

General planning criteria	Examples of satisfactory solutions
<p>Development does not increase coastal risks to properties adjoining or within the locality of the site</p>	<p>Development applications for proposed development within the 2050 and 2100 coastal hazard zones must be accompanied by detailed studies which show that the development will not increase coastal risks to adjoining properties, such as by modifying the functioning of coastal processes. If coastal protection measures are proposed as part of a development, they must also meet this criterion (no significant impact). <del>The development on No 32 does not constitute an intensification of the existing development on the site. has not been accompanied by detailed studies which show that the development will not increase coastal risks to adjoining properties, such as by modifying the functioning of coastal processes. The coastal protection measures proposed are limited to measures related to the building foundations and are not likely to increase coastal risks to adjoining properties, such as by modifying the functioning of coastal processes.</del></p>
<p>Infrastructure, services and utilities on site maintain their function and achieve their intended design performance.</p>	<p>Essential services (water, sewer, power) provided to and passing the site must be located and designed to ensure that they continue to function in major storm events up to the design life of the infrastructure. There is no certainty that infrastructure will be available during major storm events and likely that some services will continue to fail during minor flood events. There will be increased maintenance costs associated with supporting development in flood affected areas such as this one.</p> <p>New major, essential services infrastructure should be located outside the 2100 coastal risk area.</p>
<p>Development accommodates natural coastal processes</p>	<p>No new development (with specific exceptions) will be approved in the immediate coastal risk area. Design of development in the 2050 and 2100 coastal risk areas must allow for relocation or removal in the relevant timeframe. The development has not been designed as adaptable or removable in response to coastal hazard.</p>

<b>General planning criteria</b>	<b>Examples of satisfactory solutions</b>
Coastal ecosystems are protected from development impacts	The development is not on coastal dunes or headlands and does not significantly impact on coastal endangered ecological communities.
Existing public beach, foreshore or waterfront access and amenity is maintained.	The development does not significantly reduce public access to the beach or the recreational and scenic amenity of the beach.

**From:** Garry Whitaker [gwhitaker@harboursat.com.au]  
**Sent:** Monday, 19 November 2012 9:59 PM  
**To:** Stewart, Adam  
**Subject:** Re: 30-32 Stewart Street, The Entrance Nth - Flood Evacuation Advice

Hi Adam

I apologise for sending this to you by COB today. I hope I'm not too late to put my position clearly and for the record.

To begin with, I hold the appointment of the NSW State Emergency Service, Local Controller for Wyong. The NSW SES is the combat agency for flood, storms and tsunamis.

I am a volunteer and am responsible for the effective running of the local Unit. Part of that responsibility includes providing information to the general public regarding safety during floods, storms and tsunamis. The information provided is of a general nature and does not constitute formal training or professional opinion.

I was contacted by Martens Engineers asked for advice on preparing a Flood Evacuation Strategy to accompany the Stewart St Development Application. The advice I gave them was general in nature, composed of standard SES messages as follows:

During floods, storms and tsunamis, members of the public should:

- follow the directions of NSW SES and the Police.
- listen to radio and television broadcasts to stay up to date with warnings, weather conditions and evacuation orders.
- respond to evacuation orders given by the NSW SES or Police.
- if concerned by rising flood waters, move to higher ground.
- at no time walk, ride or drive through flood water.

In explaining these points I said that evacuation orders will contain specific details of evacuation routes and evacuation centres depending on the circumstances of the particular event. When asked about using the dunes as an evacuation route I said that in some events that would be possible but it is also true that in situations of severe coastal erosion, the dunes may be threatened by the sea.

I have said to Martens and to Council staff, and I want to make it abundantly clear here, that I personally do not believe that it is reasonable to plan for the SES to come and rescue people. We will make every effort to do so, but there are no guarantees that we will be able to respond quickly. In the scale of flood event that would impact properties in this area, we will almost certainly be engaged in multiple, life-saving flood rescues, involving motor vehicles and properties already inundated. We know that one of the first properties under threat from estuarine flooding is Wyong Nursing Home and that alone will use up considerable resources.

In your email you refer to, *"site specific evacuation plans - which are largely based upon emergency management issue published by your own head office"*, I am not exactly sure to which document(s) you refer and therefore am unable to comment on them.

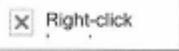
To reiterate - I am not a professional consultant. My comments were not given in the form of a consultant's report and should only be taken as general information. The general advice given is also available from the NSW SES website and does not take into account the special needs of a specific location or community.

30/11/2012

I hope this makes my situation clear.

Regards

Garry


 P (02) 4355 4043 M 0419 262 024 F (02) 4351 2521 E [garry.whitaker@one.ses.nsw.gov.au](mailto:garry.whitaker@one.ses.nsw.gov.au)

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**Garry Whitaker** NSW State Emergency Service - Sydney Northern

*Local Controller* Levitt St PO Box 764  
Wyong NSW 2259 Wyong NSW 2259

*Wyong*

**FOR EMERGENCY HELP IN FLOODS AND STORMS CALL THE NSW SES ON 132 500** 

[www.ses.nsw.gov.au](http://www.ses.nsw.gov.au)

This message is intended for the addressee named and may contain confidential information. If you are not the intended recipient, please delete it and notify the sender. Views expressed in this message are those of the individual sender, and are not necessarily the views of the NSW State Emergency Service.

On Thu, Nov 15, 2012 at 11:19 AM, Stewart, Adam <[ACStewart@wyong.nsw.gov.au](mailto:ACStewart@wyong.nsw.gov.au)> wrote:  
Hi Gary,

Reporting of this application to Council has been deferred one meeting to allow some extra time to receive your response. My revised timeframe is to finalise the report by next Tuesday, but i would really appreciate your response by Monday. If it makes things easier for you, I would be happy to receive a simple Yes or No response on whether you agree with the agreements attributed to the SES. At the very least would you give me the courtesy of confirming that you will not be formally commenting.

Without your response i will not challenge the agreements attributed to the SES, but will be required to discuss strongly why i do not agree with site specific evacuation plans - which are largely based upon emergency management issue published by your own head office. I am loathed to discuss the SES in this light, particularly since the applicant has indicated a desire to appeal in the Land and Environment Court should the elected Council resolve to accept the report refusal recommendation.

If you need any further information, or wish to discuss the matter further, please do not hesitate to call/email.

**Adam Stewart**

Senior Development Engineer

Development Engineering

**Wyong Shire Council**

30/11/2012

P.O. Box 20 , WYONG NSW 2259  
Tel: 02 4350 5514 Fax: 02 4351 2098  
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**From:** Stewart, Adam  
**Sent:** Wednesday, 7 November 2012 10:18 AM  
**To:** '[gwhitaker@harboursat.com.au](mailto:gwhitaker@harboursat.com.au)'  
**Cc:** Vereker, Gina  
**Subject:** FW: 30-32 Stewart Street, The Entrance Nth - Flood Evacuation Advice

Hi Gary,

Thank you for your time last Thursday, it was great to put a face to a name. We appreciate your time and insights into emergency management and planning/development.

The final report regarding this development application is due this Friday, and i would like to include some formal comment from yourself on the issue outlined below - particularly given the views that you expressed last week. Unfortunately, without formal correspondence from yourself I am not comfortable challenging the discussions and agreements made between the applicant and the SES. Any comments you wish to provide would be appreciated by COB tomorrow to allow inclusion in the report.

As mentioned previously, i only ask that you comment on the attached Flood Evacuation Strategy in relation to the discussions and agreements attributed to the SES. Of course, any other comments are welcome. If you need any further information, or wish to discuss the matter further, please do not hesitate to call/email.

Kind regards,  
Adam

**Adam Stewart**

Senior Development Engineer

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**From:** Stewart, Adam  
**Sent:** Monday, 22 October 2012 9:45 AM  
**To:** '[gwhitaker@harboursat.com.au](mailto:gwhitaker@harboursat.com.au)'  
**Subject:** FW: 30-32 Stewart Street, The Entrance Nth - Flood Evacuation Advice

30/11/2012

Hi Gary,

I appreciate that you, and the SES, do not generally have the time or responsibility for responding to DA related issues. However, i ask that you comment on the attached Flood Evacuation Strategy in relation to the discussions and agreements attributed to the SES.

I have read your email dated 4/9/2012 to Martens and Assoc. (included as attachment A in the strategy) and take the contents to be a general summary of appropriate response actions during a flood event unrelated to the proposed development of two dual occupancy dwellings. Unfortunately i do not have the benefit of knowing the contents of the preceding telephone conversation between Martens and Assoc. and yourself for context.

The proposed strategy is a significant component of the flood risk assessment undertaken by Martens and Assoc, and a major determinant in reducing the identified flood risk from high to low hazard to support intensification of the sites. Council's assessment does not support the hazard classification nor conclusions of the Martens and Assoc. assessment - particularly the site specific evacuation strategy.

While any comments you may wish to provide are welcome, i do not ask for a thorough assessment of the strategy as a whole. As identified above, i only ask that you comment on the attached Flood Evacuation Strategy in relation to the discussions and agreements attributed to the SES.

Please do not hesitate to contact me if you require any clarification, or further information, in relation to the above request.

Thank you in advance,  
Adam

**Adam Stewart**

Senior Development Engineer

Development Engineering

**Wyang Shire Council**

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30/11/2012

#### **4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba**

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TRIM REFERENCE: DA/82/2012 - D03196650

MANAGER: Peter Fryar, Manager Development Assessment

AUTHOR: Julie Garratley; Development Planner

#### **SUMMARY**

An application has been received for a Residential Flat Building consisting of 26 Senior Living Units at Wadalba. The application is made under the provisions of State Environmental Planning Policy (Housing for Seniors and People With a Disability) 2004 (Seniors Living SEPP). The twenty-six units will consist of 12 x one-bedroom and 14 x two-bedroom single-storey attached dwellings. The application has been examined having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act (EP&A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report. The application is recommended for approval.

<b>Applicant</b>	Ross Howard
<b>Owner</b>	Mr Y and Mrs O Shevket
<b>Application No</b>	DA/82/2012
<b>Description of Land</b>	Lot 1111 DP 1080360 459 Pacific Highway, Wadalba
<b>Proposed Development</b>	26 seniors living dwellings
<b>Site Area</b>	7,868m <sup>2</sup>
<b>Zoning</b>	2(e) (Urban Release Area Zone)
<b>Existing Use</b>	Vacant
<b>Estimated Value</b>	\$2,018,000

#### **RECOMMENDATIONS**

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

#### **PRECIS**

- The application is for 26 one (1) and two (2) bedroom single-storey attached dwellings. Each dwelling has its own single-car garage and private courtyard. The application includes three visitor parking spaces, communal open space and site landscaping.

#### **4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

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- The site is zoned 2(e) (Urban Release Area Zone) and “Housing for older people or people with a disability” is a permissible use with Council’s consent.
- The application is made under the provisions of the Seniors Living SEPP.
- Following the submission of additional details and amended plans, the application now complies with the requirements of the Seniors Living SEPP.
- The application was advertised and 55 submissions were received with the main issues raised being whether the development would provide “low-income housing”, character of the area, possible traffic impact, adequacy of on-site visitor parking and the buildings’ appearance.
- All issues raised in the objections are addressed in the report and consent is recommended.

#### **INTRODUCTION**

The property, known as 459 Pacific Highway Wadalba, is an irregular-shaped allotment fronting the eastern side of the Pacific Highway road reserve at Wadalba. The lot has an area of 7,868m<sup>2</sup>, is vacant, and has a slight, regular fall from its south-eastern corner to its north-western corner. The sites eastern boundary is Quarterhorse Parade, a 14.5m wide, constructed public road and Settlement Drive, another public road, abuts the sites northern boundary. In accordance with a previous subdivision development consent, Settlement Drive has been extended through the lot to its southern boundary but, although constructed, has not been dedicated as public road. A constructed footpath/overland flowpath runs adjacent to the sites northern boundary from the present end of Settlement Drive to the Pacific Highway road reserve.

To the east of the site, on the eastern side of Quarterhorse Parade, lies “Owl Park”, a Council-owned, embellished public reserve, 3426sq m in area. To the north, north-east, south-east and south are relatively recent residential subdivisions now mostly developed with mainly single and some two-storey detached dwelling-houses. Immediately south of the subject site lie two large semi rural properties that are also zoned 2(e) (Urban Release Area Zone).



#### 4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)



*FIGURE 1: Aerial photograph of site (highlighted) and surrounds with cadastral overlay.*

#### **The Proposed Development**

The proposal is for the construction of twenty-six single-storey dwellings as “in-fill self-care housing”, a class of self-contained dwellings defined in Clause 13 of the Seniors Living SEPP (see plans in Attachment 4).

The dwellings would be built in two stages: the first stage would consist of the land on the western side of the (constructed but not dedicated) extension of Settlement Drive, adjacent to the Pacific Highway road reserve, being developed with six one-bedroom dwellings and six two-bedroom dwellings; the second stage would consist of the land on the eastern or opposite side of the extension of Settlement Drive being developed with six one-bedroom dwellings and eight two-bedroom dwellings.

The first stage consists of four main buildings (Blocks A, B, C and D) all oriented on an east-west alignment. Each of these buildings will contain three dwellings. For each of the two sets of buildings there is a separate internal driveway which forms the combined vehicular and pedestrian access to individual dwellings. A visitor carparking space and manoeuvring area is located at the end of each of the two driveways.

The second stage consists of four main buildings. The two buildings fronting Palomino Road (Buildings E and F) each contain two dwellings and the two other buildings (Buildings G and H) each contain five dwellings. All four buildings are oriented on an east-west alignment and access for the two southern-most buildings is proposed from an internal driveway leading to the extension of Settlement Drive.

### **4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

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Three of the four northern-most dwellings in this second stage are designed with their individual driveways accessing Palomino Road and the fourth dwelling has its individual driveway accessing Settlement Drive. A visitor carparking space is provided adjacent to the western side of Block E.

All buildings are to be constructed of a combination of brick, concrete tile, glazing and hardiplank and each of the 26 dwellings has its own single-car garage and a private open space courtyard. The development also proposes to provide a residents' outdoor communal area, site landscaping and bin storage areas.

#### **Summary**

The proposed development is for 26 strata titled units to be used as housing for the over 55s. The proposal is to integrate with the surrounding residential area and offer an alternative accommodation to those who wish to down size from a larger home to a residence which offers less maintenance.

A number of issues were raised in regard to the development proposal which included access to public transport, details of fencing, amendments to some elevations to improve appearance, improvement of private open space areas, the provision of details of colours and materials and provision of information required to be submitted under the Seniors Living SEPP.

To achieve satisfactory access to existing bus stops a footpath of 1.5 metre minimum width from Settlement Drive to the intersection of London Drive and Pacific Highway is required to be constructed. The existing footpath along Settlement Drive to London Drive will also need to be widened. This is the most direct path of travel for occupants to access public transport and will achieve obligations under the SEPP to provide access to public transport at no greater than 400m in distance from the site.

The private open space areas, with the exception of Block H, have a 1.2m high fence around perimeters to provide privacy for the occupants. The preference for the units in Block H is to utilise the landscaping to achieve privacy for the occupants. The applicant has also added the use of full height horizontal slat screens in locations where additional privacy is required.

The local area is zoned for residential use to cater for a range of housing types appropriate to the area. The surrounding locality contains a mix of one and two storey contemporary detached dwellings. The roads are sealed with roll type gutters and are quite narrow. Concerns have been raised over the impact of the additional traffic movements the development will present.

Traffic generation for the proposed development has been compared to that of the approved and commenced subdivision application (DA/788/2005), using standard traffic generation rates taken from the Roads & Maritime Services (RMS) Guide to Traffic Generating Developments. The comparison indicates a predicted reduction in trip generation both in peak hour and daily time steps compared to the approved and commenced subdivision application. This is shown in Table 1 below under DCP 2005 Chapter 67 Engineering Requirements for Development. A review of RMS accident data indicates that no accidents have been recorded at the intersection of Johns Road and Settlement Drive in the last five years which is the entry/exit point of the residential estate.

### 4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)

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The proposed development is compatible with the ultimate road hierarchy identified in DCP 2005 Chapter 49 which is being delivered incrementally over time. The proposed development will include that part of Settlement Drive constructed under DA/788/2005 to be dedicated as a public road. The missing portion to complete the link to Johns Road was approved under DA/1580/2005/B and is yet to be constructed. The development will necessitate the completion of road infrastructure in accordance with the relevant provisions of DCP 2005 Chapters 49, 66 and 67 which will include the provision of a 1.5 metre wide concrete footpath for the full frontage of the development, gutter/footpath crossings, completion of Settlement Drive road formation and stormwater drainage works. Additionally, a turning bay must be provided towards the southern end of the Settlement Drive extension.

Vehicle entry and exit has generally been designed to achieve entry and exit in a forward direction, with the exception of Villas 1 to 4 (inclusive) of Stage 2. Access to these villas requires a single reversing manoeuvre, which is considered satisfactory considering each villa is served by a separate driveway that feature adequate sight distances and the low vehicle trip generation anticipated with each villa.

The development provides a single car garage as a minimum to each unit. In accordance with the Seniors Living SEPP, 5% of the total number of car parking spaces must be designed to enable the width of the spaces to be increased to 3.8 metres. The development is only required to provide a minimum of two garages with these dimensions but includes a minimum of four garages in Stage 1 and four garages in Stage 2 with dimensions of 6.0m x 3.85m which satisfies this requirement. Visitor car spaces are provided with four in Stage 1 and two in Stage 2 which is also acceptable as the Seniors Living SEPP does not stipulate a number required.

The proposal attempts to integrate with the character of the local area by presenting a single storey unit development suitably contoured and landscaped with subtle colours to complement the local streetscape. A 3D image is provided in Attachment 3 as an indication of the appearance of the completed development. The units are proposed for strata subdivision which would put each in private ownership with a body corporate responsible for the maintenance of open space and landscaped areas.

The overall concept of "Owl Park Senior's Living" is considered to be worthwhile. With the exception of a variation sought to allow two garages of the 26 units to be setback at a distance of 4.5 metres, the general proposal is generally compliant with SEPP Seniors Living and the required setbacks in accordance with DCP Chapter 99 Building Lines.

#### VARIATIONS TO POLICIES

Clause	3.1
Standard	6m setback to garage
LEP/DCP	DCP 2005, Chapter 99 Building Lines
Departure basis	7.7% (approx.) 2 of 26 units have garages set back at 4.5m from the front boundary.

### **4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

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#### **HISTORY**

- 05/05/2005: Development consent (DA/788/2005) granted for eleven-lot residential subdivision.
- 07/11/2007: Development application (DA/1500/2007) cancelled for garden apartments and town-houses.
- 01.06.2009: Development application (DA/1720/2007) for seniors living development comprising 25 single-storey dwellings and four two-storey dwellings withdrawn.

#### **PERMISSIBILITY**

The land is zoned 2(e) (Urban Release Area Zone) under Wyong Local Environmental Plan 1991 (WLEP). The use is defined under the WLEP 1991 as "housing for older persons or people with a disability" which is permissible, with Council consent within the zone. However, the proposal is also permissible under the provisions of Seniors Living SEPP which permits such developments (in-fill self-contained dwellings) on land zoned primarily for urban purposes which includes Council's 2(e) (Urban Release Area Zone).

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

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

- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004
- Seniors Living Policy: Urban Design Guidelines For Infill Development
- Wyong Local Environmental Plan 1991
- Wyong Development Control Plan 2005
  - Chapter 49 – Warnervale East and Wadalba North West Urban Release Area
  - Chapter 69 – Controls for Site Waste Management
  - Chapter 70 – Notification of Development Proposals
  - Chapter 99 – Building Lines
- Warnervale District Section 94 Plan
- Landscape Policy and Guidelines

#### **ECOLOGICALLY SUSTAINABLE DEVELOPMENT PRINCIPLES**

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

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

#### **4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

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##### **Climate Change**

The potential impacts of climate change on the proposed seniors living development have been considered as part of the assessment of the application. Climate change includes consideration of such matters as potential rise in sea level; potential for more intense and, or, frequent extreme weather conditions including storm events, bush fires, drought, flood and coastal erosion; as well as how the proposed development may cope, combat or withstand these potential impacts. In this particular case, there were no matters that warranted further consideration.

##### **ASSESSMENT**

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

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

##### **State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004**

The development is required to be assessed against the relevant provisions of the SEPP for Seniors and People with a Disability 2004. The following compares the details of the proposal against specific requirements of the Seniors Living SEPP. A summary table of how the development complies with the various requirements of the Seniors Living SEPP can be seen in Attachment 2.

##### **Clause 24 Site compatibility certificates required for certain development applications**

Clause 24 prohibits Council from consenting to a seniors housing development unless the Director-General has certified a current site compatibility certificate for the site. However, Clause 24(1A) states that if seniors housing is permissible with consent on the land under another environmental planning instrument then a site compatibility certificate is not required. In this respect it is noted that WLEP 1991 permits seniors housing with consent within the 2(e) zone that applies to the land. Therefore, no site compatibility certificate is required in this instance.

##### **Clause 25 Application for site compatibility certificate**

Site compatibility certificate not required.

##### **Clause 26 Location and access to facilities**

Clause 26 prohibits Council from consenting to a development unless it is satisfied, by written evidence, that the residents of the proposed development will have access to:

- a) shops, bank service providers and other retail and commercial services that residents may reasonably require;
- b) community services and recreation facilities; and
- c) the practice of a general medical practitioner.

#### **4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

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In terms of “access”, Clause 26(2)(c) of the Seniors Living SEPP provides that if the site is within 400 metres of a bus stop where a bus will take residents to within 400 metres of the required services then access is deemed to be satisfactory. However, access to the bus stop must be via a suitable access pathway which is defined, inter alia, as a sealed pathway suitable for wheelchairs, motorised carts and the like.

The applicant has proposed that residents would access bus stops on the eastern and western sides of the Pacific Highway just south of the highway’s intersection with London Drive. This would allow residents to travel to centres such as Wyong to the south and Lake Haven in the north. The bus stops are north of the site and within 400 metres but require the construction of a suitable concrete pathway from Settlement Drive to the Pacific Highway with the existing footpath north of the development along Settlement Drive to be widened in order to satisfy the SEPP’s requirements of a “suitable access pathway”.

#### **Clause 27 Bush fire prone land**

The land is not identified as bush fire prone land.

#### **Clause 28 Water and sewer**

Clause 28 requires Council to be satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for removal or disposal of sewage. The proposed development can be serviced by the existing sewer infrastructure adjacent to and traversing the development. The developer must extend the water main for full frontage of Settlement Drive. Developer contributions charges for water supply and sewerage in accordance with the relevant Development Servicing Plan will be applicable.

#### **Clause 29 Certain site compatibility criteria**

Notwithstanding that a site compatibility certificate is not required for this site, Clause 29 requires Council to take into consideration site compatibility criteria referred to in Clause 25(5)(b)(i) (iii) and (v). Those criteria are:

- (i) *the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of the land in the vicinity of the proposed development,*
- (iii) *the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,*
- (v) *without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.*

### **4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

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In regards to the Point (i) above it is noted that, in terms of the natural environment, the site is considered to be suitable for the development in that it has no significant physical constraints, such as extreme slope, or significant hazards, such bush fire, or significant resources. This physical suitability for various types of residential development has previously been demonstrated by Council's granting of consent for the site to subdivided into ten residential lots ranging in size from 584.6m<sup>2</sup> to 695.6m<sup>2</sup>.

In regards to Point (iii), the site's suitability in terms of services that are or will be available to the site, it has already been demonstrated that there are retail, community, medical and transport services available provided a suitable access pathway is constructed for residents to easily access bus transport to take them to those services in Wyong and Lake Haven. In this regard the site can be regarded as suitably located in terms of available services.

In regards to Point (v), built form and character, this proposal is for twenty-six attached dwellings in place of an approved subdivision which would have created ten lots that would, in all likelihood, have been developed for detached dwelling-houses similar to those in the neighbourhood. However, while the proposed numerical dwelling density is higher than the surrounding residential development, the *Design Guideline for Infill Development* (see later discussion) acknowledges that the likely higher densities do not preclude the development from achieving a good "fit" within an existing low-density residential environment. With this in mind, is considered that it is more the overall design (dwellings present to the roads), bulk (single storey) and materials (brick, tile, glazing and hardiplank) of the development rather than any particular number of dwellings that allows the development to "fit" well within the existing character of the neighbourhood.

#### **Clause 30 Site analysis**

Clause 30 prohibits Council from consenting to a development unless it is satisfied that the applicant has taken into account a site analysis prepared by the applicant in accordance with the requirements of this clause. These requirements include a written statement explaining how the design of the proposed development has regard to the site analysis and explaining how the design of the proposed development has regard for the design principles set out in Division 2 of the SEPP.

Clause 30 provides a specific list of items that should be shown on the site plan. In this regard the applicant's site plan fails to provide the following details:

- Neighbouring buildings: location, height, use, balconies on adjacent properties, and pedestrian and vehicle access to adjacent properties;
- Privacy: adjoining private open spaces, living room windows overlooking site, location of any facing doors and/or windows;
- Views and solar access: enjoyed by neighbouring properties;
- Major trees: on adjacent properties;
- Street frontage features: poles; trees; kerb crossovers, bus stops, and other services;
- Built form and character of adjacent development: architectural character, front fencing, and garden styles;
- Heritage features: of surrounding locality and landscape
- Direction and distance to local facilities: local shops, schools, and recreation and community facilities;
- Adjoining land uses and activities

#### **4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

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It is noted that some of these details such as footpaths appear on other plans such as the "Proposed Rainwater Tank Catchment, Service Area and Location" that was submitted before amendments were made to the design and before the RMS informed Council that the site would be required to have stormwater on-site detention facilities that would attenuate post-development flows to pre-development flows. Additionally the applicant has since submitted a written site analysis identifying details generally required on the site analysis plan.

Clause 30 requires the applicant to explain how the design of the development has regard for the site analysis. The clause also requires the applicant to explain how the design of the proposed development has regard to the design principles set out in Division 2 and this has not been provided by the applicant. A site analysis has been prepared in accordance with the requirements of Clause 30 of SEPP (Seniors).

Although lacking in detail from the applicant, the development proposal is considered to meet the requirements of the above design principles as noted in Attachment 2.

#### **Clause 31 Seniors Living Policy: Urban Design Guideline for Infill Development**

Clause 31 of the SEPP requires Council to take into consideration the provisions of the *Seniors Living Policy: Urban Design Guideline for Infill Development* published by the Department of Infrastructure, Planning and Natural Resources in March 2004.

The document has five sections, each corresponding to a key issue when designing development under the Seniors Living Policy, these being:

- Improving neighbourhood fit (responding to context);
- Improving site planning and design (site planning and design);
- Reducing impacts on streetscape (impacts on streetscape);
- Reducing impacts on neighbouring properties (impacts on neighbours); and
- Improving internal site amenity (internal site amenity).

The following is an assessment of the proposed development against the Guideline's five key issues.

#### **Responding to Context**

The Guidelines state that new developments that increase residential densities need not be out of character with their area but should contribute to the overall character of the area, or, in other words, have a good neighbourhood "fit". The Guidelines maintain that an appreciation of neighbourhood character and good site analysis are key factors to producing quality developments under the Policy.

The key elements that contribute to neighbourhood character and therefore should be considered in the planning and design of new development are:

#### **Street layout and hierarchy:**

In terms of this key element it is noted that the site is located in a newly developed, low-density residential suburb and that the planned road pattern proposed in Chapter 49 Warnervale East and Wadalba North West Urban Release Area of Wyong DCP 2005 is to be maintained by the extension and dedication of Settlement Drive.



### 4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)

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#### **Block and lots:**

The neighbourhood lot pattern is one of individual residential lots, with a general size of 550m<sup>2</sup> to 650m<sup>2</sup>, that is of fairly recent origin. The exception to the general lot size are those lots fronting the Pacific Highway road reserve which are 10 metres deeper to permit dwellings to be set further from the road reserve in recognition of the noise generated by traffic travelling along the highway. The site is a parcel that had been consented to for subdivision into ten (10) lots consistent with surrounding subdivisions. The current proposal is an example of “infill development”.

The Stage 1 parent lot has the advantage of a regular rectangular shape and long road frontage but runs almost due north-south providing challenges to maintaining a good street pattern while ensuring that dwellings and private open space maximise solar access and avoid excessive noise. The Stage 2 parent lot, however, has three road frontages, making it highly visible and is almost square in shape that also provides challenges for a design that will “fit” within the neighbourhood.

The design appears to have attempted to account for the above considerations in the following ways:

- Dwellings located adjacent to the western boundary in Stage 1 have no windows on that façade and have garages located on the western elevation to reduce any impact of noise and summer afternoon solar gain;
- All buildings have a northerly orientation to maximise winter solar access;
- Private open spaces and living areas are located on the north side of each dwelling to maximise winter solar access.
- Buildings avoid running parallel to public roads and buildings tend to present as a single dwelling to the road similar to that in the neighbourhood by reorienting the buildings and reducing the number of dwellings from that proposed in the previous 2007 application.
- As the site is highly visible, all dwellings are single storey, with adequate roof articulation and site landscaping.
- No front boundary fencing is proposed consistent with the surrounding development.

In summary, the design of the development appears to have responded to the challenges and opportunities of the blocks.

#### **Built environment:**

The Guidelines state that residential neighbourhoods are often consistent in terms of built form. This includes not only the size and shape of buildings but the spaces between them. It is important, according to the Guidelines, that new built form, as far as possible, follows these patterns.

### 4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)

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The surrounding streets have a very consistent built form: predominantly single-storey, detached dwellings set back from the street with landscaped gardens and no front boundary fences. Dwellings address the street and have a general width at the front building alignment of 14 metres, have separate driveways and are separated from each other, usually, by a minimum of approximately 1.8 metres. The current design proposes single-storey dwellings in an arrangement where no long rows of attached dwellings present to any of the three local street frontages.

In addition, an attempt has been made for the nearest dwellings to any street to present to the street but it is considered that this presentation can be further strengthened by simple but effective techniques such as including windows in the garage walls of Dwelling 5 and Dwelling 10 in Stage 2 which front Settlement Drive. These suggested improvements were discussed with the applicant who has agreed to these proposed amendments and they are recommended to be included in any consent granted by Council.

#### **Trees**

The Guidelines maintain that trees and vegetation are critical in establishing the particular character of a neighbourhood or street and that distinctive patterns of planting can often compensate for undistinguished built form.

A landscape plan has been submitted with the application. The landscape plan proposes to emulate the current street tree plantings in the surrounding area and to provide significant landscaping of both private and communal open space areas. It is considered that the proposed landscaping will assist in ensuring that the development will fit well within the neighbourhood.

#### **Policy environment**

Chapter 49 Warnervale East and Wadalba North West Urban Release Area of DCP 2005 applies to the land and in Section 2.0 of that chapter it states, in part, that the aims for the development of the area are to have:

- *A high-quality and varied residential environment; and*
- *Attractive streetscapes which reinforce the function of the street and enhance the amenity of dwellings; and*
- *Provide opportunity for a variety of housing types.*

The chapter continues in Section 3.0 Philosophy (Page 4) to state that:

*“The quality of the subdivision will be influenced to a great extent by the appearance and function of the streetscape. The streetscape is an element which influences the physical environment of any community more than any single element of a plan.”*

It is considered that the design of the proposed development does consider what the key characteristics of the area are as identified by Council and are reasonably reflected in the design of the buildings and their relationship to the surrounding built and open space environment.

### **4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

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Schedule 3 refers to standards concerning accessibility and useability for self contained dwellings.

The development proposal has been designed in accordance with the accessibility and useability provisions contained within SEPP (Seniors).

#### Site Planning and Design

The design utilises the lot shapes and orientation to achieve suitable private open space which maximises solar access and avoid excessive noise. The design of Stage 1 provides access from two entry points on Settlement Drive which reduces traffic impact. Stage 2 has one entry driveway with four units having direct access. Units 2 to 4 have direct access onto Palomino Road while unit 1 has direct driveway access to Settlement Drive.

#### Impacts on Streetscape

The development will be suitably landscaped to provide an attractive appearance. Fence heights are a maximum of 1.2 metres to avoid a "compound" type resemblance and street facades have suitable detail to address the street in an attractive fashion. The buildings avoid running parallel to public roads and tends to present as a single dwelling as viewed from the roadways.

#### Impacts on Neighbours

The location of the development is unlikely to have a large impact upon the neighbours. The majority of the units are accessed by a communal driveway with the exception of units 1 to 4 in Stage 2 which have direct access to the street. A major concern of the residents is the impact that the Seniors Living development will have upon traffic. It has been found that the Seniors Living development will actually generate less traffic than the previously approved 10 lot subdivision which could have accommodated 10 single dwellings. Senior's Living developments by their nature generate less traffic than regular residential living. Visitor parking has also been raised as an issue. The development provides six visitor car spaces with units 1 to 4 in Stage 2 providing a stacked parking arrangement for visitors. The amount of visitor parking is acceptable under the Seniors Living SEPP.

#### Internal Site Amenity

The design provides a shared open space area which contributes towards the overall site amenity. Each unit has its own private open space and all with the exception unit 8 in Stage 1 achieve suitable solar access. Unit 8 achieves slightly less than the recommended three hours between the hours of 9am and 3pm on the 21 June (winter solstice). However, the SEPP only requires 70% of the units in the development to achieve the minimum three hours, therefore access to solar amenity is acceptable. Each unit looks out onto individual private open space which assist in creating the illusion of more space by bringing the outside in. The development provides suitable paths and lighting in accordance with the Seniors Living SEPP further contributing towards a positive site amenity.

### **4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

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

The proposed senior's living is permissible with consent and complies with the objectives of the zone which is to cater for a range of housing types appropriate for an urban release area and not exceeding two storeys in height. The proposed seniors living development provides an alternative residential development for the over 55s who either no longer need a larger home or may have become disabled and require the convenience of a purpose built unit of modest proportions.

#### **Wyong Development Control Plan 2005 Chapter 49 – Warnervale North West Urban Release Area**

The Warnervale/Wadalba Urban Release Area represents a significant expanse of land that is capable of supporting in excess of 10,000 dwellings. It is an objective of Council that development of the area is well planned and more importantly developed to provide an efficient and attractive environment for those who will come to live there in the future. The proposed senior's living development contributes towards environmentally and socially sustainable growth.

The Chapter aims to facilitate development for primarily residential purposes in accordance with the provisions of WLEP 1991 (Amendment No 2, No 96 and No 163) in a manner that will:

- Provide a high quality and varied residential environment with accessible open space, retail and community facilities;

The proposed development complies with the objectives of Chapter 49 by providing a high quality residential development that is a variation of the dwelling types offered within the urban release area. Each unit provides private open space in an easy to access location direct from living areas, communal open space and a park is located opposite the subject site.

- Provide attractive streetscapes which reinforce the function of a street and enhance the amenity of dwellings;

The proposed development provides an attractive streetscape through the use of articulation and landscape design. The individual dwelling units face the internal access roads and only Villas 1,2,3 and 4 of blocks E and F have direct access from garages onto Settlement Drive or Palomino Road. The small amount of direct access results in less vehicle accessible entry points allowing the smooth flow of traffic through the residential area.

- Provide opportunity for a variety of housing types;

The development proposal contributes towards providing a variety of housing type through the one and two bedroom unit types offered. These units are designed for the over 55s who are downsizing and looking for a smaller residential option, or those who may suffer from a disability and may need the design of purpose built unit to enable them to continue independence and quality of life.

- Provide a safe and efficient system of roads and pathways for vehicular, pedestrian and cycle movements;

### **4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

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The proposed development contributes towards a safe system of access ways through the efficient use of internal roads and pedestrian pathways which provide access to cycleways and transport links such as bus stops.

- Provide for the protection and enhancement of the environment.

The proposed development protects the environment by providing appropriate stormwater and drainage design which is unlikely to provide an adverse impact to public land. The proposal will enhance the environment by providing quality architecturally designed dwellings as infill development to complement the surrounding area. Suitable landscaping has been proposed to integrate and enhance the immediate locality.

### **Wyong Development Control Plan 2005 Chapter 67 – Engineering Requirements for Development**

#### Roads, Access & Traffic

Vehicle entry and exit of the development has generally been designed to achieve entry and exit in a forward direction, with the exception of Villa 1 to 4 (inclusive). Access to these villas requires a single reversing manoeuvre, which is considered satisfactory considering each villa is served by a separate driveway that features adequate sight distances and the low vehicle trip generation anticipated with each villa.

The development will necessitate the completion of road infrastructure in accordance with the relevant provisions of DCP 2005 Chapters 49, 66 and 67. Conditions have been recommended requiring the provision of a 1.5 metre wide concrete footpath for the full frontage of the development, gutter/footpath crossings, completion of Settlement Drive road formation and stormwater drainage works. Additionally, a turning bay must be provided towards the southern end of Settlement Drive extension. The applicant has confirmed the intention to dedicate the portion of Settlement Drive that results in the divide of the parent property to Council. The developer is also required to provide of a 1.5m wide footpath from the Pacific Highway to Settlement Drive and widen the pathway along the western side of Settlement Drive to the northern boundary of the proposed development.

Traffic generation for the proposed development has been compared to that of the approved and commenced subdivision application (DA/788/2005), using standard traffic generation rates taken from the RTA (RMS) Guide to Traffic Generating Developments. The comparison indicates a predicted reduction in trip generation both in peak hour and daily time steps compared to the approved and commenced subdivision application as shown in table 1 below.

#### 4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)

**Table 1:** Comparison of vehicle trips between 26 senior's living units and 10 residential dwellings.

Time Step	Generation Rate / Trip Generation	10 Residential Lots DA/788/2005	26 Senior's Living Units DA/82/2012	Difference
Peak Hour	Vehicle Trip Rate	0.85 trips / dwelling	0.2 trips / unit	- 3.3 trips (- 39%)
	Vehicle Trips	8.5 trips	5.2 trips	
Daily	Vehicle Trip Rate	9.0 trips / dwelling	2 trips / unit	- 38 trips (- 42%)
	Vehicle Trips	90 trips	52 trips	

The proposed 26 unit senior's living development will result in less traffic generation than the previously approved 10 lot subdivision. Given the narrow characteristics of the local roads the reduced number of traffic trips is considered to be favourable to the local environment.

#### Flooding

A public pathway that adjoins the northern boundary of the development forms a dual function as a stormwater overland flow path for the local catchment, which operates during storm events exceeding the piped capacity of the stormwater network. The development application is supported by a flood study to estimate flow behaviour. The study has been reviewed and the calculations/methodology are considered to be adequate.

The analysis has confirmed that the path/road network adjacent to the development does not have sufficient capacity to convey the peak 1% AEP overland flows. The applicant's Engineer has made recommendations requiring minimum floor levels for habitable floor and garage floor levels, and the provision of strategically placed dwarf walls to redirect overland flows. Conditions have been recommended that will require compliance with the recommendation of the flood study, which will entail minor changes to floor levels and the provision of dwarf walls along both the full length of Quarterhorse Parade and the full lot frontage of the public pathway.

#### Stormwater Management

The proposed development will require the completion of interallotment drainage system along the rear of the properties on the western side of Settlement Drive and the provision of Council road drainage as required by relevant provisions of DCP 2005 chapters 49, 66 and 67. Stormwater generated from the development will be discharged to either the adjacent kerb or interallotment drainage system. A condition will be included to detail the required design and construction of the interallotment drainage system and council road drainage, in addition to the requirement for a detailed stormwater management plan covering the internal stormwater management.

#### **4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

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##### Water & Sewer

The proposed development can be serviced from the existing sewer infrastructure adjacent to and traversing the development. The developer must extend in the water main for the full frontage of Settlement Drive. Developer contribution charges for water supply and sewerage in accordance with the relevant Development Servicing Plan will be applicable.

##### **Wyong Development Control Plan 2005 Chapter 69 – Controls for Site Waste Management**

A Waste Management Plan has been submitted as part of the application. Accordingly, the proposal is consistent with the objectives and requirements of Chapter 69 – Controls for Site Waste Management.

##### **Wyong Development Control Plan 2005 Chapter 99 – Building Lines**

The development proposal has been lodged under the provisions of SEPP Seniors Living however in regard to building lines, the proposal complies with DCP Chapter 99 with the exception of the units in Stage 2 which face Palomino Road. The garages of units 1 and 4 of Stage 2 are setback at 4.5 metres instead of 6.0 metres. The variation offers articulation and variation in the street façade and results in variation of approximately 7.7%. Given the overall compliance with building line setbacks, this variation can be recommended for support.

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

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

The site is within a relatively recent residential subdivision located to the east of the Pacific Highway and north of Johns Road at Wadalba. The height, bulk and scale of the proposed development is consistent with the low density residential setting and overshadowing, overlooking or visual impacts are negligible. The location and design of the development is suitable in regard to the site constraints and the impact on the natural and built environment is considered acceptable.

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

Access to the site is currently via Quarterhorse Parade with future access to include Settlement Drive. Settlement Drive currently has a break in the constructed road, however the road has been constructed on the subject site but is yet to be dedicated as public road. Settlement Drive effectively divides the subject site into two enabling access to the site from Quarterhorse Parade, Palomino Road and Settlement Drive. The development is to be built in two stages with stage 1 being the area closest to Pacific Highway. Stage 1 consists of 12 units which are accessible via two driveways off Settlement Drive. Each unit is then accessed from the internal driveway. Stage 2 consists of 14 units with a common driveway from Settlement Drive to access the units of Block G and H, while unit 1 has direct access from Settlement Drive and units 2, 3 and 4 have direct access from Palomino Road. These units are required to reverse egress which is considered acceptable in this situation considering the low traffic volume of the neighbourhood street and adequate sight distance.

### 4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)

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All access and paths of travel have been designed in accordance with AS1428 for access and mobility. Wheelchair access by a continuous accessible path of travel can be obtained by all residents.

Throughout the development, adequate pathway lighting is to be provided. Letterboxes are also located where wheel chair access is accessible. Each unit has a minimum dimension of 6.0m x 3.2m. The Seniors Living SEPP requires 5% of the total number of car spaces or at least one space if fewer than 20 spaces to have an increased width of 3.8m. The development has four garages in stage 1 and four garages in stage 2 with a minimum width of 3.85m which exceeds the minimum amount required of two garages for the whole development.

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

The inclusion of a public footpath between the footpath at Settlement Drive and the pedestrian crossing at London Drive will be required as part of the development. This path will improve pedestrian connectivity to the existing bus stops. The existing path along Settlement Drive will be required to be widened to achieve the required standards. The development proposal includes private open space to each unit as well as common open space areas and easy access to Owl Park which is adjacent to the development on Quarterhorse Parade.

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

The proposed development will impact on the utilities supply with the need for supply to 26 individual units. The proposed development can be serviced from the existing sewer infrastructure adjacent to and traversing the development. The developer must extend in the water main for the full frontage of Settlement Drive. Developer contribution charges for water supply and sewerage in accordance with the relevant Development Servicing Plan will be applicable.

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

There are no known items of heritage significance either within the site or in the vicinity of the site.

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

The site is not known to contain any valuable resources.

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

The proposed development will require the completion of interallotment drainage system along the rear of the properties on the western side of Settlement Drive and the provision of Council road drainage as required by relevant provisions of DCP 2005 chapters 49, 66 and 67. Stormwater generated from the development will be discharged to either the adjacent kerb or interallotment drainage system. A condition has been recommended detailing the required design and construction of the interallotment drainage system and council road drainage, in addition to the requirement for a detailed stormwater management plan covering the internal stormwater management.



#### 4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)

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

There are no known effects on the conservation of soils or acid sulphate soils.

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

The proposed development is unlikely to affect air and microclimatic conditions.

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

The site vegetation is limited to grass cover. The proposed development is unlikely to have any affect on flora and fauna.

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

Waste management facilities such as bin storage enclosures for collection by Council's contractors via Settlement Drive.

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

The development application has been accompanied by a BASIX Certificate which outlines compliance with energy and thermal comfort requirements.

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

The proposed development will generate noise and vibration during the construction stage, however this would be expected to cease upon completion with noise levels generated from the development that of the standard residential environment.

DCP Chapter 49 requires the construction of acoustic fencing along the boundary fronting the Pacific Highway. This acoustic fence is existing and was constructed in conjunction with a previous development application.

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

The site is identified as potentially being affected by mine subsidence. The proposed development was referred to the Mines Subsidence Board (MSB) who approved the application subject to specific conditions of consent as outlined below under "*submissions from public authorities*".

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

There are no known technological hazards that are likely to affect the development.

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

The design appears to have incorporated crime prevention measures through the use of natural surveillance and access control. Passive natural surveillance is achieved by locating nominated open space areas where they can be casually observed from private open space and primary living areas of adjoining dwellings and by pedestrian and vehicular traffic within the development.

#### **4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

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Territorial reinforcement and natural access control are incorporated into the landscape strategy that seeks to clearly define private from public area within the development. Appropriate lighting will further enhance safety, security and crime prevention measures. The utilisation of communal open spaces will promote community ownership of public spaces as well as increasing use reducing the opportunity for crime and vandalism in these locations.

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

The proposed development will provide additional housing for seniors living. Given that the general population is ageing with a large number of the population in the Wyong Shire being over 55, the development creates a positive social impact for the senior members of the community who would prefer to live in a comfortable environment with others of similar age.

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

The proposed residential development is unlikely to have any detrimental economic impacts.

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

The proposed dwelling units are to be located within a 2(e) Urban Release Area zone therefore a site compatibility certificate was not required. The development is to occur in two stages with Stage 1 units to be located in four rows with direct access to internal service roads and footpaths and communal open space. The site and internal design is considered to be satisfactory.

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

The construction phase is not expected to create any significant impacts however conditions relating to hours of construction and traffic control are recommended.

*Any **cumulative impacts**.*

The proposed development is not expected to create any cumulative impacts.

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

*Whether the **proposal fits in the locality**.*

The proposed development is for seniors living units. The proposal is within an appropriate zone and will compliment the residential surroundings. The proposal is considered to fit within a locality where there a large number of the population are over 55 and in need of appropriate accommodation.

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

The site attributes are considered to be conducive to the development.

**4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

**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 55 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 EP&A Act 1979. A summary of the submissions is detailed in the table below.

<b>Doc. No</b>	<b>Summary of Issues</b>	<b>Response</b>
D02950751 D02950748	Settlement Drive unable to cope with traffic increase	Traffic generation of the proposed development was compared to that of the previously approved 10 lot subdivision and found to produce less. Therefore Settlement Dr is considered capable of coping with the traffic produced by the development.
D02953388	High fence around development Increased traffic & parking issues Reduction in local property values	There is a 1.2m high fence around portions of the development. Traffic as above. The development supplies some visitor parking. Affect on property values is unknown.
D02950656	Lack of visitor car spaces	Stage 1 offers four visitor car spaces, stage 2 has two visitor spaces plus units 1 to 4 have stacked parking to accommodate visitors to these units.
D02950655 D02949855 D02947626 D02946920 D02947626 D02946217	Increased traffic and decrease of safety	Traffic will be less than the previously approved DA (as above). The speed limits and street design dictate travel speeds, therefore safety should be maintained.
D02942410	Increased traffic and parking. Childrens safety as a result of additional traffic. Noise emanating from proposal.	Traffic will be less than the previously approved DA (as above). The speed limits and street design dictate travel speeds, therefore safety should be maintained. Noise should be that of any residential development.
D02947097 D02947970 D02947607	Development out of character for the area Estate only for single dwellings Devalue properties Increased traffic Units can change from seniors living to low cost housing. Will be rented out by young people	The development is permissible within the residential zone and while a higher density form of design, the design has attempted capture the character of the area through the use of a single storey and facades that address the street. It is unknown the affect the proposal will have on property values. Traffic not expected to increase as much as if ten single dwellings. The units will be identified as being for over 55s/seniors on the 88B therefore unable to be sold/rented as low cost housing.
D02948321	Cheap rent and attract unruly tenants. Potential to be sold to Department of Housing Increased traffic	Tenants will be over 55, unruly people can reside anywhere. Future sales unknown. Traffic as previously mentioned.

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<b>Doc. No</b>	<b>Summary of Issues</b>	<b>Response</b>
D02946243	Devalue property and increase traffic	Impact on property values unknown. Traffic as previously mentioned.
D02951517 D02946151 D02944122	Development out of character for the area Overdevelopment of site Increased traffic and streets too narrow for extra vehicles Devalue property Concerns of type of occupants to live in development	The development is permissible within the residential zone and while a higher density form of design, the design has attempted capture the character of the area through the use of a single storey and facades that address the street. It is unknown the affect the proposal will have on property values. Traffic not expected to increase as much as if ten single dwellings. The units will be identified as being for over 55s/seniors on the 88B therefore unable to be sold/rented as low cost housing.
D02946918 D02946202 D02945962	Represents a community housing compound Increased traffic Devalue properties. Concerned units will be sold to Department of Housing.	Subjective comment. Traffic as previously mentioned. Impact on property values unknown. Future sales unknown.
D02947814 D02950289 D02947616 D02947626 D02946929 D02946910 D02942625 D02946523 D02945741 D02945992	Increased traffic & parking Development out of character for the area Devalue property	The development is permissible within the residential zone and while a higher density form of design, the design has attempted capture the character of the area through the use of a single storey and facades that address the street. It is unknown the affect the proposal will have on property values. Traffic not expected to increase as much as if ten single dwellings. Visitor parking provisions have been included.
D02949137 D02946907 D02945634 D02946236 D02951514 D02946653 D02944760	General objection e.g. out of character, negative impact, developer may sell to Housing Department	The development is permissible within the residential zone and while a higher density form of design, the design has attempted capture the character of the area through the use of a single storey and facades that address the street. Future sales unknown.
D02948705	Increased traffic and decrease of safety Generally rental properties with little screening of who is tenanted. Tenants unsavoury "bong smoking"	Traffic will be less than the previously approved DA (as above). The speed limits and street design dictate travel speeds, therefore safety should be maintained. Unknown the future status of the units and tenants/owners.

**4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

<b>Doc. No</b>	<b>Summary of Issues</b>	<b>Response</b>
D02947995 D02947996	Units do not appear to comply with SEPP requirements. Where are ldy & drying areas? How do you ensure that only 55s reside? Are disabled over 55? Units can be rented to people under 55. Property address misleading Traffic and parking issues. Visual appearance of proposal. Property devalue. How can the units be prevented from being sold to Housing Commission?	Units generally comply with SEPP. Each unit has ldy. Restrictions for over 55s on 88B. The proposal is for seniors, all units are compliant for disabled access with several equipped with extra garage widths. Property address is 459 Pacific Hwy. It is noted that it may be misleading as development proposal fronts Settlement Dr, Palomino Pde & Quarterhorse Pde. Traffic generation of the proposed development was compared to that of the previously approved 10 lot subdivision and found to produce less vehicle trips. Visitor parking is provided. Visual appearance is considered satisfactory. The impact the proposal will have on property values is unknown as is future sales.
D02947809	Development out of character for the area. Devalue properties. Proposal will give false perception of area being for social housing.	The development is permissible within the residential zone and while a higher density, the design has attempted to capture the character of the area through the use of a single storey and facades that address the street. It is unknown the affect the proposal will have on property values.
D02946221	Development out of character for the area. Traffic & parking impacts. Devalue properties. Proposal will have negative impact on how estate is perceived.	The development is permissible within the residential zone and while a higher density, the design has attempted to capture the character of the area through the use of a single storey and facades that address the street. It is unknown the affect the proposal will have on property values. Traffic not expected to increase as much as if ten single dwellings.
D02947602	Development out of character for the area – result in a slum Increased traffic and streets too narrow for extra vehicles Devalue property Concerns of type of occupants to live in development Kitchens not suitable for wheel chairs Access to bus stops over 400m	The development is permissible within the residential zone and while a higher density the design has attempted to capture the character of the area through the use of a single storey and facades that address the street. Traffic generation of the proposed development was compared to that of the previously approved 10 lot subdivision and found to produce less. Therefore Settlement Dr is considered capable of coping with the traffic produced by the development. It is unknown the affect the proposal will have on property values. Applicant has stated that kitchens are in accordance with required AS. Developer is to construct pathway from access path on northern boundary to the intersection at London Dr which is within 400m.

**4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

Doc. No	Summary of Issues	Response
D02946935	<p>Development out of character for the area, i.e brick walls, ghetto &amp; graffiti            No community consultation            Increased traffic and streets too narrow for extra vehicles and emergency vehicles            Devalue property            Address misleading            Lack of visitor parking            No footpaths            Garbage disposal            Undesirable activities occur            Poor access to bus stops &amp; public facilities.            No access to car washing and plant maintenance,</p>	<p>The development is permissible within the residential zone and while a higher density the design has attempted to capture the character of the area through the use of a single storey, low fences and facades that address the street. Community was notified in accordance with DCP70. Traffic generation expected to be less than previously approved 10 lot subdivision. Roads built to Australian Standard. It is unknown the affect the proposal will have on property values.            Address is noted. Footpaths are required as part of the development construction. There are garbage bin areas. Access to bus stops in accordance with SEPP.            Car washing can be undertaken in visitor spaces. Plant maintenance under body corporate.</p>
D02946892	<p>Represents a community housing compound.            Increased traffic &amp; impact on parking.</p>	<p>Proposal considered suitable for site.            Traffic generation expected to be less than previously approved 10 lot subdivision. Each unit has parking and 6 visitor spaces are provided across development.</p>
D02946861	<p>Flood study is in error – no reference to Settlement Dr.            Visitor parking deficient in accordance with SEPP.            Settlement Dr unlikely to link with Johns Rd &amp; contrary to DCP49.            Pathway access to Pacific Hwy blocked off &amp; used for stw control            Bus stop within 400m via pedestrian pathway is not correct            Narrow streets in estate            Development out of character for the area,            Garages not suitable for people in wheel chairs.            Car manoeuvring may be a problem in some blocks.            Internal 800mm doors may not be suitable for wheelchairs.            Setback of 6m not adhered to like other dwellings in estate.            Non-compliant with parts of SEPP.            Overdevelopment of site</p>	<p>Flood study has been reviewed and found to be adequate. SEPP is silent on number of required visitor spaces.            Settlement Dr is identified under DCP49 to link with Johns Rd.            Pathway to Pacific Hwy will be available for use to link with future path on Pacific Hwy which is to be used to access bus stop within 400m.            Streets are to AS.            The development is permissible within the residential zone and while a higher density form of design, the design has attempted capture the character of the area through the use of a single storey, low fences and facades that address the street.            Under the SEPP 5% of units are required to provide suitable garages for wheelchairs, the development includes a minimum of four garages in Stage 1 and four garages in Stage 2 with dimensions of 6.0m x 3.85m. Car travel paths considered sufficient.            Internal dimensions in accordance with AS.            Required setback is 4.5m to dwelling &amp; 6m to garage, a variation has been sought to allow two garages to encroach in setback.            Generally compliant with SEPP.            Development suitable for site.</p>
D02940268	<p>Narrow streets already cause traffic issues.            Potentially sold to Housing Dpt.            If sold to Housing Dpt, it will be unkept, graffiti etc.</p>	<p>A review of RMS accident data indicates that no accidents have been recorded at the intersection of Johns Road and Settlement Drive in the last five years. Narrow streets should result in slower traffic.            Future sales unknown.</p>

### 4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)

Doc. No	Summary of Issues	Response
D02946510	BASIX requirements not met Not enough visitor parking Further traffic issues. Out of character with existing homes Devalue properties. Settlement Dr shown on plans, but does not continue. Proposal will entice anti-social behaviour.	BASIX supplied as compliant. SEPP silent on number of required visitor parking. Traffic issues expected to increase by less than previously approved 10 lot subdivision. Settlement Dr will be dedicated to Council. Last link to be completed under other DA. Behaviour of residents unknown.
D02946589	Does not comply with SEPP	Appears to be generally compliant with SEPP.

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

The development application was referred to the RMS and the MSB. The RMS advised that it has no objections to the proposed development and provided the following comments are included in any consent:

#### *Access and Parking Requirements*

- *On site vehicular turning facilities are to be provided to enable all vehicles to exit in a forward direction.*
- *Internal accesses and any parking facilities are to be designed and constructed in accordance with Wyong Shire Council DCP No.61 "Carparking" and AS/NZS 2890.1 2004 Part 1 as amended 2005: "Off-street car parking" AS 2890.2 Part 2: "Off-street commercial vehicle facilities.*
- *Vehicular access to the Pacific Highway is denied.*
- *Construction access to or from the Pacific Highway is denied.*
- *A Construction Traffic Management Plan (CTMP) shall be prepared and include a Vehicle Movement Plan and Traffic Control Plan. It shall be prepared with the intention of causing minimal impact to the operation of the road network during construction. The CTMP shall be submitted to Council for review and approval prior to any construction activities occurring on site.*
- *The works referred to above shall be undertaken at full cost to the developer and to the satisfaction of the RMS.*
- *RMS understands that Council may require the construction of a footpath on the eastern side of the Pacific Highway between the site and London Drove. RMS supports this proposal and suggests that the path be constructed as a shared pedestrian / cycle path.*

#### 4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)

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##### *Drainage Requirements*

- *In order to minimise impacts on the stormwater drainage system, including associated flooding behaviour and water quality impacts, stormwater generated from the development site must be managed so as to attenuate post-development flows to pre-development flows for a full range of design rainfall events. The principles of Water Sensitive Urban Design may be applied in order to achieve this goal.*
- *Groundwater seepage and overland stormwater flow which affect the classified road reserve shall be managed on site.*
- *Stormwater from the development shall be conveyed by gravity (not a charged or pump system) to the street kerb or via a direct connection to an on street stormwater gully pit. If the pit option is implemented the pipeline within the footpath area shall have a minimum cover of 300mm.*
- *Where any direct stormwater connection to the kerb is made, it is to be by way of a low-profile rectangular hollow galvanised steel section. All kerb and footpath rectification works are to be undertaken to the satisfaction of the RMS.*
- *The works referred to above shall be undertaken at full cost to the developer and to the satisfaction of RMS.*

The MSB approved the application subject to the following comments being included in any consent:

- *The final drawings to be submitted prior to commencement of construction are to contain certification by a qualified structural engineer, to the effect that any improvement constructed to meet the specifications of such final drawings will be safe, serviceable and repairable taking into account the following mine subsidence parameters:*
  - a) *Maximum ground strains of  $\pm 3\text{mm/m}$*
  - b) *Maximum tilt of  $4\text{mm/m}$*
- *Structural separation of units in Blocks G and H at a maximum of 30 metres.*
- *All brick walls to be fully articulated to meet mine subsidence design, geotechnical conditions of the site and the requirements of the Building Code of Australia. The location of articulation joints are to be clearly shown on plan and elevations.*
- *Attention is to be given to internal finishes to ensure they have been installed in accordance to relevant codes and standards. Particular attention is to be given to tiled areas. Avoid the use of brittle materials liable to damage from mine subsidence.*
- *Drainage/sewer design needs to provide for mine subsidence effects determined in the geotechnical report. This may necessitate the use of flexible joints, shorter lengths, or additional downpipes and drainage points. Underground services shall be located to facilitate ease of repair or replacement.*



#### **4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

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- *Roads and Driveways are to be constructed in bitumen or flexible pavement. If concrete areas are required, specific design is to be provided to demonstrated that any damage will be of a slight classification. Concrete design would need to include full articulation and separation/sacrificial sections where appropriate.*
- *Upon completion of construction, work as executed certification by a qualified structural engineer is to be forwarded to the Board confirming construction was in accordance with the plans submitted.*

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

The provision of additional housing for the aged is in the public interest.

#### **OTHER MATTERS FOR CONSIDERATION**

The development proposal is subject to developer contributions under Section 94 of the EP&A Act 1979. The proposal will be levied under the Warnervale District Section 94 Plan.

#### **CONCLUSION**

The subject site is zoned 2(e) Urban Release Area and is identified for residential development. The proposed self contained dwellings are permissible under the WLEP 1991.

The development while being permissible under the WLEP 1991 also satisfies the requirement of the SEPP (Housing for Seniors and People with a Disability) 2004 and will provide additional housing opportunities in close proximity to public transport, Wyong Hospital and existing residential neighbourhoods. The application is recommended for approval subject to conditions of consent.

**Attachment 1**

**Attachment 2**

**Attachment 3**

**Attachment 4**

**Locality Plan**

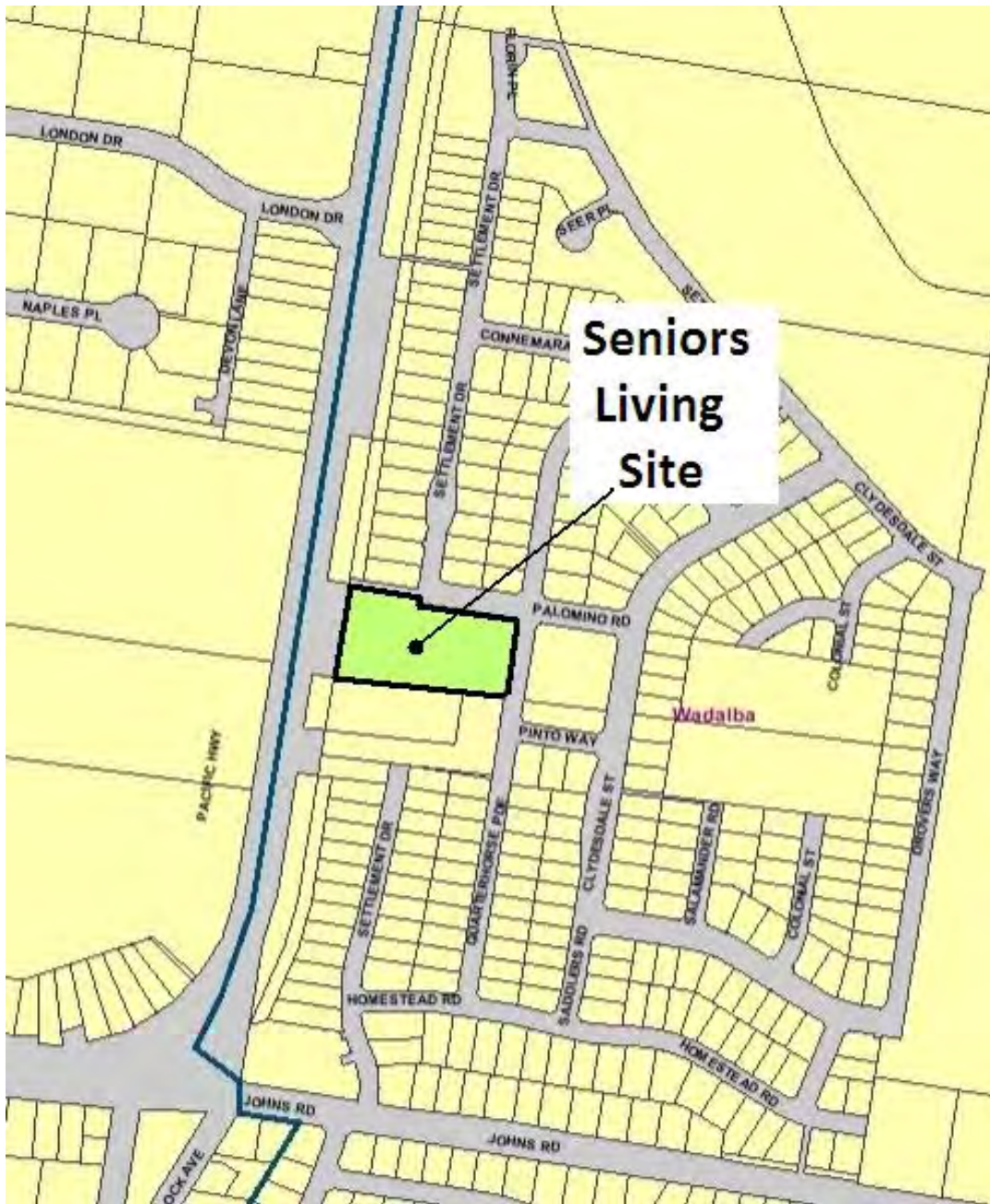
**Comparison of Development to Requirements of the Seniors Living SEPP**

**3d Image of Proposed Development**

**Plans of Proposed Development**

4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)

Attachment 1 - Locality Plan



**4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

**Attachment 2  
Comparison of Development to Requirements of the Seniors Living SEPP**

<b>Clause</b>	<b>Comment</b>	<b>Compliance</b>
<b>Part 2 Site-related requirements</b>		
26 Location and access to facilities	The site complies with the location and access requirements.	Yes
27 Bush fire prone land	The proposed site is not identified as being bushfire prone.	N/A
28 Water and sewer	Water and sewer connections are available to the site.	Yes
29 Consent authority to consider certain site compatibility criteria for development applications to which clause 24 does not apply: i) the natural environment; (iii) the services and infrastructure that are or will be available to meet the demands of the dev't. v) the bulk, scale, built form and character of the proposed development	The proposed development is compatible with the natural environment, and the existing character of the area. Services and infrastructure necessary to service the development are existing.	Yes
<b>Part 3, Division 2 – Design Principles</b>		
33 Neighbourhood amenity and streetscape	The proposed development will integrate with the existing neighbourhood amenity and streetscape through the use of a single storey design with articulation and landscaping.	Yes
34 Visual and acoustic privacy	The units have been designed to negate unnecessary noise and provide privacy.	Yes
35 Solar access and design for climate	The proposal has been designed to capture good solar access and capture cross flow ventilation.	Yes
36 Stormwater	Stormwater will be discharged via an interallotment drainage system along the rear of the properties on the western side of Settlement Dr or to the kerb.	Yes
37 Crime prevention	The proposed design provides suitable lighting and will assist in providing passive surveillance and hence crime prevention.	Yes
38 Accessibility	A new path is proposed to access the bus stops and street footpath is to be widened. Internal pathways are accessible and suitably lit.	Yes
39 Waste management	The proposal will utilise Council's waste management service. Bin storage areas are located in each stage.	Yes

**4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

<b>Part 7, Division 4 – Development standards that cannot be used as grounds to refuse consent</b>		
48 (a) building height: if all proposed buildings are 8 metres or less	Height approx 5.5 metres to pitch.	Yes
(b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less	FSR Stage 1 approx 0.30.95:1 Stage 2 approx 0.32.30:1	Yes
(c) landscaped area: if a minimum of 30% of the area of the site is to be landscaped.	The site appears to achieve the minimum 30%.	Yes
(d) deep soil zones: if there is soil of sufficient depth to support growth of trees and shrubs on an area of less than 15% of the site. Two thirds of the area preferably should be at the rear of the site.	The landscape plan appears to support the required amount of deep soil plantings.	Yes
(e) solar access: if living rooms and private open space of a minimum 70% of the dwellings receive a minimum of 3 hours direct sunlight between 9am & 3pm in mid winter.	All but one unit receives the required amount of sunlight between the hours of 9am & 3pm in mid winter.	Yes
(f) private open space for in-fill self-care housing: if not less not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor,	Units have accessible private open space of not less than 15 sqm each.	Yes
(h) parking: if at least 0.5 car spaces for each bedroom are provided or 1 space for each 5 dwellings	Each unit has a single garage and there are six visitor car spaces. Units 1 to 4 in Stage 2 provide stacked parking for visitors.	Yes

4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)

Attachment 3 – 3D Image of Proposed Development



**4.3 DA/82/2012 -Proposed Seniors Living Development Consisting of 26 Dwellings at Wadalba (contd)**

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**ATTACHMENTS**

- 1 Draft Approval Conditions D03192812
- 2 Development Plans Enclosure D03204558



**PROPOSED DRAFT CONDITIONS – DA 82/2012****Approved Plans**

- 1 The development is to be undertaken in accordance with the approved development plans and specifications listed below except as modified by any conditions of consent and any amendments in red made to the approved plans:

<b>Title</b>	<b>Drawing No.</b>	<b>Revision</b>	<b>Date</b>	<b>Drawn By</b>
Site & Roof Plan	da01		Aug 2010	Howard Phillips Design Partners
Site Plan & Site Analysis	da02b	b	14/12/11	Howard Phillips Design Partners
Site Sections	DA03b	b	14/12/11	Howard Phillips Design Partners
Site Elevations	DA04b	b	14/12/11	Howard Phillips Design Partners
Block A, Plans, Sections & Elevations	cc03b	b	Aug 2010	Howard Phillips Design Partners
Block B, Plans, Sections & Elevations	cc04b	b	Aug 2010	Howard Phillips Design Partners
Block C, Plans, Sections & Elevations	cc05b	b	Aug 2010	Howard Phillips Design Partners
Block D, Plans, Sections & Elevations	cc06b	b	Aug 2010	Howard Phillips Design Partners
Block E, Plans, Sections & Elevations	cc07b	b	14/12/11	Howard Phillips Design Partners
Block F, Plans, Sections & Elevations	cc08b	b	14/12/11	Howard Phillips Design Partners
Block G, Plan & Roof Plan	cc09b	b	14/12/11	Howard Phillips Design Partners
Block G, Sections & Elevations	cc10b	b	14/12/11	Howard Phillips Design Partners
Block H, Plans, Sections & Elevations	cc11c	c	14/12/11	Howard Phillips Design Partners
Block H, Plans, Sections & Elevations	cc12c	c	14/12/11	Howard Phillips Design Partners
Fence Details	-	-	-	Howard Phillips Design Partners

**Certificates – Application and Approval**

- 2 A Construction Certificate is to be issued by the Principal Certifying Authority prior to commencement of any construction works. The application for this Certificate is to satisfy all of the requirements of the Environmental Planning and Assessment Regulation 2000.
- 3 Prior to the occupation or use of the building/structure, an application for an Occupation Certificate for the development must be submitted to and approved by the Principal Certifying Authority.

- 4 An application for a Subdivision Certificate must be submitted to and approved by the Council/Certifying Authority prior to endorsement of the plan of subdivision.
- 5 Where conditions of this consent require approval from Council under the Roads Act 1993, Local Government Act 1993 or Water Management Act 2000, a completed Subdivision Construction Certificate application form must be lodged with Council and be accompanied by detailed design drawings and supporting information. Upon submission to Council, fees and charges will be calculated in accordance with Council's Management Plan. The fees and charges must be paid prior to Council commencing the design assessment.

## **Prior to Release of Construction Certificate:**

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

### **Contribution Payment Requirements**

#### Stage 1

- 6 Prior to the issue of any Construction Certificate, the payment to Council of contributions (as contained in the attached Schedule) under Section 94 of the Environmental Planning and Assessment Act 1979 and Council's Section 94 and Section 94A Contribution Plan. Council's contributions are adjusted on the first day of February, May, August and November. The amount of the contributions will be adjusted to the amount applicable at the date of payment.

### **Design Requirements**

#### Stages 1&2

- 7 Prior to the issue of any Construction Certificate, documentation on how the units comply with the requirements for self-contained dwellings in Part 1 of Schedule 3 of SEPP (Housing for Seniors or People with a Disability) 2004 is to be submitted to the Principal Certifying Authority.

#### Stage 1

- 8 Prior to the issue of the Construction Certificate certification from an acoustic engineer that the existing noise attenuation fence approved under DA/788/2005 along the Pacific Highway frontage is installed in accordance with the plan by Johnson Partners "Acoustic Fence Details" (Ref. No. 10947, dated 02/07/2007, sheet 601). Confirmation on how the units comply with the internal noise objectives under the Building Code of Australia is also required and to be submitted to the Principal Certifying Authority.

### **Flooding Design Requirements**

#### Stages 1&2



- 9 Prior to the issue of any Construction Certificate, the development plans must be amended to incorporate all recommendations of the Flood Study prepared by ADW Johnson (Ref: 1094, Issue No. B, and dated 26/09/2011).

### Roadworks - Design Requirements

#### Stage 1

- 10 The submission to Council of Civil Works design drawings and specifications detailing the following design requirements:
- Concrete footpath 1.5 metres wide for the full street frontage of the development.
  - Street lighting in accordance with AS/NZS 1158 for the extension of Settlement Drive.
  - Street trees at a maximum of 15.0 metre spacing.
  - Vehicle access crossing(s).
  - Any associated works to ensure satisfactory transitions to existing infrastructure
  - A temporary public turning area in Settlement Drive extension. One of the proposed driveways may be upgraded to fulfil this purpose.
  - Concrete footpath at least 1.5 metre wide from Settlement Drive to the intersection of London Drive and Pacific Highway.
  - Roads and driveways are to be constructed in bitumen or flexible pavement. If concrete areas are required, specific design is to be provided to demonstrate that any damage will be of a slight classification. Concrete design would need to include full articulation and separation/sacrificial sections where appropriate.
  - Upgrade of the existing bus stops at the intersection of London Drive and Pacific Highway to comply with the requirements of a basic boarding point as described in the "Guideline for promoting compliance of bus stops with the Disability Standards for Accessible Public Transport" published by the Australian Human Rights Commission.

The required design drawings are to be prepared in accordance with Council's Development Control Plan 2005, Chapter 67 - *Engineering Requirements for Development* and must be jointly approved by Council as the Roads Authority and the Roads & Maritime Authority prior to the issue of a Construction Certificate.

## Stormwater Drainage - Design Requirements

### Stages 1&2

- 11 Stormwater drainage works external to the site and discharging into a public system or public land requires approval from Council under Section 68 of the Local Government Act 1993. Detailed design drawings prepared in accordance with Council's Development Control Plan 2005, Chapter 67 - *Engineering Requirements for Development* must be approved by Council prior to the issue of a Construction Certificate. All other stormwater management works must be approved by the Accredited Certifier.
- 12 The submission to the Accredited Certifier of a detailed stormwater management plan featuring:
  - Stormwater disposal to the kerb, or interallotment drainage system as appropriate.
  - Suitably sized galvanised box section across the footpath area for connection to the existing kerb and guttering and drainage pit at the boundary line.
  - The provision of an interallotment drainage system along the rear of properties on the western side of Settlement Drive to benefit upstream properties generally as shown as Interallotment Drainage Line 60 on Johnson Partners design plans (Drawing Number 10947, Revision A, and Sheets 101 and 252).

The plans must be prepared in accordance with AS/NZS3500.3:2004 and Council's Development Control Plan 2005, Chapter 67 – Engineering Requirements for Development, and must be approved by the Accredited Certifier prior to issue of the Construction Certificate.

## Structural Design Requirements

### Stages 1&2

- 13 Prior to the issue of a Construction Certificate, satisfactory structural plans prepared by a suitably qualified Registered Structural Engineer are to be submitted for the approval of the Accredited Certifier, for the following building elements
  - Piers and slab.
  - Mine subsidence parameters of maximum ground strain of  $\pm 3\text{mm/m}$  and a maximum tilt of  $4\text{mm/m}$ .
  - Structural separation of units in Block G and H at a maximum of 30 metres.
  - All brick walls are to be fully articulated to meet mine subsidence design, geotechnical conditions of the site and the requirements of the Building Code of Australia. The location of articulation joints are to be clearly shown on plan and elevations.

## Water and Sewer Services - Design Requirements

Stages 1&2

- 14 All water and sewer works or works impacting on water and sewer assets must be designed and constructed to the requirements of Council as the Water Supply Authority. The requirements are detailed in the Section 306 Notice of Requirements letter attached to this consent. **Note:** The Section 306 Notice contains requirements associated with the development that must be completed prior to the issue of the Construction Certificate.

## Prior to Commencement of Works:

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

### Erosion and Sediment Control Requirements

Stages 1&2

- 15 Prior to works associated with the development commencing, soil erosion and sediment controls measures are to be provided on the development site in accordance with Council's Policy E1 - Erosion and Sediment Control from Building Sites and Development Control Plan 2005, Chapter 67 – *Engineering Requirements for Development* and the approved development plans.
- 16 Prior to works associated with the development commencing, a single all-weather hardstand access, extending from the kerb and gutter/edge of bitumen to the building under construction, is to be installed in order to provide appropriate access to the site during periods of inclement weather.
- 17 Prior to works associated with the development commencing, suitable sediment control kerb inlet trap devices are to be provided downstream of the development site adjoining locations such as kerb inlet drainage pits, in order to prevent any silt that may have left the site from entering the drainage system. The build up of silt and debris behind the required kerb inlet trap devices is to be removed from the site on a daily basis.
- 18 Prior to works associated with the development commencing, an appropriate sign to promote the awareness and importance of the maintenance of on-site sediment control techniques is to be provided on the most prominent sediment fence or erosion control device within the development site, for the duration of the project.

### Home Building Act Requirements

Stages 1&2

- 19 Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless Council, as the Principal Certifying Authority for the development to which the work relates, has been furnished with the following information:

In the case of work to be done by the holder of a contractor licence under that Act:

- the name and licence number of the contractor; and
- A copy of the Home Owner Warranty Insurance.

In the case of work to be done by the holder of an owner-builder permit under that Act:

- A copy of the Owner Builder's Permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

## Roads - Preconstruction Requirements

### Stages 1&2

- 20 Prior to commencing any works upon public roads the developer and their contractor will be required to:
  - Obtain a copy of the Council approved Civil Works plans and pavement design (if applicable).
  - Obtain a copy of Development Control Plan 2005, Chapter 67 – *Engineering Requirements for Development*. This is Council's Specification for Civil Works and is available on Council's web site.
  - Arrange a meeting on-site with Council's Principal Development Construction Engineer on (02) 4350 5555.
- 21 Prior to works associated with the development commencing, a Plan of Management is to be submitted to and approved by Council as the Roads Authority for any works or deliveries that impact on any public roads or public land as a result of the construction of the development. The plan must include a Traffic Control Plan prepared by a person holding Roads and Traffic Authority (RTA) accreditation for selecting and modifying traffic control plans. Fees and charges are applicable to the review and approval of the required management plan in accordance with Council's Plan of Management.
- 22 Prior to works associated with development commencing, a dilapidation report must be prepared and submitted to Council as the Roads Authority. The required dilapidation report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, water supply, sewer works, street trees, street signs or any other Council assets in the vicinity of the development. **Note:** The report will be used by Council to determine the extent of damage arising from site and construction works.

## Site Requirements

### Stages 1&2

- 23 Prior to works associated with the development commencing, the Principal Contractor (or Owner/Builder) is to erect a suitable sign in a prominent position on the development site (not attached to any tree) identifying the name, address and telephone number of the Principal Certifying Authority (PCA) for the work, the name, address and telephone number (including a number for outside of business hours) of the Principal Contractor for the work (or Owner/Builder) and stating that unauthorised entry to the site is prohibited. The required sign is to be maintained for the duration of works associated with the development. Appropriate signs can be collected from Council's Customer Service Centre, where Council is the nominated Principal Certifying Authority with respect to the development.
- 24 Prior to works associated with the development commencing, suitable toilet facilities must be available or be provided upon the development site, with the required toilet facility(s) maintained until development works are completed at a ratio of one (1) toilet plus one (1) additional toilet for every twenty (20) persons employed at the site. Each toilet must:
- be a standard flushing toilet connected to a public sewer system; or
  - have an on-site effluent disposal system approved under the Local Government Act 1993, or be a temporary chemical closet approved under the Local Government Act 1993, supplied by a suitably licensed contractor.
- 25 Prior to works associated with the development commencing, a suitable metal waste skip (with self-closing lid or secure covering) or lined mesh steel cage(s) is to be provided upon the development site for the duration of the construction phase of the development in accordance with the requirements of Development Control Plan 2005, Chapter 100 – Quality Housing. The required waste receptacle is to be suitably emptied at appropriate times during the construction phase of the development.
- 26 Prior to works associated with the development commencing, a suitable hoarding or safety fence between the work site and the public place is to be provided in accordance with Work Cover Authority requirements. The required hoarding/fencing is to remain in place during the construction phase of the development. Should the hoarding/fencing be required to be provided within the road reserve area, approval from Council under the Roads Act as the Roads Authority is required to be obtained prior to its erection.
- 27 Prior to works associated with the development commencing, the existing sewer manhole within the site is to be located and suitably protected from damage for the duration of the construction phase of the development. Should the works associated with the development result in the need for the existing manhole to be raised or lowered, approval of Council as the Water and Sewer Authority is required.

## During Construction Works:

*The following conditions must be satisfied during construction works.*

### Approved Plans

Stages 1&2

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

### Erosion and Sediment Control - Construction Requirements

Stages 1&2

- 29 Sand and other materials associated with the construction of the development that could potentially be washed off the site during rain periods, are to be stored behind a suitable sediment control barrier.
- 30 All sediment and erosion control devices provided with respect to the development are to be periodically cleaned and maintained in an effective state for the duration of works. On the spot fines for non-compliance with this requirement may be issued under the provisions of the *Protection of Environment Operations Act, 2000*.

### Flooding - Construction Requirements

Stages 1&2

- 31 Certification from a Registered Surveyor confirming that the minimum floor levels identified in the Flood Study prepared by ADW Johnson (Ref:10947, Issue No. B, dated 26/09/2011) have been achieved must be submitted to the Principal Certifying Authority when the dwellings reach floor level stage. **Note:** Framework associated with the building is not to be erected until such time as the floor level certification is received.

### Plumbing and Drainage - Construction Requirements

Stages 1&2

- 32 Council as the Water Supply Authority, under the provisions of the Water Management Act, or in unsewered areas where an onsite sewage management facility is to be installed, is to be notified to undertake inspections of the internal drainage lines, (prior to the pouring of the concrete slab), and external drainage lines inclusive of sewer junction connection, prior to the backfilling of the trenches. These inspections can be arranged by telephoning Council's Customer Contact Centre on (02) 4350 5555 a minimum of twenty-four (24) hours prior to the required time for the inspection. Please note that all drainage inspection fees are to be paid to Council prior to plumbing and drainage works associated with the development commencing.

## **Services/Utility Requirements**

Stages 1&2

- 33 The developer is solely responsible for any costs relating to alterations and extensions of existing roads, drainage, water and sewer infrastructure and other utilities for the proposed development.
- 34 Other public authorities may have separate requirements and should be consulted prior to commencement of works in the following respects:
- Australia Post for the positioning and dimensions of mail boxes in new commercial and residential developments;
  - AGL Sydney Limited for any change or alteration to gas line infrastructure;
  - Ausgrid for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
  - Telstra, Optus or other telecommunication carriers for access to their telecommunications infrastructure.

## **Site Requirements**

Stages 1&2

- 35 During the construction phase of the development, all building materials, plant and equipment must be placed on the site of the development in order to ensure that pedestrian and vehicular access within adjoining public roads, footpaths and reserve areas, is not restricted and to prevent damage to public infrastructure.
- 36 During the construction phase of the development, downpipes and the associated stormwater disposal system is to be suitably connected to the site stormwater connection point immediately after the roof materials are positioned in order to prevent erosion of the site from roof water run off. The Principal Certifying Authority for the development will not issue a compliance certificate for framing unless connection of the site stormwater (or temporary system) has occurred.

## **Prior to Release of Occupation Certificate:**

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

### **BASIX Requirements**

Stages 1&2

- 37 Prior to the issue of an Occupation Certificate, pursuant to Clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is mandatory that all the commitments listed in the BASIX Certificate applicable to the development are fulfilled.

### **Building Code of Australia – Compliance Requirements**

Stages 1&2

- 38 Prior to the issue of the Occupation Certificate, the building shall be completed in accordance with the relevant provisions and requirements of the Building Code of Australia.

### **Dilapidation Rectification Requirements**

Stages 1&2

- 39 Prior to the issue of an Occupation Certificate, any damage not shown in the Dilapidation Report submitted to and approved by the Principal Certifying Authority prior to site works commencing, will be assumed to have been caused as a result of the site works undertaken with respect to the development and must be rectified at the applicant's expense.

### **Flooding – Compliance Requirements**

Stages 1&2

- 40 Prior to the issue of an Occupation Certificate, certification from a Registered Surveyor confirming that the dwarf walls as identified in the Flood Study prepared by ADW Johnson (Ref:10947, Issue No. B and dated 26/09/2011) have been provided must be submitted to the Principal Certifying Authority.

### **Landscaping Requirements**

Stages 1&2

- 41 Prior to the issue of an Occupation Certificate, all street trees are to be replaced from *Cupaniopsis anarcordiodes* to *Waterhousia floribunda*. All street trees are to be a minimum 100 litre pot size and planted a minimum of 0.4 metres from the kerb.



- 42 Prior to the issue of an Occupation Certificate, to ensure landscaping works are properly completed, the landscape designer must provide certification to the Principal Certifying Authority certifying that landscaping has been implemented in accordance with the approved landscape plan as amended by any conditions of this consent.
- 43 Prior to the issue of an Occupation Certificate, a detailed maintenance schedule for all landscaping areas associated with the development is to be provided to and approved by the Principal Certifying Authority. The maintenance program is to continue for a minimum of 52 weeks and will outline how the trees will be maintained during that period.
- 44 The landscape consultant is to carry out an inspection 6 months after occupation or completion of the development to ensure that all works have been carried out and to assess maintenance and recommend any required remedial work.
- 45 An additional six (6) *Corymbia maculata* trees are to be planted along the Pacific Highway frontage.

### Roads – Compliance Requirements

#### Stage 1

- 46 Prior to the issue of an Occupation Certificate, the completion of road and road drainage works associated with the extension of Settlement Drive. Works shall be completed in accordance with DCP 2005 Chapter 67 – Engineering Requirements for Development and as shown on civil design plans prepared by Johnson Partners (Drawing No.10947, Revision A and sheets 101, 102, 103, 104 and 251).

#### Stages 1&2

- 47 The provision of any additional civil works required to ensure satisfactory transitions to existing work as a result of work conditioned for the development works are to be approved by Council as the Roads Authority prior to issue of the Occupation Certificate.
- 48 All works within the public road must be completed in accordance with the approved Civil Works design drawings and Development Control Plan 2005, Chapter 67 - *Engineering Requirements for Development* and be approved by Council as the Roads Authority prior to the issue of any Occupation Certificate.

#### Stage 1

- 49 Any road works and or traffic control facilities within a state road must be completed in accordance with the approved Civil Works design drawings and RTA Works Authorisation Deed, and be jointly approved by Council as the Roads Authority and the RTA prior to the issue of any Occupation Certificate.
- 50 The submission to the Council as the Roads Authority of certification from an Accredited Service Provider (ASP) that the street lighting installation has been completed in accordance with AS/NZS 1158 and AS 4282-1997, the approved design drawings and will achieve a minimum of twenty (20) year design life.

The certification must be received by Council prior to the issue of the Occupation Certificate.

### Seniors Living Compliance Requirements

Stages 1&2

- 51 Prior to the issue of an Occupation Certificate, the applicant must create a restriction as to user under the Conveyancing Act 1919 restricting the occupation of each dwelling in the subject development to:
- people aged 55 years or over or people with a disability as defined by the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*;
  - people who live with such people as defined in sub-clause above; and
  - staff employed to assist in the administration of and provision of services to housing provided in this development.

### Statutory Certificate Requirements

Stages 1&2

- 52 An application for a Subdivision Certificate must be submitted to and approved by the Council under the Conveyancing Act 1919 prior to endorsement of the plan of subdivision. The application for this Certificate is to satisfy all of the requirements of Section 157 of the Environmental Planning and Assessment Regulation 2000.

### Stormwater – Compliance Requirements

Stages 1&2

- 53 The construction of the stormwater management system in accordance with the approved Stormwater Management Plan and AS/NZS 3500.3-2004. Certification of the construction by a suitably qualified consultant shall be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.
- 54 The construction of stormwater drainage works external to the site and discharging into a public system or public land in accordance with the approved Stormwater Management Plan and Development Control Plan 2005, Chapter 67 - *Engineering Requirements for Development*. All works must be approved by Council under Section 68 of the Local Government Act 1993 prior to issue of the Occupation Certificate. All other stormwater management works must be approved by the Principal Certifying Authority.

**Subdivision– Compliance Requirements**

## Stages 1

- 55 The creation of an easement to drain stormwater in accordance with DCP 2005 Chapters 66 and 67 over the required interallotment drainage system prior to the issue of the Occupation Certificate.
- 56 The proposed extension of Settlement Drive must be dedicated as public road in accordance with DCP 2005 Chapter 49 at no cost to Council and prior to the issue of the Occupation Certificate.

**Vehicle Access and Parking – Compliance Requirements**

## Stages 1&amp;2

- 57 The construction of the carpark and accesses in accordance with AS/NZS 2890 - Parts 1. Certification of the construction of the carpark and associated accesses by a suitably qualified consultant shall be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

**Water and Sewer Services/Infrastructure – Compliance Requirements**

## Stages 1&amp;2

- 58 The obtaining of a Section 307 Certificate of Compliance under the Water Management Act 2000 for water and sewer requirements for the development from Wyong Shire Council as the Water Supply Authority prior to issue of the Subdivision/Occupation Certificate. All works for the development must be approved by Council prior to the issue of a Certificate of Compliance.

**Work as Executed Requirements**

## Stage 1

- 59 Prior to the issue of an Occupation Certificate, Works as Executed information for the development as identified in Council's Development Control Plan 2005, Chapter 67 - *Engineering Requirements for Development* is to be submitted to and approved by Council. The required Works as Executed information is to be submitted in hard copy and in electronic format in accordance with Council's 'CADCHECK' requirements.
- 60 Prior to the issue of an Occupation Certificate, work as executed certification by a qualified structural engineer is to be forwarded to the Mines Subsidence Board confirming that construction has been undertaken with the plans submitted.

## **Ongoing Operation:**

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

### **Advertising Sign Requirements**

- 61 No advertising sign/s shall be erected on or in conjunction with the use and/or development without prior development consent unless the advertisement is an 'approved sign' under Development Control Plan 2005, Chapter 50 - *Advertising Signs*.

### **Site Appearance, Maintenance and Security Requirements**

- 62 The owner of the site must maintain the external finishes of the building(s), structures, walls and fences for the life of the development and any graffiti must be removed in a timely manner.

### **Waste Management – Compliance Requirements**

- 63 All waste generated on the premises shall be stored in a manner so that it does not pollute the environment.
- 64 All waste generated on the premises shall be transported to a facility which is licensed to receive that material.

#### **4.4 DA/125/2012 - Proposed Rural Subdivision at Jilliby**

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TRIM REFERENCE: DA/125/2012 - D03184455

MANAGER: Peter Fryar, Manager Development Assessment

AUTHOR: Mark Greer; Senior Development Planner

##### **SUMMARY**

An application has been received for a rural subdivision at Jilliby. 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) 1979 and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

The application has been requested by a Councillor to be determined at a Council meeting in the event that the recommendation is for refusal.

<b>Applicant</b>	Iris Lodge c/- ADW Johnson
<b>Owner</b>	As above
<b>Application No</b>	125/2012
<b>Description of Land</b>	Lot 42 DP 755271 No 33 Dunks Lane, Jilliby
<b>Proposed Development</b>	Two Lot Subdivision
<b>Site Area and zoning</b>	36.62 hectares, 1(a) Rural Agriculture
<b>Existing Use</b>	Residence and agriculture (keeping of livestock)

##### **RECOMMENDATION**

***That Council refuse the application for reasons detailed in the schedule attached to the report, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues.***

##### **PRECIS**

- Land is zoned 1(a) Rural (Rural Zone) under Wyong Local Environmental Plan 1991 (WLEP 1991) with an area of 36.62 hectares.
- The subdivision proposes the creation of two allotments with areas of 16.47 hectares and 20.15 hectares.
- Clause 14(2) of WLEP 1991 requires that land shall not be subdivided within Zone 1(a) creating an allotment having an area less than 20ha.

#### 4.4 DA/125/2012 - Proposed Rural Subdivision at Jilliby (contd)

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- The applicant seeks Council's consent to create one of the proposed allotments with an area minimum requirement less than the 20 hectares by way of varying the requirements of Clause 14 under the provisions of State Environmental Planning Policy No 1 (SEPP1).
- Based on a decision of the NSW Court of Appeal, in *Agostino V Penrith City Council*, the subdivision of land creating an allotment less than the minimum 20 hectares minimum is considered to be prohibited.
- The Mines Subsidence Board (MSB) has refused to grant approval under Section 91 of the EP&A Act 1979.
- The application is recommended for refusal.

### INTRODUCTION

#### The Site

The site contains a dwelling and outbuildings adjacent to Dunks Lane. The site is used for cattle grazing. The site has an area of 36.63 hectares and is situated toward the confluence of Wyong River and Jilliby Creek. The land has multiple road frontages with a primary frontage to Dunks Lane, secondary frontage to Davenport Lane and a tertiary frontage to Jilliby Road. The residence is located adjacent to the western frontage of Dunks Lane.

The land is approximately 4.48 kilometres north-west of the Wyong Post Office and is generally level land with no distinguishing topographic features. Apart from a vegetated riparian zone of Jilliby Creek, the land is void of any significant vegetation.



*Subject site (in white outline)*

### The Proposal

Consent is sought for a two lot subdivision of the subject land. Proposed lot 421 has an area of 16.47 hectares. Proposed lot 422 has an area of 20.15 hectares. The existing residence and outbuildings would be situated on proposed lot 421.

Each proposed allotment will retain a major frontage to Dunks Lane. Proposed lot 421 retains the permanently filled dams while proposed lot 422 retains the entire frontage to Jilliby Creek. A right of access is proposed in favour of proposed lot 422 over proposed lot 421 to access water supply from the dams.

### Summary

The application proposes the creation of an allotment less than the minimum area required for subdivision under Clause 14(2) of WLEP 1991. Clause 14(2) requires that subdivision in the 1(a) zone achieve a minimum of 20 hectares per allotment. The proposal will result in the creation of one of the allotments having an area of 16.47 hectares.

The applicant seeks to use SEPP 1 in order for Council to vary the provisions of WLEP 1991 for the granting of consent to the subdivision proposal. SEPP 1 is a planning policy established by the NSW State Government to make development standards more flexible. It allows Council to approve a development proposal that does not comply with a development standard prescribed under an Environmental Planning Instrument where it can be shown that strict compliance is unreasonable or unnecessary in the circumstances.

Previously, Clause 14(2) had been considered by Council to be a development standard. The term "development standards" is defined in the EP&AA Act as follows:

**"development standards"** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) *the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) *the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) *the cubic content or floor space of a building,*
- (e) *the intensity or density of the use of any land, building or work,*
- (f) *the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) *the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) *the volume, nature and type of traffic generated by the development,*

#### **4.4 DA/125/2012 - Proposed Rural Subdivision at Jilliby (contd)**

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- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed.”

Since the adoption of the WLEP 1991 Council has approved a number of applications for subdivision and boundary adjustments resulting in the creation of allotments less than the minimum area prescribed under Clause 14(2) in rural areas. Such applications have been subject to a merit assessment under the provisions of the SEPP 1 and where necessary, if delegation requires, receiving concurrence from the Department of Planning and Infrastructure.

However, Council's interpretation of a number of provisions contained within the WLEP 1991 has recently changed by virtue of the NSW Court of Appeal decision in *Agostino v Penrith City Council* [2010] NSWCA 20 (“Agostino”).

In brief, the appeal related to a development application for alterations and additions to an existing fruit and vegetable store, prohibited in the zone (as a shop). The specific site however, was the subject of a special provision within the Penrith City LEP (Clause 41(3)) which carried maximum floor space criteria (being 150m<sup>2</sup>).

The proposal was defined as a fruit and vegetable store for the purposes of the clause however, the proposal sought to substantially increase the floor area. The question for the Court was whether the maximum floor area of 150 m<sup>2</sup> specified in Penrith City LEP was a development standard amenable to variation under SEPP 1. The Court held that the provisions of Clause 41(3) of the PCLEP were not a development standard but rather a prohibition.

“*Agostino*” is the relevant case law in determining how an environmental planning instrument is to be interpreted in determining whether a proposed development is permissible and so establish that a consent authority has jurisdiction to grant consent. Establishing jurisdiction is an essential prerequisite to the exercise of the statutory authority conferred by the EP&A Act to determine a DA or S96 application. If a consent authority fails to establish a jurisdictional fact then the consent or modification it grants is invalid, and that decision is not protected by s.101 of the Act.

“*Agostino*” has been considered in a number of subsequent decisions, specifically used to determine that the proposed development in those other matters was prohibited. Examples include *Huang v Hurstville City Council (No 2)* [2011] NSWLEC 151 *Casaceli v Bega Valley Shire Council* [2010] NSWLEC 1162 and *Willoughby City Council v Spa & Beauty Relaxation Centre Pty Ltd* [2011] NSWLEC 101.



#### 4.4 DA/125/2012 - Proposed Rural Subdivision at Jilliby (contd)

In view of Agostino, the provisions of Clause 14(2) are regarded as a prohibition and accordingly cannot be varied under SEPP 1. Therefore if a parcel of land cannot achieve a subdivision having an area greater than the minimum 20 hectares, then the application is unable to be approved.

Notwithstanding Council's interpretation of the provisions of Clause 14(2) of the LEP, Section 91 of the Act requires a consent authority to gain approval to alter or erect improvements within a Mine Subsidence District or to subdivide land therein (Integrated Development). In the course of the assessment period Mines Subsidence Board (MSB) has indicated that it will not grant approval for the development application.

#### Section 91A(4) of the EP&A Act states:

*"91(4) If the approval body informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out, the consent authority must refuse consent to the application".*

As the MSB have determined not to grant an approval, Council must refuse the application pursuant to the provisions of Section 91(4) of the Act.

#### VARIATIONS TO POLICIES

Clause	14(2)
Standard	20 hectares per lot for 1(a) zoned land
LEP	Wyong Local Environmental Plan 1991
Extent of variation/departure	17.5% for lot 421 proposed as 16.47 hectares
Departure basis	The provision of Clause 14(2) is regarded as a prohibition and thus the application for an allotment with an area less than the criteria of the provision cannot be approved.

#### HISTORY

On 29 May 1997, an application for a three lot subdivision involving a neighbouring property (lot 43 in DP 755271) was refused, primarily on the grounds that the proposal failed to satisfy Council that the use of SEPP 1 to vary Clause 14 of the WLEP 1991 was appropriate in that instance.

On 22 September 1998, an application for a temporary rural dwelling on the subject site was approved. The application was subsequently amended to remove the reference of "temporary" for the dwelling to enable its permanent placement on the land.

On 27 October 2011, a pre lodgement meeting was held at the applicant's request with Council staff. At the time, Council did not have the benefit of the decision of the Agostino case and accordingly considered the proposal on the basis that subdivision of land in the Rural 1(a) zone where the land did not meet the minimum lot requirement could be considered by the proponent submitting a formal SEPP 1 objection. Other issues were noted at the meeting including flooding, waste disposal, bush fire and amenity.

**PERMISSIBILITY**

Subdivision including boundary adjustment is defined under Section 4B of the EP&A Act 1979 and means “*the division or restructure of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition*”. Although not specifically defined under Clause 7 of WLEP 1991 the development is referred to as “Subdivision” and “Boundary Adjustment” in Clause 13 and is permitted with consent.

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

**Environmental Planning and Assessment Act 1979**

Section 79C

The application is subject to the heads of consideration under Section 79C of the Environmental Planning and Assessment Act.

Sections 91 and 91A

The application is defined as “Integrated Development” under the provisions of Section 91 of the EP&A Act 1979 and was referred to the NSW Rural Fire Service (RFS) and MSB.

Section 91 of the Act requires approval to alter or erect improvements within a Mine Subsidence District or to subdivide land therein.

Section 91A of the Act requires the relevant approval to be obtained for Integrated Development prior to the issue of a development consent.

The MSB has indicated that it will not grant the approval for the development application by stating the following:

*“Pursuant to Section 91A of the EP&A Act, the Mine Subsidence Board (MSB) advised on 5 March 2012, that the proposed subdivision was refused as it was contrary to Clause 14 of the Wyong Local Environmental Plan (WLEP) and the Mine Subsidence Board’s subdivision policy which prescribes a minimum lot size of 20 hectares.*

*It is our opinion that the above reason for refusal is beyond the charter of the MSB pursuant to Section 15 of the Mine Subsidence Compensation Act 1961 (MSC Act) which provides:*

*15 Mine subsidence districts*

- (1) The Governor may by proclamation published in the Gazette proclaim any area to be a mine subsidence district.*
- (3) The Board may grant its approval either subject to conditions or unconditionally or may refuse its approval.*
- (3B) Without limiting the generality of subsection (3), the Board may refuse to approve an application or grant its approval subject to conditions where the application relates to:*
  - (b) the subdivision of land, being land which, in the opinion of the Board, may subside if the coal and shale in the land were extracted by underground methods.*

*Accordingly, it is our position that the reasons given for refusal by the MSB are outside of the parameters of Section 15 of the MSC Act.”*

#### **4.4 DA/125/2012 - Proposed Rural Subdivision at Jilliby (contd)**

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As such Council cannot grant consent pursuant to the provisions of Section 91A(4) of the Act.

NSW Rural Fire Service granted general terms of approval on 30 March 2012.

#### **State Environmental Planning Policies (SEPP)**

The approval has sought to rely upon the provisions of SEPP 1 as a means of varying the minimum allotment requirement of 20 hectares pursuant to Clause 14(2) of WLEP 1991. As previously discussed, SEPP 1 cannot be relied upon as the creation of an allotment less than the 20 hectares minimum is prohibited.

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

Subdivision is defined under Section 4B of the EP&A Act 1979. Although not specifically defined in Clause 7 WLEP 1991, the development is referred to as "Subdivision" and is permitted with consent pursuant to Clause 13.

#### **RELEVANT ISSUES**

Having regard to Section 79C of the Environmental Planning and Assessment Act, it is considered that the following matters require further consideration and are addressed in the following sections:

#### **Wyong Local Environmental Plan (LEP) 1991**

The current lot status:

Lot 42 = 36.62 hectares, 1(a) Rural Agriculture zoned

The proposed lot arrangement:

Lot 421 = 16.47 hectares, 1(a) Rural Agriculture zoned

Lot 422 = 20.15 hectares, 1(a) Rural Agriculture zoned



*Plan of subdivision – lots 421 and 422*

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

The application cannot be approved under Clause 14(2) of WLEP 1991, the provisions of such clause being regarded as a prohibition. MSB has refused to grant its approval. On its merit, the proposal is considered reasonable, however, Council does not have the authority to grant consent for reasons stated previously in the report.

**THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT (S 79 C(1)c))**

As stated previously, on its merits, the proposal is considered reasonable, however, strict compliance with the minimum lot requirement is necessary as the creation of an allotment having an area less than 20 hectares minimum is prohibited.

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

*Any submission from the public.*

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

**CONCLUSION**

Under the provisions of Section 91A the EP&A Act 1979, a consent authority must refuse a development application for “integrated development” if the approval body, in this case the MSB, informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out.

#### **4.4 DA/125/2012 - Proposed Rural Subdivision at Jilliby (contd)**

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In consideration of the recent decision of the Court of Appeal in *Agostino V Penrith City Council*, the proposal which enables the creation of an allotment which is less than the minimum requirement under Clause 14(2) of WLEP 1991 is prohibited.

In view of the conclusions to this report it is recommended that the application be refused.

#### **ATTACHMENTS**

- |          |   |                     |
|----------|---|---------------------|
| <b>1</b> | Letter from Mine Subsidence Board dated 4 April 2012              | D02969387           |
| <b>2</b> | Formal Response from Mine Subsidence Board dated 27 November 2012 | D03206881           |
| <b>3</b> | Draft Reasons for Refusal   | D03184477           |
| <b>4</b> | Development Plans   | Enclosure D03184582 |

In reply please send to: Wyong District Office  
 Our reference: FN98-00152W0  
 Your reference: DA 125/2012  
 Contact: Tom Hole (02) 4352 1646

WSC  
 DX 7306  
 WYONG

4 April 2012

Attention Mark Greer

SUBDIVISION APPLICATION NO. TSUB12-01501W1  
LOT 42 DP 755271 NO 33 DUNKS LANE JILLIBY  
CREATING LOTS 421 & 422. REFUSED UNDER 20HA

The Mine Subsidence Board cannot support the approval of the subdivision. The proposal is contrary to Mine Subsidence Board's subdivision policy which prescribes a minimum lot size of 20 hectares.

The Mine Subsidence Board refused a similar application on this property in 2001.

The Wyong Mine Subsidence District was proclaimed on 9 April 1997. Minimum permissible lot size for subdivision is 20Ha.

Attached is a copy of the Community Information Brochure which was produced in conjunction with the proclamation of the district.

I have included a copy of design requirements which was produced for internal use by Board's staff.

Should you wish to discuss the application further, please contact me at the Board's Wyong office.

Yours faithfully



Tom Hole  
 District Manager



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**MINE SUBSIDENCE BOARD**

**WYONG AND MANDALONG MINE SUBSIDENCE DISTRICTS**

**DESIGN FEATURES**

<b>Topic</b>	<b>Details</b>
Residential Slabs and Footings	All slabs and footings are to comply with the minimum requirements determined by AS 2870. Slabs or footings are permitted in Area W1. Strip footings only are permitted in Areas W2, M1 and M2.
Subdivisions	<p>If subdivision approved, minimum lot size will be that permitted under the zoning when the Wyong and Mandalong Districts were proclaimed. <b>Minimum</b> subdivision to be 20 ha.</p> <p>Only one principal dwelling shall be approved on such subdivided lots.</p>
Main Structure	<p>Maximum plan dimensions 250 m<sup>2</sup> exclusive of garages, verandahs, etc.</p> <p>Suspended verandahs, garages, etc to be isolated from dwelling by separation joints.</p> <p>Special features, such as sunrooms, conservatories, foyers, entrances and the like, that project from the main structure, may be permitted on some sites, subject to discussion and concurrence of the Board's officers.</p>
Farm Buildings	Steel framed farm buildings, etc on slabs to engineer's design will be permitted.
Granny Flats	<p>Where acceptable to council, must be separated from main dwelling by breeze-way or equivalent.</p> <p>May have common roof line.</p>
Swimming Pools	<p>In-ground swimming pools to be of conventional regular plan.</p> <p>Free form pools will not be approved.</p> <p>Pool to have maximum length of 10 metres.</p> <p>Reinforced concrete pools to be designed by qualified engineer to withstand site specific subsidence parameters.</p>

# COMMUNITY INFORMATION FROM THE MINE SUBSIDENCE BOARD

The Minister for Mineral Resources, the Hon Bob Martin has announced changes to the Mine Subsidence Districts in the south-western part of Lake Macquarie and in areas of Wyong Shire.

As illustrated on the attached map, the changes incorporate some areas in new Mine Subsidence Districts and exclude others which will no longer be affected by underground mining. Areas around Cooranbong and Wyong have been revoked. The new Districts generally extend west of the F3 Freeway and include the areas of Wyong Creek, Dooralong and Mandalong, but ends before Yarramalong. A large portion of State Forest is included, with the remainder of the area primarily zoned rural.

This action has been taken as a result of the ongoing review of Mine Subsidence Districts by the Mine Subsidence Board and advice from the Department of Mineral Resources regarding economic coal resources.

**The changes to the Mine Subsidence Districts are not an approval to mine.** Mining approvals are granted by the Department of Mineral Resources following detailed investigation of surface and environmental issues by the coal lease holder. The Mine Subsidence Board has the responsibility of protecting the community by reducing future damage and promoting compatibility between surface developments and underground coal mining. The Board also provides repair services and/or compensation should properties be damaged by mine subsidence.

The Mine Subsidence Board is committed to protecting and compensating for damage to any structure built prior to the proclamation of a District. The main change for areas included in a District is that approval for future development and subdivision will need to be sought from the Mine Subsidence Board. Board development approval will no longer be required for those areas removed from a Mine Subsidence District, but structures remain covered for compensation.

The Board's guidelines for future development allow for single storey brick veneer construction in keeping with the aesthetics and style of existing structures. Some two storey brick veneer dwellings will be allowed in the southern end of the Wyong District. Subdivision has largely been determined by the zoning at the time of proclamation. The Board recognises the need to have some flexibility in its guidelines and will consider other applications on their merits.

The Board provides guideline information, advice on mine subsidence and brochures free of charge to anyone with questions about Mine Subsidence Districts and mine subsidence. Arrangements have been made for the Board's Wyong and Speers Point Offices to remain open until 7 pm next Thursday and the following Tuesday to assist with any enquiries. The Board's staff are available to address community groups regarding the Board's role and mine subsidence, and regularly do so as a community service. The coal mining companies involved have already established project offices at Morisset and Wyong to facilitate community consultation.

For people of non-English speaking backgrounds, information and interpreter services are available from the Board's Head Office at 117 Bull Street Newcastle, or by asking any District Office for assistance.

**For further information please call the Mine Subsidence Board on (049) 50 8088 if your property is within Lake Macquarie Council area, or (043) 52 1646 if it is in Wyong Shire.**

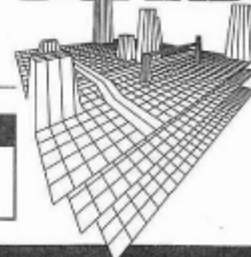
## WYONG

Suite 3, Feldwin Court, 30 Hely Street,  
Wyong 2259 • Phone: (043) 52 1646

## SPEERS POINT

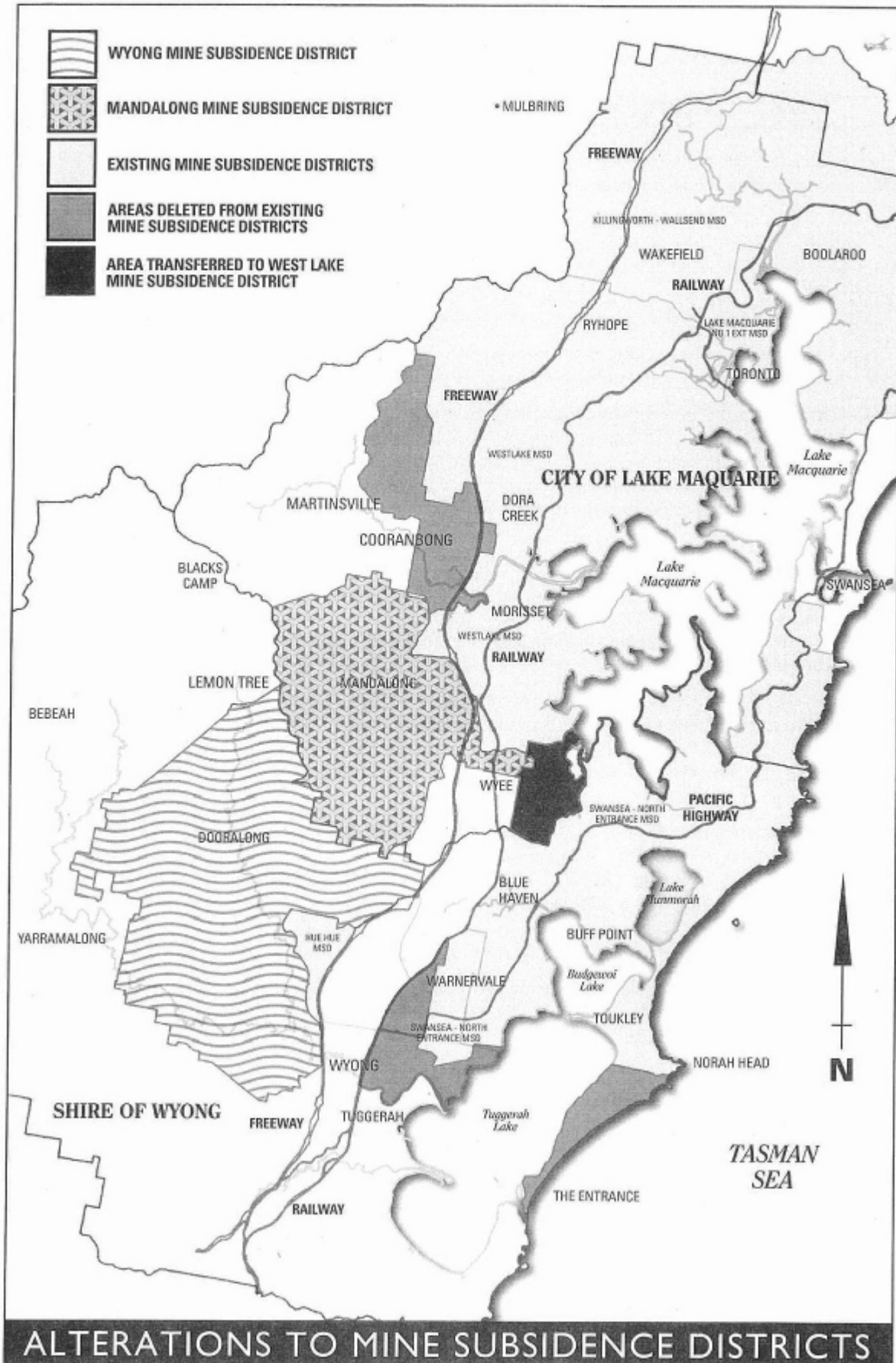
143 Main Road Speers Point 2284  
Phone: (049) 50 8088

# MINE SUBSIDENCE BOARD



**PUTTING SERVICE & THE NEEDS OF PEOPLE FIRST**





In reply please send to: Head Office  
 Our reference: FN98-00152W0  
 Your reference:  
 Contact: G J Cole-Clark — CEO — (02) 4908 4395

27 November 2012

Ms Stephanie Van Dissel  
 Town Planner  
 ADW Johnson  
 PO Box 3717  
 TUGGERAH NSW 2259

Dear Ms Van Dissel

**SUBDIVISION APPLICATION NO. TSUB12—01501W1  
 LOT 42—DP 755271—NO 33 DUNKS LANE JILLIBY  
 CREATING LOTS 421 & 422**

The above lot is in a Mine Subsidence District and the Mine Subsidence Board's approval is required for subdivision and surface development.

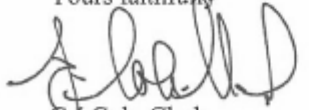
In March 2012 the Mine Subsidence Board refused the subdivision as it would result in an allotment size less than the minimum prescribed by the Board of 20 hectares.

The Mine Subsidence Board has also received correspondence from McKees Legal Solutions. Let me be absolutely clear that all decisions by the Mine Subsidence Board relating to subdivision and surface development are given in writing.

I have reviewed the information and discussed details with the District Manager Wyong.

The Mine Subsidence Board refuses the subdivision under S15(3B) of the *Mine Subsidence Compensation Act*. The site is located in an area identified for future coal extraction and the land may be affected by mine subsidence. The subsidence can exacerbate existing flooding issues and increase the vulnerability to any improvements. Due to subsidence the Board also has requirement limiting subdivision to a minimum of 20 hectares.

Yours faithfully

  
 G J Cole-Clark  
 Chief Executive Officer



**NEWCASTLE**

Ground Floor  
 NSW Government Offices  
 117 Bull Street  
 Newcastle West 2302  
 PO Box 488G Newcastle 2300  
**Telephone: (02) 4908 4300**  
 Facsimile: (02) 4929 1032  
 DX 4322 Newcastle West

**PICTON**

100 Argyle Street  
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 DX 26053 Picton

**SINGLETON**

The Central Business Centre  
 Unit 6, 1 Pitt Street  
 Singleton 2330  
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**WYONG**

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 30 Hely Street  
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**HEAD OFFICE**

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PUTTING SERVICE AND THE NEEDS OF PEOPLE FIRST

**Draft Reasons for Refusal**

- 1 Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application for subdivision of Lot 42 in DP 755271 is prohibited under Clause 14(2)(b) – as one of the proposed allotment does not meet the minimum lot requirement of 20 hectares.
  
- 1 Pursuant to the provisions of Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed “Integrated Development”) and the approval of the Mine Subsidence Board has not been granted. Accordingly, pursuant to Section 91A(4) of the Environmental Planning and Assessment Act 1979, consent cannot be granted.

#### **4.6 DA/322/2012 - Proposed Supermarket at Wyong**

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TRIM REFERENCE: DA/322/2012 - D03200786  
MANAGER: Gina Vereker, Director  
AUTHOR: Peter Fryar; Manager Development Assessment

#### **SUMMARY**

The proposal is for the construction of an ALDI store including associated carparking and signage on the corner of the Pacific Highway, North Road and Hardware Lane, Wyong. The proposed development complies with the objectives of the 3(a) Business Centre zone and is permissible with consent. The application has been assessed having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment (EP&A) Act, 1979 and other statutory requirements with any issues requiring attention and consideration being addressed in the report.

<b>Applicant</b>	ALDI Stores c/- Barker Ryan Stewart
<b>Owner</b>	ALDI Stores
<b>Application No</b>	DA/322/2012
<b>Description of Land</b>	Lots 13 and 14 DP 658934, Lots 11 and 12 Section 1 DP 3136 and Lot 112 DP 555924, Nos 146 – 148 Pacific Highway and 33 Hely Street, Wyong.
<b>Proposed Development</b>	Demolition of existing buildings and structures and the erection of an Aldi Supermarket Store.
<b>Site Area</b>	4,250m <sup>2</sup>
<b>Zoning</b>	3(a) Business Centre
<b>Existing Use</b>	Vacant
<b>Employment Generation</b>	Up to 20 people (full time and part time)
<b>Estimated Value</b>	\$4,100,000

#### **RECOMMENDATION**

- 1 That Council, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues, grant consent subject to the conditions detailed in the schedule attached to the report.**
- 2 That Council waive the Section 94A Contribution of \$41,000 in return for the net public benefit provided by the provision of an awning along the Pacific Highway frontage, mature landscaping and feature wall on the corner of Pacific Highway and North Road, Wyong.**
- 3 That Council vary Development Control Plan 2005 Chapter 81 – Retail Centres to permit the development.**



## 4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)

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The site is located on the north-eastern edge of the Wyong District Centre. To the north, on the opposite side of North Road is Wyong Grove Primary School and a Council reserve. To the south is commercial and retail development fronting the Pacific Highway. To the west along Hely Street is a variety of commercial uses. The Sydney to Newcastle link lies on the eastern side of the Pacific Highway.

An easement for drainage in favour of Wyong Shire Council dissects Lots 12,13 and 14.

### The Proposed Development

Consent is sought for the erection of a single-storey supermarket and ancillary car park. The proposal will comprise:

- Demolition of remaining foundations from former structures and clearing of vegetation on site;
- Preparatory earthworks including land remediation;
- Erection of the ALDI foodstore (with approximate gross floor area of 1,681m<sup>2</sup>) and “at grade” parking for 69 cars on the corner of Hely Street and North Road;
- Site landscaping; and
- Provision of associated services, drainage infrastructure and advertising signs.

The supermarket will trade between 8am and 9pm seven days a week. Loading and unloading will occur between 6am and 10pm seven days a week. The supermarket will employ up to 20 people on a full-time and part-time basis.

ALDI has been operating internationally for over 50 years, with the first Australian store opening in January 2001. There are over 200 stores operating across New South Wales, ACT, Queensland and Victoria. Generally the business operates in the medium size supermarket range.



*Photomontage of proposed supermarket looking from the east.*





*Photomontage of proposed supermarket looking from the north.*

### **External Referrals**

The application was referred to the Roads and Maritime Services (RMS) in accordance with Clause 104 and Schedule 3 of SEPP (Infrastructure) 2007.

### **Summary of Key Issues**

#### **Stormwater Drainage**

The site is subject to localised flooding. The applicant submitted a stormwater management concept and this was referred to the RMS. The RMS initially raised concerns over the concept and a revised concept was prepared in consultation with the applicant. This concept has been supported by Council's Senior Planning Engineer (Hydrology) and agreed to by the applicant. The RMS's concerns have been adequately addressed.

#### **Building Height**

The Wyong/Tuggerah Planning Strategy identifies this site, being a "gateway" site, as suitable for a building up to six stories in height. The proposed building is single storey. The assessment by Council's Landuse Planning and Policy Unit has acknowledged that at this stage in the development of the Wyong Town Centre a six-storey building is not feasible and that the proposal is appropriate for the site.

#### **Economic Impact**

Development Control Plan (DCP) 2005, Chapter 81 – Retail Centres proposes that additional retail floor space not be created in the Wyong CBD until 2021. However, the applicant has submitted an economic impact assessment and this has been previously reviewed by Council's consultant who has concluded that the additional floor space will not detrimentally affect the existing retail outlets but will, in fact, strengthen the retail sector.

## 4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)

### VARIATIONS TO POLICIES

Clause	8.1.2
Standard	Retail floor space timing (prior to nominated year 2021)
LEP/DCP	DCP 2005 Chapter 81 – Retail Centres
Departure basis	10.5%

TABLE 1: Details of proposed variation to Wyong DCP Chapter 81.

### HISTORY

The subject lots were originally created in 1879. An easement for drainage incorporates Lot 12, 13 and 14.

- 20.02.2007: DA/1062/2007 granted consent for demolition of buildings and erection of a shop (ALDI foodstore) and commercial premises.
- 27.04.2010: Council considered preliminary plans for a redesign for the proposed ALDI shop various issues such as the building's appearance and stormwater management discussed with applicant.
- 23.06.2010: Following further discussions between Council and applicant a revised preliminary design submitted for further assessment.
- 17.03.2010 Consent granted to DA 898/2010 for demolition of buildings and erection of a three storey shop (Aldi) foodstore and commercial premises.

### PERMISSIBILITY

The subject site is zoned 3(a) Business Centre under the Wyong Local Environmental Plan 1991 (WLEP 1991). The proposal complies with the objectives of the zone, in particular, Objective (b) which states:

*“(b) to provide for higher intensity retail and commercial uses, while allowing for low intensity retail and commercial uses in other business zones,”*

in that it provides for retail activities that are appropriate to the character and needs of the Wyong District Centre. The erection of a supermarket is permissible with consent.

### RELEVANT STATE/COUNCIL POLICIES AND PLANS

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

- State Environmental Planning Policy No 55 – Remediation of Contaminated Land
- State Environmental Planning Policy No 64 – Advertising and Signage
- State Environmental Planning Policy (Infrastructure) 2007
- Central Coast Regional Strategy
- Wyong/Tuggerah Planning Strategy
- Wyong Local Environmental Plan (LEP) 1991



#### **4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)**

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- Development Control Plan 2005
  - Chapter 7 – Wyong Town Centre
  - Chapter 50 – Advertising Signs
  - Chapter 61 – Carparking
  - Chapter 69 – Controls for Site Waste Management
  - Chapter 70 – Notification of Development Proposals
  - Chapter 81 – Retail Centres
  - Landscape Policy and Guidelines
- Retail Centres Strategy
- Contributions Plan No.1 – Wyong District and Part Rural West District

#### **ECOLOGICALLY SUSTAINABLE DEVELOPMENT PRINCIPLES**

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

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

#### **ASSESSMENT**

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

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

##### **State Environmental Planning Policy No.55 – Remediation of Contaminated Land**

Council's records identify the subject site as being contaminated and accordingly, a Stage 1 Environmental Site Assessment, dated July 2008, prepared by Coffey Environments was carried out. The information, findings and recommendations provided indicate the necessity for a detailed investigation to be undertaken in relation to the extent of contamination on site.

Under Clause 7 of SEPP 55 Council must consider a report specifying the findings of a preliminary investigation of the land concerned and may request a detailed investigation if it considers the findings of the preliminary investigation warrant such an investigation.

In this case, a detailed investigation is recommended to be included as a condition of any consent. This is because the preliminary investigation has indicated that the site was previously used for two activities (fuel storage and asbestos disposal) listed in Table 1 of the *Managing Land Contamination Planning Guidelines* and because the proposed use (a shop) has the potential to increase the risk of exposure to contamination without the appropriate remediation. The detailed investigation will define the nature, extent and degree of contamination; assess potential risk posed by contaminants to health and the environment; and will obtain sufficient information to develop a remedial action plan (RAP) which has been recommended by Coffey Environments. An appropriate condition is also recommended to be included in any consent granted by Council requiring the preparation of the RAP.

**State Environmental Planning Policy No.64 – Advertising and Signage**

Signage will remain generally the same as previously approved by Council. However, the location of the signage will be slightly relocated to accommodate changes to the eastern car park configuration.

The proposed signage includes:

- o Eastern building elevation – 2 x illuminated ALDI logo flush wall sign and 1 illuminated ALDI logo “Poster Box” sign.
- o Northern building elevation – 2 x illuminated ALDI logo pylon sign;
- o Eastern car park – 1 x illuminated ALDI logo pylon sign and
- o Western car park – 1 x illuminated ALDI logo pylon sign.

Logos have also been shown on the northern and eastern elevations depicting images of fresh fruit and vegetables which form part of the architectural design of the building and assist in providing visual relief to the façade of the building.

SEPP No 64 – Advertising and Signage applies to all signage and excludes business identification signs from most of the requirements. Clause 8 of Part 2 does, however, require Council to be satisfied that any proposed business identification signs are consistent with the objectives of SEPP 64 and satisfy the assessment criteria in Schedule 1 of SEPP 64.

Objective (a) of SEPP 64 states:

*“(a) to ensure that signage (including advertising):*

- (i) is compatible with the desired amenity and visual character of an area, and*
- (ii) provides effective communication in suitable locations, and*
- (iii) is of high quality design and finish, and”*

Given that the design and finish of the signs will be durable and of a high quality and the proposed locations are suitable for, and effective in, identifying the business, it is considered that the proposed signs are consistent with the above objective of the SEPP.

In terms of satisfying the assessment criteria in Schedule 1 of SEPP 64, the following table compares the proposed signs to those criteria.

<b>ASSESSMENT CRITERIA</b>	<b>COMMENT</b>
<p><b>1 Character of the area</b></p> <ul style="list-style-type: none"> <li>• Is it compatible with existing or desired future character of the locality?</li> <li>• Is the proposal consistent with a particular theme in the area?</li> </ul>	<p>The signs are proposed to be located in a commercial business district.</p> <p>A “heritage” theme applies to heritage buildings and other “appropriate” buildings in the town centre (Wyong DCP 2005 Chapter 7). This building is not sited near any heritage buildings and is not considered to be an “appropriate” building for heritage-themed signs.</p>

**4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)**

<p><b>2 Special areas</b></p> <ul style="list-style-type: none"> <li>• Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</li> </ul>	<p>The site is within the Wyong Town Centre which has an identified heritage theme. This site is located on the edge of the town centre and distant from any heritage building and its signage does not detract from any heritage area.</p>
<p><b>3 Views and vistas</b></p> <ul style="list-style-type: none"> <li>• Does the proposal obscure or compromise important views?</li> <li>• Does the proposal dominate the skyline and reduce the quality of vistas?</li> <li>• Does the proposal respect the viewing rights of other advertisers?</li> </ul>	<p>The signs do not obscure important views.</p> <p>The signs do not dominate the skyline or reduce the quality of vistas.</p> <p>The signs do not interfere with any other advertiser or potential advertiser.</p>
<p><b>4 Streetscape, setting or landscape</b></p> <ul style="list-style-type: none"> <li>• Are the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</li> <li>• Does the proposal contribute to the visual interest of the streetscape?</li> <li>• Does the proposal reduce clutter by rationalising existing advertising?</li> <li>• Does the proposal screen unsightliness?</li> <li>• Does the proposal protrude above buildings, structures or tree canopies in the area?</li> <li>• Does the proposal require ongoing vegetation management?</li> </ul>	<p>The signs are part of a large commercial building in an area characterised by commercial buildings.</p> <p>Signs are of high quality and contribute to visual interest of the streetscape.</p> <p>The signs replace several signs on or around the existing derelict buildings.</p> <p>No unsightly features to screen.</p> <p>No, none of the signs protrude above the proposed building or any tree canopies.</p> <p>Management of landscaping required regardless of any signs.</p>
<p><b>5 Site and building</b></p> <ul style="list-style-type: none"> <li>• Is the proposal compatible with the scale of the site or the building or both?</li> <li>• Do the signs respect important features of the site or building or both?</li> <li>• Do the signs show innovation and imagination in its relationship to the site or building or both?</li> </ul>	<p>The signs are compatible with the scale of the building and the site.</p> <p>The signs are well positioned on the building and on the site.</p> <p>The signs are considered to be satisfactory from these two considerations.</p>

#### 4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)

<p><b>6 Associated devices and logos</b></p> <ul style="list-style-type: none"> <li>• Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?</li> </ul>	<p>The signs are planned to be internally illuminated. Logos and lighting devices are an integral part of the signage. No other devices are proposed.</p>
<p><b>7 Illumination</b></p> <ul style="list-style-type: none"> <li>• Would illumination result in unacceptable glare?</li> <li>• Would illumination affect safety for pedestrians, vehicles or aircraft?</li> <li>• Would illumination detract from the amenity of any residence or other form of accommodation?</li> <li>• Can the intensity of the illumination be adjusted, if necessary?</li> <li>• Is the illumination subject to a curfew?</li> </ul>	<p>No, the location of the signs should not result in unacceptable glare.</p> <p>No, illumination of the signs will not create safety issues.</p> <p>No, there are no residences or other forms of accommodation that would be affected by the illumination.</p> <p>Unknown but given nature of the proposal this is not necessary.</p> <p>No curfew applies to site or to proposal.</p>
<p><b>8 Safety</b></p> <ul style="list-style-type: none"> <li>• Would the proposal reduce the safety for any public road?</li> <li>• Would the proposal reduce the safety for pedestrians or bicyclists?</li> <li>• Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?</li> </ul>	<p>No, the directional signs will likely increase safety for the public roads.</p> <p>No, the proposal will not reduce safety for pedestrians or cyclists.</p> <p>No, the proposal will not obscure sightlines from any public area so there will be no reduction in safety.</p>

*Table 2: Comparison of proposed signs to assessment criteria in Schedule 1 of SEPP 64.*

From the assessment shown in the above table it is concluded that the proposed signs satisfy the assessment criteria listed in Schedule 1 of SEPP 64. The “lifestyle graphics” proposed on the northern and eastern façade of the building are not considered to be “advertisements” but a condition of consent will limit the lifestyle graphics to murals, paintings or photographs and no logos or other advertising will be permitted.

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

Clause 104 requires certain specified uses to be referred to the RMS prior to Council determining any such specified use and to take into consideration a number of matters including any submission made by the RMS. Schedule 3 of SEPP (Infrastructure) 2007 lists those uses that are to be referred to the RMS and includes “shops” with a size of 500m<sup>2</sup> and where the site has access to a classified road or to a road that connects to a classified road if the access is within 90 metres of the connection.

#### **4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)**

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In this case the proposed ALDI foodstore will have a gross floor area of approximately 1140m<sup>2</sup> and vehicle connection point to North Road within 90 metres of that road's intersection with the Pacific Highway which is a classified road. Accordingly, the application was referred to the RMS for comment and the RMS has responded in correspondence dated 18 June 2012 by advising that it has no objection to the proposal but raising a number of issues that it requests be considered and, or, addressed. These issues are considered in later sections of this report.

In addition to the RMS comments, SEPP (Infrastructure) 2007 requires Council to consider:

- The accessibility of the site; and
- Any potential traffic safety, road congestion or parking implications of the development.

These matters are also considered in later sections of this report.

#### **Central Coast Regional Strategy**

The Central Coast Regional Strategy was produced by the Department of Planning in 2006 and provides a strategy for the region up to 2031. The strategy provides a vision and direction for the Central Coast's development in regards to centres and housing, economy and employment, environment, heritage and natural resources.

The strategy identifies Wyong-Tuggerah as a major centre and identifies significant retail growth, based on population growth, will create a need for more speciality shops, bulky goods outlets and department stores. The strategy identifies a number of actions in regards to the region's centres including 5.11 which states:

*“Ensure new retail and commercial development is located in centres. Some local convenience retailing may be required out of centre, however the presence of a convenience shop can initiate a neighbourhood centre, around which other activities such as child care facilities can be located.”*

It is considered that the establishment of this major shop in the CBD of Wyong, which is identified as a major centre in the strategy, is consistent with that strategy.

#### **Wyong/Tuggerah Planning Strategy**

The Wyong Tuggerah Planning Strategy identifies the site as being within a “business/administration” precinct of the Wyong Town Centre. The related adopted Wyong Tuggerah Design Vision also provides design guidance for developments in the Wyong Town Centre and, in particular, has identified the site as appropriate for development up to six stories in height.

Council's Senior Strategic Planner has reviewed the proposed development of the land for an Aldi Supermarket particularly in regards to the Wyong Tuggerah Planning Strategy and has advised the following:

*“The subject site is a key, gateway entrance from the north to the Wyong Town Centre and as such, must give the impression that the Town Centre is an attractive, legible place for business or pleasure.”*

#### **4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)**

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*A strong corner building with additional height, massing and articulation to both frontages is required to define a gateway statement to the Town Centre and reinforce the main street character. The site should incorporate a high standard of architecture, urban design and landscaping.*

*The approved plans for the proposed Aldi Store provides a strong presence to both boundaries and the inclusion of some commercial space will help reinforce its presence.*

*The adopted Wyong/Tuggerah Planning Strategy identifies the site as future 6 storey commercial development. Whilst it is not in theoretical terms consistent with the vision of the Strategy, it is considered prudent that at this point in time to recognise that a 6 storey development is unfeasible. The original plan had included some commercial component including office space on the street level. This is encouraged.”*

With regards to the comments the issue of the awning along the Pacific Highway frontage is considered in more detail under the heading “Chapter 7 – Wyong Town Centre. Other design elements relating to the façade are also considered under that same section.

Council’s Urban Designer also reviewed the initial proposal submitted under the development application and advised as follows:

*“There are some concerns regarding the carpark areas that needed to be addressed:*

- 1) Vehicular access and egress with irregular widths and also possible conflicting exit points on Hardware Lane;*
- 2) Pedestrian crossing over Hardware Lane to be slightly relocated to allow for pedestrian usage (conflicting with trolley bay);*
- 3) 3 staff car spaces to be surrounded by kerb to prevent obstruction of ramp access to supermarket and also to prevent car obstructing pedestrian access to lane crossing.*

*Regarding the external aesthetics of the building, the Pacific Highway façade is extremely lengthy (37m of blind wall).*

*It is extremely important that the building addresses the street. The building is located in a prominent position and it requires visibility to and from the street.*

*Also the wall is too horizontal. The horizontal lines along the façade need to be broken to provide a more attractive, elegant and active building.*

*There are diversified simple ways of addressing the street and also to create a more vertical attractive building for example, opening long straight windows along the wall and also increasing the parapet height at certain points to break the lengthy horizontality. Using the colour from top to bottom will help breaking that line.*

*Adding to that, another horizontal wall has a horizontally orientated opening that again increases even more the effect. This white painted wall could be extended horizontally and vertically to allow for the installation of an awning to allow for covering above the access stairs to the supermarket. Also, this wall opening could have a different shape to add to the building.*

#### **4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)**

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*The dark grey/charcoal lower wall should be replaced by a 800mm height sand stone wall surrounding the corner of the site to create a focal point and to treat and address the site in a more artistically way, since the location is a gateway to Wyong Town Centre. The corner point could have a taller, 1800 mm sand stonewall with an opening allowing to see through the supermarket building such as picture frame for example and this wall could also hold a sign of Welcome to Wyong.*

*The reason for suggesting sandstone wall is to match the beige colour used on the building and also to create an aesthetical effect in this locality. This area could also be landscaped and lit to emphasise and create a focal point.”*

In response to the comments received from Council’s Urban Designer, the applicants Architect responded as follows:

*“We have reviewed the written comments provided and believe we have identified Council’s primary concerns as being:*

- *The horizontal nature of the eastern building façade*
- *Creating a more vertical looking building*
- *The extent of the awning over the entry stairs*
- *Materiality*
- *Providing signage opportunity for Council to the corner of the site.*

*Council’s designers primary concern appears to be with the horizontal nature of the eastern façade. It is a function of a grocery store that it requires lengthy walls for stocking. Introducing an awning over the entry stairs will further add to the horizontal nature of the façade which we would like to avoid. In addressing Council’s comments we have introduced the following elements.*

##### *Vertical Windows*

*Vertical windows have been introduced to the eastern elevation to break up the façade and introduce a visual connection between the interior and exterior spaces.*

##### *Use of Colour*

*Consistent paint colour from the top of the parapet to the floor level has been introduced to give the building a more vertical appearance. This also helps to break the building façade up into different colour elements.*

##### *Increasing Parapet Height*

*We have increased the parapet height at the southern end of the eastern façade again to detract from the horizontal nature of the elevation. Articulated the precast panels with grooves continuing the detail of the parapet to create the appearance of a consistent element from parapet to floor level.*

##### *Materiality*

*We have introduced sandstone clad masonry to the feature wall of the main entry stair. This also forms a connection between the building and the corner feature wall accommodating Wyong Town Centre Signage. Note, signage is indicative and is to be installed by Council, refer to elevation on drawing DA-01 for intent.*

#### **4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)**

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##### The Gateway Site

*We have introduced an 1800mm high sandstone clad masonry wall to the corner of the site, this will allow the installation of signage by Council (design subject to ALDI approval). It should be noted, that in order to provide this element for the installation of signage, ALDI has foregone one car space. The entry driveway has been increased in width providing more comfortable vehicular access to the site.*

##### Extension of the Awning to the main entry stair

*The awning currently extends over most of the entry stair. The awning has been designed to cantilever off the forecourt building structure so as to maximise car parking on the site. There is no opportunity to extend this awning any further as it would require the use of structural columns which would impact upon the available car parking on the site.”*

A critical design element considered necessary to be incorporated into the proposal involves the erection of an awning area at the frontage to the Pacific Highway. This matter is discussed in detail further in the report. The plans have been amended to incorporate an awning to the Pacific Highway frontage.

Recommendations concerning Hardware Lane (lighting and signage) can be required as conditions of any consent but the building's design, the width of Hardware Lane and the context of the two do not lend themselves to practical options for increasing the opportunity for this road to be used as a highly trafficked pedestrian thoroughfare.

It is concluded that although the design may not fully realise the vision of the strategy this must be weighed against the fact that the proposal will replace a collection of derelict buildings that currently occupy this “gateway” to the Wyong Town Centre. It is considered that the proposal, if approved, will provide a far better impression that the town centre is an attractive, legible place for business and pleasure notwithstanding that the design may not fully realise the detail of the design vision.

#### **Wyong Local Environmental Plan (LEP) 1991**

##### Clause 10 – Zone objectives and development control table

The use, erection of a “shop”, is permissible with Council's consent within the 3(a) zone that applies to the land. In addition, and as previously discussed under the heading “Permissibility”, the proposed use is considered to be consistent with the relevant objectives of the zone.

##### Clause 15 – Development on land containing acid sulphate soils

The land is identified on Council's Acid Sulphate Soils Planning Maps as within Class 5 (within 500 metres of another class) which requires the preparation of an acid sulphate soils management plan if works are proposed that are likely to lower the watertable in adjacent Class 1, 2, 3 or 4 land to any point below 1 metre AHD.

The closest other class to this site is a Class 3 which is over 140 metres from the subject site. It is concluded that the proposed development is not likely to have any impact on the watertable in the adjoining Class 3 land given the scope of works and the distance to the adjoining class.



#### **4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)**

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##### Clause 28 – Tree Management

The proposed removal of three small trees on the undeveloped part of site is considered to be ancillary to the proposed development. The proposed clearing will not significantly impact soil stability, water quality, amenity, vegetation systems or fauna habitats. The site will be fully landscaped as part of the proposed development.

##### Clause 29 – Services

Clause 29 of WLEP 1991 prohibits Council from granting consent to development unless satisfactory water, sewer and drainage services are available to the development. In regards to drainage and stormwater management the following comments are relevant:

##### **Flooding and Drainage**

The subject site is traversed by an existing 3.0 metre wide “Easement to Drain Water” containing a 1.2m x 0.5m concrete box culvert. This stormwater drainage system is subject to frequent blockages, upstream surcharges and has the demolished “BBC Hardware” original building foundations directly constructed over the concrete box culverts. This system is partly inoperative and is currently bypassed by an existing 1050mm diameter pipeline within Hardware Lane extending to North Road.

The catchment is highly urbanised and suffers from frequent urban flooding. The lower catchment area within Anzac Avenue, Pauline Lane, Hely Street, Hardware Lane and The Pacific Highway suffered high level flooding during the 2004 and 2007 storm events.

The draft report “Wyong Town Centre – Detail Stormwater Drainage Investigation and Options Analysis – Stage 2” prepared by Cardno P/L Consulting Engineers indicates that the 1% AEP flood level is 6.21m AHD in the vicinity of Hardware Lane adjacent the proposed new building.

The proposed building floor level is 500mm above the flood level at 6.71m AHD. The proposed Aldi Shop loading dock is located directly opposite the sag point within Hardware Lane and has the potential to trap upstream surcharge stormwater flows from Hely Street. In accordance with the recent advice from Cardno P/L the calculated surcharge flows at Hardware Lane with the completion of the construction of the trunk drainage system from Hely Street extending to the Pacific Highway would be 4m<sup>3</sup>/sec. Aldi’s Consulting Engineers have submitted calculations indicating that only 1m<sup>3</sup>/sec flows can be discharged through the loading dock area and car parking area without exceeding an acceptable velocity/depth ratio of 0.4m<sup>2</sup>/sec. The remaining flow ie 3m<sup>3</sup>/sec can only be directed to flow under the building via the loading dock in a controlled lined secondary flow path designed by the Consulting Engineers. Vertical inlet grills shall be incorporated into the loading dock western building walls to ensure public and user safety while the building structural elements designed to accommodate the expected flow velocity by a Consulting Structural Engineer.

The loading dock will include the provision of adequate warning signage and line marking to delineate the flow path reducing future risks and ensuring public safety. The signage and linemarking will extend into the car parking area to ensure the public is aware of the potential flood risk along Hardware Lane, loading dock and the car parking area.

The ongoing operation of the loading dock area and car park will require the implementation of a flood emergency management plan.

#### **4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)**

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Major trunk drainage augmentation works along Hardware Lane, across North Road connecting to the existing culverts under the Pacific Highway are required as part of this development application. These works are identical to the drainage works required by the previously approved Aldi Shop DA/898/2010. The Trunk Drainage works as well as roadworks within Hardware Lane have been included in a Voluntary Planning Agreement between Wyong Shire Council and Aldi Stores P/L. The Trunk Drainage works will be undertaken concurrently with the missing link (Hely Street to Hardware Lane) across the Oasis and Centrelink sites by Council's (Infrastructure Management Department).

The construction of the trunk drainage box culverts within Hardware Lane will involve removing the existing functional 1050 diameter pipeline and the closing of the entire 6.0 metre wide lane from the rear of the Oasis Centre extending to the North Road intersection. During the construction of this work any stormwater flows generated by the upstream catchment will be forced to flow through the Aldi site. It is recommended that the culvert works are completed to an operational stage prior to the commencement of any building works within the Aldi site to assist in managing stormwater flows through the site during flood periods.

In regards to water and sewer contributions, it has been calculated that the proposal will generate a load of 8.41 ETs (Equivalent Tenement) on the water supply and the sewerage systems based on a commercial development area of 1,682m<sup>2</sup> at 0.005 ET per m<sup>2</sup>. There will be a credit, however, of 2ET for water supply and for sewerage. The proposal falls within the Development Servicing Plan (DSP) for the Wyong District and contributions will be applicable and have been calculated as follows:

- Water supply: \$12,166.18
- Sewerage: \$15,307.08

Water and sewer connection requirements, including the above contributions, will form part of the Section 306 approval.

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

##### Chapter 7 – Wyong Town Centre

Chapter 7 provides guidance in the development of land, including the subject site, in the Wyong Town Centre. In addition, Chapter 7 provides a number of development controls and design requirements for development within the town centre.

- Pacific Highway Frontage Awning

The plans (final) have been amended to incorporate an awning to extend the length of the building elevation fronting the Pacific Highway. The original plan submitted as part of the application did not provide an awning to the Pacific Highway frontage although an awning to the Pacific Highway frontage formed part of the plans approved under DA 1062/2007.

Wyong Development Control Plan 2005, Chapter 81 deals with Retail Centres and more specifically, Section 8.1 relates to the Wyong District Town Centre of which the site forms part. An objective of the DCP Chapter in relation to the Wyong Town Centre is to provide *“landscape and streetscape improvement... to enhance the amenity of the existing area”*. The provision of an awning along the Pacific Highway frontage to the development will assist in satisfying this objective.

#### **4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)**

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More specifically, the Design Guidelines provided in Section 11.0 of the DCP Chapter state:

“e *Awnings should be provided on all building frontages and should extend over at least half of the width of the footpath. Awnings provide visual interest to buildings and protect pedestrian from weather elements*”.

Wyong Town Centre DCP 2005, Chapter 7 provides further specific design guidelines and Development Controls. Any development within the town centre must give consideration to the urban context within which it is located and design accordingly. The existing streetscape within the town centre is characterised by the provision of awnings over the footpath which should extend along the Highway to include the subject site. This is reinforced under the provisions of Section 2.21 of Chapter 7 which states that a development proposal will have regard to:

*“the compatibility of the proposed development within the broader urban context, that is the relationship of the building with existing and future development in the locality”.*

An “in principle” agreement has been reached with the applicant that the provision of the awning along the Pacific Highway frontage provides a “material public benefit”. Accordingly, the draft Voluntary Planning Agreement (VPA) prepared in relation to the proposal acknowledges the awning as providing a material public benefit in lieu of payment of a Section 94A contribution. The decision to waive the S94A contribution of \$41,000 must be the subject of a resolution by Council.

- Paving/Floor Treatment

The Urban Design Guidelines requirement for special purpose pavers or granite sets to be used for the footpath treatment will be required as a condition of consent.

- Landscaping

In regards to the trees proposed for street landscaping the Landscape Design Assessment Officer (LDAO) has advised that street trees are to be included into the design along the Pacific Highway and, in agreement with Council’s Landscape Architect, the preferred species is to be Magnolia grandiflora along the site’s Pacific Highway frontage for the full frontage of the site. The LDAO has further advised that additional street tree plantings along North Road are to be included into the design. Street tree plantings are to be as per the current theme and should be spaced a minimum of three metres apart. These requirements will be recommended to be included as conditions of any consent that is granted.

From the above it is concluded that the concerns of the Strategic Planner have been reasonably addressed, given the circumstances, and that the proposed development satisfies the requirements of Chapter 7.

#### Chapter 50 – Advertising Signs

Chapter 50 provides specific development controls and certain considerations to be taken into account when assessing any proposed signage. The following table compares the proposed signage to the relevant controls and considerations of Chapter 50 and shows that the proposed signs satisfy the relevant requirements of Chapter 50.

#### 4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)

SIGNAGE	PROPOSED	REQUIRED	COMPLIES?
Single freestanding double-sided pylon sign fronting Hely Street (Western Carpark)	Height = 5.4m Area = 12.0m x 2.4m (4.8m)	Max height = 7m Max area = 8m <sup>2</sup> One sign per street frontage	Yes
Single freestanding double-sided pylon sign fronting North Road (Eastern Carpark)	Height = 5.4m Area = 2m x 2.4m (4.8m <sup>2</sup> )	Max height = 7m Max area = 8m <sup>2</sup> One sign per street frontage	Yes
2 x Flush wall Aldi sign on eastern façade	2.0m x 2.4m each Internally illuminated Minimum 2.6m above ground level	Must be 2.6m above ground level if illuminated  Max total coverage not to exceed 25% of wall space for each frontage	Yes
2 x Flush wall Aldi sign on northern façade	2.0m x 2.4m each Internally illuminated Minimum 2.6m above ground level	Must be 2.6m above ground level if illuminated  Max total coverage not to exceed 25% of wall space for each frontage	Yes
An ALDI lifestyle graphic on northern façade and 3 x lifestyle graphics eastern elevation	One graphic proposed on northern elevation Approx 10m x 2.4m = 24m <sup>2</sup> – Eastern Approx 1.5m x 2.5m = 24m <sup>2</sup>	Must be 2.6m above ground level if illuminated Max total coverage not to exceed 25% of wall space for each frontage	Yes

TABLE 3: Comparison of proposed signage to requirements of Chapter 50 – Advertising Signage

#### Chapter 61 – Carparking

Section 3.0 of Chapter 61 sets out the on-site car parking requirements for various types of developments. There are two “types” of development – shop or supermarket – which could apply to the development and each use has differing car parking provision rates. The following table compares the development to the car parking requirement for each use:

STANDARD	REQUIRED SPACES	PROPOSED SPACES	COMPLIES
<b>Supermarket</b> 4.7 spaces / 100m <sup>2</sup> GFA	1137.34@4.7 spaces 100m <sup>2</sup> (GFA) = 54 spaces	69	Yes

TABLE 4: Comparison of proposal to the requirements of Chapter 61 – Carparking for shops and supermarkets.

## 4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)

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\* GFA = Gross Floor Area

As can be seen, the proposal more than complies with the required car parking for a supermarket under the adopted amendments to Chapter 61.

### Chapter 69 – Controls for Site Waste Management

A site waste management plan was submitted with the development application. A condition of consent is recommended requiring the management of waste during construction to be managed in accordance with that plan.

### Chapter 70 – Notification of Development Proposals

In accordance with Section 2.4 of Chapter 70 the application was advertised for a period of 14 days from 4 May 2012 to 23 May 2012. No submissions were received as a result of the notification of the proposal.

### Chapter 81 – Retail Centres

The proposal involves an increase in “retail” floor space of approximately 1,795m<sup>2</sup>. The proposed additional floor area is contrary to the provisions of Clause 8.1.2 of Chapter 81- Retail Centres which recommends a timing for the addition of any retail floor space until after 2021. As such, the additional retail floor space proposed under the current application, when calculated as a percentage of the existing floor space, results in a variation of 10.5%.

An Economic Impact Assessment (EIA) was prepared by Insite Planning Engineering Environmental. The report provided the following conclusion in relation to the proposed development:

*“... Wyong has significant representation of core and non-core retail businesses, as well as being recognised as the administrative centre for the LGA. Wyong services a large surrounding population with major commercial competition to the south at the regional Westfield Tuggerah shopping centre.*

*The area’s population has rapidly grown over the past decade and is forecast to continue to do so...*

*Aldi stores sit within an interesting place in the retail hierarchy. They resemble a supermarket yet have very distinctive characteristics. As a consequence, the trade impacts are different. Aldi stores leave gaps in the market for which other traders can capitalise. They have far less stock lines than other supermarkets but are price competitive.*

*There are a number of significant demographic and associated trade factors which are good support indicators for further retail development in the trade area. In particular:...*

- *The projections indicate that the population of Wyong will grow from some 135,498 persons in 2001 to 220,141 persons by 2031 –an increase of 84,643 persons. This represents an overall increase in 62.5% in the resident population between 2001-31. The majority (49,498 people-over 65%) of the population growth will be occurring in the bulk of the Primary Trade Area (PTA) and Secondary Trade Area (STA).*

#### 4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)

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- *The largest increase in population growth for the trade area will occur over the period 2006-16.*
- *Supermarket spending is expected to increase by \$31.1M within the PTA and STA over the period 2006-11.*
- *Almost 50% of total increased retail expending (\$475M) and supermarket spending (\$152M) will occur within the PTA and STA over the period 2006-11.*

*The atypical operational manner of the Aldi store and projected population growth (and retail expenditure increase) over the period 2006-11 provide for an immediate introduction of an additional retailer that would complement the Wyong retail centre and provide a marked increase in services for the public.*

*Whilst the matter of the Aldi store not being located within the central retail area could be raised, it is only around 200 metres from major retail nodes and is therefore considered within the core retail area context. The site is zoned appropriately for the use. Furthermore, it is not considered residents could consistently complete their full complement of weekly shopping by exclusively visiting an Aldi store. Trips to other retail outlets in these circumstances will be necessary and likely to be local.*

*The proposal will also generate economic activity during both construction and operation phases providing further grounding for a local economy already highly dependent on the retail sector... It is also considered the proposed development has a genuine and real capacity to increase total trade drawn to the local area. The Aldi development will not lead to a significant decline in supermarket trading at other locations. The impacts on other centres will be recovered quickly as population growth occurs. This is not an 'out of town' development and it will sit amongst existing commercial and community infrastructure as well as residential development..."*

The proposed development was reviewed by Council's Senior Strategic Planner who has advised that in assessing the original development application (DA/1067/2007) Council sought the comments of Council's Retail Consultant. In regards to the current application, the Senior Strategic Planner has made the following comments:

*"Given that the amount of floor space remains similar to that proposed and approved under DA/1062/2007, and that the applicant is still using the original EIA from that DA to justify the economic impacts of the proposal, Leyshon's previous comments are still relevant and a further referral to him is not necessary.*

*The comments basically support the development of an ALDI store within the Wyong Town Centre on the basis that:*

- 1 *ALDI are not a full line supermarket and carry a restricted range of goods. As a result the impact of an ALDI supermarket on other nearby existing supermarkets is substantially less.*
- 2 *The majority of customers can not satisfy all their shopping needs at an ALDI supermarket and often shop at other supermarkets within the Town Centre where ALDI is located. Thus, ALDI can complement rather than compete with existing supermarkets.*

#### **4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)**

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3. *ALDI often attracts customers from outside the Town Centre in which they are located due to the limited number of ALDI stores and their unique characteristics. Meaning that the store is also likely to be patronised by shoppers from the northern parts of Wyong Shire.*
4. *Research has shown that introduction of an ALDI store to a Town Centre can lower the prices of goods from other competitive supermarkets in close proximity to ALDI. Therefore it provides not only a lower priced grocery option but also encourages price competition which can benefit all consumers, not just those that shop at ALDI.*

The information provided in the EIA demonstrates that additional retail floor space in the Wyong District Centre prior to 2021 is warranted and will not affect other retail centres in the locality given projected population growth, the need for retail competition within the Centre and the nature of the Aldi store which generally does not allow for a full shop to be undertaken.

The proposed store does not contravene the objectives for the Wyong District Town Centre as outlined under clause 8.1.1 of Chapter 81 for the following reasons:

- It will not affect Wyong's position in the Shire as the principal administrative centre;
- The proposed development will integrate to some degree with the heritage themes of the centre as it will incorporate heritage images on the building's Pacific Highway frontage which are considered an appropriate scale given the site is identified as one of the major northern gateways into Wyong;
- Demolition of derelict buildings, streetscape planting and improvement will occur and will result in a significantly improved amenity;
- Despite the fact the location of the subject site is on the perimeter of the main town centre, the redevelopment of this site will provide retail activity that reinforces the functions of the Town Centre, providing activity at the northern end of the town.

It is considered that the proposal has demonstrated that the expansion will not exacerbate the existing vacant floor space currently in the Wyong Town Centre as it is redeveloping a site which once contained retail services. The shop will contribute to the viability of the Town Centre, providing a different range of services to that which already exist and will reinforce the identified role of the Town Centre with regard to its retail and administrative roles.

The construction of the proposed development will provide for a wider range of goods and services which contribute to employment and economic growth within the Shire whilst providing competition to the other retailers in the Town Centre which will subsequently benefit the consumer.

#### **Landscape Policy and Guidelines**

Council's Landscape Policy and Guidelines requires the landscape design for the development to be prepared as a Category 3 development because it is highly visible and has a value in excess of \$2,000,000. A Category 3 development requires its landscape design to be prepared by an approved Category 3 landscape designer/consultant.

### **Retail Centres Strategy**

The information provided in the EIA demonstrates that additional retail floor space in the Wyong District Centre prior to 2021 is warranted and will not affect other retail centres in the locality given projected population growth, the need for retail competition within Wyong Centre and the nature of the Aldi store and its retail characteristics. Furthermore, the proposed additional floor space will not exceed the maximum gross retail floor space recommended for Wyong (17,000m<sup>2</sup>). The fact that this addition will occur before 2021 is considered warranted in this instance given the type of development proposed as previously discussed.

### **Voluntary Planning Agreement (VPA)**

The applicant has submitted a Voluntary Planning Agreement (VPA) with Council. Council considered a report on the VPA at its meeting held on 28 March 2012 and resolved as follows:

- “1 That Council receive the report on Proposed Aldi Development and Voluntary Planning Agreement at Wyong.*
- 2 That Council authorise the General Manager to execute the Voluntary Planning Agreement that meets his satisfaction.*
- 3 That Council consider any additional funds required for undertaking upgrades to the stormwater drainage system in Wyong as part of the 2012/13 Annual Plan.”*

The VPA provides for the applicant to make a monetary contribution in lieu of undertaking “upstream” trunk drainage works. Upon finalisation of the VPA, the draft agreement will be placed on public exhibition.

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

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

Wyong Town Centre is identified as a major centre and this proposed redevelopment will significantly assist in ensuring that Wyong Town Centre continues to fulfil that role. Although Wyong Town Centre is identified as a centre with a heritage theme, this modern building is not sited close to the main heritage buildings but is to be located on a gateway site for the Centre and will help present the Centre as a modern, vibrant area.

In addition, it should be noted that on 24<sup>th</sup> November 2010 Council adopted a report recommending that several sites throughout the Shire be identified as “iconic sites” based on the following criteria:

- Location within centre;
- Land ownership pattern;
- Size of the site;
- Employment generating; and
- Constraints



#### **4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)**

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The subject site was included in this list and the purpose of identifying “iconic sites” is to recognise sites within the Shire that have the potential to be a catalyst for economic growth and development confidence. A framework has been developed for providing planning controls that provide a balance between incentives for proposals and the orderly development of these key areas of the Shire.

The owners of the site are aware that the site has been identified as an “iconic site” but the identification does not prevent the current proposal from proceeding but may give the owner other options to consider in the future as the planning controls for the iconic sites are developed.

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

Vehicle access to the two proposed Aldi car parking areas is via Hely Street and North Road with egress from both car parking areas from Hardware Lane. The proposal includes 69 car parking spaces provided within two separated at grade car parks. The car parking areas will require compliance with the relevant Australian Standard. Hardware Lane will also provide service vehicle access from Anzac Avenue for the Aldi service truck (15.3 metre) to manoeuvre into the loading dock adjacent Hardware Lane.

The pavement within the entire length of Hardware Lane including pavement transition work within Anzac Avenue and North Road will require reconstruction to accommodate the increased traffic loadings. The Hardware Lane carriageway will require extensive works including, trunk drainage, sewer re-location, kerb & gutter, kerb returns, line marking, signage, a raised pedestrian crossing and adequate regulatory signage and line marking to delineate the truck loading area and manoeuvring path across the laneway. It is noted that the pavement and associated kerb and gutter within Hardware Lane excluding transition works within Anzac Avenue and North Road have been included in the Voluntary Planning Agreement between Council and the Aldi Food Shop P/L. The footpaths within North Road, Hely Street and the Pacific Highway will require reconstruction to provide adequate safe pedestrian access to the development.

Hely Street and North Road will require signage, line marking and parking restrictions to clearly delineate all entry and exit access crossings to the parking areas.

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

The footpath areas on North Road and the Pacific Highway will be reconstructed and landscaped to provide better pedestrian access and improved amenity.

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

In regards to water and sewer services, this issue was discussed under the heading “Clause 29 – Services” and found to be satisfactory. In addition, development consents for proposals similar to this development are routinely conditioned whereby the developer is required to contact and comply with a range of relevant service authorities for services such as electricity, telephone and gas. Such a condition is recommended to be applied in this instance in any consent that is granted.

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

The site is not identified as a heritage item and is not identified as being within the vicinity of a heritage item. However, the site is within the Wyong Town Centre which has a heritage theme for new development to complement a number of historic buildings in the core CBD area. In this regard, the development is proposed to include heritage images in the steel mesh of the car park façade fronting the Pacific Highway.

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

Although the proposal represents an increase in available retail floor space earlier than planned it has been concluded, for several reasons including the nature of ALDI shops, that the proposed development will not have a detrimental impact on existing retail floor space but will likely have a positive impact on the viability of the existing retail areas.

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

Council will require any fittings (toilets and hand basins) to be water efficient. A water tank is to be provided in order to comply with BASIX requirements.

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

The issue of acid sulphate soils has been considered under the heading "Clause 15 – Development on land containing acid sulphate soils". In respect of conservation of soils, appropriate conditions are recommended should consent be granted requiring appropriate site management measures be put in place prior to construction occurring to ensure that soil erosion does not occur. These measures are also recommended to be required to be maintained throughout the duration of the construction via a condition of consent in any consent that is granted.

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

No effect on air quality or microclimate conditions has been identified in the assessment of this application.

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

The proposed development will have no significant effect on flora and fauna given that the site is within a commercial business district and has been previously developed for a range of commercial purposes.

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

The waste products at the site will be primarily packaging and other grocery and shop materials. Waste will be stored on site until removed. All plastic waste will be returned to the ALDI Stores warehouse and distribution centre at Minchinbury for recycling.

The applicant proposes to locate a waste compactor within the loading dock area of the building. Collection of compacted material will be undertaken by an independent contractor. Putrescible waste is generally limited to staff waste and this will be collected in two 1.5 cubic metre bins. These bins will be emptied on an "as needs" basis by a local contractor.

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

The applicant has pointed out that Section J of the Building Code of Australia deals with energy efficiency and is mandatory for Class 5 to 9 buildings. The proposed ALDI store is a Class 6 building and will be located within Climate Zone 5. As a result, the building has been designed to comply with Parts J1 through to J8 of the BCA.

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

The applicant has submitted a noise impact assessment for the revised proposal. The assessment considers all aspects of the development (fixed mechanical plant and equipment, car park and truck deliveries, traffic, and construction noise). The report concluded that, subject to the recommended measures being implemented, that noise associated with the proposal would be satisfactory.

It will be recommended as a condition of consent that all recommendations contained in the assessment be implemented.

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

The site is subject to localised flooding and to soil contamination. Both issues have been considered in previous parts of this report and are to be appropriately addressed by conditions in any consent granted by Council.

**Any risks from technological hazards.**

No risks from technological hazards have been identified in the assessment of this proposed development

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

The external car park and outdoor circulation areas will be lit at night for safety of customers. All lighting, including signage, is to be turned off after the ALDI store closes.

**Any social impact in the locality.**

The proposed development must be considered as likely to have a positive social impact as it will provide improved retail services in the town centre as well as providing local employment opportunities in the construction and operational stages.

**Any economic impact in the locality.**

The proposed development will have a positive economic impact because, apart from providing local employment, it will provide a boost for the Wyong Town Centre and remove a series of derelict buildings thus enhancing the attractiveness of the Centre.

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

The site design will ensure that the building will serve reasonably well as a "gateway" building at the northern limit of the Wyong Town Centre given its modern design and construction:

#### **4.6 DA/322/2012 - Proposed Supermarket at Wyong (contd)**

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

In respect of construction activities, appropriate conditions are recommended to be applied to any consent that is granted, requiring appropriate site management measures be put in place prior to construction occurring to ensure that soil erosion and sedimentation do not occur. These site management measures should be required to be maintained throughout the duration of the construction via a condition of consent.

##### **Any cumulative impacts.**

No cumulative impacts have been identified as a result of this assessment of the development proposal.

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

##### **Whether the proposal fits in the locality.**

The proposed shop is to be sited in a CBD and be set among other commercial and retail business and, as such, is considered to be a reasonable fit within the locality.

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

The site's attributes – good access, level land and no unmanageable constraints, and location within an existing town centre make the site conducive to the development.

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

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

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

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

The application was referred to the RMS which made a submission. In the submission it raised no objection to the proposal subject to a number of conditions regarding traffic management and access being included in any consent. In addition, the RMS had several concerns with the stormwater drainage concept as it related to the Pacific Highway and required these concerns to be appropriately addressed. In response, Council's Senior Development Engineer devised an alternate drainage strategy that both the applicant and the RMS are now satisfied with in concept. Conditions of consent will require the developer to seek the approval of the RMS prior to construction commencing following detailed drainage designs being completed.

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

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

It is in the local community's interest for developments to be located within the Shire that provide significant local employment opportunities for the community and that assist to reinforce the functions of local centres within the Shire.

**OTHER MATTERS FOR CONSIDERATION**

**Voluntary Planning Agreement**

Refer to previous comments in the report.

**Deeds of agreement etc.**

There are no deeds of agreement involved in this application.

**CONCLUSION**

The application is for a supermarket on a gateway site in the Wyong Town Centre. There are a number of planning strategies and policies that are relevant to the development of this site. The major issues raised through the assessment of the application against these documents are the height of the building, its modern design in a heritage-themed precinct, its potential economic impact on existing retail establishments and stormwater management. The stormwater management issues have been adequately resolved. The assessment of the potential economic impact and the desired height of the building has found that the development is satisfactory. In terms of the building's design the proposal may not fully realise the desire to have a strong heritage theme reflected throughout the CBD but when balanced against the need to provide a strong, vibrant gateway to the CBD in place of the current situation the proposal is supported

**ATTACHMENTS**

- |   |   |           |
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| 1 | Draft Approval Conditions               | D03204897 |
| 2 | Development Plans (A3 colour) Enclosure | D03206325 |

**PROPOSED DRAFT CONDITIONS OF APPROVAL – DA 322/2012**

- 1 The development is to be undertaken in accordance with the approved development plans and specifications listed below except as modified by any conditions of consent and any amendments in red made to the approved plans:

Proposed Store	“Aldi”	Drawing No.	Revision	Date	Drawn By
Cover sheet		DA-00/-	C	September 2012	Donaldson Worrad
Site plan & signage schedule		DA-01/C	C	September 2012	Donaldson Worrad
Retail floor plan		DA-02/C	C	September 2012	Donaldson Worrad
Roof plan		DA-03/C	C	September 2012	Donaldson Worrad
Elevations -sheet 1		DA-04/C	C	September 2012	Donaldson Worrad
Elevations – sheet 2		DA-05/C	C	September 2012	Donaldson Worrad
Sections		DA-06/C	C	September 2012	Donaldson Worrad
Site analysis plan		DA-07/C	C	September 2012	Donaldson Worrad
Waste management plan		-	A	December 2011	Donaldson Worrad
Landscape plan		SS10-2221	A	November 2011	Site Image Landscape Architects

**Certificates – Application and Approval**

- 2 A Construction Certificate is to be issued by the Principal Certifying Authority prior to commencement of any construction works. The application for this Certificate is to satisfy all of the requirements of the Environmental Planning and Assessment Regulation 2000.
- 3 Prior to the occupation or use of the building/structure, an application for an Occupation Certificate for the development must be submitted to and approved by the Principal Certifying Authority.
- 4 Where conditions of this consent require approval from Council under the Roads Act 1993, Local Government Act 1993 or Water Management Act 2000, a completed Subdivision Construction Certificate application form must be lodged with Council and be accompanied by detailed design drawings and supporting information. Upon submission to Council, fees and charges will be calculated in accordance with Council’s Management Plan. The fees and charges must be paid prior to Council commencing the design assessment.

## **Prior to Release of Construction Certificate:**

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

### **Acid Sulphate Soils – Investigation and Reporting Requirements**

- 5 Submission to the Consent Authority of an Acid Sulphate Soil Management Plan, prepared by a suitably qualified person, prior to issue of the Construction Certificate. This plan should outline all requirements pertaining to the Stage 2 environmental site assessment prepared by Coffey Environments, dated 11 July 2008

### **Dust Control Requirements**

- 6 Prior to the issue of a Construction Certificate, suitable details must be provided for the approval of the Accredited Certifier of an appropriate system to control dust emissions from the site during construction works. The approved method of controlling dust emissions from the site is to be implemented and be maintained for the duration of construction works on the site.

### **Ecology/Tree Requirements**

- 7 Prior to works associated with the development commencing and for the duration of construction works, the following protocols are to be implemented to ensure tree and vegetation protection upon the development site:
  - Street trees (1 – 8) are to be protected by the erection of 1.8 metre-high chain wire interlocking fencing as per the engaged Arborist's direction, AS/NZS 4970-2009 - *Protection of Trees on Development Sites* and Development Control Plan 2005, Chapter 67 - *Engineering Requirements for Development*. Trees 1 – 6 are to have the fencing erected to the existing kerb facing North Road & to the existing footpath to the south. The remaining two sides (east and west) are to have the protection fencing located 2 metres from the trunks of the trees.
  - All fenced tree protection areas are to be clearly marked as "No Go Area" on the fencing itself.
  - No clearing of vegetation or storage of vehicles or machinery, waste, fill or materials or unauthorised access is to occur within the fenced tree protection areas.

The management protocols and requirements within these conditions relating to tree and vegetation retention, protection and rehabilitation are to be included in all contract documentation, plans and specifications used by each civil contractor and sub-contractors. All future plans are to include the street trees and trees earmarked for retention on site.

## Erosion and Sediment Control – Design Requirements

- 8 Prior to the issue of a Construction Certificate, design details for the control of soil erosion from the site must be provided for the approval of the Accredited Certifier. Required design details must comply with the requirements of Council's Policy E1 - Erosion and Sediment Control from Building Sites or 'Soils and Construction – Managing Urban Stormwater' (Blue Book).

## Flooding Design Requirements

- 9 Prior to the issue of the Construction Certificate the submission to the Principal Certifying Authority of plans detailing the following minimum floor levels;
- The minimum floor level of the building must be 0.5m above the 1%AEP flood level of 6.21 metres Australian Height Datum (AHD).
  - The provision of certification from a practising structural engineer that all sections of the approved structure which is subject to the force of water or debris due to a 1% AEP flood, have been designed to resist the stresses thereby induced. An appropriate factor of safety is to be applied to the forces exerted by the 1% AEP flood before it is used in any structural calculations.
  - All building materials used or located below the 1% AEP flood level must be flood compatible and the internal areas of lower operational levels appropriately waterproofed and protected from operation during flood events. Plans and specifications detailing the building materials and flood proofing are to be submitted to the Principal Certifying Authority.
  - The pedestrian ramps and openings located on the ground floor (car park level) into the building adjacent Hardware Lane shall be suitably flood compatible to prevent damages from flood waters.
  - The Electrical Sub Station shall be raised to a level 500mm above the 1 % AEP flood level within Hardware Lane to the requirements of Energy Australia.
  - The storage of all toxic or pollutant substances or other products which may be hazardous or pollute flood waters at a minimum level of RL 6.71 metres AHD being 500mm above the 1% AEP flood level. Alternatively these materials must be placed within an area protected by bunds constructed to a height such that no flood waters can enter the banded area if the flood level rose to 500mm above the 1% AEP flood level.
  - All waste, garbage bins and receptacles shall be covered and contained within an enclosure to prevent flood debris.
  - The design and construction of a secondary flow path from the loading dock area through the car parking area without exceeding an acceptable velocity/depth ratio of 0.4m<sup>2</sup>/sec. The flow path shall be designed by a suitably qualified Consulting Engineer.



- The construction of a stormwater surcharge flow path from the loading dock area under the Aldi Shop building in a controlled lined flow path designed by the Consulting Engineer. Note: The combined capacity of the flow path through both the car parking area and under the building must be designed to accommodate a minimum of 4m<sup>3</sup>/s as calculated by Councils Consultant.
- The stormwater surcharge flows that exit from under the Aldi shop building to flow over the Pacific Highway footway shall not exceed the acceptable velocity/depth ratio of 0.4m<sup>2</sup>/Sec. Calculations demonstrating compliance with this requirement shall be undertaken by a suitably qualified consulting Engineer.
- Vertical inlet grills shall be incorporated into the loading dock building walls to ensure safety and the building structural elements designed to accommodate the expected flow velocity by a Consulting Structural Engineer. Appropriate warning signage of flood depth and rising flood waters shall be provided within the loading dock and car parking area.

#### **Roadworks - Design Requirements**

- 10 The provision of raised pedestrian crossing within the Hardware Lane carriageways to facilitate safe pedestrian movements from the car park into the building. The works shall incorporate associated line marking and regulatory signage within Hardware Lane. Detailed design plans shall be submitted to Council for approval by the Local Traffic Committee and Council as the Roads Authority.
- 11 The loading dock shall also be adequately sign posted and the truck turning movements delineated by pavement marking within Hardware Lane and the loading dock area. Detailed design plans shall be submitted to Council for approval by the Local Traffic Committee and Council as the Roads Authority.
- 12 The reconstruction of the Hardware Lane carriageway from Anzac Avenue to North Road. The works shall include the provision of kerb returns, kerb and gutter, dish crossings, footpath, pram ramps, and a pavement designed for a minimum 2x10<sup>6</sup> ESA's. Design plans shall be prepared in accordance with Council's Development Control Plan 2005, Chapter 67 - Engineering Requirements for Development. Note: The design engineering plans and specifications shall be submitted to and approved by Council and the Local Traffic Committee prior to issue of a Construction Certificate.

- 13 The reconstruction of the Hardware Lane / Anzac Avenue intersection to accommodate a turning 15.3m delivery vehicle (Aldi truck). The works shall include provision of kerb returns, footpath, pram ramps, and a pavement designed for a minimum  $2 \times 10^6$  ESA's. A Traffic Management Plan shall be prepared to address all traffic and parking arrangements within Anzac Avenue and Hardware Lane necessary to facilitate delivery vehicle (Aldi truck) access. Design plans shall be prepared in accordance with Council's Development Control Plan 2005, Chapter 67 - Engineering Requirements for Development. Note: The design engineering plans and specifications shall be submitted to Council and the Local Traffic Committee for approval prior to issue of a Construction Certificate.
- 14 The reconstruction of the Hardware Lane / North Road intersection to accommodate a turning 15.3m delivery vehicle (Aldi truck). The works shall include provision of kerb returns, footpath, pram ramps, and a pavement designed for a minimum  $2 \times 10^6$  ESA's. A Traffic Management Plan shall be prepared to address all traffic and parking arrangements within North Road and Hardware Lane necessary to facilitate delivery vehicle (Aldi truck) access. Design plans shall be prepared in accordance with Council's Development Control Plan 2005, Chapter 67 - Engineering Requirements for Development. Note: The design engineering plans and specifications shall be submitted to Council for approval as the Roads Authority prior to issue of a Construction Certificate.
- 15 The provision of concrete 1.2-2.5m wide foot paving within the Pacific Highway and North Road and in accordance with Council's Development Control Plan 2005, Chapter 67 - Engineering Requirements for Development. The design plans must be approved by Council as the Roads Authority prior to issue of a Construction Certificate.
- 16 The provision of street trees within the North Road footway area in accordance with Council's Development Control Plan 2005, Chapter 67 - Engineering Requirements for Development. The plans must be approved by Council as the Roads Authority prior to issue of a Construction Certificate.
- 17 The reconstruction of damaged or broken kerb and gutter, replacement of redundant vehicle crossings and pavement restoration within the Pacific Highway carriageways including the existing car parking spaces in accordance with Council's Development Control Plan 2005, Chapter 67 - Engineering Requirements for Development. The works shall include line marking, signage and pavement resurfacing works along the entire frontage of the site. The design plans must be endorsed by the RMS and approved by Council as the Roads Authority prior to the issue of a Construction Certificate.
- 18 All existing layback kerbs that are redundant along North Road and Hardware Lane are to be replaced with kerb and gutter to the standard height of the existing kerb on the street prior to the issue of an Occupation certificate.
- 19 Safe and secure bicycle parking for 8 bicycles are to be provided on site and shown on the design plans prior to issue of a Construction Certificate.
- 20 Appropriate street lighting is required at the following locations in accordance with relevant Australian Standards.

- proposed pedestrian crossing on the Hardware Lane approach to North Road,
  - the intersection of Hardware Lane/Anzac Avenue, and
  - within both car parks.
- 21 The applicant is to consult with Roads and Maritime Services (RMS) and Busways with regard to the possible relocation of the existing bus stop on Pacific Highway north of North Road to a location adjacent to the proposed development. This will require the installation of regulatory signage and pavement markings to be approved by RMS prior to the issue of the Construction Certificate.
- 22 “No Stopping” Signs are to be installed on the southern side of North Road between Pacific Highway and Hely Street. A plan showing the location of the signs is to be submitted to the Local Traffic Committee for consideration.

**Roads Maritime Services Requirements**

- 23 Construction access to or from Pacific Highway is denied. A Construction Traffic Management Plan (CTMP) shall be prepared and include a Vehicle Movement Plan and Traffic Control Plan. It shall be prepared with the intention of causing minimal impact to the operation of the road network during construction. The CTMP shall be submitted to the RMS and Council for review and approval prior to any construction activities occurring on site.

**Land Contamination - Remediation**

- 24 An appropriately qualified consultant shall be engaged to carry out remediation and validation of a contaminated site prior to construction of the proposed development. This will be carried out in accordance with State Environmental Planning Policy No 55 – Remediation of Land, all remediation work must be carried out in accordance with any contaminated land planning guidelines issued under section 145C of the Act, any guidelines in force under the Contaminated Land Management Act 1997, and the remediation plan must be approved under this consent.
- 25 An EPA accredited site auditor must prepare a site audit statement stating that the site is suitable for the proposed development prior to construction of the proposed development. This requirement must be complied with prior to a Construction Certificate being issued.

All recommendations made by Coffey Environments in the Stage 2 environmental site assessment, dated 11 July 2008, must be followed. This will allow an assessment to be determined of the potential off-site contamination.

**Vehicle Access and Car Parking - Design Requirements**

- 26 The design of the carpark and accesses in accordance with AS2890.1, 2 & 6.

- The Hely Street/North Road car park, spaces Nos 1-33 (minimum 2.6 m x 5.4 m) shall be one way directional controlled with one way sign posting and line marking.
- The North Road /Hardware Lane car park, spaces Nos 34-57 & 59-68 (minimum 2.6m x 5.4m ) and disabled spaces Nos 57 & 58 (minimum 7.2 m x 5.4) shall be one way directional controlled with one way sign posting and line marking.
- The Hardware Lane car parking area shall include the provision of pavement delineation to clearly show the stormwater surcharge path from Hardware Lane to the Pacific Highway. The secondary flow path shall be sign posted with appropriate warning and flood depth markers. Note: The car park design shall be supported by hydrological and hydraulic calculations prepared by a suitably qualified consultant to determine the velocity depth factor with the acceptable safety ratio in accordance with Australian Rainfall & Runoff.

The design shall include the provision compliant with AS/NZS 2890 is to be submitted to the Principal Certifying Authority prior to issue of a Construction Certificate.

- 27 Appropriate signage is to be provided at all vehicular entry and exits to clearly delineate the direction of traffic flow into and out of the development and internal circulation.
- 28 "No Entry" signs are to be placed on both sides of Hardware Lane at its intersection with North Road to reinforce the existing one way restriction.
- 29 Signs are to be placed on both exits of the carparks onto Hardware Lane directing traffic to North Road.

### **Stormwater Drainage - Design Requirements**

- 30 The construction of Trunk Drainage augmentation works (Concrete Box Culvert) from the existing culverts within Hardware Lane across North Road connecting to the existing twin cell box culvert under the Pacific Highway in accordance with Council Concept Trunk Drainage Design dated 28/09/2010. Note: The trunk drainage culverts adjacent the site within Hardware Lane shall be completed to an operational stage prior to the commencement of building works within the Aldi site. The trunk drainage works are to be designed in accordance with the following:
  - The removal of the existing stormwater drainage pipeline from Hardware Lane and the existing culvert system from the site.
  - The Trunk Drainage works are to be designed to accommodate the 1% AEP storm event in accordance with the Stormwater Drainage Investigation prepared by Cardno (NSW) P/L (May 2011).
  - The works shall include the provision of an inlet grate within Hardware Lane of sufficient capacity to ensure the entry of upstream overland surcharge stormwater flows and connection to the existing box culvert and pipeline at the western boundary of Hardware Lane.
  - The provision of a concrete headwall, outlet protection works, safety fencing and flood depth markers at the outlet within the Pacific Highway.