Settlement Strategy post exhibition                              | Land Management                   |                      |
| Proposed               | Norah Head Boat Ramp - Part 3   | Community and Recreation Services |                      |
| Proposed               | Provide update of plans and financial viability of The Art House and Cultural Development | Community and Recreation Services |                      |
| Proposed               | Precinct 7A Masterplan - Feedback following exhibition                                    | Land Management                   |                      |
| Proposed               | AUSGRID (NOM 9.2 9 May 2012)  | Land Management                   |                      |
| Proposed               | Urban Design Principles & Concepts  | Land Management                   |                      |
| Proposed               | RZ/7/2009 Chittaway road Rezoning   | Land Management                   |                      |
| Proposed               | Bushfire works plan   | Infrastructure Management         |                      |
| Proposed               | Iconic Site No 16 - 216-222 Main Road & Rowland Terrace Toukley                           | Land Management                   |                      |
| Proposed               | Draft Shire Wide Contributions Plan   | Land Management                   |                      |
| Proposed               | Ourimbah Masterplan objectives of project   | Land Management                   |                      |
| Proposed               | Rezoning - 223 Scenic Drive Colongra  | Land Management                   |                      |
| Proposed               | Natural Resources Management Strategy   | Infrastructure Management         |                      |
| Proposed               | Sea level rise notification & 149 certificate   | GM Unit                           |                      |
| Proposed               | Biodiversity Management Plan  | Infrastructure Management         |                      |
| Proposed               | Central Coast TAXI's  | Infrastructure Management         |                      |
| Proposed               | RMS *CONFIDENTIAL   |                                   |                      |



### **1.3 Address by Invited Speakers**

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TRIM REFERENCE: F2012/00026 - D03199934

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Jacquie Elvidge; Councillor Services Officer

#### **SUMMARY**

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

#### **RECOMMENDATION**

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

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

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TRIM REFERENCE: F2012/00026 - D03209096

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Jacqui Elvidge; Councillor Services Officer

### **SUMMARY**

Confirmation of minutes of the previous Ordinary Meeting of Council held on Wednesday 28 November 2012 and the Extraordinary Meeting of Council held on Thursday 29 November 2012.

### **RECOMMENDATION**

***That Council confirm the minutes of the previous Ordinary Meeting of Council held on Wednesday 28 November 2012 and the Extraordinary Meeting of Council held on Thursday 29 November 2012.***

### **ATTACHMENTS**

- |   |  |           |
|---|--|-----------|
| 1 | MINUTES - Ordinary Council Meeting - 28 November 2012              | D03201854 |
| 2 | MINUTES - Extraordinary Council Meeting - 29 November 2012         | D03203574 |
| 3 | MINUTES - Confidential Ordinary Council Meeting - 28 November 2012 | D03201868 |

**WYONG SHIRE COUNCIL**

**MINUTES OF THE  
ORDINARY COUNCIL MEETING OF COUNCIL  
HELD IN THE COUNCIL CHAMBER  
WYONG CIVIC CENTRE, HELY STREET, WYONG  
ON 28 NOVEMBER 2012  
COMMENCING AT 5:00 PM**

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**PRESENT**

Councillors D J Eaton (Chairperson), G P Best, R L Graham, K G Greenwald, L A Matthews, L R Nayna, L S Taylor, A Troy, D P Vincent and L D Webster.

**IN ATTENDANCE**

General Manager, Acting Director Development and Building, Director Infrastructure and Operations, Acting Director Community and Recreation Services, General Counsel, Executive Manager to the General Manager, Chief Information Officer, Manager Building Certification and Health, Manager Roads and Stormwater, Project Officer Integrated Planning, Communications and Marketing Coordinator, Director Level 2 Care and Education Karinya, Assistant Care and Education Karinya, Director Level 2 Care and Education North Lakes, Assistant Manager Care and Education, Qualified Child Development Worker and three administration staff.

The Mayor, Councillor Eaton, declared the meeting open at 5.04 pm and advised in accordance with the Code of Meeting Practice that the meeting is being recorded.

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

The Acting Director of Community and Recreation Services thanked Ms Marlene Pennings and Ms Barbara Roach for all the work they did in the community and congratulated them on being recognised in the Hidden Treasure Honor Roll for 2012, celebrating women volunteers in the community.

The Mayor announced that the North Lakes Child Care Centre won the gold medal award, throughout Australia, for best overall child care program and thanked staff representatives Ms Beth Jones, Ms Karen Fitzsimmons, Ms Alison O'Keefe, Ms Alison Whitmore and Ms Tracey Bowman for all their hard work and commitment towards Council's child care program.

**APOLOGIES**

There were no apologies.

At the commencement of the ordinary meeting report numbers 1.1 and 5.2 were dealt with first, then the remaining reports in order. However for the sake of clarity the reports are recorded in their correct agenda sequence.

**1.1 Disclosure of Interest**

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**5.3 Council Approval- Revised Motor Vehicle Policy and Procedure**

Acting Open Space Manager, Brett Sherar, declared a pecuniary interest in the matter for the reason that the policy has an impact on his employment contract and took no part in discussion.

**5.3 Council Approval- Revised Motor Vehicle Policy and Procedure**

Director Infrastructure and Operations, Greg McDonald, declared a pecuniary interest in the matter for the reason that the policy has an impact on his employment contract and took no part in discussion.

**5.3 Council Approval- Revised Motor Vehicle Policy and Procedure**

General Counsel Legal and Risk Manager, Brian Glendenning, declared a pecuniary interest in the matter for the reason that the item of business directly affects that the policy has an impact on his employment contract and took no part in discussion.

**5.3 Council Approval- Revised Motor Vehicle Policy and Procedure**

Land Use Planning Policy Development Manager, Martin Johnson, declared a pecuniary interest in the matter for the reason that the policy has an impact on his employment contract and took no part in discussion.

**5.3 Council Approval- Revised Motor Vehicle Policy and Procedure**

The General Manager, Michael Whittaker, declared a pecuniary interest in the matter for the reason that the policy has an impact on his employment contract and took no part in discussion.

**5.9 Central Coast Mariners Bid to Attract David Beckham.**

Councillor Bob Graham declared a non-pecuniary insignificant interest in the matter for the reason that he is a member of The Central Coast Mariners Football Club Board of Directors and chose to remain in the chamber.

**9.1 Mayoral Minute - General Manager's Mid Year Performance Review**

The General Manager, Michael Whittaker, declared a pecuniary interest in the matter for the reason that it impacts on his employment contract, left the chamber at 7.56 pm, took no part in discussion and returned to the chamber at 7.57 pm.

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

***474/12 That Councillors now disclose any conflicts of interest in matters under consideration by Council at this meeting.***

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**PROCEDURAL MOTION**

**RESOLVED unanimously on the motion of Councillor NAYNA and seconded by Councillor GREENWALD:**

**474/12 That Council allow meeting practice to be varied.**

**476/12 That Council use the exception method to deal with the balance of the Agenda.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

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

**477/12 That with the exception of report numbers 1.6, 1.8, 3.1, 5.1, 5.2, 5.4, 5.5, 5.7, 5.8, 6.3, 6.5, 6.6, 8.1 and 9.1 Council adopt the recommendations contained in the remaining reports.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

Councillor Vincent left the meeting at 5.20 pm and returned at 5.23 pm and as a result took no part in voting on this item.

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

**478/12 That Council recommit item 2.1 - DA 727/2012 - Detached Secondary Dwelling at Gorokan.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY AND WEBSTER

AGAINST: NIL

**1.2 Proposed Inspections and Briefings**

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

**479/12 That Council receive the report on Proposed Inspections and Briefings.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**1.3 Confirmation of Minutes of Previous Meeting**

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

**480/12 That Council confirm the minutes of the previous Ordinary Meeting of Council held on Wednesday 14 November 2012.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**1.4 Address by Invited Speakers**

---

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

**481/12 That Council receive the amended report on Invited Speakers.**

**482/12 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, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

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

---

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

**483/12 That Council consider the following matters in Confidential Session, pursuant to Sections 10A(2)(a) and (c) of the Local Government Act 1993:**

**9.1 Mayoral Minute – General Manager's Mid Year Performance Review 2012-13**

**9.2 Facility Agreement – Borrowings for LIRS projects**

**9.3 2012-16 Strategic Plan – September Quarter Review Q1 – only that part arising from the Legal matters on page 26**

**484/12 That Council note its reasons for considering Report No 9.1 – Mayoral Minute – General Manager's Mid Year Performance Review 2012-13, is that discussion is anticipated which concerns the rights of individuals; Report No 9.2 – Facility Agreement – Borrowings for LIRS projects, as it contains information that, if disclosed, would confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business with and part of Report 5.1 2012-16 Strategic Plan – September Quarter Review Q1, is that it contains advice concerning litigation or would be otherwise privileged.**

**485/12** That Council request the General Manager to report on this matter in open session of Council.

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**1.6 Mayoral Minute - Australian Chinese Theme Park Offer to Purchase Council Land**

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Councillor Best left the meeting at 5.56 pm and returned to the meeting at 5.57 pm during consideration of this item.

Councillor Matthews left the meeting at 6.00 pm and returned to the meeting at 6.02 pm during consideration of this item.

Councillor Troy left the meeting at 6.01 pm and returned to the meeting at 6.03 pm during consideration of this item.

**RESOLVED unanimously on the motion of Councillor EATON:**

**486/12** That Council approve the sale of the 1 Warren Road being an area of 15.77 ha and part of Lot 3 DP 10007500 for a sale price of \$10,000,000 to the Australian Chinese Theme Park Pty Ltd (ACN 47 054 613 735).

**487/12** That Council authorise the Common Seal of Wyong Shire Council to be affixed to the "Contract for Sale of Land" between Wyong Shire Council and ACTP (ACN 47 054 613 735)

**488/12** That Council authorise the Mayor and General Manager to execute all documents relating to this sale of land.

**489/12** That Council authorise the Mayor and General Manager attend the signing ceremony on behalf of Council.

**490/12** That Council set a sunset date of the 10 December 2012 by which the contract is to be signed by both parties.

**491/12** The Council requests the General Manager to report back to Council at its meeting of 12 December 2012 on the outcome of the resolutions contained within this minute.

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**1.7 Mayoral Minute – Submission Review of Approved Wyong Shire Council Organisation Structure 24 October 2012**

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

***492/12 That Council receive and note all submissions.***

***493/12 That Council adopt the proposed organisation structure as presented in Attachment 4 as the Wyong Shire Council Organisation Structure.***

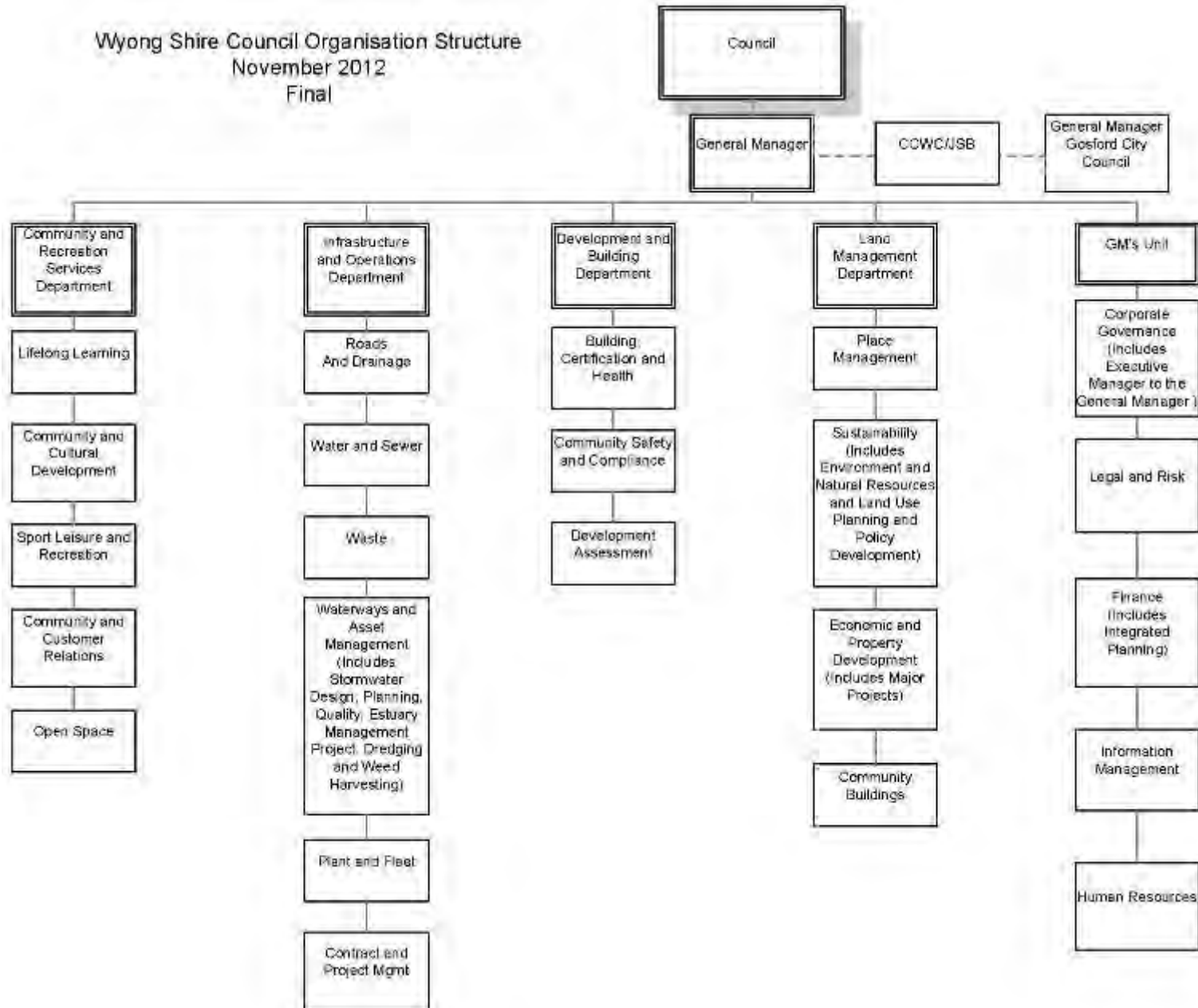
***494/12 That Council delegate power to the General Manager to undertake continuous improvement to the WSC Organisation structure to enhance customer service, staff satisfaction and financial savings.***

***495/12 That Council designate the positions of Director Development and Building, Director Land Management, Manager Sustainability and Manager Waterways and Asset Management as Senior Designated Officers.***

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL





**1.8 Mayoral Minute - M1 Ramp at Wyong**

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**RESOLVED unanimously on the motion of Councillor EATON:**

496/12 That Council reiterate its support for the need for a Freeway connection to Alison Road, in order to provide expedited emergency services, and request the General Manager to formally advise the Minister for Roads and Ports.

497/12 That Council request the General Manager to direct staff from Council's Asset Management Unit to arrange a meeting with Roads and Maritime Services (RMS) to initiate preliminary investigations into the feasibility of constructing a northbound entry ramp to the M1 Pacific Motorway at Wyong in the vicinity of the existing emergency access facility and the availability of funding to cover the cost of this investigation work.

498/12 That Council request the General Manager to direct staff from Council's Asset Management Unit to work with RMS to develop concept designs and cost estimates for the project, subject to the external costs being met by State and Federal Government Funding .

499/12 That Council request the General Manager to direct staff to write to the Federal Government seeking their funding for the delivery of the proposal.

500/12 That Council request the General Manager to direct staff to investigate and report on a concept design to improve Old Maitland Road and its connectedness to the M1 at Cobbs Road, Tuggerah.

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**2.1 DA 727/2012 - Detached Secondary Dwelling at Gorokan**

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

501/12 That Council grant consent having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues, and subject to the conditions detailed in the schedule attached to the report with the Section 94 contributions deleted from the consent.

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**2.2 Ex Officio appointment to Tuggerah Lakes Reserve Trust (Central Coast Wetlands - Pioneer Dairy)**

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

**502/12 That Council's Manager Sustainability or their delegate be nominated to the Department of Primary Industries Catchments and Lands as Council's ex officio member for a 5 year term to the board of Tuggerah Lakes Reserve Trust (Central Coast Wetlands – Pioneer Dairy).**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**3.1 RZ/9/2012 Rezoning to Permit Officeworks at Tuggerah**

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

**503/12 That Council prepare a Planning Proposal to amend Wyong Local Environmental Plan, 1991, pursuant to Section 55 of the Environmental Planning and Assessment Act, 1979 based on the Applicant's Planning Proposal Submission.**

**504/12 That Council, upon compilation, forward the Planning Proposal to the Department of Infrastructure and Planning accompanied by a request for a "Gateway Determination", pursuant to Section 56 of the Environmental Planning and Assessment Act, 1979.**

**505/12 That Council undertake community consultation and consultation with relevant Government Agencies, in accordance with details attached to the "Gateway Determination".**

**506/12 That Council request the Department of Planning and Infrastructure to prepare a relevant Local Environmental Plan amendment and that the Minister be requested to make the Plan, subject to there being no significant objections, that cannot be resolved by making minor amendments to the Planning Proposal.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**4.1 Contract Variation - Microsoft Licensing**

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

**507/12 That Council approve a budget variation increase of \$320,000 (excl GST) for the existing Microsoft Licensing Agreement in order to support increases in demand and improvements to the service delivery model.**

**508/12 That Council note the estimated total value of the contract over the three (3) year period will now be \$995,000 (excl. GST).**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**5.1 2012-16 Strategic Plan - September Quarter Review (Q1)**

---

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

**509/12 That Council defer consideration of this item until the confidential session, as item 9.3, as additional legal advice has now been received regarding this matter.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**5.2 Proposed Replacement of Pedestrian Bridge over Tumbi Creek, Peninsula Point, Berkeley Vale**

---

Councillor Vincent left the meeting at 5.22 pm and returned at 5.23 pm during consideration of this item.

Ms Susan Zgraja addressed the meeting at 5.23 pm, answered questions and retired at 5.29 pm.

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

**510/12 That Council endorse the construction of a new "Cable Stay Bridge" with associated shared pathway approaches over Tumbi Creek at the location as shown in Option A.**

**511/12 That Council approve expenditure for the construction of the new bridge within the funding limits of Councils existing 2012/2013 capital works budget.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR AND TROY

AGAINST: COUNCILLORS VINCENT AND WEBSTER

**5.3 Council Approval - Revised Motor Vehicle Policy and Procedure**

Acting Open Space Manager, Brett Sherar, declared a pecuniary interest in the matter for the reason that the policy has an impact on his employment contract and took no part in discussion.

Director Infrastructure and Operations, Greg McDonald, declared a pecuniary interest in the matter for the reason that the policy has an impact on his employment contract and took no part in discussion.

General Counsel Legal and Risk Manager, Brian Glendenning, declared a pecuniary interest in the matter for the reason that the item of business directly affects that the policy has an impact on his employment contract and took no part in discussion.

Land Use Planning Policy Development Manager, Martin Johnson, declared a pecuniary interest in the matter for the reason that the policy has an impact on his employment contract and took no part in discussion.

The General Manager, Michael Whittaker, declared a pecuniary interest in the matter for the reason that the policy has an impact on his employment contract and took no part in discussion.

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

***512/12 That Council note the consultation process between with staff and management***

***513/12 That Council consider the issues and submissions raised by staff and detailed in the report.***

***514/12 That Council endorse the revised Motor Vehicle Policy and Procedure.***

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**5.4 NSW Local Infrastructure Renewal Scheme Approved Loan Interest Subsidy - options concerning the use of resulting savings**

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

**515/12 That Council approve the following proposals in this report relating to the allocation of associated savings as a result of the success of Council's two applications under the NSW Local Infrastructure Renewal Scheme and that the Finance team process those changes in the December quarter review.**

- a That Council meet the cost of the loan principal repayments for the Warnervale Road Project from the Section 94 reserve fund (with the Finance team managing the accounting details).**
- b That Council meet the cost of the loan principal repayments for the Local Roads Pavement Renewal Programme from the current CAPEX budget.**
- c That Council meet the cost of the interest repayments for both of the loan funded projects from the current debt portfolio budget.**
- d That Council utilise some of the associated capital savings to the current budget, as a result of the loan funding, to allocate \$2M towards an accelerated CAPEX programme of backlog works of road pavement renewal in 2012/13.**

**516/12 That Council authorise the General Manager to negotiate and execute the associated loan contract with a selected lending authority.**

**517/12 That Council authorise the affixing of the seal to and executing the two funding agreement documents associated with successful applications under the NSW Local Infrastructure Renewal Scheme.**

**518/12 That Council authorise the Mayor to write to the Premier, Treasurer, Minister of Local Government and Members for Wyong and The Entrance thanking them for the Local Government Infrastructure Renewal Scheme (LIRS) and request they continue the LIRS in future NSW government budgets.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**5.5 2011/12 Annual Report**

---

Councillor unanimously Vincent left the meeting at 6.24 pm and returned to the meeting at 6.25 pm during consideration of this item.

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

- 519/12 That Council adopt the 2011/12 Annual Report (including enclosures).**
- 520/12 That Council post a copy of the 2011/12 Annual Report (including enclosures) on Council's website.**
- 521/12 That Council advise the Minister for Local Government of Council's URL link to access the report.**
- 522/12 That Council receive the 2008-12 Outcomes Report against the Community Strategic Plan.**
- 523/12 That Council note its appreciation of the staff in relation to the production of the 2011/12 Annual Report (including enclosures).**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**5.6 Voluntary Planning Agreements - Capped Contributions**

---

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

- 524/12 That Council delegate to the General Manager the authority to endorse the two draft VPA's lodged with Development Applications 671/2012 and 695/2012 respectively.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**5.7 Councillor Weekend Workshop - February 2013**

---

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

**525/12 That Council note the contents of the report.**

**526/12 That Council hold the Councillor Weekend Workshop at Shoal Bay, Port Stephens.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**5.8 NSW Local Infrastructure Renewal Scheme (LIRS) Round 2. Proposal to submit projects to incur borrowings to be subsidised under the LIRS**

---

**RESOLVED unanimously on the motion of Councillor TAYLOR and seconded by Councillor TROY:**

**527/12 That Council approve the submission of the following two projects for approval to incur borrowings to be subsidised under LIRS Round 2:**

**a Purchase of capital equipment to facilitate increased wrack harvesting**

**b Renewal and upgrading of Gross Pollutant Traps and Stormwater Treatment Devices to benefit water quality in Tuggerah lakes**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**5.9 Central Coast Mariners Bid to attract David Beckham**

---

Councillor Bob Graham declared a non-pecuniary insignificant interest in the matter for the reason that he is a member of The Central Coast Mariners Football Club Board of Directors and chose to remain in the chamber.

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

**528/12 That Council receive and note the report on Central Coast Mariners Bid to attract David Beckham.**

**529/12 That Council approve a sponsorship of \$100,000 as an underwriting for the Mariner's costs incurred in recruiting David Beckham as a guest player for a ten week period from mid January 2013, subject to a formal agreement between Wyong Shire Council (WSC) and the Central Coast Mariners Ltd.**



**530/12 That Council authorise the General Manager to execute the agreement which shall include a condition that makes payment subject to a satisfactory Return On Investment being achieved for the Shire on completion of the sponsorship.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

### **6.1 Information Reports**

---

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

**531/12 That Council receive the report on Information Reports.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

### **6.2 Works in Progress - Water Supply and Sewerage**

---

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

**532/12 That Council receive the report on Works in Progress - Water Supply and Sewerage.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

### **6.3 Upgrading of the Pacific Highway through the Wyong Township by the Roads and Maritime Services**

---

Councillor Graham left the meeting at 7.01 pm and returned to the meeting at 7.03 pm during consideration of this item.

Councillor Taylor left the meeting at 7.03 pm and returned to the meeting at 7.04 pm during consideration of this item.

Councillor Troy left the meeting at 7.15 pm and returned to the meeting at 7.16 pm during consideration of this item.

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

**533/12 That Council receive the report on Upgrading of the Pacific Highway through the Wyong Township by the Roads and Maritime Services.**

**534/12 That Council reaffirm its previous resolution, of the 24 October 2012, supporting the Roads and Maritime Service's (RMS) preferred option through the town.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

#### **6.4 Activities of the Development Assessment and Building Certification and Health Units**

---

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

**535/12 That Council receive the report on Activities of the Development Assessment and Building Certification and Health Units**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

#### **6.5 Investment Report for October 2012**

---

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

**536/12 That Council receive the Investment Report for October 2012.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

#### **6.6 Results of Water Quality Testing for Beaches and Lake Swimming Locations**

---

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

**537/12 That Council receive the report on Results of Water Quality Testing for Beaches and Lake Swimming Locations.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**6.7 Outstanding Questions on Notice and Notices of Motion**

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

**538/12 That Council receive the report on Outstanding Questions on Notice and Notices of Motion.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**8.1 Notice of Motion - Green Tape Reduction on DCP Chapter 14 - Trees**

Councillor Webster left the meeting at 7.34 pm and returned to the meeting at 7.37 pm during consideration of this item.

Councillor Taylor left the meeting at 7.43 pm and returned to the meeting at 7.44 pm during consideration of this item.

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

**539/12 That Council amend its Development Control Plant 2005: Chapter 14 - Tree Management;**

**7.1.1 "Plants with undesirable characteristics" due to location. Now to read "trees located within (6) metres of an approved residential structure and (12) metres of a non residential approved structure, will be considered to be undesirable due to their location".**

**540/12 That Council also vary clause;**

**7.1.2 "Plants with undesirable characteristics generally" to now read "all trees that are of non native species"**

**541/12 That Council staff follow the statutory process with regards to amendments to DCP Chapter 14.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**CONFIDENTIAL SESSION**

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

**542/12 That Council move into Confidential Session.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA,  
TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

At this stage of the meeting being 7.52 pm council moved into Confidential Session with the members of the press and public excluded from the meeting of the closed session and access to the correspondence and reports relating to the items considered during the course of the closed session being withheld. This action is taken in accordance with Section 10a of The Local Government Act, 1993.

**OPEN SESSION**

Council resumed in open session at 7.57 pm and the General Manager reported on proceedings of the confidential session of the ordinary meeting of council as follows:

**9.1 Mayoral Minute - General Manager's Mid Year Performance Review 2012-2013**

---

**543/12 That Council endorse the General Manager's performance review for the mid year 2012/13 assessment.**

**544/12 That Council approve the change to his financial contribution for private use of the Council motor vehicle within his remuneration package as contained in Attachment 1 and any consequential changes to other components of his remuneration package noting the total remuneration package remains unchanged.**

**9.2 Facility Agreement - Borrowings for LIRS projects**

---

**545/12 That Council accept the offer of loan borrowings, as dated 21 November 2012, for an amount of \$7,130,000 for a nine years and eleven month (9yrs and 11mths) term, based on a bi-annual amortisation table, from Commonwealth bank of Australia in accordance with the 2012-13 borrowings Programme.**

**546/12 That Council authorise the Mayor and General Manager to execute all documents relating to the Facility Agreement between the Wyong Shire Council and Commonwealth Bank of Australia.**

**547/12 That Council authorise the Common Seal to be affixed to the executed Facility Agreement between the Wyong Shire Council and Commonwealth Bank of Australia.**

**9.3 2012-16 Strategic Plan - September Quarter Review (Q1)**

---

- 548/12** That Council receive the first Quarterly Review Report on progress against the WSC 2012-16 Strategic Plan.
- 549/12** That Council note that Council's Responsible Accounting Officer has declared the financial position of Wyong Shire Council to be satisfactory.
- 550/12** That Council authorise the General Manager to attempt to settle land and environment court proceedings 10957 of 2012 by the upholding of the appeal and the granting of conditional consent to DA/733/2012, on the best terms as the General Manager can negotiate.

**QUESTIONS ON NOTICE**

**Q42/12 Wyong Neighborhood Centre Project**

**Councillor Lisa Matthews**

F2004/07438

*"Could staff please provide an update of the status of the men's shed?"*

*Can staff/council confirm that there will be no additional costs or liability to council?"*

**THE MEETING** closed at 7.59pm.

WYONG SHIRE COUNCIL

MINUTES OF THE  
**EXTRAORDINARY COUNCIL MEETING OF COUNCIL**

HELD IN THE COUNCIL CHAMBER  
WYONG CIVIC CENTRE, HELY STREET, WYONG  
ON 29 NOVEMBER 2012  
COMMENCING AT 7:00 PM

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**PRESENT**

Councillors D J Eaton (Chairperson), G P Best, R L Graham, K G Greenwald, L A Matthews, L R Nayna, L S Taylor, A Troy, D P Vincent and L D Webster.

**IN ATTENDANCE**

General Manager, Acting Director Development and Building, Director Infrastructure and Operations, Acting Director Community and Recreation Services, General Counsel and two administration staff.

The Mayor, Councillor Eaton, declared the meeting open at 7.02 pm and advised in accordance with the Code of Meeting Practice that the meeting is being recorded.

Councillor Matthews delivered the opening prayer and read an acknowledgment of country statement.

**APOLOGIES**

There were no apologies.

The meeting was adjourned until 8.00 pm.

The meeting was reconvened at 8.10 pm

At the commencement of the ordinary meeting report numbers 1.1, 2.5, 2.7, 2.9 and 2.10 were dealt with first then the remaining reports were dealt with via the exception method. However for the sake of clarity the reports are recorded in their correct agenda sequence.

**1.1 Disclosure of Interest**

---

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

**551/12 That Councillors now disclose any conflicts of interest in matters under consideration by Council at this meeting.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**PROCEDURAL MOTION**

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

**551/12 That Council allow meeting practice to be varied.**

**552/12 That Council use the exception method to deal with the balance of the Agenda.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

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

**553/12 That with the exception of report numbers 2.5, 2.7, 2.9 and 2.10 Council adopt the recommendations contained in the remaining reports.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**2.1 History of the Central Coast Joint Service Project**

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

**554/12 That Council receive and note the information.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**2.2 Central Coast Joint Services Project - Key Governing Instruments and Planning Documents**

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

**555/12 That Council receive the information.**

**556/12 That Council endorse the attached documents.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**2.3 Central Coast Joint Services Project - Key Council Resolutions**

---

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

**557/12 That Council receive and note the previous Councils' resolutions and status updates regarding the Central Coast Water Corporation and Joint Services Business.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**2.4 Central Coast Joint Services Project - Status Report**

---

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

**558/12 That Council note the information.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**2.5 Central Coast Joint Services Project - Decisions by the PCG to date**

---

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

**559/12 That Council receive and note the report.**

**560/12 That Council endorse the decisions of the Program Control Group as being compliant with the Councils' resolutions and heads of power delegated to the General Managers.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**2.6 Central Coast Joint Services Project - Communications and Engagement**

---

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

**561/12 That Council receive and note the information.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL



**PROCEDURAL MOTION**

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

**562/12 That Council allow meeting practice to be varied.**

**563/12 That Council resolve items 2.7, 2.9 and 2.10 in conjunction with each other.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**2.7 Water and Sewerage Service Delivery Framework**

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

**564/12 That Council receive and note the report**

**565/12 That Council refer this matter to a joint Gosford/ Wyong Councils workshop to a date to be set in February 2013.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**2.8 Report of the Central Coast Water Corporation**

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

**566/12 That Council receive and note the information.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**2.9 Review of Corporate Customer Services Functionality for Inclusion in the Joint Services Business**

---

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

**567/12 That Council receive and note the report**

**568/12 That Council refer this matter to a joint Gosford/ Wyong Councils workshop to a date to be set in February 2013.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**2.10 Review of Stores and Procurement Functionality for Inclusion in Joint Services Business**

---

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

**569/12 That Council receive and note the report**

**570/12 That Council refer this matter to a joint Gosford/ Wyong Councils workshop to a date to be set in February 2013.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, NAYNA, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NIL

**2.11 Sponsorship for Regional Harmony Week Celebrations**

---

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

**571/12 That Council, in conjunction with Gosford City Council, join with relevant stakeholders to stage a regional celebration for Harmony Week.**

**572/12 That Council, in conjunction with Gosford City Council, each contribute \$5,000 annually towards the celebration.**

FOR: COUNCILLORS BEST, EATON, GRAHAM, GREENWALD, MATTHEWS, TAYLOR, TROY, VINCENT AND WEBSTER

AGAINST: NAYNA,

**THE MEETING** closed at 8.36 pm.

## **2.1 Mayoral Minute - Tuggerah Lakes Reserve Trust (Pioneer Dairy)**

---

TRIM REFERENCE: F2012/02016 - D03208817

AUTHOR: Doug Eaton; Councillor

### ***I formally move:***

***That Council extends the same arrangements to the Tuggerah Lakes Reserve Trust (Pioneer Dairy) that was offered to the Ourimbah Soccer Club in regard to the water and sewerage developer charges currently levied on the new amenities building, being a 65% contribution from General Fund and the remaining 35% paid by the Pioneer Dairy Trust over 4 equal payments with interest charged at 10% per annum.***

### **GENERAL MANAGER'S NOTE**

Tuggerah Lakes Reserve Trust received approval from the Department of Primary Industries, Catchments and Lands on 24 August 2012 to undertake development work on the Pioneer Dairy site. This work included the upgrade of the Caretakers Cottage, the creation of a Community Garden and Car Parking facilities and the dismantling and relocation of the Old Milking Bails.

Council was not involved in the approval process and as such the Trust was not advised of the Council fees and charges outlined in Council's Sect 306 requirements.

The Trust originally approached Council in November 2009 to provide sewer investigation and design services for the site. This involved a private sewer pump station and pressure main and connection to Council's sewerage system. No reticulated water connection was proposed for the site.

Following completion of the design the Trust approached Council in February 2012 to Project Manage the design and construction work. This included the preparation of tender documents, managing the contract procurement process and project managing the contract. The Trust approved Council's Project Management offer on 31 May 2012. Construction of the work commenced in October 2012.

Following acceptance of Council's offer the Trust was advised in May 2012 to apply for the sewer connection, a section 306 certificate and a private sewer pump station trade waste application. Council's section 306 requirements included the payment of the sewer development charges (\$13,117.77), the investigation fees (\$286.65) and the section 307 administration fee (\$36) amongst other conditions. The sewer contribution charge was based on the estimated sewerage load that will be generated by the development.

Extending the same arrangements to the Tuggerah Lakes Reserve Trust (Pioneer Dairy) as was applied to the Ourimbah Soccer Club (35% Club/ 65% Council) it would result in the Trust paying \$4,704.15. An arrangement to pay this off over 4 instalments could be accommodated.

### **3.1 Deferred Payment of Section 94 Contributions**

---

TRIM REFERENCE: F2004/00552 - D03202904  
MANAGER: David Jack, Director Corporate Services  
AUTHOR: David Kitson; Senior Contributions Officer

#### **SUMMARY**

This report provides information on the different models for permitting the deferred payment of Section 94 contributions and a proposed policy.

#### **RECOMMENDATION**

- 1** *That Council adopt the Proposed Policy for the deferred payment of Section 94 development contributions provided in this report.*
- 2** *That Council approve the necessary changes to the contributions plans which allows Council to delegate the consideration and approval of application for deferment in accordance with the adopted policy.*
- 3** *That Council request that the Department of Planning & Infrastructure make the necessary legislative changes as part of its planning reform process that confirms and supports Council's ability to record deferred Section 94 contribution as a debt against the land pursuant to section 603 of the Local Government Act 1993.*

#### **BACKGROUND**

A report was submitted to Council at its Ordinary Meeting on 9 May 2012 that provided information and recommendations addressing the following motion:

*"That Council vary its policy on collection of s94 contributions to allow for the contributions to be paid prior to issue of Occupation Certificate."*

This notice of motion was titled "Assisting Housing Affordability".

The conclusion of the report submitted to Council was that there were significant compliance and administration cost associated with a deferred contribution system based on the payment of contributions at the occupation certificate. Council resolved:

- 1** *That Council agree in principle to vary its policy to allow collection of s94 contributions for the contributions to be deferred until later in the development process.*
- 2** *That Council request the General Manager to report on possible implementation procedures and benefits and disbenefits back to Council for approval prior to adoption.*

This report seeks to address this resolution.

**CURRENT STATUS**

Existing Collection System

Contributions are currently collection at critical points in the approval process depending on the type of development. The existing contributions plans require the payment of contributions:

1. Prior to the release of the subdivision certificate for subdivisions (which is required in order to register the subdivision plan with the Land Titles Office and for it to issue the land titles for the new lots)
2. Prior to the issue of construction certificate for buildings (which allows building work to commence)
3. Prior to the commencement of a use where there is no building work required i.e. change of use.

This is the standard approach to the collection of contribution that has been taken historically by local government across NSW.

The principal rationale for these payment trigger points is that it provides an absolute guarantee of payment. It also provides funds early in the development process to undertake works or to recoup monies that have already been spent in advance of development.

Developer's Rational

There are two reasons why a developer would seek to defer the payment of development contributions:

1. The difficulty in obtaining finance to cover development costs and the payment of Section 94 contributions. This applies in particular at the start of a development when there is no cash flow. Since the Global Financial Crisis (GFC) the feedback from developers is that it is increasingly difficult to get access to loan monies from financial institutions, which have become more conservative in their lending practices. In effect, the financial institutions are rationing loan funding to those projects that have the best prospect of commercial success (in their view). Another important factor is that valuers have also become more conservative with valuations of development sites provided to banks, which they use to make lending decisions.
2. To reduce or eliminate the holding costs that are currently incurred between the time contributions are paid and when the developments generate income through sales/rent. The long standing approach adopted by developers to reduce holding costs is to release smaller stages and/or sell off the plan, so as to reduce the time between outlaying contribution monies (as well as potentially other development costs) and a return upon the sale./use of lots/units

### 3.1 Deferred Payment of Section 94 Contributions (contd)

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#### Contribution Interest

Council earns interest on contribution monies that have been held prior to them being expended on works. This interest is not accounted for in the contributions plans. While some attempts have been made in some past to account for this additional income and thus reduce the contribution rate, the typical approach to this issue by most Councils is to treat it as a contingency towards the increase in the cost of works above inflation.

If the interest rate for money invested is 4% p.a. and the inflation rate is 3% p.a., the net "real" gain for Council is 1% p.a. while ever the money is invested.

Thus, the ability for developers to reduce holding costs by deferring the payment of development contributions will come at the cost to Council equivalent to approximately 1% p.a. of the deferred contributions during the deferral period.

#### Wyong Shire Provisions

Four of Council's earlier contributions plans are silent on whether deferred payment of contributions is permitted. Two Contributions Plans specifically indicate that "*Council does not permit deferred or periodic payments of developer contributions*"

The remaining six contributions plans that have been adopted more recently contain the following provisions:

*"Council will generally not accept deferred or periodic payment of contributions required under this plan.*

*Council has, however formulated a policy in relation to the negotiation and preparation of planning agreements which provides for the consideration of deferred or periodic payments.*

*Consideration of requests for deferral of contributions will involve careful consideration of community/public infrastructure delivery and financial implications for Council. "*

The intention has been to include this clause as the older contributions plans are reviewed and updated.

#### Survey of Councils

A sample of contributions plans from 15 Councils has been examined to ascertain their policies in respect to the deferral of development contributions, as well as feedback from officers from some of those Councils. The results of that survey are displayed in the attached table.

All Councils except one had provisions that allowed contributions to be deferred with the submission of a bank guarantee. Two Councils had policies that allow contribution for subdivision to be deferred until the lots were sold.

**OPTIONS**

The options that have been used or could be used are discussed in the following sections. These options include:

1. Bank Guarantee
2. Deferred Payment upon sale of lots
3. Debt against the land
4. Consent Provisions for Built Developments (occupation certificate)

**1. Bank Guarantee**

As indicated, 14 of the 15 Councils surveyed had provisions that permit the deferment of development contributions subject to the lodgment of a bank guarantee. The majority of provisions were based on individual application, meeting “exceptional circumstance” criteria and Council discretion.

One of the most common head of consideration specified is that deferred payment of contributions does not prejudice the timing or manner of works under the applicable contributions plan.

Most Councils allow bank guarantees to be provided as security for a limited period of time before they would be called up. Four Councils had a policy that limited deferment to 12 months, one to a maximum of 2 years and the others subject to negotiation. .

A bank guarantee is normally arranged by a developer on the basis that they provide the money to the value of the guarantee to the issuing bank, which places it in a term deposit for the life of the guarantee. A developer is required to pay an application fee and/or management fee which vary depending on the financial institution. The Commonwealth Bank requires a \$200 establishment fee with a management charge of 0.825% every 6 months (i.e. 1.65% per annum).

Where the developer does not have the cash for the term deposit for the bank guarantee, it would normally be raised as part of a secured loan to finance the development. Making this assumption the annual cost of providing a bank guarantee can be calculated as follows:

| <b>Details</b>                  | <b>% p.a.</b> |
|---------------------------------|---------------|
| 2 year commercial leading rate: | 6.00%         |
| Bank Guarantee Charge           | 1.65%         |
| Gross Cost to Development       | 7.65%         |
| less 2 year Term Deposit Rates  | 4.00%         |
| Net Cost to Developer           | 3.65%         |

This cost will reduce over time as the bank guarantee gets paid down. The cost of funding a bank guarantee for \$30,000 of contributions at 3.65% is \$1,095 per annum.

Contingencies need to be made in the guarantee amount for future indexing.

## 2. Deferred Payment until Sale of Lots

Kempsey Shire Council and Shoalhaven City Councils have been identified as having a specific policy for subdivisions that permits the payment of contributions once lots are sold. A further proposed model has been submitted by ADW Johnson on behalf of Rexel Pty Ltd for a development site within Wyong Shire.

These deferred payment models do not require the submission of a bank guarantee, but are based on either a deed of agreement (agreement) or a Voluntary Planning Agreement (VPA) acting in tandem with a caveat on each new lot preventing its sale until contributions are paid. While the three models have similarity there are some major differences, which are examined below.

The **Kempsey Shire Council** policy provides:

*In respect to subdivisions, Council will consider the deferment of payment of contributions, subject to the following:-*

- a. The owner of the land shall enter into a Deed of Agreement with Council and at no cost to Council.*
- b. The agreement shall be registered in the form of a caveat on the title of the englobo allotment.*
- c. The agreement shall provide for payment of the deferred contribution at the rate applicable at the time of payment.*
- d. The caveat shall be in a form that acts as a bar to transfer of ownership of any lot within the subdivision unless Council has provided its agreement to remove the caveat.*
- e. Council's agreement to removal of the caveat will be provided upon receipt of payment of the deferred contributions in accordance with the terms of the Deed of Agreement.*

Advice from the Kempsey Shire Development Engineer indicates that this policy has been in place for some 10 years and up to 100 subdivisions have been processed under it. The majority of subdivisions processed under this policy have been small scale developments, with the most common form being the subdivision of existing urban lots i.e. subdivision of backyards. The largest subdivision utilising this policy to date is an 18 lot subdivision.

Under the policy developers are bill for all legal costs directly by Council solicitor who deals directly with the developer's solicitor on all matters including the finalisation of the deed of agreement in accordance with a standard template. The only Council involvement is providing the current contribution required at the time of settlement.

A developer can decide at any time prior to the issue of the subdivision certificate that they wish to defer the payment of contributions until the sale of lots in accordance with the Council policy. Basically the subdivision certificate will be withheld until either the contributions are paid or the deed of agreement is executed. The consent conditions for all subdivision proposals require the payment of contributions prior to the issue of subdivision certificate without reference to the deferment policy.



### 3.1 Deferred Payment of Section 94 Contributions (contd)

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The existence of the deferment policy is provided by way of advisory note to preserve Council's rights to change its policy at any point in the future. Council is committed to reviewing its deferment policy in the next 12-18 months as part of the review of the its engineering guidelines document.

Council has only experienced one problem to date in respect to a two lot subdivision where the Bank holding the mortgage foreclosed on the land. The Bank demanded that the Council remove the caveat. Council removed the caveat and issued a notice of intentions to serve an order against the property for breach of the development consent regarding unpaid contributions. Council then issued a debt against the land pursuant to Section 603 of the Local Government Act. The Banks paid the contributions upon sale of the lot.

The **Shoalhaven City Council** policy provides:

*In the case of subdivisions, Council will consider the deferment of payment of development contributions and Section 64 headworks charges, subject to the following:-*

1. *The owner of the land and, if relevant, any mortgagees of the property entering into, at no cost to Council, a Deed of Agreement.*
2. *The agreement between the Council and applicant binding the applicants land (underlining inserted) with the obligation to repay the contributions.*
3. *If the applicant's land is subject to a mortgage(s), Council entering into a priority agreement with the mortgagee(s) (underlining inserted) that gives Council priority for payment of contributions.*
4. *Notice of the agreement and Council's rights being registered in the form of a caveat on the title of the land to be subdivided.*
5. *The agreement making provision for payment of the deferred contribution **at the rate applicable at the time of payment** and detail a schedule for the timing of the payments upon sale of the subdivided lots.*
6. *The caveat shall be in a form that acts as a bar to transfer of ownership of any lot within the subdivision unless Council has provided its agreement to remove the caveat.*
7. *Council's agreement to removal of the caveat from a subdivided lot being provided upon receipt of payment of the deferred contributions in accordance with the terms of the Deed of Agreement.*
8. *All costs involved in the above requirements are at the expense of the applicant.*
9. *This section does not apply to subdivisions where the construction of a dwelling is included in the development application.*

The Development Officer from Shoalhaven City Council has confirmed that one deed of agreement (agreement) for the deferment of contributions has been executed and another is in the final stages of negotiations.

He indicated the requirements (see above) for a “priority agreement” with the mortgagee/s has not been a stumbling block to date. The ANZ Bank is a party to the first agreement executed and the NAB has agreed to be a party another agreement that is currently being finalised.

Council is in receipt of the Shoalhaven agreement template, which has been favourable reviewed by Council’s Solicitor.

A submission in support of the exhibited Shoalhaven City draft policy in 2009 indicated it would cost them about \$900 per lot in costs for the preparation of the agreement and having a solicitor at the settlement to authorise the removal of the caveat for each lot (which Council will agree to under the policy upon payment of the required contributions). It was estimated that this cost would reduce to \$600 per lot were Council authorises the developer’s solicitor to act on Council’s behalf at the settlement.

**Rexel Pty Ltd** has submitted a Draft voluntary planning agreement (VPA) in respect to its proposed 105 lot subdivision of Lot 229 DP 1105837 & Lot 230 DP 1105837, Johns Road, Wadalba in DA/1082/2011. The Draft VPA seeks a reduction in the total contributions payable and for them to be deferred until the lots are sold.

The proposed reduction in total contributions will be dealt in a separate report.

The provisions in the draft Voluntary Planning Agreement (VPA) for the deferral of contributions until the sale of lots is similar to the Shoalhaven model.

The proposal set out in the Draft VPA is reproduced as follow:

- Developer/applicant write to Council formally requesting Council defer contributions and provides Council with details of their solicitor and financiers;
- Council instructs its solicitors to liaise with the developers solicitors to draw up a deed of agreement authorising a caveat to be registered on the title;
- A **tripartite deed of agreement** is signed by the owner of the land and the Council and developers financiers;
- The developer’s financiers acknowledge caveat and debt to Council within tripartite agreement.
- Deed and Caveat are registered on the title
- Council issues subdivision certificate (assuming all other matters are addressed)
- Plan of Subdivision is registered
- When individual lots are to be sold developer/solicitor writes to Council requesting to arrange the withdrawal of caveat;
- Council instructs its solicitors to arrange for a withdrawal of the caveat when contributions are paid in full and advise them of the current outstanding amounts for the lot in question;
- At settlement contributions are paid to Council and the caveat is withdrawn;

The key points made in the draft VPA are:

- Developer is responsible for all costs associated with the agreement (Council legal fees, developer fees, caveat registration and withdrawal fees etc);
- Deed of agreement created between Council and owners and financiers;
- Caveat registered on the title, preventing transfer of the lot;
- Land cannot be sold until contributions are paid;
- Contributions payable are indexed on the date they are paid.

### 3.1 Deferred Payment of Section 94 Contributions (contd)

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In support of this arrangement, the proponent indicates that the development costs are approximately \$100,000 per lot, with between 30-40% of this cost made up of development contributions (Section 94 and Section 64 sewer & water).

The net section 94 contributions proposed to be paid under the draft VPA are approximately \$3 M. The subdivision is proposed to be released in 4 stages, with the first stage containing 21 lots with approximately \$630,000 of section 94 contributions payable. Assuming it took on average 1 year to sell all the lots, the holding costs would be in the order of:

| <b>Contribution source</b> | <b>Principal</b> | <b>% rate</b> | <b>Total Cost</b> | <b>per lot cost</b> |
|----------------------------|------------------|---------------|-------------------|---------------------|
| Borrowed Money             | \$630,000        | 6.00%         | \$37,803          | \$1,800             |
| Bank Guarantee             | \$630,000        | 3.65%         | \$22,995          | \$1,095             |

The "Rexel Model" is essentially the same as the Shoalhaven Model except there is another legal instrument i.e. a VPA.

#### Caveats

There is transitional issue in respect to the use of caveats, as at the commencement of the arrangement to defer contributions, a caveat can only be placed on the un-subdivided development lot.

The Land Titles Office will not register a subdivision plan that has a caveat over it unless the parties with caveatable interests gives their consent, which may be conditional upon the same caveat being placed on the titles of the new lots.

#### Legal Advice

Council's solicitor has examined the features of the Shoalhaven Model and considers that adopting a similar approach will provide a high level of security for the recovery of unpaid deferred contributions should a developer default.

### **3. Debt against the Land**

There is potentially a simpler approach to deferring contributions that involves securing the deferred contributions as a debt against the land, which is supported by a deed of agreement.

Section 603 of the Local Government Act allows Council to place a debt on land either for rates and any other charges. Any debt that Council places against land remains with the land irrespective of whether the owner on-sells the land or goes bankrupt.

A standard solicitor's enquiry for the vendor of a residential allotment is the submission of an application to Council for a Section 603 certificate. Such certificate declares the existent and extent of the debt to Council that is recorded against the land. It is a normal conveyance practice for purchasers to insist that all such debts against the land are clear prior to settlement. If they proceed with the purchase with the debt unpaid, then the debt carries over to the new owner in exactly the same way as unpaid rates.

### **3.1 Deferred Payment of Section 94 Contributions (contd)**

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This approach is most suited to large scale subdivisions where the Torrens title lots are intended to be sold, as there is a reasonable assurance that the contributions will be paid prior to the transfer.

The “Debt against the land” model is not well suited for the deferred payment of contributions in respect of built developments, as the Section 603 certificate is only effective when applied for on behalf of a prospective purchaser. A built development may be completed and occupied and not sold. The ultimate remedy for unpaid contributions for built developments where it is held as debt against the land is for Council to instigate proceedings to sell up the property. This may be potentially unpalatable especially where it involves small scale residential development where the owner is the occupant and there are elements of hardship.

#### Internal Procedures

A flow chart has been prepared and is attached that shows the various internal actions that are required in respect to the implementation of a “debt against the land” model in the context to the timing of the statutory processes and development stages.

#### Potential Features

The potential features of a “Debt against the Land” Model could be:

1. Its restriction to greenfield developments that will make a significant contribution towards employment generation and provide significant economic stimulus.
2. A requirement that the conclusion of a Deed of Agreement between Council and the Development shall be completed preferable as part of the development consent but no later than the issue of the 1<sup>st</sup> construction certificate for each stage of subdivision works.
3. A requirement for the payment of an administration fee equivalent to 2% p.a. of the outstanding indexed deferred contributions i.e. \$600 per annum where contributions are \$30,000 in total.

#### Legal Advice

Council's solicitor has indicated that while the “debt against the land” model has some merit, to date it is an untested area for which there is no supporting case law. Council's solicitor indicates that a submission to the Government's Planning Reforms could be made to suggest further legislative changes to support this approach.

### **4. Consent Provisions for Built Developments (occupation certificate)**

Development contributions for residential and non-residential buildings are currently required to be paid prior to the issue of the construction certificate, which is necessary to commence building works.

There are potential difficulties in structuring the deferred payment of contributions until development units (residential, commercial or industrial) are sold, as:

- o not all developments are proposed to be subdivided, and

- there is no guarantee that developments that have a consent to be subdivided will be subdivided when they are completed. There is always the possibility (discretion remains with the owner) for completed buildings to remain unsubdivided in the same ownership for extended periods of time either occupied by the owner or rented out.

The only other potential trigger point for the payment of contributions in the development process for built developments is prior to the issue of the occupation certificate. It should be noted that an occupation certificate is a prerequisite for the issue of subdivision certificate for the strata title subdivision of built developments, which is required for a subdivision plan to be registered with the Land Titles Office so it can issue strata title deeds, which enables the individual units to be sold.

Under this model, the standard condition of consent would need to be amended such that the payment of contributions is required prior to the issue of the occupation certificate. This presently is contrary to the requirements of the contributions plans that each specifies that contributions are required to be paid prior to the issue of the construction certificate.

The occupation certificate is considered to be an extremely poor and unreliable trigger for the payment of contributions, because it is possible to occupy completed building prior to occupation. The advice for Building Services indicates that this unfortunately does occur on an all-to-regular basis, especially in respect to small scale developments.

In multiple unit developments, there is potential for occupation certificates to be applied for individual units as they are being completed. This adds to the complexity of administering the deferred payment of contributions.

#### Small Scale Developments

Significant additional resources would be required to effectively police deferred contributions payable at the occupation certificate for small scale developments.

This task is made considerably more difficult given the potential involvement of private certifiers in the issue of construction and occupation certificates for building works. It is at the whim of the developer when they apply for an occupation certificate from a certifier.

The option of pursuing repayment of overdue contributions would generally be through the Environmental Planning & Assessment Act as a breach of the consent. This has the potential to fail especially in respect of small scale developments in the following steps:

- The owner moves into a dwelling without occupation certificate.
- Council's powers to issue an order for the owner to vacate the premises until contributions have been paid is hindered by the obligation under the Environmental Planning & Assessment Act (EP&A Act) to consider whether such an order will make the occupant homeless.
- Clause 109M of the EP & A Act prevents Council from issuing an order if the building has been occupied without an occupation certificate for more than 12 months.

### 3.1 Deferred Payment of Section 94 Contributions (contd)

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- o Council could then potentially take action against the owner under the EP&A Act in the Land & Environment Court (LEC) for a breach of the development consent (at significant cost).

#### Potential Features

The potential use of the occupation certificate as the trigger for the payment of contributions could be permitted subject to:

1. A restriction to major developments that make a significant contribution towards employment generation, affordable housing or provide significant economic stimulus.
2. Each stage having no less than 10 units.
3. Requests to deferred the payment of contributions need to be made as part of the development application or via a Section 96 Amendment application.
4. Payment shall be made for the entire stage of a development upon the release of the first occupation certificate.
5. Payment of an administration fee equivalent to 1% p.a. of the outstanding indexed deferred contributions i.e. \$300 per annum where contributions are \$30,000 in total.
6. Requests to defer contributions being referred the Iconic Sites Governance Panel for consideration and determination.

#### **DISCUSSION**

There are a number of potential approaches where Council wishes to proceed with a policy that allows the payment of development contributions to be deferred. Some of the issues that Council needs to address in setting the parameters for a policy include:

1. The risk & security
2. The type of developments eligible
3. The trigger for payment i.e. payments deferred for a specific period or upon the progress of development
4. The administrative costs
5. Approval Process

These issues have generally been canvassed in the body of the report, with the exception of the administration costs, which are canvassed below.

#### 1. Risk & Security

The existing trigger points provide an absolute guarantee of payment as development cannot proceed until contributions are paid. Contributions for built developments paid prior to the issue of the construction certificate from a building budgeting perspective means that they are treated as part of the preliminary expenses, rather than competing for the reducing pool of funds as completion is being approached.

The use of bank guarantees or a "priority agreement" for deferring contributions as discussed provide sufficient security for Council to recover unpaid contributions. There are currently some legal uncertainties regarding the risk of security held as a "debt against the land".

### **3.1 Deferred Payment of Section 94 Contributions (contd)**

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The risk associated with payments being required prior to the occupation certificate can be reduced by restricting it to development that are likely to make a significant contribution to employment, housing affordability or economic stimulus.

#### 2. Types of Development

It is considered that any policy to defer contributions should be restricted to major developments that will make a significant contribution towards contribute to employment, housing affordability or economic stimulus within the Shire.

#### 3. Trigger Points

The deferred payment of contributions for subdivision from the prior to the release of the subdivision certificate to the sale of lots can be managed and secured under the priority agreement model that requires mortgagees to paying Council contributions ahead of other debt.

The deferred payment of contributions for built development from prior to the release of construction certificate to prior to the issue of occupation certificate can be adequately managed through the consent process for larger developments.

The use of the occupation certificate as the trigger point for the payment of contributions for small residential developments is considered to be extremely problematic, both in terms of administration and enforcement.

#### 4. Administration

There is significant additional work required to properly administer the deferred payment of Section 94 contributions. Council's computerized Section 94 contributions recording system is not presently capable of effective managing such multiple payment under one development application. Failing the ability to funds a software upgrade, there will need to be considerable manual accounting.

Depending on the take up rate under a deferred payment policy, there could be a significant additional work load that may require additional resources.

It is considered that Council should charge developers for the ability to defer contributions to cover this additional internal administration.

The administration cost of administering a bank guarantee potentially involves the least administration as they are for a lump sum that covers the whole amount owed and only needs to be reviewed and reconciled prior to the expiration of the deferment period. Council currently has an administration charge of \$264 for a bank guarantee submitted for outstanding civil works, which generally have a value ranging between \$5,000 and \$50,000.

The other deferred payment model will require considerably more administration.

It is considered that under the Shoalhaven "priority agreement" Model it would be reasonable to charge 1% per annum on outstanding indexed monies, which would be \$300 per lot per annum based on a \$30,000 per lot contribution. This would be in addition to the costs involved in establishing the agreement and solicitors' costs for all parties in establishing, transferring and removing caveats.

The administration of contributions deferred until the occupation certificate model would potentially require a similar amount of administration to the priority agreement model where it is restricted to large developments. It is recommended that a 1% charged per annum on outstanding indexed monies be applied.

There is little doubt that significant additional resources would be required for small development having regard to the greater likelihood of non-compliance and the relative cost between unpaid contributions and the cost of legal action.

The “debt against the land” model would require the most resources to effectively administer as it involves several internal referral processes and the raising of new invoices each quarter to account for indexing. Having regard to the cost savings relative to the priority agreement that involves solicitors cost to create, modify and remove caveats, there is a reasonable opportunity for Council to require a fee for service.

A 2% charge per annum on outstanding monies would be \$600 per lot per annum based on a \$30,000 per lot contribution. This compares favourably with the \$900 per lot cost estimate provided to Shoalhaven several years ago for the establishment of the agreement and the solicitors’ cost relating to caveats.

### 5. Approval Process

The adoption of any deferred payment of contribution policy will require decisions on who will assess application and whether decisions will be made on individual applications by Council or delegated to staff.

Legal advice indicates that Council cannot delegate a decision that is inconsistent with the provisions of an adopted development contributions plan.

Where Council wishes to delegate decisions to staff, amendments to all contributions plan will likely be required.

It is suggested that requests to defer the payment of contributions could be assessed and determined by Iconic Sites Governance Panel.

### Conclusions

There are a number of conclusions that can be reached in relation to this issue.

1. Bank Guarantees do not solve the developer’s problems accessing funds, as capital or borrowed monies needs to be provided to secure guarantees. The holding costs of a bank guarantee are however significantly lower than loan monies used directly to paid contributions.
2. A bank guarantees in the context of a policy that allows the payment of contributions to be deferred for a specific period is a good option for built developments. It potentially allows deferment for the construction period until the development is completed and can be occupied and/or sold (at the discretion of the owner).



### 3.1 Deferred Payment of Section 94 Contributions (contd)

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3. The Shoalhaven “priority agreement” model appears to be the optimum approach for the deferment of contribution until the sale of lots for Greenfield subdivision at this stage given the untested nature of the “debt against the land” model.
4. The negotiation of a priority agreement with the financial institutions as per the Shoalhaven Model has proved to be possible, with the execution of one such agreement with another pending. Some financial institutions however may not be prepared to enter such agreements.
5. The use of voluntary planning agreements as the vehicle for deferring the payment of contributions is considered to be unsuitable because of the legislative requirements relating to public exhibition and the registration of caveatable interests.
6. The “debt against the land” model potentially provides for absolute security provided internal administrative processes are robust. This model is suited to subdivision rather than built developments. However, there is currently no precedent for this approach and no supporting case law.
7. The use of the occupation certificate as a trigger for the payment of contributions is not suitable for small scale built development. Some consideration may be appropriate for large scale developments subject to a range of considerations.

#### **PROPOSED POLICY**

Having regard to the information in this report, where Council wishes to adopt a policy that allows the payment of Section 94 contributions to be deferred is recommended that Council adopt the following draft policy:

#### **All Developments**

A bank guarantee be permitted as security for the deferred payment of Section 94 development contributions for all development types subject to:

1. *The bank guarantee shall be unconditional and irrevocable.*
2. *Payment being made within 12 months with the lodgment of the guarantee.*
3. *The bank guarantee is from a financial institution acceptable to Council*
4. *The guaranteed amount includes a contingency for inflation as determined by Council.*
5. *The payment of an administration fee equivalent to 1% p.a. of the outstanding indexed deferred contributions invoiced quarterly. i.e. approximately \$300 per annum based on a \$30,000 per lot contribution.*
6. *Requests to defer contributions being referred the Iconic Sites Governance Panel for consideration and determination*

**Greenfield subdivisions**

The deferred payment of Section 94 development contributions for Greenfield subdivision is permitted until lots are sold subject to:

1. *The deferred payment of contributions shall be restricted to:*
  - a. *large “greenfield” subdivisions that have the potential to generate employment and economic activity.*
  - b. *subdivisions where the construction of dwellings are not included in the development application.*
2. *The deferred payment of contributions shall be supported by the execution of a deed of agreement with the following features:*
  - a. *The owner of the land and, if relevant, any mortgagees of the property being a parties to the agreement.*
  - b. *The agreement binding the applicant’s land with the obligation to repay the contributions.*
  - c. *The agreement binding the mortgage(s) to give Council priority for payment of contributions.*
  - d. *The agreement and Council’s rights under the agreement being registered in the form of a caveat on the title of the land to be subdivided prior to the issue of the subdivision certificate.*
  - e. *The agreement shall provide that the caveat shall be in a form that acts as a bar to transfer of ownership of any lot within the subdivision unless Council has provided its agreement to remove the caveat.*
  - f. *Council’s agreement to removal of the caveat from a subdivided lot being provided upon receipt of payment of the deferred contributions in accordance with the terms of the agreement.*
  - g. *The agreement shall set out the contribution rate applicable on a per lot basis at the time the agreement is made and the means for determining the contribution rate applicable at the time of payment.*
  - h. *The Section 94 contributions shall be paid upon settlement of each lot.*
  - i. *All costs involved in the operation of the agreement are to be at the expense of the developer/applicant*
3. *Deed of Agreement shall:*
  - a. *preferable be submitted as part of the development application.*
  - b. *be executed prior shall be the issue of the 1<sup>st</sup> construction certificate for the subdivision works relating to the applicable stage.*

### 3.1 **Deferred Payment of Section 94 Contributions (contd)**

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4. *No development of any lots with structures/ buildings or the use of land shall be undertaken until deferred contributions have been paid in respect of that lot.*
5. *A requirement for the payment of an administration fee equivalent to 1% p.a. of the outstanding indexed deferred contributions invoiced quarterly. i.e. approximately \$300 per annum based on a \$30,000 per lot contribution.*
6. *Requests to defer contributions being referred the Iconic Sites Governance Panel for consideration and determination*

#### **Built Developments**

The deferred payment of Section 94 development contributions for built developments be permitted until the occupation certificate subject to:

1. *The deferred payment of contributions shall be restricted to development that make a significant contribution towards employment generation, affordable housing or provide significant economic stimulus.*
2. *Each stage having no less than 10 units.*
3. *The request to defer the payment of contributions being made as part of the development application or via a Section 96 Amendment application.*
4. *The payment of development contributions being made for the entire stage of a development prior to the release of the first occupation certificate for any unit in that stage.*
5. *Payment of an administration fee equivalent to 1% p.a. of the outstanding indexed deferred contributions invoice quarterly i.e. \$300 per annum where contributions are \$30,000 in total.*
6. *Requests to defer contributions being referred the Iconic Sites Governance Panel for consideration and determination.*

#### **STRATEGIC LINKS**

Section 94 contributions relate to objective no. 4 under the Community Strategic Plan i.e.

*“4. Areas of natural values in private and public ownership will be enhanced and retained to a high level in the context of ongoing development”*

The proposal to introduce a policy that allows the payment of Section 94 contributions to be deferred is directed towards the following objectives under the Community Strategic Plan:

- Objective 6 – *“a strong sustainable business sector and increase local employment built on the Central Coast’s business strengths”*
- Objective 3 – *“access to a diverse range of affordable and coordinated facilities, programs and services”, including affordable housing.*

### **Wyong Shire Council Strategic/ Annual Plan**

The development and adoption of a policy to defer the payment of Section 94 contributions does not have a direct link to the actions under the Wyong Shire Council Structure Plan.

### **Long term Financial Strategy**

The development and adoption of a policy to defer the payment of Section 94 contributions will likely reduce the net Section 94 income unless some administration fee is imposed that counters the loss of interest that can be earned by Council during the deferment period. It is unlikely that there will be a significant impact on the long term financial strategy contained in the Wyong Shire Strategic Plan provided there are adequate security arrangements in place.

### **Budget Impact**

The development and adoption of a policy to defer the payment of Section 94 contributions as proposed will:

- o Be income neutral where a 1% p.a. charges is made on outstanding indexed deferred contributions, which equates to the 1% real interest that Council would otherwise earn. .
- o Likely lead to a reduction in Section 94 contributions income during its introduction. The precise impact cannot be calculated. The converse is that the policy will provide more development and thus over time may increase contributions revenues.

### **CONSULTATION**

A survey of Councils was undertaken to ascertain the existing practices for deferring the payment of Section 94 contributions. A range of internal parties were consulted in respect of the administration of a deferred payment scheme.

### **GOVERNANCE AND POLICY IMPLICATIONS**

The defer payment of development contribution will involved additional administration and involve the development of new procedures and recording systems.

### **MATERIAL RISKS AND ISSUES**

The current collection for Section 94 is relatively risk free, some additional unforeseen risks may be associated with the introduction of a policy to allow the deferred payment of Section 94 contributions.

### **ATTACHMENTS**

- |          |  |           |
|----------|--|-----------|
| <b>1</b> | Deferred Contribution Payment Schemes September 2012 (A4 Colour)                       | D03202889 |
| <b>2</b> | Time Line for Deferred Payment of Contributions for Greenfield Subdivision (A4 Colour) | D03202895 |
| <b>3</b> | Local Government Act 1993 No 30  | D03202897 |

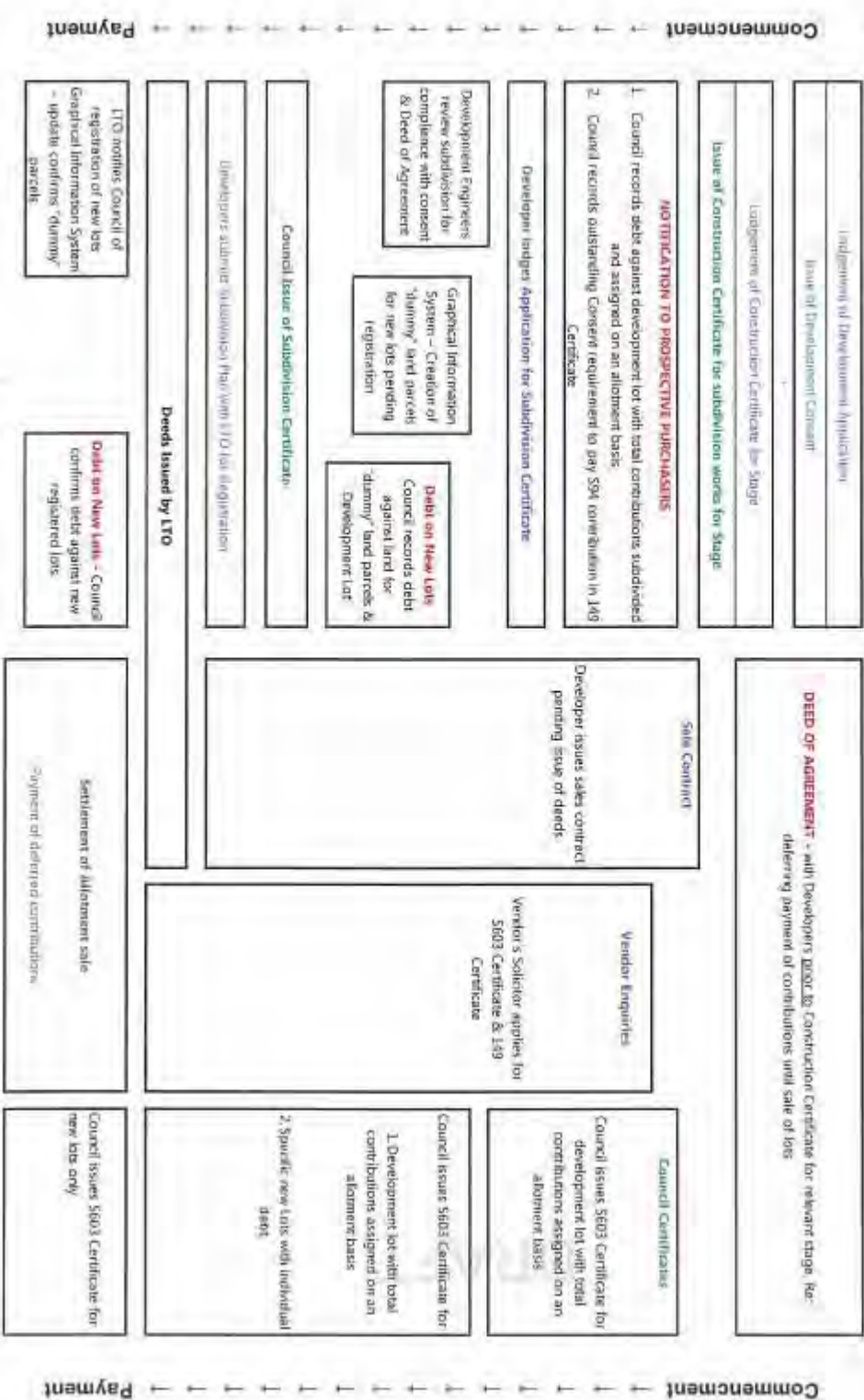
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## Deferred Contribution Payment Schemes - Sept 2012

|  | Deferred contributions permitted | Subject to circumstances / Council discretion | Bank Guarantee required | Bank Guarantee unconditional | Time frame                  | Requirements for Bank                                | All Costs - Interest, admin etc | Interest calculated                            | Deed of Agreement |
|--|----------------------------------|---|-------------------------|------------------------------|-----------------------------|--|---------------------------------|--|-------------------|
| Great Lakes                              | No                               | n/a   | n/a                     | n/a                          | n/a                         | n/a  | n/a                             | n/a  | n/a               |
| Wollongong City                          | Yes                              | yes   | yes                     | yes                          | not specified               | not specified  | yes                             | not specified                                  | no                |
| Lake Macquarie City                      | yes                              | yes   | yes                     | yes                          | max 12 months               | Australian Bank                                      | yes                             | private borrowing rate for local government    | no                |
| Port Stephens                            | yes                              | yes   | yes                     | yes                          | max 12 months               | not specified  | yes                             | CPI  | no                |
| Paramatta City                           | yes                              | yes   | yes                     | not specified                | not specified               | not specified  | not specified                   | not specified                                  | no                |
| City of Wagga Wagga                      | yes                              | yes   | yes                     | not specified                | not specified               | not specified  | not specified                   | not specified                                  | no                |
| Shoalhaven City - General Policy         | yes                              | yes   | yes                     | yes                          | Max 2 years                 | not specified  | yes                             | % used for operative rates                     | no                |
| Hawkesbury City                          | yes                              | yes   | yes                     | yes                          | not specified               | not specified  | yes                             | Council estimate of compound interest rate +3% | no                |
| Gosford City                             | yes                              | yes   | yes                     | not specified                | not specified               | not specified  | not specified                   | not specified                                  | no                |
| Maitland City                            | yes                              | yes   | yes                     | yes                          | Max 12 months               | Australian Bank                                      | yes                             | CPI  | no                |
| Camden                                   | yes                              | yes   | yes                     | yes                          | not specified               | Minimum long term A credit rating (Standard & Poors) | yes                             | not specified                                  | no                |
| Liverpool                                | yes                              | yes   | yes                     | yes                          | not specified               | not specified  | yes                             | compound interest forgone by Council           | no                |
| Kempsey Shire - General Policy           | yes                              | yes   | yes                     | yes                          | 12 months                   | not specified  | yes                             | not specified                                  | yes               |
| Kempsey - Residential Allotments         | yes                              | no  | n/a                     | n/a                          | upon sale of home, till 1st | n/a  | yes                             | n/a  | yes               |
| Shoalhaven City - residential allotments | yes                              | no  | n/a                     | n/a                          | upon sale of home, till 1st | n/a  | yes                             | n/a  | yes               |

0.0 test (contd)

**Time Line for Deferred Payment of Contributions for Greenfield Subdivision "Debt against Land" Model**  
 Prepared by David Kason - 20 November 2012



0.0 test (contd)

## Local Government Act 1993 No 30

Current version for 1 September 2012 to date (accessed 19 October 2012 at 10:14)  
 Chapter 15: Part 9: Section 603

<< page >>

### 603 Certificate as to rates and charges

- (1) A person may apply to the council for a certificate as to the amount (if any) due or payable to the council, by way of rates, charges or otherwise, in respect of a parcel of land.
- (2) The application must be in the approved form and be accompanied by the approved fee.
- (3) The council is to issue a certificate to the applicant stating:
  - (a) the rates, charges or other amounts due or payable to the council in respect of the land and when they became due or payable, or that no such rates, charges or other amounts are due or payable, and
  - (b) the balance of any special rate waived, under section 565, and the period for which it is waived, and
  - (c) the work carried out on the land by the council and the cost that may be recovered from the owner or occupier for the work, or that no such work has been carried out, and
  - (d) the name of the person shown in the council's records at the date of the certificate as the owner of the land, if the person acquired the land under Division 5 of Part 2 of Chapter 17.
- (4) The production of the certificate is taken for all purposes to be conclusive proof in favour of a bona fide purchaser for value of the matters certified.
- (5) For the purposes of this section, rates, charges and other amounts are taken to be due or payable even though the requisite period after service of any notice may not have expired.

#### **4.1 Proposed purchase of Lot 3 DP 657514 - 30 Manns Rd, Fountainsdale**

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TRIM REFERENCE: F2006/01036 - D03040148

MANAGER: David Jack, Acting Director Land Management

AUTHOR: David Lemcke; Senior Planner

#### **SUMMARY**

Approval is sought to acquire Lot 3 DP 657514 30 Manns Road, Fountainsdale, currently zoned 7 (a) Conservation and 7 (c) Scenic Protection: Small Holdings Zone, for its classification as Community Land – Bushland. Further approval is sought to undertake a capital upgrade of this natural asset and enter into a Biobanking Agreement with the Office of Environment and Heritage under the “*Linking Landscapes through Local Action*” Project which is a key component of the Green Corridors Program under Goal 22 of the NSW 2021 State Plan.

#### **RECOMMENDATION**

- 1 That Council authorise the purchase of Lot 3 DP 657514 30 Manns Rd, Fountainsdale for a purchase price to be negotiated to a maximum of \$80,000 (excl. GST) and authorise \$10,000 for associated costs, using restricted funds generated by Clause 14 of Wyong LEP 1991.**
- 2 That Council authorise the affixing of the Common Seal of Wyong Shire Council to all documents relating to the acquisition of the land by Council.**
- 3 That Council authorise the Mayor and the General Manager to execute all documents relating to the acquisition of the land by Council.**
- 4 That, Council classify Lot 3 DP 657514 30 Manns Rd, Fountainsdale as Community Land – Bushland following purchase.**
- 5 That Council rezone Lot 3 DP 657514 as E2 – Environmental Conservation under draft Wyong LEP 2012.**
- 6 That, Council approve a budget of \$55,000.00 (excl. GST) for a capital upgrade of Lot 3 DP 657514 including vegetation management, improved access, interpretive signage, fencing as needed, undertake community engagement and related actions using restricted funds generated by Clause 14 of Wyong LEP 1991.**
- 7 That, Council authorise the Mayor and the General Manager to execute all documents relating to entering into a Memorandum of Understanding (MOU) with the Office of Environment and Heritage to establish a Biobank site on Lot 3 DP 657514.**



## BACKGROUND

The sale of this land is part of a rationalisation of Central Coast land holdings being undertaken by the Roman Catholic Church (Diocese of Broken Bay). The Lot is considered to have very limited development potential. The location of the Lot facilitates cost effective bush fire mitigation of Council bush land by allowing construction of a fire trail network that will help protect approximately 300 properties. The Lot has high environmental values.

Funding for the purchase and necessary natural asset upgrade works comes from restricted funds generated by Clause 14 (3)(b)(ii) of the WLEP 1991:

*“for the purchase of land within Zone No. 7 (a) for use as a public reserve or for the improvement or embellishment of any public reserve owned by the Council which is within Zone No. 7 (a)”.*

## BIOBANKING

The State Government has created the “*Linking Landscapes through Local Action*” Project (LL) as part of the “*Green Corridors Program*”, which is a key to achieving Goal 22 of the NSW State Plan 2021 – “Protect our natural environment”. Under this Project, the Office of Environment and Heritage (OEH) called for Expressions of Interest (EOIs) for Biobanking agreements to be established on Council land, and land suitable for purchase by councils.

OEH has advised that the subject Lot scores very highly and has invited Council to enter into a Memorandum of Understanding (MOU) to establish a Biobanking Agreement, on the basis that Lot 3 is purchased in accordance with the recommendations. The establishment of a Biobanking Agreement will mean a permanent guaranteed source of funding to manage the Lot. This is estimated at \$322,000 - \$402,000 into a Trust fund, which will provide annual management payments of \$14,000 - \$18,000 for the first ten years; and ongoing payments of \$8,000 - \$10,000 thereafter.

The establishment of permanent biodiversity corridors is a key element in facilitating development within Wyong Shire, and is the approach being undertaken by the Growth Centres Commission. The establishment of corridors allows a simpler rezoning and development assessment pathway under environmental assessment criteria at State and Federal levels. A viable permanent reserve system provides greater certainty for the business community for the development potential of other sites.

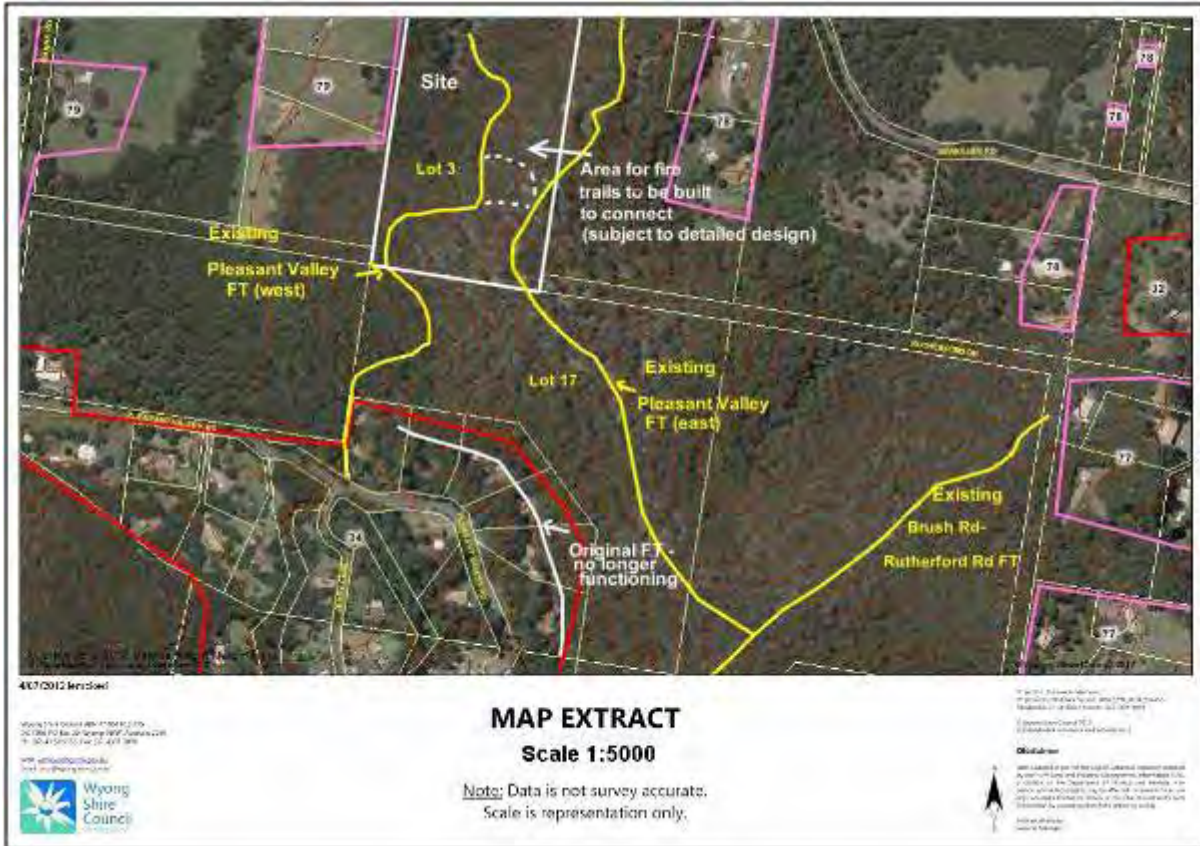
The Biobanking Scheme is created under the NSW *Threatened Species Conservation Act 1995* (TSC Act). It is designed to:

- increase the use of offsets to counterbalance the impacts of development on biodiversity
- provide a transparent, repeatable method for determining those impacts and offsets
- encourage developers to avoid areas with high biodiversity
- provide incentives for landowners to protect and enhance biodiversity on their land.

## 4.1 Proposed purchase of Lot 3 DP 657514 - 30 Manns Rd, Fountaindale (contd)

### CURRENT STATUS

Council currently has no suitable method of managing the bush fire risk to private property in the Fountaindale area that arises from Council bushland. The purchase of Lot 3 would permit extension of the Fire Trail system in the local area to mitigate bush fire hazard and facilitate Hazard Reduction burning (See Figure 1). The Wyong Bush Fire Management Committee (BFMC) has endorsed this as the preferred method of risk mitigation for Council to undertake.



### OPTIONS

#### Purchase Lot 3, construct the Fire Trail, and manage for biodiversity

- allows cost-effective fire trail construction and mitigation of bush fire risk;
- the Fire Trail adds to recreational opportunities and allows active land management;
- enhances biodiversity and facilitates development in the local area;
- provides permanent State Government funding for land management;
- provides a trial of Biobanking on Council estate;
- permits removal of fire trail easement from six private property titles.

This option has been endorsed by the Project Assessment Team with a Project Evaluation Criteria score of 57.00, and a Benefit – Cost Ratio of 6.51.

Recommended option.

#### 4.1 Proposed purchase of Lot 3 DP 657514 - 30 Manns Rd, Fountaindale (contd)

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##### Maintain the status quo

- bush fire risk cannot be mitigated effectively;
- existing adjoining Council land cannot be managed as effectively;
- no enhancement of biodiversity;

Not recommended.

##### Construct a new fire trail on existing Council estate (Lot 17 DP 737217)

- a new fire trail entirely on existing Council reserve is estimated at 4-6 times the total cost of the preferred option due to the existing vegetation and topography;
- no enhancement of biodiversity;

Not recommended.

## CONSULTATION

Consultation regarding the project has been undertaken with the following:

- Roman Catholic Church (Diocese of Broken Bay)
- Wyong Bush Fire Management Committee (BFMC)
- Hunter-Central Rivers Catchment Management Authority (CMA)
- NSW Office of Environment & Heritage – Biobanking Team (OEH)
- Open Space Unit; Economic & Property Development Unit

## THE PROPOSAL

This report seeks approval for the following:

- To purchase 8.024 ha of bushland at Fountaindale,
- Funding for Capital Works on the land with an estimated value of \$55,000,
- Enter an MOU to establish a Biobanking Agreement with the NSW State Government capable of generating sufficient income to manage the site in perpetuity.

## CONCLUSION

The project will permit Council to:

- cost effectively mitigate corporate bush fire risk in Fountaindale;
- enhance community safety;
- provide an additional recreation asset; and
- enhance biodiversity and facilitate development in the local area.

Funding for the purchase and capital expenditure comes from Restricted Funds unable to be spent for other purposes. Ongoing funding for land management is provided by the State Government in perpetuity. There is no impact to Council's current budget.

## ATTACHMENTS

- 1 Enclosure to Council report- Purchase Lot 3 DP 657514 - 30 Manns Rd, Fountaindale      Enclosure    D03208504

#### **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance**

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TRIM REFERENCE: DA/48/2012 - D03017762

MANAGER: Peter Fryar, Manager Development Assessment

AUTHOR: Salli Pendergast, Senior Development Planner

#### **SUMMARY**

A development application has been received for demolition of existing structures and construction of two dual occupancy buildings at 30-32 Stewart Street, The Entrance. 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) 1979 and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

|                             |  |
|-----------------------------|--|
| <b>Applicant</b>            | Legge Architects   |
| <b>Owner</b>                | B Moran P/L, L Capolupo P/L, & M Capolupo P/L  |
| <b>Application No</b>       | DA/48/2012   |
| <b>Description of Land</b>  | 30-32 Stewart Street, North Entrance, Lots 5 and 6 in DP.18519                                     |
| <b>Proposed Development</b> | Demolition of existing buildings and construction of 2 x attached dual occupancies and subdivision |
| <b>Site Area</b>            | 1161m <sup>2</sup>   |
| <b>Zoning</b>               | 2(b) Multiple Dwelling Zone  |
| <b>Existing Use</b>         | Three dwelling houses  |
| <b>Estimated Value</b>      | \$720,000  |

#### **RECOMMENDATIONS**

- 1** *That Council refuse the application, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues, subject to appropriate reasons for refusal detailed in the schedule attached to the report.*
- 2** *That those who made written submissions be advised of Council's decision.*

#### **PRECIS**

- The application seeks approval for demolition of the existing buildings and construction of two attached dual occupancy buildings (4 dwellings) and subdivision.

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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- The site is identified as 'high hazard flood storage' and is partly affected by the 2100 Coastal Erosion Hazard Planning Line.
- The application also seeks variation to Council's seven (7) metre height control.
- The proposal represents an intensification of development on the site including subdivision into 4 lots. The development is contrary to Council's Flood Prone Land Development Policy as it proposes 'new development' including an intensification of development and subdivision in high hazard flood affected area. The site in part is seawards of the 2100 Coastal Erosion Hazard Planning Line.
- The application is recommended for refusal due to the flooding hazard and the potential impacts that this site constraint poses.

### **INTRODUCTION**

#### **The Site**

The site comprises two rectangular shaped adjoining lots on the northern side of Stewart Street, North Entrance. Stewart Street is a no-through road extending east-west between Hutton Road and the dunes of North Entrance Beach. The beach is approximately 100 metres to the east of the site and the lake approximately 300 metres to the west.

No.30 Stewart Street contains an existing single storey two bedroom dwelling house with fibro cladding and tiled roof. No.32 Stewart Street contains two detached single storey dwellings (dual occupancy) one located behind the other. The dwelling fronting the street is a three bedroom, tiled, weatherboard clad dwelling with a tiled roof and the dwelling at the rear is a two bedroom fibro clad dwelling. Adjoining the site to the north, east and west are one and two storey dwelling houses. There is a large Norfolk Island Pine tree within the frontage of No.32 and a second Norfolk Island Pine tree on the adjoining site to the east known as No.34 Stewart Street.

The site is flood affected and is generally flat with a change in levels from the rear of the site (west to east) of 2.42m-2.75m AHD towards the front of the site (west to east) 1.37m -2.17m AHD. Although bushfire prone land is located at the eastern end of Stewart Street, the site itself is not bushfire prone land.

## 4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)

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### The Proposed Development

The application seeks approval for the demolition of the three existing dwellings on the site and construction of two attached two storey dual occupancy buildings over three levels. The application also seeks consent for subdivision of the development on each site creating four Torrens Title lots in total.

Each of the four (4) dwellings is two storey has three bedrooms, a rear north facing terrace and garden, a single garage and an external stacked parking space. The design of the dwellings is modern in architecture and form. The habitable floor level of the building has been raised to accommodate a flood planning level of 3.6 metres for the finished ground floor level of each dwelling. This includes a 2100, 100 year flood level of 3.1m with a freeboard of 500mm. The garages for each dwelling are non habitable floor space and are below the flood planning level at approximately 2.23m AHD. Each dwelling also includes a rooftop terrace with perimeter planter boxes to limit the potential for overlooking.

All three existing dwellings on the site are located below the proposed flood planning level. All three dwellings are to be demolished under the application. Filling of the site is proposed to approximately 2m AHD in the southern portion of the site.



## 4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)

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The two existing dwellings on the site at 30 and 32 Stewart Street and the two Norfolk Island Pine trees.

### Summary

During the assessment of the application, there were a number of issues in relation to the proposal and the design of the development and supporting documentation. The issues raised in relation to the proposal included:

- Building height and scale
- Landscape screening
- Privacy
- Flooding hazard
- Coastal Hazard

Amended plans and information have been submitted for the proposal to address building height and scale, landscaping and privacy concerns, however, the application is not supported on grounds of flooding and is recommended for refusal.

## 4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)

### VARIATIONS TO POLICIES

|                 |  |
|-----------------|--|
| Clause          | Flood Prone Land Development Policy                            |
| Standard        | Flood Assessment of Development table                          |
| LEP/DCP         | New development prohibited in high hazard flood storage areas. |
| Departure basis | 100% Not supported   |

|                 |                                 |
|-----------------|---------------------------------|
| Clause          | 4.1 – Building Height           |
| Standard        | Maximum 7 metre building height |
| LEP/DCP         | 58 – Dual Occupancy             |
| Departure basis | 24% (8.67m)                     |

|                 |   |
|-----------------|---|
| Clause          | Coastal Zone Management Plan for the Wyong Coastline - Section 9.1.5                        |
| Standard        | Intensification and subdivision of land seawards of the 2100 coastal erosion planning line. |
| LEP/DCP         | Coastal Hazards Management Plan   |
| Departure basis | Minor   |

### HISTORY

#### *Development history*

- DA/756/1993 for a dual occupancy containing a 3 bedroom unit and a 2 bedroom unit at No.32 Stewart Street was approved on 13 October 1993.
- DA/190/1996 for a two (2) lot subdivision of No.32 Stewart Street was approved on 21 March 1996.
- DA/668/2009 for a residential flat development comprising of 4 townhouses (two x dual occupancies) at Nos.30-32 Stewart Street was refused 29 April 2010.
- DA/1916/2005 for demolition works and construction of a residential flat development consisting of four townhouses and strata subdivision was approved in 2005 but was surrendered in January 2010.

#### *Flooding History*

- Historical records held by Council indicate that the highest know Tuggerah Lakes flood level occurred in June 1949 (2.1m AHD), with other severe events occurring in April 1946 (1.9m AHD), May 1964 (1.9m AHD) and April 1927 (1.8m AHD).
- The most recent flooding events occurred in June 2011 (0.91m AHD), February June 2007 (1.65m AHD), February 1992 (1.2m AHD) and February 1990 (1.6m AHD).



## 4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)

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### PERMISSIBILITY

The subject site is zoned 2(b) Multiple Dwelling Residential Zone under the Wyong Local Environmental Plan 1991 (WLEP 1991). The following definition under WLEP is relevant to the proposal and reads:

**'dual occupancy building'** means a building consisting of 2 dwellings on one allotment of land.

Dual occupancy buildings are permissible with consent within the 2(b) zone.

Clause 10 of the WLEP 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) 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 development is considered to be compatible with the 2(b) zone objectives by providing a housing type that, following a reduction in building height under amended plans for the proposal, is considered to be domestic in scale and character and will generally not exceed two storeys.

### 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 No. 71 – Coastal Protection
- State Environmental Planning Policy (Building Sustainability Index: Basix) 2004
- Wyong Local Environmental Plan 1991
- Wyong Shire Development Control Plan 2005
  - Chapter 14 -Tree Management
  - Chapter 58 – Dual Occupancy
  - Chapter 67 - Engineering Requirements for Developments
  - Chapter 69 - Controls for Site Waste Management
  - Chapter 77- Coastal Hazards
  - Chapter 70 - Notification of Development Proposals
- Landscape Policy and Guidelines
- Waste Management Guidelines
- Wyong Coastal Zone Management Plan

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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- The Entrance-North Entrance-Long Jetty S94 Plan
- The Entrance Peninsular Planning Strategy
- NSW Coastal Planning Guideline: Adapting to Sea Level Rise (2010 NSW Dept. Planning)
- Flood Prone Land Development Policy – F5

### **ECOLOGICALLY SUSTAINABLE PRINCIPLES**

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

The proposed development is considered to incorporate satisfactory stormwater, drainage and erosion control and the retention of vegetation where possible. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

Council's Control Zone Management Plan aims to limit development in areas identified as being prone to Coastal Hazards. The site is located in part within the 2100 Coastal Hazard Planning Line and is also within a 'high hazard flood storage area'. For reasons discussed further in this report, the 'Precautionary Principle' should be applied in the circumstances to avoid creating more intense development in a 'high risk' area.

### **Climate Change**

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the application. 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, drought, flood and coastal erosion; as well as how the proposed development may cope / combat / withstand these potential impacts. In this particular case, these matters are discussed in greater detail throughout the report.

### **ASSESSMENT**

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

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

#### **State Environmental Planning Policy 71 – Coastal Protection**

State Environmental Planning Policy (SEPP) No.71 – Coastal Protection applies to the development. The site is located within the coastal protection zone under the SEPP and in accordance with Clause 7, the proposal has been assessed within the context of the matters for consideration outlined under Clause 8 and under Part 4 and found to be unsatisfactory in respect of the consideration of flooding in respect of the development (refer to the attached table for further details). The proposal is also considered inconsistent with the aims of the policy by virtue of the same reason.

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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Supporting the proposal would set a precedent that would have a cumulative impact on the exposure of more people and properties to flooding.

### **State Environmental Planning Policy (Building Sustainability Index: Basix) 2004**

SEPPP (Building Sustainability Index: Basix) 2004 applies to the development and in accordance with the SEPP, a Basix Certificate (multi dwelling) has been obtained for the development.

### **Wyong Local Environmental Plan 1991**

#### *Clause 10 - Zoning*

The subject site is zoned 2(b) Multiple Dwelling Residential Zone under the WLEP 1991. Dual occupancy buildings are permissible with development consent and are considered consistent with the 2(b) zone objectives.

#### *Clause 15 - Acid Sulphate Soils*

Clause 15 requires special assessment to be given to certain development on land being subject to actual or potential acid sulphate soils. The site is identified as predominantly Class 4 on the Acid Sulphate Soils (ASS) Planning Map with a small part of the south western corner of the site being Class 2.

Under Clause 15(4) of the WLEP 1991, a preliminary acid sulphate soils assessment report is required to be undertaken in accordance with the *Acid Sulphate Soils Assessment Guidelines* for any works within:

- Class 4 that are beyond 2 metres below the natural ground surface and any works by which the watertable is likely to be lowered to any point beyond 2 metres below the natural ground surface, or any works within,
- Class 2 that are below the natural ground surface or are works by which the watertable is likely to be lowered

Under the proposal, the site is to be filled by up to 2 metres in the southern portion of the site. As such there are no works proposed as part of the development that are below the natural ground surface or by which the watertable is likely to be lowered in the part of the site identified as Class 2. Although there is some work proposed below natural ground in the portion of the site identified as Class 4, the work will not extend beyond 2 metres below the natural ground surface nor will any proposed works be likely to lower the watertable to any point beyond 2 metres below the natural ground surface. To address any potential inaccuracy in the ASS mapping database, conditions could be recommended requiring preparation of a management plan in the event that acid sulphate soils are encountered during construction. However, as the application is recommended for refusal, such conditions will not be necessary.

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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### *Clause 23 - Flood Prone Lands*

Clause 23 requires that the consent of Council be obtained for works including buildings in residential zones within a flood prone area. Subclause 2 permits Council to impose a condition of consent requiring the floor level of the building or work to be at a height sufficient to prevent or reduce the incidence of flooding of that building. Subclause 3 states:

*“(3) The Council shall take into account as a matter for consideration in determining whether to grant consent as referred to in this clause the effect of the proposed development on flooding.”*

The site is located within a flood prone area and the design of the building includes a minimum floor level that is above the flood planning level. However, the application involves an intensification of the residential use of the site and this is considered to increase the extent of the hazard by exposing additional people and property to potential flood impacts. The proposal does not include adequate evacuation in a high hazard flood storage area and is recommended for refusal.

### *Clause 28 – Tree Management*

Clause 28 requires development consent for the removal of any tree or native vegetation. The site contains a couple of trees that will be potentially impacted by the proposed development including a Norfolk Island Pine tree in the front setback. Additionally, there is another Norfolk Island Pine tree located on the adjoining site at No.34 Stewart Street which will also be potentially impacted by the proposed development. The application seeks approval for the removal of the trees on the site and conditions could be recommended to ensure that the tree on the adjoining site is retained and protected, however, the application is not supported on other grounds and is recommended for refusal.

### *Clause 29 - Services*

The proposed development can be serviced from the existing water main in the Stewart Street frontage, and sewer main adjacent to the developments northern boundary. Developer charges for water supply and sewerage in accordance with the relevant Development Servicing Plan would be applicable based upon the additional loading generated from the development. However, the application is not supported on other grounds and is recommended for refusal. These services are susceptible to flooding undercurrent flood levels and will be further impacted by increased flood levels and increased frequency of flooding. The protection of these infrastructure assets is not assured from future or more frequent flood events.

### *Clause 13 Subdivision*

Clause 13(1) requires Council consent for subdivision of land. The proposal includes the subdivision of each dual occupancy. The proposed subdivision layout would result in the creation of four lots each having an area of 290m<sup>2</sup>. The layout proposes regular shaped lots. The final plan of subdivision would need to be upgraded to show the required easements for maintenance/repair and pedestrian access. However, the proposal is not supported on flooding grounds and the proposed intensification of the site from two lots into four would expose more people to the hazard and is contrary to Council’s relevant policies. The creation of a new lot located on the eastern most part of the site, would be impacted substantially by the 2100 Coastal Erosion Hazard Planning Line.

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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The site affected by the 2100 Coastal Erosion Hazard Line currently contains a dual occupancy development. The subdivision of the land would still enable the erection of two dwellings landward of the 2100 Hazard line and does not contravene the objectives of the plan.

### **Wyong Shire Development Control Plan 2005**

#### *Chapter 14 -Tree Management*

There are two trees within the subject property that come under the requirements as set out within DCP 14 'Tree Management' and one tree on the adjoining site at 34 Stewart Street that may potentially be affected by the proposed building works. Tree 1 is a semi mature Norfolk Island Pine (*Araucaria heterophylla*) in average condition located in the front yard of number 32. Tree 2 is a non native tree identified as a Fiddlewood (*Citharexylum spinosum*) and is located in the backyard of 32 Stewart Street. The applicant is seeking removal of Trees 1 and 2 on the site. Tree 1 has a structural weak point in the trunk leaving it more susceptible to strong coastal winds and possible structural failure. Its close proximity to the proposed development leaves it vulnerable to root damage and increased stress. The tree at 34 Stewart Street (Tree 3) is located in the front yard and has also been identified as a Norfolk Island Pine (*Araucaria heterophylla*). Due to the tree being within a neighbouring property, it will require retention and incorporation into the development. The landscape plan for the development indicates suitable replacement planting for the trees to be removed.

#### *Chapter 58 – Dual Occupancy*

DCP Chapter 58 (Dual Occupancy) contains Council's main planning controls specifically related to dual occupancy development. The proposal complies with the following numerical requirements under the DCP:

- Floor space ratio of 0.5:1 (0.5:1 proposed)
- Minimum allotment size for side by side dual occupancy of 550sq.m (580m<sup>2</sup> proposed)
- Minimum 25% of site at ground level being soft landscaping (33% proposed)
- Car parking provision and design
- Side, rear and front setbacks minimums
- Private open space provision

There is sufficient articulation of building façade for each dwelling. In accordance with the DCP, there are no unbroken wall lengths exceeding 10 metres in length and 3 metres in height. Each of the garages do not dominate the façade being single garage and at the lowest point of the building façade. Each dwelling has a clearly identifiable entry. The DCP requires that rooftop structures shall not detract from the architectural merit of the building and shall be suitably setback from the building edge to maintain privacy to surrounding dwelling. Landscape screening has been included to the perimeter of each roof top area which has been setback towards the rear of the building and away from ready view of the street.

The overall height of the proposed buildings was identified as an area of concern. Clause 4.1b states that buildings within 2(b) zones shall generally not exceed two storeys and 7 metres in building height. A maximum height of 11 metres from ground level applies to the peak of the roof, or a wall abutting the roof in the case of raked or cathedral ceilings.

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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The proposal is generally 2 storey in that the floor area of the building (including the garage) only extends over two storeys at any one point. However, the development reads as three storeys from the street because of the garages being positioned at a lower level (ie. below the flood planning level) to the habitable floorspace. In this regard, it is noted that there is only one level positioned directly above the garage. The design, including the three different levels, is a consequence of the flooding constraints of the site and the need to raise habitable floor area above the flood planning level.

The perception of the height of the buildings is further exaggerated by the building form with a parapet roof and the generous floor to ceiling heights. To address this, the applicant amended drawings to reduce the internal room heights from 3.05 m to 2.7m floor to ceiling on the ground floor and from 2.9 to 2.7 on the first floor. Additionally, the ceiling to floor height (ie. the area between storeys) has been reduced in thickness from 550mm to 450mm. These changes have resulted in the overall building height being reduced by 650mm. The reduced building height has minimised the visual scale of the development and is acceptable.

With the reduction in building height, the amended building measures 7.3m from the flood planning level to the top of the parapet roof and at the worst case scenario 8.67m from natural ground (and the garage floor level) to the parapet roof. This means that although the development does not exceed the 11 metre maximum that applies under the DCP to the peak of the roof, the development does exceed the 7 metre height control. The reason for this, as discussed previously, is due to the flooding constraint on the site which has resulted in an elevated floor level for both buildings, and which when combined with the parapet roof building form, results in the variation to the building height. The proposal is considered consistent with the objectives for 'Building Height' under the DCP despite the variation. The objectives include:

- *The height of development should:*
  - *be consistent with the objectives of the zone;*
  - *not be visually obtrusive;*
  - *relate to the topography of a site;*
  - *preserve privacy and amenity for neighbouring residents; and*
  - *maintain solar access.*

Any objective contained within the 2(b) land use table is “*to cater for a wide range of housing types essentially domestic in scale and character and generally not exceeding a height of 2 storeys*”. The development is considered to comply with the zone objective. Despite the variation, the amended height of the building is considered reasonable in the immediate context and orientation of the site. There are a number of two storey buildings surrounding the site and there are no adverse amenity impacts resulting from the building design in terms of overshadowing or privacy, or visual impacts. The variation to building height is supported acknowledging the flooding constraints of the site.

### *Chapter 69 - Controls for Site Waste Management*

In accordance with the requirements of DCP Chapter 69, a Waste Management Plan was submitted with the application outlining the waste disposal, re-use and recycling (on and off site) for the demolition stage of the development This includes the types and estimated volume of waste generated and waste minimisation strategies.

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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The applicant estimates that 80-90% of materials will be recycled due to the high proportion of masonry materials. However, no plan was provided for the 'construction phase' or for the 'ongoing use' of the premises. This matter could be addressed by appropriately worded conditions to ensure the development is carried out in accordance with the submitted Waste Management Plan and requiring that a waste management plan be prepared for the construction and on going phases of the development, however, the application is not supported on other grounds and is recommended for refusal.

### *Chapter 77- Coastal Hazards*

DCP Chapter 77- Coastal Hazards aims to reduce the impact of coastal hazards on individual owners and occupiers and to ensure that knowledge of coastal hazards guides the location and design of future development along the coastline. The DCP applies to development proposals and improvements on land shown in the DCP plans (Clause 1.6). Although the site is shown in Plan 2 of the DCP, it is outside of the hatched area. It is noted that this matter is more thoroughly considered under up to date documents addressing coastal hazard. Much of the hazard data included in DCP Chapter 77 has been superseded by the recently adopted Wyong Coastal Zone Management Plan. The applicant submitted a coastal hazards assessment in response to the issue of coastal hazard.

### *Landscape Policy and Guidelines*

Council's Landscape Policy and Guidelines and DCP Chapter 58 requires the landscape design for the development to be a Category 2 development that requires the expertise of an approved Landscape consultant. A landscape plan accompanied the application that complies with the requirements of the Landscape Policy.

A condition could be included to ensure that the landscape works are constructed and maintained in accordance with Council's Policy including the engagement of an approved landscape consultant and contractor to under take the work, however the application is recommended for refusal on other grounds.

### *Wyong Coastal Zone Management Plan*

Wyong Coastal Zone Management Plan has been exhibited and adopted and '*provides strategic direction and step by step guidance about key actions to achieve sustainable management for Wyong's coastline*'. The plan includes maps of coastal hazards and hazard zones for Wyong's coastline taking into account the NSW Government's sea level rise policy in response to climate change. The plan identifies that coastal erosion and recession will affect land use capability and property values and the feasibility and cost of repairing and maintaining community infrastructure such as access ways, roads, car parks, stormwater drains and sewerage systems. In the longer term, Council's risk treatment strategy is planned or managed retreat (ie. a risk avoidance approach) to ensure that new development does not increase the risks associated with coastal hazards in the 2050 and 2100 planning horizons.

The plan uses precautionary planning tools to reduce future coastal risks including appropriate designs for new development in the 2050 coastal erosion hazard area and the 2100 coastal erosion hazard area to include, for example, modular development which can be relocated landward as the coastal erosion scarp recedes. The plan prohibits new subdivisions, vulnerable development (including nursing homes and hospitals) or other development that intensifies land use in the 2050 or 2100 coastal risk areas.

## 4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)

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The Coastal Zone Management Plan (Section 9.1.5) states that there is to be no 'intensification of development' seaward of the 2100 coastal hazard planning line. This includes changing a single occupancy to a dual occupancy dwelling, new subdivisions, major infrastructure (such as main roads and sewerage systems). The hazard line extends across a small portion of number 32. The proposed subdivision of No 32 will create two allotments both having the capability of accommodating future dwellings landward of the 2100 hazard line. Accordingly, although the land is in part affected by the 2100 Coastal Hazard Line, the proposed subdivision will not result in an intensification of development seaward of the line and is therefore considered to be consistent with the Plan.

### *The Entrance Peninsular Planning Strategy*

The Entrance Peninsular Planning Strategy (TEPPS) applies to the development of the site. The site is included within Precinct 1 known as 'The Entrance North Gateway'. Precinct 1 will be the northern gateway to The Entrance Peninsula. It will be a generally low density residential coastal village providing convenient and attractive living for its residents through its landscaped streets and neighbourhood parks. One of the objectives being to 'maintain the low scale and low density coastal village character of the precinct'. One of the controls under the strategy to achieve this is to:

*Restrict building heights to be a maximum two storeys [ie. generally 6 metres, to the topmost ceiling, for residential...] and encourage coastal architectural design styles in new and redeveloped buildings.*

Additionally, the strategy states:

*New or renovated residential buildings are to be low scale to maximum height of 6 metres (approximately two storeys) and provide an attractive facade to the street, designed to reflect the coastal character of the area and integrate with existing built forms.*

Although the proposed development is generally two storeys it exceeds the 6 metre height control under the strategy. A contributing factor to the non compliance in the building height is related to the flooding constraint of the site. The strategy acknowledges the constraints to development within the North Entrance area due to climate change impacts stating: *The entire Entrance North area is potentially susceptible to climate change impacts (eg. sea and lake level rise, increased storm activity and intensity, and coastal erosion). Climate change issues will be addressed by incorporating appropriate planning solutions that address the latest climate change information, as it becomes available.* The development does not adequately address climate change impacts or the building height requirements of the strategy.

### *Tuggerah Lakes Floodplain Risk Management Plan*

The Tuggerah Lakes Floodplain Risk Management Study and Plan is under preparation. The Study was publicly exhibited in early 2011, which evaluates management options for the floodplain in respect to both existing and proposed development. The Plan is yet to be exhibited and has not been adopted by Council. Under the plan Council is considering a range of floodplain management measures to manage the existing and future flood risk to the properties within the Tuggerah Lakes Catchment.



## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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### *Flood Prone Land Development Policy – F5*

Council's Flood Prone Land Development Policy applies to the site and aims to ensure that any new development be designed and constructed in such a way that it will minimise risk to property and life from flooding, without affecting flooding conditions of other properties in an adverse way, and to ensuring the development is ecologically positive and sustainable. It is the main assessment policy that has been applied within Wyong LGA over the last 20 years.

The application of the policy requires the classification 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 definition of 'New Development' due to the proposed population intensification; however the determination of 'Flood Hazard' required further consideration and is discussed in detail later this report under the section titled 'Flooding' - specifically 'Flood Hazard Assessment'.

Under the Policy, 'new development' is defined as:

*Development of a completely different or more intense nature, or likely to increase the population density compared with that associated with the existing zoning (including rezoning, except for rezoning for drainage or open space purposes). Dual occupancy development shall also be considered as new development.*

As discussed above, a qualitative Flood Hazard Assessment has been undertaken to determine the 'Flood Hazard' in accordance with the policy, but also in accordance with the NSW Government's *Floodplain Development Manual* (2005). The determination of flood hazard category is discussed in greater detail later in the report under the impacts of the development in relation to flooding hazard. In summary, the development is categorised as 'high hazard flood storage' and under the policy, new development is prohibited in high hazard flood areas or in areas where evacuation routes are through high hazard areas. Therefore in accordance with Council's Flood Prone Land Development Policy the application cannot be not supported under the Policy.

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

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

##### *Locality and Streetscape*

The proposal will not adversely impact on the character and amenity of the locality and streetscape. Although the design is modern in form and appearance, the architectural character of the development is acceptable within the locality and streetscape.

##### *Solar access and over shadowing*

Shadow diagrams have been prepared for the development at intervals of 9:00am, midday and 3:00pm, on 21 June, and 21 December. The diagrams indicate the scenario mid-winter on the shortest day of the year as well as mid-summer on the longest day of the year in order to ascertain shadowing impacts from the development throughout the year.

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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The orientation of the site is in a north-south axis with the northern end at the rear of the site and the southern end at the street front. This results in shadows being cast towards the front of the site and across Stewart Street. The mid-winter diagrams indicate that during the morning period, shadowing resulting from the new building extends across the dwelling at number 28 and towards the street. The shadowing also extends across the subject site. By midday, the shadowing has receded and is mainly contained within the site, extending across the majority of the site frontage and to a minor extent the roadway. During the afternoon period, the shadowing extends across the dwelling at number 34 and towards the street front. As the rear alignment of the building is consistent with that of the adjoining properties, the proposed building does not reduce solar access to the rear yards of the dwellings located either side of the site or to the rear yards of the new dwellings on the site. A minimum of 3 hours unobstructed solar access continues to be achieved for a minimum of 75% of the rear yard private open space areas between 9am and 3pm.

There is no significant or unreasonable amenity impacts resulting from solar access loss to any existing surrounding residential development or public areas as a consequence of the development. The overall extent of shadowing impact resulting from the proposal is not significant or unreasonable.

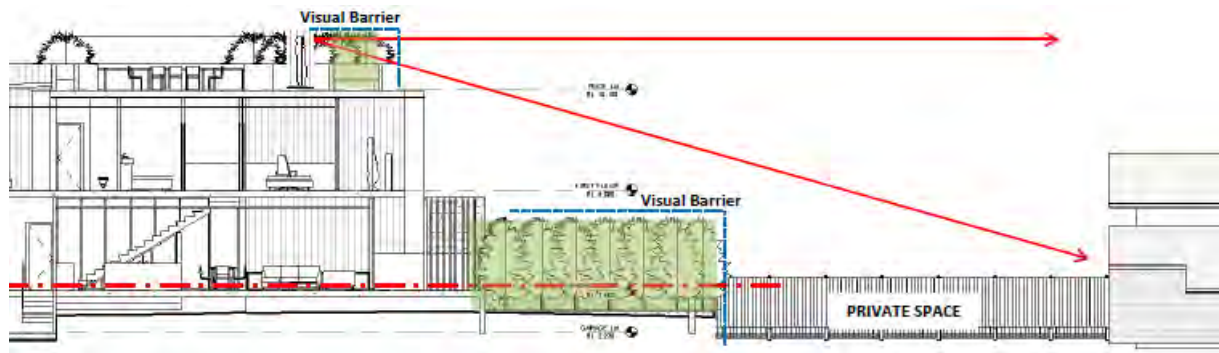
### *Privacy and overlooking*

There are a number of residential dwellings surrounding the site to the north which are potentially affected by overlooking and visual privacy impacts. The applicant has included boundary fencing, landscape planting and rooftop planters to screen these backyard areas from potential overlooking by the future occupants of the development.

Overlooking from the rooftop areas will be largely screened by the proposed planter boxes and boundary tree planting within the rear yards of each new dwelling, directing viewing outwards rather than downwards from the rooftop. Amended drawings were submitted adjusting the width of the planter boxes from 900 mm wide to 1.5 metres wide in order to provide more screening and to limit the sightlines, by moving the edge of the terrace back from the edge of the building. This means that the view angle downwards is greatly reduced. The view of a person standing on the amended roof terrace is therefore directed outwards and restricted from viewing into the rear yards of the adjoining neighbours. The view has been adjusted so that the focus is on the distant beach and rooftops.

Additionally, the density of the planting in the terraces is to be increased by selecting planting that will provide a thicker and higher screen. This could be achieved as a condition of consent, however, the application is not supported on other grounds and as such is recommended for refusal.

## 4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)



The remainder of the building has generally been designed to minimise the potential for overlooking to the adjoining residential properties. Wall and roof projections also assist in mitigating potential overlooking issues to and within the site itself. Viewing from within the building is directed outwards rather than downwards due to the design of balconies and terraces adjoining each room. The uppermost floor of the development contains only bedrooms and bathrooms and the areas used for entertaining are limited to the ground floor level. Although it is acknowledged that the living areas at ground floor level are elevated due to the flooding constraint, screen tree planting is proposed along this northern boundary to ensure that the privacy and general amenity of the adjoining dwellings along this boundary is preserved.

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

Access is proposed from Stewart Street via a separate driveway to each dwelling with one external stacked parking space on the driveway and a single garage for each dwelling. There is no significant traffic generation or heavy vehicle movements associated with the proposal in the long term. There are no significant or unreasonable impacts on the external local road system. The development will necessitate the completion of road infrastructure in accordance with the relevant provisions of DCP 2005 Chapters 58 and 66. Stewart Street is a local street catering for generally low traffic flows. The external road system is considered suitable for the expected minor increase in traffic resulting from the proposal. The access arrangement proposed is consistent with the surrounding developments, features adequate sight distance and the proposed access arrangement is considered satisfactory

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

There is no adverse impact upon the use of surrounding public open space as a consequence of the proposal however, the application is not supported on other grounds.

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

The existing area is serviced by water and sewer reticulation, power and telecommunications. These services are susceptible to flooding under current flood levels and will be further impacted by increased flood levels and increased frequency of flooding. The protection of these infrastructure assets is not assured from future or more frequent flood events. There is a potential that once the full affects of the projected sea level rise are experienced they may result in the inundation of underground assets and create a foreseeable risk to the failure of these services with risk of harm to residents.

#### **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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This includes a lack of sanitary services, clean drinking water and power, all essential for sustaining urban development. There is no guarantee that the infrastructure assets will be protected from future and more frequent flood events.

Rising sea level, ground water and more frequent flooding coupled with increased rainfall intensities will have a detrimental effect on road pavements. In low lying vulnerable areas potentially at or below RL 1.5m it may not be possible to maintain the road pavements to an acceptable standard due to water penetration of the pavement and permanent saturation of pavement materials.

Council is preparing a Climate Change Adaptation plan which in part will assess the impacts of sea level rise on assets and infrastructure and determine actions required by Council to maintain those assets in the future or not. This plan is in the early stages of development. Council is unaware of the intention of the other infrastructure owners with protection or the continued provision of their assets relative to the impacts of sea level rise.

The June 2007 flood event was calibrated to a 1:10 year flood event for Tuggerah Lakes. The inundation lasted for 4-5 days. There was no power in the area for 3 days. There was no sewer reticulation available because of the power failure. The water reticulation was available as it is gravity fed. People remained in their houses where possible because they had water available; however with no power, sewer was unavailable, contaminating the flood waters causing a potential health risk.

Although this risk is present in low hazard flood areas, the risk is significantly compounded in high hazard flood areas where no safe evacuation is available to occupants of the development. By virtue of this, the proposed intensification of the site is not appropriate.

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

The site is not heritage listed and there are no heritage listed properties within the immediate vicinity of the site that would be potentially impacted by the proposal.

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

There are no unreasonable or significant adverse impacts on other land resources associated with the proposal. The development will not have any adverse impact upon conserving and using valuable land resources such as mineral and extractive resources, agricultural land or any water supply catchment.

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

The development includes the provision of 5KL rainwater tanks for each dwelling for reuse on the site in the gardens and toilets and 3 star showerheads, taps and fixtures.

The application is supported by a conceptual stormwater management plan, which identifies stormwater discharge to Stewart Street. The proposed stormwater assets are considered satisfactory, however some concern is raised about the ability of overland stormwater flows to enter each of the units. A condition could be provided to require the building floor level to be above the overland flow path top water level, or provide a suitably sized grated drain to protect the entrances to the development with the detailed stormwater design plans at Construction Certificate stage, however, the application is not supported on other grounds and is recommended for refusal.

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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

#### *Acid Sulphate Soils*

The issue of acid sulphate soils has been discussed earlier in the report.

#### *Earthworks*

The development proposes filling to achieve the nominated floor levels. The Section 94 Contributions Plan No. 3 for The Entrance District anticipates filling within the North Entrance catchment and proposes mitigation works in the form of additional piped culverts fitted with flood gates beneath Wilfred Barrett Drive to offset the expected rise in local catchment flood levels. On this basis, the proposed filling is considered acceptable. Conditions could be recommended ensure fill is of a suitable standard and adequately compacted. Similarly, erosion and sediment control device design and implementation could form the basis of conditions, however, the application is not supported on other grounds and is recommended for refusal.

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

There are no unreasonable or significant adverse impacts upon the air quality and microclimate conditions associated with the completed development. There is minimal potential for any air pollution, odour, fumes or other air quality impacts associated with the completed development on the site.

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

The application seeks approval for the removal of two existing trees on the site and various shrubs. The proposal also has a potential impact on a Norfolk Island Pine tree located on the adjoining site at number 34. Were the application supported, conditions would be recommended to ensure protection of the tree on the adjoining site.

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

The development generates domestic waste only. There is potential within the development for the satisfactory storage of mobile waste bins and potential for suitable waste collection arrangements in the future to service the development.

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

A Basix Certificate (multi unit) has been obtained for the development to ensure that the minimum efficiencies are achieved for water, thermal comfort and energy initiatives. The development includes a 5 star gas instantaneous hot water system for each dwelling, florescent lighting throughout all dwellings, gas cooktop and electric oven, adequate ventilation to kitchens, bathrooms and laundries, ceiling, floor and wall insulation (where not concrete), single Low-E glazing.

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

The garages for the development have been centrally designed, away from the neighbouring properties and are enclosed in a masonry room. Additional acoustic insulation is also proposed to mitigate any potential noise impacts. It is not anticipated that there will be any significant or unreasonable noise and vibration associated with the completed development.

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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There will be some noise generated during construction, however, this will be of limited duration and could be controlled by suitable restrictions on the construction hours, however, the application is not supported on other grounds and is recommended for refusal.

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

### *Flooding Overview*

The development application was accompanied by a Flood Risk Management Report which initially classified the site as 'High Hazard Flood Storage' and then refined this classification in light of other relevant factors. The refinement undertaken to determine true hazard include consideration of property losses and damages, damage to structures, and loss of evacuation route and flood isolation. The applicant's report concluded the true hazard is 'low flood hazard' based upon this assessment and recommended support for the proposed development. However, the report has been assessed and is considered unsatisfactory.

The applicant's hazard assessment is not considered to be sufficiently comprehensive in its considerations and features a number of oversights, particularly in relation to flood characteristics and suitability of an unconventional evacuation route. Firstly, the flood characteristics do not recognise the potential effects of the Wilfred Barrett Road levee system overtopping. A primary reference of the Flood Risk Management Report was the draft Tuggerah Lakes Floodplain Risk Management Study, which discusses the limitations of the levee system. The SES Local Flood Plan also acknowledges the protection afforded by the levee system. Exclusive adoption of the general lake flood behaviour for flood risk assessment is not considered appropriate in The Entrance North sub-catchment.

Secondly, the assessment of an evacuation route by non-roads means is unconventional and not supported by the current SES Local Flood Plan, which identifies that evacuations directed by the Wyong SES Local Controller must proceed along main roads and major local roads. The applicant has recently submitted a site specific Evacuation Strategy to Council reaffirming their desire to evacuate through the sand dunes at the eastern end of Stewart Street.

The strategy has been purportedly agreed with by the Wyong SES sub branch. However, subsequent correspondence with the SES Local Controller for Wyong has confirmed that no such agreement was made. He has advised that *"I am not a professional consultant. My comments were not given in the form of a consultant's report and should only be taken as general information. The general advice given is also available from the NSW SES website and does not take into account the special needs of a specific location or community"*.

Site specific evacuation strategies are contrary to emergency management provisions within the Floodplain Development Manual and any reliance on the site specific evacuation plan to reduce risk is not appropriate. On this basis the contents and conclusions of the applicant's report cannot be accepted.

Based on the qualitative flood hazard assessment undertaken (below), the appropriate flood hazard category is 'high hazard flood storage' under Council's Flood Prone Land Development Policy. In accordance with the Policy the development cannot be supported and is recommended for refusal based on flooding grounds.

## 4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)

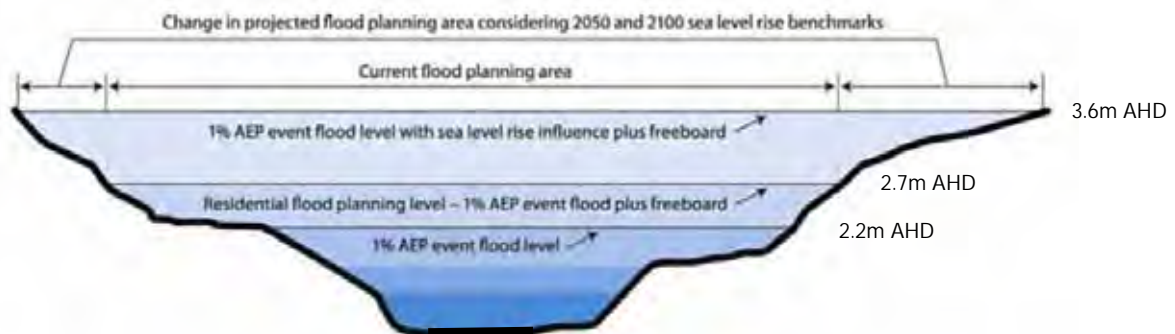
The determination of flood hazard is outlined in greater detail below and includes the qualitative flood hazard assessment that has been undertaken in relation to the proposal.

### *Flood Intelligence*

The Tuggerah Lakes Flood Study was completed in 1994, which identifies that the 1% AEP flood level relevant for this development is 2.2m AHD. Other sized flood events were analysed and calculated, and which are summarised below in Table 2 and shown pictorially in Figure 2.

| Flood Scenario                    | 50% AEP | 20% AEP | 5% AEP | 1% AEP | PMF |
|-----------------------------------|---------|---------|--------|--------|-----|
| Base Flood Study                  | 0.91    | 1.36    | 1.8    | 2.2    | 2.7 |
| Incl. Sea Level Rise to Year 2050 | 1.31    | 1.76    | 2.2    | 2.6    | 3.1 |
| Incl. Sea Level Rise to Year 2100 | 1.81    | 2.26    | 2.7    | 3.1    | 3.6 |

**Table 2 –Flood Levels (m AHD)**



**Figure 1 – Indicative Tuggerah Lake Cross-section**

The 1% AEP (Annual Exceedance Probability) flood level is the level that is reached or exceeded on average once every 100 years. Put another way, there is a 1% chance of a flood of this size or greater occurring in any given year. Similarly, for example, the 5% AEP flood level is the level that is reached or exceeded on average once every 20 years.

The probability of experiencing a given size flood once or more in a lifetime is shown below in Table 1. This has been reproduced from the Floodplain Development Manual, which is the NSW Government's Manual relating to the management of flood liable land in accordance with Section 733 of the Local Government Act 1993.

## 4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)

| Size of Flood (AEP) | Probability of Experiencing the Flood in a Period of 70 Years |                    |
|---------------------|---|--------------------|
|                     | At Least Once (%)   | At Least Twice (%) |
| 10%                 | 99.9  | 99.3               |
| 5%                  | 97.0  | 86.4               |
| 2%                  | 75.3  | 40.8               |
| 1%                  | 50.3  | 15.6               |
| 0.5%                | 29.5  | 4.9                |

**Table 1 - Probability of experiencing a given size flood once or more in a lifetime**

The proposed development is located within The Entrance North sub catchment of Tuggerah Lakes. It is partially protected from frequent flooding in the lake by a levee system formed by Wilfred Barrett Drive and a natural ridge located approximately along Link Road. There are 14 culverts of various sizes under Wilfred Barrett Drive connecting the local catchment to Tuggerah Lakes. In 1995 the outlets of the culverts were fitted with hinged flood flaps to prevent backflow of flood waters from Tuggerah Lakes. However Council has found that the flood flaps are not completely reliable: sometimes they fail to properly close for various reasons. In the most recent flood, June 2007, the Wilfred Barrett Drive levee did not protect North Entrance from flooding. Large floods will overtop the Wilfred Barrett Drive levee.

A long standing and consistent planning practice of Council is to apply the 'precautionary principle' and adopt peak flood levels from Tuggerah Lakes within The Entrance North sub catchment. This approach was adopted primarily due to lack of available levee freeboard above design 1% AEP Tuggerah Lakes flood level, and the potentially catastrophic consequences if the levee operation was compromised without planning for this possibility.

In addition to the above, planning was undertaken within the Section 94 Development Contributions Plan for The Entrance District to estimate and manage the effect of development upon local catchment flooding (behind the levee). The plan considers the loss of flood storage associated with progressive development and identifies the need for an additional 3 culverts fitted with flood flaps to be provided over time with future development to ensure the estimated local catchment flood level of 1.4m AHD is not exacerbated.

### *Flood Hazard Assessment*

The determination of flood hazard category involves firstly establishing the hydraulic category based upon flood behaviour and provisional hazard category from pure hydraulic (depth and velocity) principles. Once established, the provisional hydraulic hazard is reviewed in light of other relevant factors to establish the true 'Flood Hazard' category.

The initial flood hydraulic classification applicable to the development is flood storage, given the negligible velocity anticipated from flood inundation from Tuggerah Lakes during peak design conditions. The provisional flood hazard classification for flood water with negligible velocity is exclusively based on flood depth, with depths less than 800mm considered 'low hazard'. On this basis, the development is considered to be affected by a mixture of both low and high hazard flood storage as the provisional hydraulic hazard classification. Figure 2 shows the respective extents overdrawn on an extract of the architectural plans.



## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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The NSW Floodplain Development Manual states that it is not appropriate to use provisional flood hazard alone to determine hazard implications of individual developments (p.L-2). For this reason a second order assessment was carried out using the factors generally taken from Appendix L of the Manual. These include:

### Size of flood

The development is affected by both local catchment flooding and lake flooding as established above. The designated flood event for the development is the 1% AEP flood, with the sea level rise flood planning level of 3.1m AHD. This level represents varying flood depth across the development with a maximum depth of 1.7m at the western road boundary.

### Effective warning time

The Tuggerah Lake water level peaks approximately 40 hours after the start of the rainfall under design conditions. Whilst it takes a relatively long duration rainfall event to produce an elevated lake level, the critical rise which produces the peak can occur within the order of 12 hours. The effective evacuation time is taken to be 6 hours, and is considered to be a short time in terms of the need to protect people and minimise damages, particularly given the number of existing residents potentially requiring assistance in the local sub-catchment

4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)

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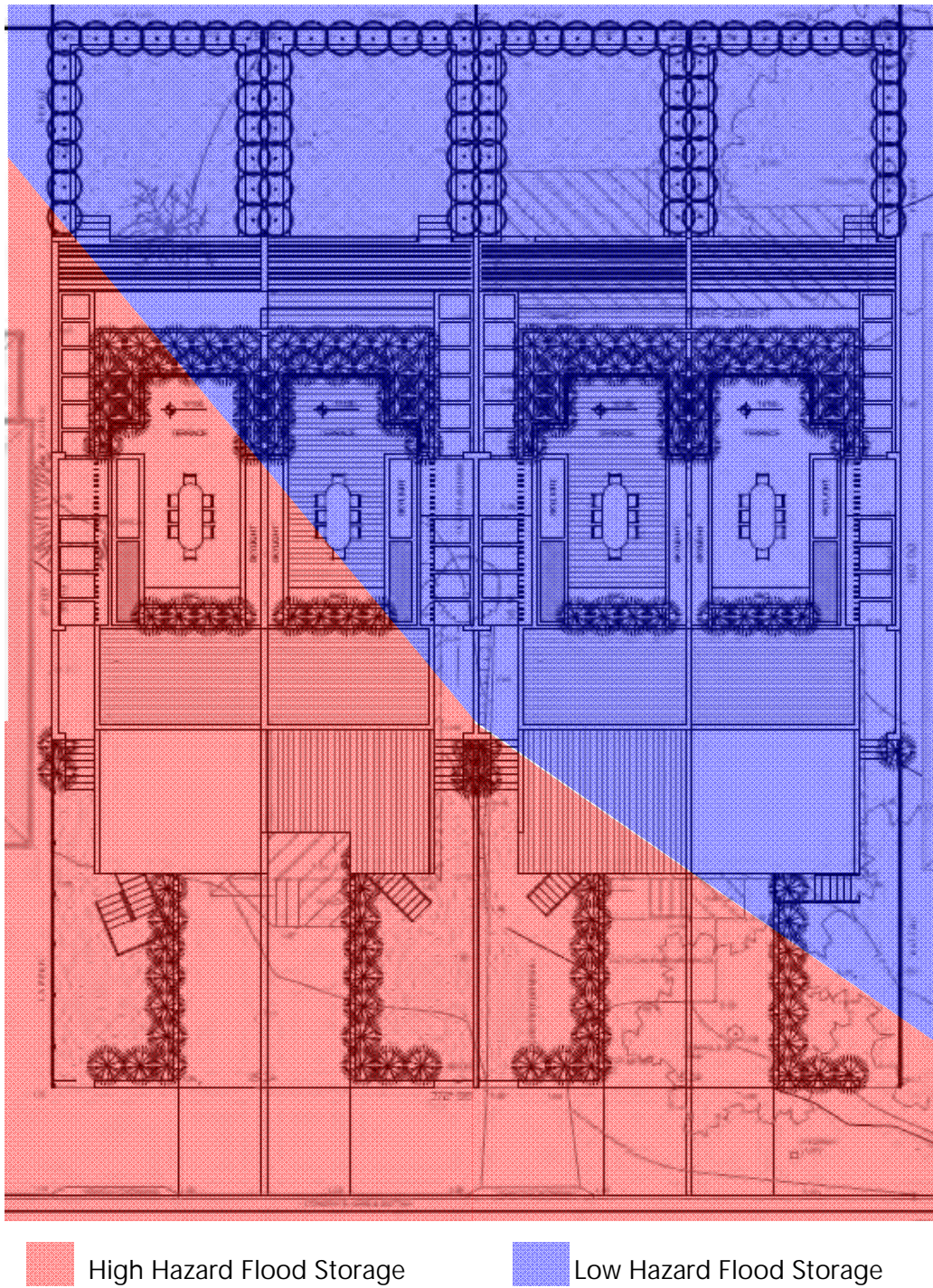


Figure 2 – Provisional Hydraulic Hazard Classification

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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### Rate of rise of flood waters

The rate of rise of water levels in Tuggerah Lakes during the 1% AEP flood design event is approximately 0.1 metres per hour. Concern is raised for the scenario where flood levels exceed the existing Wilfred Barrett Road levee and resultant rapid inundation of flood waters within The Entrance North. The levee is predicted to be overtopped as frequent as the 2100 20% AEP flood event.

Even without sea level rise predictions, events in excess of the design current 1% AEP will potentially overtop the levee.

### Flood readiness

The best indication of community readiness is taken from a recent survey completed with the preparation of the Tuggerah Lakes Floodplain Risk Management Study. Council received 1,285 responses to survey. The survey results indicated that over 90% of respondents were owner/occupiers of their property, with an average age of ownership of almost 30 years. Only 33% of respondents had not experienced flooding at their property. Of the remaining, 18% had experienced floodwaters in the house or work, and 58% had experienced floodwaters entering into their backyard.

The majority of the respondents were living or working in the area during the June 2007 flood event and a number of respondents were living in the area when the February 1990 flood event occurred.

The survey highlighted the fact that 36% of the respondents had not looked for any information in relation to the flood or flood risk of their property. This result surprised analysts as the survey was sent out only to those properties located within the 100 year ARI flood extent, and more than 74% of respondents had experienced some form of flooding in either the June 2007 or February 1990 flood events.

It follows that the 'average person' is probably not prepared for a large flood. Those people who have experienced flood waters in the past 60 years have only experienced relatively minor floods. This is exacerbated for The Entrance North sub catchment of Tuggerah Lakes as the overtopping of the Wilfred Barrett Drive weir has never occurred since flood flaps were only installed in 1995, and previous rises within this sub catchment followed the general lake flood behaviour.

### Depth and velocity of flood waters

The depth of flood water varies across the subject site from zero to 1.7 metres depth, with negligible velocity. Across The North Entrance sub catchment, the flood depth increases beyond 1.7metres depth when heading towards, and travelling along, the main collector road (Hutton Road).

### Evacuation problems

Considering the 2100 sea level rise benchmarks, the 'last chance' opportunity for low hazard self sufficient evacuation occurs early in the design flood event, approximately 20 hours after the start of the rainfall. The height of the levee and the limit of hydraulically safe wading depth of 0.8 metres occur at approximately the same time.



## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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The later the decision is made for evacuation the more people of The Entrance North that may require assistance. Evacuation by wading is generally not encouraged by emergency services personnel due to potential problems with uneven ground, submerged hazards, animal bites, mobility of the aged and children and the distance to safe ground. There is also a potential health issue with wading through flood waters as the NSW Department of Health has previously issued Public Health Warnings to treat all flood waters as contaminated.

There is potential for flood water to contain untreated sewage, chemical contaminants or dead animal carcasses. The depth of flood waters and duration of inundation further exacerbates this issue. The time of day and weather conditions can also adversely affect evacuation.

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.

### Effective flood access

The local sub catchment is bound by Wilfred Barrett Drive which is generally higher than the residential area of The Entrance North, and is the only satisfactory means of flood access. The development is approximately 330 metres from Wilfred Barrett Drive, with more severe flooding conditions encountered between the development and Wilfred Barrett Drive.

As identified above, the level of Wilfred Barrett Drive is approximately equal to the 2100 20% AEP flood level. The NSW Floodplain Development Manual identifies that vehicle may be hydraulically unstable with flood depth of approximately 400mm. This effectively means that Wilfred Barrett Drive will be unavailable for use by evacuees and emergency service personnel from the 2100 5% AEP and rarer flood events. This is further exacerbated by the lack of delineation of the road carriage and potential for vehicles to run off the pavement into even deeper flood waters.

Pedestrian evacuation to the sand dunes was identified as an evacuation option, however it is not considered appropriate as the sole means of satisfactory evacuation within the flood assessment. Apart from 'self motivated evacuation' generally undertaken while roads are trafficable, the decision to issue evacuation orders rests with the Wyong SES Local Controller. Evacuations are to be undertaken in accordance with the current SES Local Flood Plan, which identifies that evacuations will proceed along main roads and major local roads. The sand dunes may be considered as a temporary place of refuge, but not as a means of evacuation. Predicted coastal erosion processes and significant distance to evacuation centres further reduce the suitability of this evacuation option.

### Type of Development

The development site contains three existing dwellings described by applicant in the Statement of Environmental Effects (SEE) as "very old and fibro construction and hence could be easily damaged by the floods and also are no more habitable to live in" and further describes the existing dwelling as having floor levels below the sea level rise flood planning level. While it is intuitive to deduce that completion of the development is likely to result in structurally superior dwellings above the sea level rise flood planning level, it is important to consider the proposed intensification of the property on a cumulative scale.

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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When considered cumulatively across this sub catchment, an additional dwelling per property would result in a significant number of additional human lives upon lands identified provisionally as high hazard flood storage.

However, most significantly, the previous development decisions were made based upon different flood planning considerations. The flood planning considerations have since been revised and improved.

Notwithstanding the above, this element is considered separately within the development matrix of the Council's Development of Flood Prone Lands policy, and is inappropriate for the same element to inform the matrix twice – i.e. directly in 'Type of Development' and indirectly in the 'Hazard Category'.

### Public Utilities

The existing area is serviced by water and sewer reticulation, power and telecommunications. These services are already susceptible during relatively minor flood events and will be further impacted by increased flood levels and increased frequency of flooding. The protection of these infrastructure assets into the future is not assured at this stage.

Rising sea level, ground water and more frequent flooding coupled with increased rainfall intensities are also likely to have a detrimental effect on road pavements. In low lying vulnerable areas potentially at or below RL 1.5m it may not be possible to maintain the road pavements to an acceptable standard due to water penetration of the pavement and permanent saturation of pavement materials.

During the June 2007 flood, which is estimated to be about a 10% AEP event, inundation lasted for 4-5 days in Tuggerah Lakes. There was no power in the area for 3 days. The sewer reticulation system was shut down because household gully surcharge points were inundated, which rendered it useless. Many people remained in their houses, which resulted in a public health risk due to the sewer surcharges.

### *Flood Hazard Assessment - Conclusion*

Based upon the qualitative flood hazard assessment detailed above, it is considered appropriate to adopt a flood hazard category of 'high hazard flood storage' for the purpose of application of Council's Development of Flood Prone Lands policy. The policy and the assessment of Council confirm that the proposed development is not appropriate and is not supported.

### *Sea Level Rise*

In 2009, the NSW Government specified the use of two sea level rise projections for the entire NSW coastline. These were a 400mm predicted rise to year 2050 and a 900mm predicted rise to year 2100. In 2010 the *Flood Risk Management Guide - Incorporating Sea Level Rise Benchmarks in Flood Risk Assessments* was published by the NSW Government. The guide was prepared to assist local councils in applying these projections in planning and development decisions. The guide updates the sea level rise information in the *NSW Floodplain Development Manual* published by the NSW Government in 2005 and should be read in accordance with the Manual, which is also in accordance to Section 733 of the Local Government Act 1993.

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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It was recently acknowledged by the NSW State Government that the current scientific publications allow for more accurate and locally relevant sea level rise projections to be made. As part of the recent coastal management reforms introduced by the NSW State Government, local sea level rise projections are now able to be used in lieu of those previously specified. Additionally, the NSW State Government has offered expert scientific advice to assist Council's in this process and allowed Council to choose a suitable interim arrangement until local projections can be determined.

Following enactment of the coastal reforms, Council resolved that its sea level rise interim policy consist of compliance with the 1% AEP flood level and 500mm freeboard allowance. The interim policy seeks to either set sea level rise interim projections to zero within the Wyong Shire or allow full consideration of interim sea level projections to be catered for within the flooding freeboard. Either way, this resolution does not align with the statutory direction describing how to consider sea level rise projections in relation to flooding impacts.

It follows that the resolution cannot be legally followed for planning and development decisions undertaken by Council staff. Buildings and other developments have long lives, so planning and development decisions taken now need to consider the entire life of the development. The previous State Government projections remain the current estimate of future sea level rise at this point in time.

Council also resolved in the same motion mentioned above that in circumstances where existing Government legislation or policy conflicts with Council's sea level rise interim policy, that the General Manager ensure that the matter is brought to Council for determination.

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 projection for the proposed development. The application of this projection has the affect of increasing the initial water level of Tuggerah Lake and the Pacific Ocean analysed in the Tuggerah Lakes flood study.

The Floodplain Development Manual 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 projection to the 1% AEP flood level relevant to the site". The survey plan accompanying the development application indicates that existing ground levels range between 1.4m AHD and 3.1m AHD across the site.

It follows that it is appropriate to apply the higher sea level rise projection during flood assessment. The flood levels relevant to the development are provided in Table 2 above, with year 2100 flood levels adopted for flood assessment of the application,

### *Climate Change*

Wyong Coastal Zone Management Plan identifies a number of ways that climate change may impact coastal management including:

- Minimum and maximum temperatures may rise
- Changes to rainfall patterns
- Sea level rise of at least 0.4 metres by 2050 and 0.9 metres by 2100 from 1990 levels
- Potential for increase in the frequency and severity of weather patterns responsible for extreme storm events
- Higher probability of east coast low formation.

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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Rising sea levels combined with higher frequency of storms may alter sand transport regimes along beaches and encourage coastal recession of beaches and wave attack, storm surge and erosion of coastal cliffs and bluffs. This erosion has the potential to affect coastal properties and a range of coastal infrastructure such as stormwater outlets, roads and surf clubs.

Climate Change also has the potential to increase rainfall intensities, which would also potentially increase flood levels within Tuggerah Lake. The NSW Government's Floodplain Risk Management Guide: Practical Consideration of Climate Change (2007), which is another guide to be considered in conjunction with the Floodplain Development Manual, recommends a sensitivity analysis of rainfall intensity increases of up to 30%. This has the potential to further increase peak flood levels in Tuggerah Lakes. However this has not yet been quantified. The application of the sea level rise benchmarks and 500mm freeboard to habitable floor levels (as per the NSW Government's Guideline on Development Controls on Low Risk Flood Areas 2009) provides some capacity to absorb these unquantified flooding effects associated with changing rainfall patterns.

### *Coastal Hazard*

In 2009 and 2010, the NSW Government released a number of policies, directions and guidelines to provide direction for effective management of coastal hazards and risks. These include:

- NSW Sea Level Rise Policy Statement (Department of Environment Climate Change and Water (DECCW) 2009), which sets sea level rise benchmarks for planning purposes of 40cm above 1990 levels by 2050, and 90cm above 1990 levels by 2100
- NSW Coastal Planning Guide – Adapting to Sea Level Rise (Department of Planning, 2009)
- Amendments in 2010, to the NSW Coastal Protection Act, 1979
- NSW Coastal Policy (1997)
- Coastal Risk Management Guide – Incorporating sea level rise benchmarks in coastal risk assessments (DECCW 2010)
- NSW Guideline for Preparing Emergency Action Subplans (OEH 2011)
- Ministers Requirements under the Coastal Protection Act 1979 (DECCW 2010)
- NSW Guidelines for Coastal Zone Management Plans (DECCW 2010)

All of this legislation, policy and guidance, focuses on building resilience within the community and managing coastal process risks. It provides clear direction to councils that they must properly consider coastal process hazards in their local land use, natural resource management and community development planning.

In accordance with these government publications, the Coastal Zone Management Plan for the Wyong Coastline (2011) was exhibited and adopted by Council and is the main document to be used in assessing and managing coastal risks. The plan is to be certified by the Minister of Environment and Heritage in accordance with Section 55G(2) of the Coastal Protection Act 1979 and published in the NSW Government Gazette.

The coastal areas exposed to risk are referred to as Coastal Hazard Planning Zones and are defined for the immediate, 2050 and 2100 planning horizons. Under the Coastal Zone Management Plan (Vol.1 supporting information) a small portion of the site is affected by a 2100 Coastal Hazard Planning Line. Under the plan, Section 9.1.5.1 outlines the following assessment method (nominated as Method A) for Coastal Erosion Risk):

#### **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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- *No intensification of development will be approved seaward of the 2100 Coastal Hazard Planning Line.*

Intensification of development includes replacing single storey, older style, small dwellings on the site with new, large, two storey, three bedroom dual occupancy dwellings, and new subdivision of the site. The development includes intensification of development on the site including an increase in the residential densities (including the dwelling sizes and number of bedrooms) and subdivision of the development. However, neither the proposed dual occupancy building on No 32 or the subdivision of the land will result in an intensification of development inconsistent seaward of the hazard line and is therefore not considered to be inconsistent with the Policy.

- *Council may (depending on the location) issue time limited development consents for new development proposed between the Immediate Coastal Erosion Hazard Planning Line and the 2100 Coastal Erosion Hazard Planning Line. Such consents may also identify “triggers” for adaptive actions. Prior to the expiry date of the timed consent, or at the time when the identified trigger is realised, the landholder must apply and obtain an extension of time, or relocate the structure landward on the site (where this is possible), or remove the development and stabilise the disturbed area.*

As the site currently contains a dual occupancy dwellings, the proposal will not result in an intensification of the existing development. Furthermore, the proposed subdivision of the land would enable a future dwelling (if the land was vacant) to be erected landward of the 2100 hazard line.

- *Council will not approve new subdivisions, vulnerable development (including nursing homes and hospitals) or other development that intensifies land use between the 2050 Coastal Erosion Hazard Planning Line and the 2100 Coastal Erosion Hazard Planning Line.*

The proposal involves development seawards of the 2100 line in part. However, for reasons stated above, the proposal is not considered to be an intensification.

The applicant submitted a coastal hazard assessment which recommended that the foundations of the building must be designed for hydrostatic pressure and elevated ground water tables.



## 4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)



Map showing coastal hazard planning lines for the affected property

As outlined in the Coastal Zone Management Plan there is to be no 'intensification of development' seaward of the 2100 coastal hazard planning line. The plan states (under Section 9.1.5):

*Council does not propose to approve new subdivisions, vulnerable development (such as nursing homes and hospitals) or other permanent development that intensifies land use in the 2050 or 2100 coastal risk areas.*

*Council does not propose to approve new major infrastructure (such as main roads and sewerage systems) in the 2050 or 2100 coastal risk areas, except where it can be protected in a cost effective manner that does not increase risks to other coastal values.*

For reasons stated above, the proposal is not considered to constitute an intensification of the existing development (No 32) seaward of the 2100 hazard line.

The proposal fails to address the potential impacts of coastal hazard on the development and its future occupants and is therefore not supported.

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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

There is no likely risk to people, property or the environment from any industrial and technological hazards related to the development. There is no evidence of the site being contaminated, no flammable or hazardous goods storage and the development will need to comply with the BCA fire safety requirements. Conditions are recommended in relation to asbestos removal during demolition.

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

The principles for Crime Prevention Through Environmental Design (CPTED) have been considered under the design of the proposed new development. The proposal incorporates design features and passive security management measures to discourage anti social behaviour and minimise the opportunities for criminal activities.

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

The proposal would provide additional new housing for the area replacing three older, smaller, single storey dwellings in poorer condition with four new larger dwellings. It is noted that the three existing dwellings on the site are currently occupied as lower rent housing and so provide some social benefit to the community in consideration of the shortage of affordable rental properties on the central coast. Additionally, it is considered that the new development that includes an intensification of the site will expose additional people (and property) to the risk of flooding and the impacts and hazards that poses. This includes the future occupants of the development along with the emergency services personnel that the development relies upon to assist occupants during a flood event.

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

The proposal provides additional new housing stock that will be vulnerable to flooding and coastal hazard impacts. The additional risk to property under the proposal is unnecessary and will place an additional financial burden and demands on the community in the long term in order to sustain the development in its vulnerable location (eg. emergency services and insurance premiums). There are additional long term costs to Council for the maintenance of infrastructure to service the development. It is anticipated that the additional costs associated with maintenance of infrastructure subject to periodic inundation will continue to increase over time.

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

The building design is sensitive to the immediate site context being positioned to suitably respond to the potential amenity impacts to adjoining dwellings. However, the development has not satisfactorily addressed the broader constraints of the site for development that includes the impacts of flooding and coastal hazard particularly considering the residential nature of the development and the proposed intensification of this use on the site.

The development has responded to the flooding constraint by providing higher floor levels above the flood planning level, however, as no safe evacuation route is available to the future occupants, the flooding potential of the site continues to pose a significant hazard for future occupants of the development.

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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

Conditions could be imposed to address any concerns in relation to construction management, however the application is not supported on other grounds and is recommended for refusal.

### **Any cumulative impacts.**

There are potential cumulative impacts associated with additional development and an overall intensification of residential activity in a hazardous flood prone location. The development will set an undesirable precedent that may encourage similar development within the flood prone area resulting in increased safety risks for future occupants an additional burden on emergency services responses during a major flood event and upon the broader community to continue to sustain financially the servicing of an increasing population in a vulnerable location.

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

The site attributes are not conducive to the development. The site is flood affected and assessed as high hazard flood storage and the proposal represents an undesirable and in appropriate intensification of the site which will expose more people to the hazard. This includes both the future occupants of the development and emergency services personnel.

On a cumulative basis were the majority of sites in this area permitted to develop in this manner, this would be a significant increase in population density within the hazard area and an unnecessary but significant increased risk to life and property. Due to the flooding constraints and the increased exposure of risk resulting from the intensification of the site, the site is not suitable for the development proposed and is not supported.

### **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 two (2) submissions being received. The issues raised in the submissions have been addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979. A summary of the submissions is detailed in the table below.

**4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

| Doc. No   | Summary of Issues  | Response   |
|-----------|--|--|
| D02917192 | <ul style="list-style-type: none"> <li>• Understood that Council is no longer supporting higher density development on residential lots in the floodplain due to climate change impacts.</li> <li>• Site lies within 2100 zone of reduced foundation capacity</li> <li>• Building height – the building is visually obtrusive and has no regard for privacy or amenity of neighbouring residents.</li> <li>• Building exceeds the height and scale requirements being three levels from the street – contrary to DCP height of generally 2 storeys and a maximum 7 metres building height from nature ground.</li> <li>• Floor Space Ratio of 0.5:1 has been exceeded.</li> <li>• Appearance does not positively contribute to the streetscape and is not compatible with the desired future character of the area.</li> <li>• Roof top terrace impact on the privacy of neighbouring properties.</li> <li>• The site appears to be filled. There is no filling allowed in the floodplain.</li> <li>• Stormwater management along Stewart Street is already inadequate with frequent flooding and cannot cope with 4 new dwellings.</li> <li>• Reasonable levels of privacy will not be maintained externally day or night. Dwelling to the north will lose privacy to their rear yards, pools and entertainment areas.</li> </ul> | <p>The application involves the intensification of the residential activity on the site and is recommended for refusal on flooding grounds and in consideration of the future potential coastal hazard impacting the site.</p> |
| D02933129 | <ul style="list-style-type: none"> <li>• Concern regarding adverse privacy impacts as yard is to the north adjoining the site.</li> <li>• Concern regarding height of building, rooftop garden and extensive north facing windows that all look down into our yard, pool and entertainment area.</li> <li>• Let to believe that Council was no longer allowing higher density development on residential lots in flood prone area.</li> </ul>  | <p>Privacy impacts have been satisfactorily addressed under the application, however, the development is recommended for refusal on flooding grounds.</p>  |

**Any submission from public authorities.**

There are no submissions from public authorities.

## **4.2 DA/48/2012 - Proposed Demolition of Existing Structures and Construction of Two Dual Occupancy Buildings at North Entrance (contd)**

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

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

The development is considered unsuitable for the site due to the flooding and coastal hazard constraints of the site. The site is identified as within a high hazard flood storage area and includes works not permitted seaward of the 2100 coastal hazard planning line. The proposal represents an undesirable intensification of the site that would unnecessarily expose additional people and properties to risks from flooding and coastal hazard impacts which is contrary to the local and community interest.

### **OTHER MATTERS FOR CONSIDERATION**

#### *Section 94 Contributions Plans*

The Entrance-North Entrance-Long Jetty S94 Plan and Shire Wide Contributions Plan apply to the development of the site, however, the application is not supported on grounds of flooding and coastal hazard and is recommended for refusal.

### **CONCLUSION**

The application seeks approval for construction of two dual occupancy buildings over two existing lots and subdivision into four lots. Each dwelling is two storey and three bedroom with a garage. There is a minor variation sought under the application to the maximum building height of 7 metres, however, the site is identified as 'high hazard flood storage' and under Council's Flood Prone Land Development Policy, the development is prohibited. The application is recommended for refusal for the reasons shown in the attached schedule.

### **ATTACHMENTS**

|   |   |           |           |
|---|---|-----------|-----------|
| 1 | Draft Reasons for Refusal   |           | D03197480 |
| 2 | DCP Chapter 58 Compliance Tables (2)  |           | D03017878 |
| 3 | SEPP 71 Coastal Protection Compliance Table                                   |           | D03017880 |
| 4 | Coastal Hazards Compliance Table  |           | D03017873 |
| 5 | Development Plans (A3 B&W)  | Enclosure | D03040643 |
| 6 | SES Response 30-32 Stewart Street, The Entrance Nth - Flood Evacuation Advice |           | D03204425 |

**Draft reasons for refusal - DA 48/2012**

- 1 Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not suitable for the development proposed being identified as a high hazard flood storage area and given that the proposal is an intensification of the land use without a safe evacuation route.
- 2 Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal is not in the public interest as it is contrary to Council's Flood Prone Land Development Policy.
- 3 Pursuant to Section 79C(1)(b) &(e) of the Environmental Planning and Assessment Act 1979, the proposal is not in the public interest as it will set an undesirable precedent that encourages other similar development in the area which cumulatively will impact adversely on the safety of the community and the community resources required to sustain development in a vulnerable location.
- 4 Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the development is an unnecessary and unreasonable intensification of the use of the site which results in additional people and property being exposed to flooding.
- 5 Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the development fails to adequately address the impact of flooding on the safety, amenity and financial outlay and investment of the future occupants of the development.
- 6 Having regard to the above reasons of refusal, the proposed development is contrary to the objectives of the Environmental Planning and Assessment Act 1979, as specified in Section 5(a)(ii) and (iii) which provides for the promotion and co-ordination of the orderly and economic use and development of land and the protection provision and co-ordination of utility services. The proposed development of the site in this manner will prejudice the orderly planning and development of hazard constrained land and its required servicing. The proposed over intensification of the land unsuitable for the construction of 4 dwellings and the subdivision of these by virtue of flooding constraints does not satisfy this objective.

**Development Statistics - Compliance Table**

|                             |  |
|-----------------------------|--|
| <b>Applicant</b>            | Legge Architects   |
| <b>Owner</b>                | B Moran, L Capolupo P/L, & M Capolupo P/L                          |
| <b>Application No</b>       | DA/48/2012   |
| <b>Description of Land</b>  | 30-32 Stewart Street, North Entrance, Lots 5 and 6 in DP.18519     |
| <b>Proposed Development</b> | 2 x Attached dual occupancies and demolition of existing buildings |
| <b>Zoning</b>               | 2(b) Multiple Dwelling Zone  |

**Dual occupancy – 30 Stewart Street**

|   | <b>Proposed</b>  | <b>Required</b>  | <b>Compliance</b> |
|---|--|--|-------------------|
| <b>Site Area</b>  | 580.6 m <sup>2</sup>   | 550m <sup>2</sup> min for side by side   | Yes               |
| <b>Height</b>   | Generally 2 storeys<br>8.67m<br>8.67                                   | (generally) 2 storeys<br>7 metres<br>Max 11m from ground to peak of roof.  | Yes<br>No<br>Yes  |
| <b>Site coverage/Soft landscaping</b><br>Required deep soil zone          | 33.4%  | 25% of site to be soft landscaping<br>50% of the required soft landscaping   | Yes               |
| <b>FSR</b>  | 0.5:1  | 0.5:1  | Yes               |
| <b>Gross Floor Area</b>   | 290m <sup>2</sup>  | 290m <sup>2</sup>  | Yes               |
| <b>Wall length</b>  | Complies   | No unbroken wall length exceeding 10m in length and 3m in height.  | Yes               |
| <b>Building Setbacks</b><br>(Cat C)                                       |  |  |                   |
| -Front – Building   | 7.65m  | 4.5m min   | Yes               |
| -Front - Garage   | 7.65m  | 6m min   | Yes               |
| -Sides  | 1.5m   | 0.9m min   | Yes               |
| -Rear   | 9.5m   | 0.9m min   | Yes               |
| <b>Appearance</b>   | Complies   | - High architectural quality, minimise bulk and scale<br>- No mirror image side by side<br>- Garages not to visually dominate<br>- Subfloor fender walls on facades<br>- Clearly defined entry | Yes               |
| <b>Parking</b><br>3 or more bedrooms<br>Garage/enclosed space<br>Driveway | 2 spaces/dwelling<br>1/dwelling<br>Straight line but with pine inserts | 2 spaces/dwelling<br>Min 1/dwelling<br>Not continuous straight lines   | Yes               |
| <b>Basix Certificate</b>  | Provided   | Certificate  | Yes               |
| <b>Landscaping</b><br>-Landscape Plan                                     | Category 2   | Category 2 min   | Yes               |
| -Street tree planting   | 3 street trees   | Min 2 semi-advanced trees/15m of frontage  | Yes               |
| <b>Private Open Space</b><br>-Min Area<br>-Min dimension<br>- Max grade   | 75.8m <sup>2</sup><br>7.6m<br>1:14                                     | 60m <sup>2</sup><br>4.5m<br>1:14   | Yes<br>Yes<br>Yes |

**Solar Access**

|                                   |          |                                    |     |
|-----------------------------------|----------|------------------------------------|-----|
| Each dwelling and adjoining sites | Complies | 75% POS for 3hrs btn 9-3 midwinter | Yes |
|-----------------------------------|----------|------------------------------------|-----|

**Privacy**

|                                      |  |     |
|--------------------------------------|--|-----|
| Measures and design achieves privacy | Windows offset & balconies screened if within 12m and facing living area windows or balconies of adjacent dwellings. | Yes |
|--------------------------------------|--|-----|

**Facilities**

|             |            |  |     |
|-------------|------------|--|-----|
| Laundry     | 1/dwelling | 1/dwelling                             | Yes |
| Drying area | 1/dwelling | 1/dwelling                             | Yes |
| Mailbox     | 1/dwelling | 1/dwelling + owners corp box if needed | Yes |

Storage (3 bedrooms)

**Fencing**

|                  |   |     |
|------------------|---|-----|
| 1m               | Max 1.2m front boundary (decorative materials and articulation) | Yes |
| Decorative stone |   |     |

**Dual occupancy – 32 Stewart Street**

|                                       | <b>Proposed</b>                       | <b>Required</b>  | <b>Compliance</b> |
|---------------------------------------|---------------------------------------|--|-------------------|
| <b>Site Area</b>                      | 580.6 m <sup>2</sup>                  | 550m <sup>2</sup> min for side by side   | Yes               |
| <b>Height</b>                         | Generally 2 storeys<br>8.67m<br>8.67m | (generally) 2 storey<br>7 metres<br>Max 11m from ground to peak of roof.   | Yes<br>No<br>Yes  |
| <b>Site coverage/soft landscaping</b> | 33.4 %                                | 25 % soft landscaping  | Yes               |
| <b>FSR</b>                            | 0.5:1                                 | 0.5:1  | Yes               |
| <b>Gross Floor Area</b>               | 290m <sup>2</sup>                     | 290m <sup>2</sup>  | Yes               |
| <b>Wall length</b>                    | Complies                              | No unbroken wall length exceeding 10m in length and 3m in height.  | Yes               |
| <b>Building Setbacks (Cat C)</b>      |                                       |  |                   |
| -Front – Building                     | 7.65m                                 | 4.5m min   | Yes               |
| -Front - Garage                       | 7.65m                                 | 6m min   | Yes               |
| -Sides                                | 1.5m                                  | 0.9m min   | Yes               |
| - Rear                                | 10.1m                                 | 0.9m min   | Yes               |
| <b>Appearance</b>                     | Complies                              | - High architectural quality, minimise bulk and scale<br>- No mirror image side by side<br>- Garages not to visually dominate<br>- Subfloor fender walls on facades<br>- Clearly defined entry | Yes               |
| <b>Parking</b>                        |                                       |  |                   |
| 3 or more bedrooms                    | 2 spaces/dwelling                     | 2 spaces/dwelling  | Yes               |
| Garage/enclosed space                 | 1 garage each                         | Min 1/dwelling   | Yes               |
| <b>Basix Certificate</b>              | Complies                              | Each dwelling  | Yes               |



**Landscaping**

|                       |                |   |     |
|-----------------------|----------------|---|-----|
| -Landscape Plan       | Category 2     | Category 2 min                            | Yes |
| -Street tree planting | 3 street trees | Min 2 semi-advanced trees/15m of frontage | Yes |

**Private Open Space**

|                |                  |                  |     |
|----------------|------------------|------------------|-----|
| -Min Area      | 76m <sup>2</sup> | 60m <sup>2</sup> | Yes |
| -Min dimension | 7.6m             | 4.5m             | Yes |
| - Max grade    | 1:14             | 1:14             | Yes |

**Solar Access**

|                                   |          |                                    |     |
|-----------------------------------|----------|------------------------------------|-----|
| Each dwelling and adjoining sites | Complies | 75% POS for 3hrs btm 9-3 midwinter | Yes |
|-----------------------------------|----------|------------------------------------|-----|

**Privacy**

|                                      |  |     |
|--------------------------------------|--|-----|
| Measures and design achieves privacy | Windows offset & balconies screened if within 12m and facing living area windows or balconies of adjacent dwellings. | Yes |
|--------------------------------------|--|-----|

**Facilities**

|             |            |  |     |
|-------------|------------|--|-----|
| Laundry     | 1/dwelling | 1/dwelling                             | Yes |
| Drying area | 1/dwelling | 1/dwelling                             | Yes |
| Mailbox     | 1/dwelling | 1/dwelling + owners corp box if needed | Yes |

Storage (3 bedrooms)

**Fencing**

|                        |                                     |     |
|------------------------|-------------------------------------|-----|
| 1m<br>Decorative stone | Max 1.2m front boundary(decorative) | Yes |
|------------------------|-------------------------------------|-----|

## Appendix B - State Environmental Planning Policy No 71 – Coastal Protection

| Cl.8 | Matters for Consideration  | Proposed  |
|------|--|---|
| a    | The aims of the Policy   | The aims include encouraging a strategic approach to coastal management. Council has adopted a coastal hazards management plan and the proposal is contrary to the plan as it includes prohibited development.  |
| 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. | The proposal does not impact on existing public access to an along the foreshore.   |
| c    | Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.  | The proposal does not impact on existing public access to an along the foreshore.   |
| d    | The suitability of development given its type, location and design and its relationship with the surrounding area.   | The site is not considered suitable for the development due to its flooding and coastal hazard.   |
| 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 does not impact on the amenity of the existing foreshore.  |
| f    | The scenic qualities of the New South Wales coast, and means to protect and improve these qualities.   | The proposal does not impact on the existing scenic qualities of the foreshore.   |
| 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 proposal does not impact on existing animal or plant habitat along the foreshore.   |
| 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 does not impact on existing fish habitat or marine vegetation along the foreshore.   |
| i    | Existing wildlife corridors and the impact of development on these corridors.  | The proposal does not impact on existing wildlife corridors along the foreshore.  |
| j    | The likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards.  | <del>The development will be impacted by future coastal hazard and the development does not suitably respond to this. The proposal includes an unnecessary intensification of the site including subdivision that would expose more people and properties to the future hazard contrary to the latest available information related to coastal hazard and contrary to Council's adopted coastal hazards management plan. No 32 is infected in part by Coastal Hazard (namely 2100 Hazard Line) However, the proposal is not considered to constitute an intensification of existing development on No 32.</del> |
| k    | Measures to reduce the potential for conflict between land-based and water-based coastal activities.   | Not relevant  |

|              |   |  |
|--------------|---|--|
| l            | Measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals.   | The proposal does not impact on existing cultural values along the foreshore.  |
| m            | Likely impacts of development on the water quality of coastal waterbodies.  | This matter could be addressed under conditions of consent, however, the application is recommended for refusal.   |
| n            | The conservation and preservation of items of heritage, archaeological or historic significance.  | The proposal does not impact on any heritage values along the foreshore.   |
| 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 relevant.  |
| p(i)         | The cumulative impacts of the proposed development on the environment.  | Supporting the proposal would set a precedent that would have a cumulative impact on the exposure of more people and properties to the flooding and coastal hazard |
| p(ii)        | Measures to ensure that water and energy usage by the proposed development is efficient.  | The development complies with relevant water and energy conservation requirements.   |
| <b>CI.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.   | Not relevant.  |
| <b>CI.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.   | Not relevant.  |
| <b>CI.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 proposal would connect to existing services including sewerage infrastructure.   |
| <b>CI.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.  | The development is not likely to discharge untreated stormwater.   |

## Coastal Hazard

The NSW Government policy position is to encourage appropriate coastal development. This is also Council's broad policy position. The Department of Planning sets out eight criteria which council's can use in their assessment of development applications in coastal risk areas. These criteria are included under Table 9.1 of Council's adopted Coastal Zone Management Plan and titled 'Characteristics of appropriate new development in coastal risk areas'. The table is included below.

### Characteristics of appropriate new development in coastal risk areas

| General planning criteria  | Examples of satisfactory solutions  |
|--|---|
| Development avoids or minimises exposure to immediate coastal risks (Seaward of the immediate hazard line)   | Council will not give consent to or approve new development seaward of the immediate coastal hazard line. There are no works proposed under the application seawards of the immediate hazard line.  |
| Development provides for the safety of residents, workers or other occupants on site, from risks associated with coastal processes                           | <p>A safe exit routes above storm flood height has not been provided under the proposal.</p> <p>Habitable floor levels have been designed for long term inundation above the floor hazard planning level.</p> <p>The future occupants of the development may or may not be elderly or disabled. However the development is not designed specifically as aged housing.</p> |
| Development (including coastal protection works) does not affect the safety of the public off-site from a change in coastal risks as a result of development | Development does not have a detrimental impact on beach character in terms of sand volumes and location or severity of rip cells. Development does not drive more severe erosion of public access ways. Development (such as sea walls constructed using geotextile bags or rock) does not increase safety risks for beach users.   |