

PRECIS

- The development on the subject site is known as Azzurro Blu Wharf, comprising restaurants (ground floor), a function centre (first floor) and a roof terrace observation deck that is available for use by the public.
- The site is zoned 6(a) Open Space and Recreation under Wyong Local Environmental Plan 1991 (WLEP) with the development being a permissible use in the zone.
- The Development Consent (DA/1457/2010/D) the subject of this application, granted approval to the internal alterations to the existing four (4) ground floor food service tenancies, use of the first floor as a function room and fitout of the premises.
- The proposal is for a Section 96(1A) modification to development consent 1457/2010/A involving the modification of condition 27 to restrict public access to the roof terrace observation deck between the hours of 8.00am - 5.00pm, Australian Eastern Standard Time (AEST), seven (7) days a week and 8.00am – 7.00pm, Australian Eastern Daylight Time (AEDT), seven (7) days a week. The modification will allow for exclusive use of the area by tenant(s) and their patrons between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), seven (7) days a week and will prohibit use of the roof terrace observation deck by any person between 10.00pm – 8.00am.
- By virtue of the proposed modifications, which subsequently change the nature of the use of the roof terrace observation deck to a public/private arrangement, amendments to other conditions of development consent (conditions 1, 16, 23, 24 and 27) and the addition of new conditions of development consent (16A, 27A and 27B) have been recommended as part of the Section 96 (1A) assessment.
- The proposal was placed on public notification concurrently with the proposed modifications for DA/607/2006/D (subject of a separate Section 96(1A) application), for a period of fourteen (14) days in accordance with Development Control Plan 2005 (DCP 2005) Chapter 70 - Notification of Development Proposals. Fourteen (14) submissions were received during the exhibition period. These submissions are addressed further in the report.
- The modifications proposed by the applicant, subject to the changes and inclusion of the additional conditions and amendments detailed further in the report, are recommended for approval. It is considered appropriate to limit the modified access arrangement to a trial period of twelve (12) months. This will enable Council to gauge the suitability of the limited use of the roof terrace observation deck to the general public between limited hours in the evening.

INTRODUCTION

The Site

The site is located on the northern side of The Entrance Road, east of the Wilfred Barrett Drive Bridge. The site was previously used as a foreshore reserve and recreation area and contains the development known as Azzurro Blu Wharf, comprising a three level waterfront tourist and commercial development with a boardwalk extending alongside The Entrance channel. The building currently contains ground floor restaurants and a first floor function centre. The roof top is currently designated as an observation deck open to the public during the operating hours of the development.

The Proposed Development

The *Fisherman's Wharf Waterfront tourist and commercial development incorporating restaurants, retail tenancies, public facilities and boardwalk* was approved on 18 December 2006 under Development Consent 607/2006. In response to submissions raised during the public exhibition period, conditions of consent were imposed by Council requiring the observation deck to be available for use by the public during the operating hours of the development. It was considered that the availability of the roof terrace observation deck to the public would compensate for the loss of public open space that would occur upon construction of the development.

Development Consent DA/1457/2010/A was granted for the *Internal alterations to existing four (4) ground floor food service tenancies, use of mid level function centre, external façade alterations, provision of shade structure and external deck to ground level tenancy*. This development consent imposed a condition, condition 27, which required public access to the roof terrace observation deck during operating hours of the development.

Condition 27 reads as follows:

The proprietors of the venue are to ensure to the satisfaction of Council that the public are to have unrestricted, safe and convenient access to the observation deck during the operating hours of the development. In this regard no alcohol is to be served on the observation deck.

The current Section 96(1A) application seeks to restrict public access to the roof terrace observation deck so that access to the general public is only available between 8.00am and 5.00pm daily. The restriction for public use up until 5.00pm daily is considered reasonable during Australian Eastern Standard Time (AEST), however, during daylight saving months it is considered that access should be extended until 7.00pm (AEDT) daily. The application also seeks approval for exclusive use of this area for tenant(s) and their patrons between 5.00pm and 10.00pm. Although during daylight saving months exclusive use would be reduced to between the hours of 7.00pm - 10.00pm, seven (7) days a week. Consequently, no access to the rooftop terrace would be available for **any** person(s) between the hours of 10.00pm – 8.00am. The modification would involve an amendment to Condition 27 to remove the requirement for “*unrestricted access*” during the “*operating hours of the development*” and would subsequently impose hours where the roof terrace observation deck was to remain open to the public and when the area was available exclusively for use by the tenant(s) and patrons.

It should be noted that currently the public, tenant(s) and their patrons, are all entitled to access the roof terrace observation deck during the operating hours of the development.

Moreover, the roof terrace observation deck is the subject of the current lease. If approval is granted to the modifications under this Section 96(1A) application, there will be a restriction for public access to the roof terrace observation deck after 5.00pm (AEST) or 7.00pm (AEDT), seven (7) days a week. Tenant(s) and their patrons of the development will be able to use this area to the exclusion of the general public between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), seven (7) days a week.

The proposed modifications to condition 27 will result in the addition of two conditions, conditions 27A and 27B, in the modified development consent. These new conditions provide separate requirements which relate to the restriction of the serving of alcohol on the roof terrace observation deck and make reference to the plan which will form part of the stamped approved plans.

As the nature of the use of the roof terrace observation deck is recommended to change to allow for private use between the hours of 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), it is considered reasonable to amend condition 23 to clarify that even though access to the roof terrace observation deck will be available to the tenant(s) and their patrons, to the exclusion of the public, the maximum number of occupants permitted in conjunction with the operations of the function centre should remain at 350. Utilising this area when a function is on in the function centre does not allow for additional patron numbers. Condition 24 has been recommended to be modified to rectify an error on the previous consent which referred to an incorrect condition.

It is considered that the proposed modifications will result in substantially the same development to that which was approved by Council under Development Consent 1457/2010. Public access to the roof terrace observation deck will still be available, albeit not between the hours of 5.00pm - 8.00am (AEST) and 7.00pm - 8.00am (AEDT) (7 days /week). However, this is not considered unreasonable as it will assist in limiting the opportunity for crime and anti-social behaviour which may occur in this area at night. As the roof terrace observation deck forms part of the lease for the building, this area will still be made available for use by tenant(s) and their patrons of the development between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), seven (7) days a week.

Applicant's Submission

Development Consent No 607/2006/C and Development Consent No 1457/2010/A include conditions requiring the provision of unrestricted public access to the roof-top observation deck "during the operating hours of the development":

- *Consent No 607/2006/C:*

"10. The public are to have unrestricted access to the observation deck during the operating hours of the development."

- *Consent No 1457/2010/A:*

"27. The proprietors of the venue are to ensure to the satisfaction of Council that the public are to have unrestricted, safe and convenient access to the observation deck during the operating hours of the development. In this regard no alcohol is to be served to the observation deck."

Currently, the general public are able to access the roof-top observation deck via an external stairway from the foreshore promenade at any time of the day or night. It is becoming increasingly evident that this arrangement is resulting in a number of significant public safety and building security issues, which need to be addressed, including:

- ‘after hours’ drunkenness and anti-social behaviour within an area (i.e. the roof-top observation deck) which is not easily subject to visual surveillance by the public and is not patrolled by the police. The local Superintendent of Police has indicated that the police were unaware that the roof-top observation deck was a public space and was consequently not being patrolled. The Police have recommended that public access to the observation deck should be prevented after hours by the installation of locked gates;
- Throwing of rubbish and bottles from the observation deck to the function centre terrace and the public promenade below; and
- Unauthorised access via the observation deck level lift entry to emergency exits within the building provides hiding places and the potential for building security breaches after ‘lock up’ and ‘gate crashing’ of private functions. There have been several break in attempts reported to local authorities.

Whilst, both development consents require the public to be able to have unrestricted access to the observation deck “during the operating hours of the development”, the development comprises a number of tenancies which have variable operating hours. Hence the existing terms of the consents do not provide the necessary clarity required to reasonably determine the ‘after hours’ time band within which public access to the observation deck is to be restricted.

In order to ensure that the conditions of the development consent in relation to the provision of unrestricted public access to the observation deck are consistent with the lessee’s property rights under the property lease granted by the Council and to provide for an appropriate level of public safety and building security, it is proposed to modify Consent No 607/2006/C and Consent No 1457/2010/A to enable the provision of a security door to prevent after hours public access to the roof-top observation deck and to clarify that the public are to have unrestricted access to the observation deck between 8.00am - 5.00pm daily.

This application is therefore made pursuant to Section 96 (1A) of the Environmental Planning and Assessment Act 1979 to modify Development Consent No 1457/2010/A in the following manner:..

- Consent No 1457/2010/A: Modify the consent to:
 - (i) Approve the installation of a security door on the external stairway access to the roof-top observation deck in accordance with the floor plan and elevation details provided in Drawing A-202 Revision F, prepared by CKDS Architecture Pty Ltd, dated 21 May 2012 and

(ii) Modify Condition 27 to read:

"27. The proprietors of the venue are to ensure to the satisfaction of the Council that the public are to have unrestricted, safe and convenient access to the observation deck between the hours of 8.00am - 5.00pm daily and building tenants and their patrons are to have access to the observation deck between 5.00pm - 10.00pm daily. In this regard no alcohol is to be served on the observation deck."

Modification of conditions

- The modification of Condition 27.

Amend Condition 27 as follows (refer to strike through and bold):

27 ~~The proprietors of the venue are to ensure to the satisfaction of Council that~~ For a period of twelve (12) months, from the date of this modified consent:

(a) The public are to have unrestricted, safe and convenient access to the roof terrace observation deck during the hours of 8.00am - 5.00pm (AEST), seven (7) days a week and 8.00am - 7.00pm (AEDT), seven (7) days a week; and

(b) The tenant(s) and patrons of the development are to have access to the roof terrace observation deck between the hours of 5.00pm - 10.00pm (AEST), seven (7) days a week and 7.00pm - 10.00pm, seven (7) days a week; and

~~(c) No person shall have access to the roof terrace observation deck between the hours of 10.00pm - 8.00am, seven (7) days a week. In this regard no alcohol is to be served on the observation deck.~~

Following expiration of the twelve (12) month period, the public are to have unrestricted, safe and convenient access to the roof terrace observation deck during the operating hours of the development.

Note: Any extension of the use approved in (a), (b) and (c) above, beyond twelve (12) months, will require the prior submission and approval of an application under Section 96 of the Environmental Planning and Assessment Act 1979.

Comment

The above amendments enable the roof terrace observation deck to be used by the public during daylight hours. Restricting the availability of the roof terrace area to the general public between the hours of 8.00am - 5.00pm (AEST), seven (7) days a week and 8.00am - 7.00pm (AEDT), seven (7) days a week and allowing for exclusive use by tenant(s) and their patrons **between the hours of 5.00pm - 10.00pm (AEST), seven (7) days a week and 7.00pm - 10.00pm, seven (7) days a week** is considered reasonable as it allows for better security of the building and enables the tenant(s) to control the use of the roof terrace observation deck at night when the applicant claims anti-social behaviour is more prevalent. The responsibility of the use of the roof terrace observation deck will fall upon the business operators within the development when the area is used to the exclusion of the public.

It is considered appropriate to permit the amended access arrangement to the rooftop terrace on a limited twelve (12) month trial period. This will enable Council to monitor the amenity and social impact (if any) arising from the modified use of the roof terrace observation deck to a public/private arrangement.

The reference to the serving of alcohol has been removed from this condition and has been included as a new, separate condition; as it is considered more appropriate to have the restriction on alcohol service identified as a separate condition in its own right. The inclusion of the wording "roof terrace" has been inserted into the condition to align with the reference used for that area on the stamped approved development plans under DA/607/2006.

- Addition of new Condition 27A to read:

27A For a period of twelve (12) months, the door identified in plan reference A-202, Issue F, dated 21 May 2012, prepared by CKDS Architecture, must be kept secured in an open position between the hours of 8.00am - 5.00pm, seven (7) days a week. For the sake of clarity "open" means not closed and not locked. At no time shall the door be impeded.

Comment

The plan referred to in the above condition No 27A shows the proposed location of the new security door. The purpose of the condition is to clearly state when the door is to be open, therefore providing unrestricted, safe and convenient access to the roof terrace observation deck. It is considered that the wording of the condition should avoid any ambiguity.

- Addition of new Condition 27B to read:

27B No alcohol shall be served on the roof terrace observation deck.

Comment

It is considered more appropriate to have the restriction on alcohol service identified as a separate condition in its own right. This provides more emphasis on this requirement and is clear in its intent.

- The modification of Condition 1.

Amend Condition 1 to read (refer to bold):

1 *The development taking place in accordance with the approved development plans reference number CC100C dated 21/03/11, CC101A, CC200A, CC201A dated 01/02/11 and **plan reference A-202, Issue F, dated 21 May 2012, prepared by CKDS Architecture** except as modified by any conditions of this consent, and any amendments in red as follows:*

a. Deletion of the existing security door

Comment

The additional plan forms part of the application and identifies the location of the proposed security door which will provide the appropriate restriction for access after the specified hours.

- Addition of new Condition 16A:

“16A Noise from the use of the roof terrace observation deck by patrons of the tenancies shall not generate “offensive or intrusive noise” as defined by The Protection of the Operations Environment Act 1997 (NSW)”.

Comment

The addition of proposed condition 16A will ensure that noise generated from the use of the roof terrace observation deck will be maintained at an acceptable level.

- The modification of Condition 23.

Amend Condition 23 to read (refer to bold):

“23 In accordance with the requirements of the Environmental Planning and Assessment Regulation 2000, a maximum of 350 persons, inclusive of staff and performers, are permitted within the mid level function centre. **This number (350) shall not be exceeded when use of the roof terrace observation deck is available to the tenant(s) and their patrons between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), seven (7) days a week.**

Comment

Condition 23 should be modified to provide clarity to the lessee that the maximum number of persons to occupy the function centre shall never exceed 350 persons, regardless of whether they intend to allow some patrons to utilise the roof terrace observation deck whilst attending a function in the mid level function centre.

- The modification of Condition 24.

Amend condition 24 to read (refer to bold):

24 In accordance with the requirements of Clause 98D of the Environmental Planning and Assessment Regulation, 2000, a suitable sign is to be displayed in a prominent position within the premises stating the maximum number of occupants as detailed within condition **23** above, permitted to be within the proposed mid level function centre.

Comment

Condition 24 relates to the maximum number of occupants permitted in the function centre at any one time in accordance with condition 23. Condition 16 relates to the maximum number of persons permitted on the roof terrace areas outside the function centre after 10.00pm for acoustic purposes. The modification of condition 24 under this Section 96(1A) application makes reference to the correct condition number.

Imposition of additional conditions and modification of original conditions of development consent

As discussed previously, if approval is granted to the proposed modifications sought under this Section 96(1A) application, the tenant(s) and their patrons will be able to use this area to the exclusion of the public between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), seven (7) days a week. The nature of the use of the roof terrace observation deck will therefore change to encompass a private arrangement between specified hours which is different to the current arrangement which is presently shared public/private use during the operating hours of the development. As such, certain modifications need to be made to the current development consent so that the private use of the area after 5.00pm (AEST) and 7.00pm (AEDT) is well-controlled and does not impact on the amenity of surrounding development.

The additional conditions to be imposed are for a planning purpose and will allow for adequate enforcement of the development consent if required. It is reasonable to conclude that if the tenant(s) and patrons are permitted to have exclusive use of the roof terrace observation deck between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), then the additional conditions imposed will minimise any adverse impact use of this area would have on surrounding development and would overcome any anomalies regarding use of the roof terrace observation deck which currently arise under the development consent.

The modification of the development consent to allow for the proposed additional conditions and the amending of existing conditions will provide greater clarity for use of the roof terrace observation deck for Council, the tenant(s) and the community, whilst providing the applicant with certainty and clear parameters within the development consent. These modifications will also entitle the tenant(s) to act on the development consent in a way in which they are currently unable to do and will enable them to have greater control over the use of the roof terrace observation deck than what is afforded if the area is used by the public and patrons concurrently. This control should also improve existing safety and amenity issues.

Council may impose additional conditions of consent or amend existing conditions of consent as part of the Section 96(1A) application, however, Council must be satisfied that those conditions meet the "Newbury" test or principles to test the validity of a planning condition (*Newbury District Council v Secretary of State for the Environment* [1981] AC 578 at 607G).

In order to be valid, a condition must satisfy three tests:

1. It must have a planning purpose,
2. It must relate (fairly and reasonably) to the permitted development, and
3. It must be reasonable (*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948]) –that is, the decision was so unreasonable that no reasonable authority would ever consider imposing it.

In addition to the above, the EP&A Act 1979 authorises a consent authority to impose conditions of development consent in accordance with Section 80A 'Imposition of Conditions'. The matters referred to in Section 80A of relevance to this Section 96 (1A) application include:

- 80A (a) *it relates to any matter referred to in section 79C (1) of relevance to the development the subject of the consent, or*

- (f) *it requires the carrying out of works (whether or not being works on land to which the application relates) relating to any matter referred to in section 79C (1) applicable to the development the subject of the consent, or*
- (g) *it modifies details of the development the subject of the development application, or*

In reference to the above, each of the additional conditions and modifications recommended for inclusion in the development consent are for a planning purpose and relate to matters referred to in Section 79C (1) particularly “*the likely impacts of the development*” (s79C(1)(b)), “*the suitability of the site for the development*”(s79C(1)(c), and “*the public interest*”(s79C(1)(e)). Limiting the maximum number of patrons for fire regulation purposes and imposing an additional noise condition are matters consistent with the provisions of Section 80A. It is considered that each of the additional and modified conditions have been proposed for a planning purpose and can be imposed as part of Council’s exercise of its statutory discretion.

The imposition of the additional conditions and the modification of existing conditions of development consent result in substantially the same development to that which was originally approved by Council. It is considered that the modifications recommended by Council are consistent with the modifications sought on the application form, in the Statement of Environmental Effects accompanying the Section 96(1A) application and the subsequent letter from the applicant dated 7 June 2012, albeit Council has provided greater clarity surrounding the use of the roof terrace observation deck due to the change in the use of the area from that which was previously approved.

VARIATIONS TO POLICIES

There are no variations proposed to any relevant policies.

HISTORY

There have been numerous development consents granted for the subject site. A history of the approvals is provided as an attachment to the report.

PERMISSIBILITY

The subject site is zoned 6(a) Open Space and Recreation under WLEP1991. The approved development for the *Fisherman’s Wharf Waterfront Tourist and commercial development incorporating restaurants, retail tenancies, public facilities and boardwalk* are all uses permissible with consent and are considered to be consistent with the objectives of the zone. The modifications, as proposed, do not affect the permissibility of the existing development.

Clause 10(3) of WLEP 1991 requires the Council to ensure that the proposed development is compatible with the objectives of the zone within which the development is proposed to be carried out. The proposed modifications do not affect the compatibility of the development with the objectives of the zone. The objectives of the 6(a) zone are outlined below.

- (a) *to provide for the open space and recreation needs of the local community and visitors, and*

Comment

The use of the security door will still enable the public to gain access to this public open space area between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT), seven (7) days a week, therefore it is considered that the provision and use of the door for the purposes of restricting public access is not contrary to this objective. Additionally, members of the community and visitors who are patrons of the tenancies will be able to access the roof terrace observation deck between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT) daily.

(b) to allow for other leisure and recreation-orientated development, or any other use that is authorised by a plan of management adopted under section 40 of the Local Government Act 1993, which:

(i) promotes worthwhile community benefits, and

Comment

The use of the door will provide access control, a key principle of Crime Prevention through Environmental Design (CPTED), to restrict public access after daylight hours, ensuring adequate security to the roof terrace observation deck when the businesses are not operating. Access control increases the effort required to commit a crime and subsequently reduces the potential for crime to occur. This will assist in minimising the potential for vandalism or anti social behaviour occurring when there will be less people around.

(ii) would not reduce the amount and distribution of public open space areas below acceptable levels and standards which meet the needs of the community, and

Comment

The availability of the roof terrace observation deck to the public between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT), seven (7) days a week, will not reduce the amount or distribution of public open space area to that which currently exists within the development.

(iii) would not have an unacceptable impact on the amenity of adjacent areas, and

Comment

The use of the door for the purposes of access control, and the restriction on the hours of availability of the roof terrace observation deck to the public and the tenant(s) and their patrons, will not result in an unacceptable impact on the amenity of adjacent areas. To the contrary, limiting the use of the roof terrace area may improve any existing noise issues and anti social behaviour which has been generated from the area after daylight hours.

(iv) would not have an adverse effect on water catchments, water quality, land surface conditions and important ecosystems such as Tuggerah Lakes, Lake Macquarie, streams, estuaries and wetlands.

Comment

Given the Section 96(1A) application is only seeking to modify an existing approved development there is unlikely to be any adverse effect on water catchments, water quality or the like. This matter would have been considered in the original assessment and determination of the development.

RELEVANT STATE/COUNCIL POLICIES AND PLANS

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

- State Environmental Planning Policy 71 (SEPP 71)
- Wyong Local Environmental Plan 1991 (WLEP)
- Development Control Plan 2005, Chapter 60 – The Entrance (Chapter 60)
- Development Control Plan 2005, Chapter 70 – Notification of Development Proposals (Chapter 70)
- The Entrance Peninsula Planning Strategy 2009
- The Entrance Masterplan

ECOLOGICALLY SUSTAINABLE PRINCIPLES

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

The modified development continues 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.

Climate Change

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the application. This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope / combat / withstand these potential impacts. These considerations and any related conditions remain relevant under the modified development.

ASSESSMENT

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

THE PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/ POLICIES (s79C(1)(a)(i-iv):**Section 96 (1A) Environmental Planning and Assessment Act 1979**

The applicant seeks an amendment to DA/1457/2010/A under Section 96(1A) of EP&A Act 1979. Having regard to the provisions of Section 96(1A) of the EP&A Act 1979, it is considered that the amended proposal is substantially the same development to that which was previously approved by Council.

Section 96(1A) states:

“(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.”*

The proposed amendments are considered to have minimal environmental impact and the development is considered to be substantially the same development to that which was originally approved on the site. The application was placed on public exhibition with the submissions received during the notification period considered during the assessment process and are addressed further in the report. The application is considered to be consistent with the requirements of Section 96(1A) and the modifications are therefore recommended for approval subject to the additional modifications and conditions proposed by Council.

THE LIKELY IMPACTS OF THE DEVELOPMENT (s79C(1)(b)):***The relationship to the regional and local context and setting***

The subject site is located in an area comprising public open space, restaurants, commercial, retail and residential development. Given the surrounding uses within the area and the existing uses on the site, the proposed development is considered to be in keeping with the local context of the area. The proposed modifications to this development consent will not impact on the compatibility of the development within the regional and local context.

The access, transport and traffic management measures

There are no matters relating to access, transport and traffic management measures that require further consideration or discussion as a result of the proposed modifications.

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

The proposed security door will allow public access to the roof terrace observation deck during the hours of 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT), seven (7) days a week, and exclusive access for the tenant(s) and their patrons between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), seven (7) days a week. No access to the roof terrace observation deck for any person(s) will be permitted between the hours of 10.00pm – 8.00am seven (7) days/week. The original approval for the site required public access to be available during the operating hours of the development which varied considerably and it was unclear to the public as to when the roof terrace observation deck was accessible. The proposed modifications should provide clarity for all users of the roof terrace observation deck.

The impact on utilities supply.

There will be no increase in the demand on utilities supply in terms of utility needs or the availability and capacity of utilities as a result of the proposed modifications.

The effect on heritage significance.

The existing building is not a heritage item however; there are three (3) known heritage items within the vicinity of Azzurro Blu Wharf. These are:

- The Entrance Hotel - Regional Level (No. 47 under LEP)
- World War 1 Monument Memorial Park - Local (No. 44 under LEP)
- Shop / Residence at the corner Oakland Ave & The Entrance Road - Local (No. 46 under LEP)

The proposed modifications will not impact on the items of heritage within the vicinity of the approved development.

Any effect on other land resources.

There are no matters relating to the conservation and use of valuable land resources which require further consideration or discussion.

Any impact on the conservation of water.

There are no matters relating to the conservation of water resources and the water cycle that require further consideration or discussion.

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

The Section 96(1A) application has no effect on the conservation of soils or acid sulphate soils.

Any effect on quality of air and microclimate conditions.

The proposed modifications will have no impact on air quality and microclimatic conditions.

Any effect on the flora and fauna.

There are no matters relating to flora and fauna that require consideration under the Section 96(1A) application.

The provision of waste facilities.

There will be no change in the current provision of waste facilities as a result of the Section 96(1A) application.

Whether the development will be energy efficient.

There are no matters relating to energy efficiency that require further consideration under the Section 96(1A) application.

Whether the development will cause noise and vibration.

It is considered that restricting public access to the roof terrace observation deck will minimise the generation of offensive noise pollution and should assist in acceptable ambient noise levels in the locality after dark, particularly given the area will now be able to be monitored more effectively by the tenant(s) given only patrons will be utilising the area between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), seven (7) days a week.

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

Any risks from natural hazards would have been considered in the assessment of the original application which approved the development in this location. This Section 96(1A) application does not require further consideration of risk from natural hazards.

Any risks from technological hazards.

There are no risks to people, property and the biophysical environment from industrial and technological hazards, land contamination or remediation as such, there is no further consideration or discussion on the matter.

Whether the development provides safety, security and crime prevention.

The applicant has stated that the site has been subject to a number of public safety and security risks as a result of the public access to the roof terrace observation deck. In the absence of adequate passive surveillance within and surrounding the facility after dark, the restriction of public access when the area is at its most vulnerable is considered reasonable. The use of the door for access control should reduce existing security and safety issues associated with crime and anti social behaviour.

Any social impact in the locality.

The use of the security door and closure of the roof terrace observation deck to any person after 10.00pm will ensure that members of the community are not placed in unsafe conditions or are subjected to anti social behaviour/crime after daylight hours.

Any economic impact in the locality.

There are no further matters for consideration relating to the economic benefits and costs of the proposed development.

Any impact of site design and internal design.

The proposed modifications will not impact on the site design of the development. The security door will result in a minor change to the external design of the development, however this is considered reasonable and of negligible impact to the overall design of the development.

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

There are no further matters for consideration or discussion given the proposal is a Section 96(1A) application for a modification that involves minimal construction work.

Any cumulative impacts.

There are no further matters for consideration or discussion having regard for cumulative impacts associated with the proposed modifications.

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

As the proposed modifications are of a minor nature and do not change the look or use of the existing building, there are no further matters for consideration or discussion having regard for whether the proposal fits in the locality.

Whether the site attributes are conducive to development.

The site attributes were previously considered under the original consent as being conducive to development. The proposed modifications will not change this.

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 fourteen (14) submissions being received. The issues raised in the submissions have been addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979. A summary of the submissions is detailed in the table below.

Summary of Issues	Response
Original approval of the development designated the roof area for the public viewing. Residents will be denied access to the roof area for recreational purposes and special occasions, such as New Years.	The roof terrace observation deck will continue to be available to the public between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT). It is considered reasonable, for the safety of users and the security of the building, and for the purpose of clarity for the public, patrons and tenant(s), to allow for access to the roof terrace observation deck to be restricted after 5.00pm (AEST) and 7.00pm (AEDT), available to the tenant(s) and their patrons between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), and not permitted to be used by any person after 10.00pm, seven (7) days a week.

Summary of Issues	Response
<p>The original approval required access to be available to the roof area and public toilets at all times. The removal of access would not be in the public interest.</p> <p>The current proposal is not consistent with the original approval in regards to access.</p> <p>The original approval promised access to the roof area, toilets and public boardwalk at all times.</p> <p>The proposal is an attempt by the owners to have complete control over the public land however the building is on public land and the public should have this access retained.</p>	<p>The original approval required access to the roof during the operating hours of the other businesses within the development. Access to the roof terrace observation deck was restricted once all the premises had closed for the day. Access will continue to be available to the public between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT), available to the tenant(s) and their patrons between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT).</p> <p>Access to the public toilets is not proposed to be restricted under this Section 96(1A) application.</p> <p>The proposed modification will provide certainty for the public as to when access to the roof terrace observation deck is available and will provide clear parameters for the tenant(s) and their patrons regarding public accessibility to the area.</p> <p>The proposed modification will still fulfil the intent of the original condition by making the area available, albeit public access is only available between the hours of 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT).</p> <p>No change is proposed to the operation of the existing public toilets or public boardwalk under the current Section 96(1A) application. The approval of the use of the security door will not impede use of either of these facilities.</p> <p>The operation of the development is governed by the Development Consent and the lease agreement. The modifications proposed under this Section 96(1A) application maintain public access to the roof terrace observation deck, even though provision is not made for public access after 5.00pm (AEST) or 7.00pm (AEDT).</p>
<p>The illegally installed security door has already caused problems in regards to access to the observation deck.</p> <p>The public toilets and pedestrian boardwalk have also raised problems along with the garbage area of the development.</p>	<p>Agreed. The Section 96(1A) for DA/607/2006/C seeks approval for the installation and use of the security door in a new location. It is anticipated that by imposing clear conditions on the development consent relating to the installation and use of the door and public access, then issues that have previously arisen regarding public access to the roof terrace observation deck should not occur.</p> <p>Agreed. Council has been dealing with these matters of non-compliance as a separate issue. The proposed modifications do not relate to the public toilets, pedestrian boardwalk or garbage area. Council has recently issued an approval for additions to the garbage area under DA/169/2012.</p>

Summary of Issues	Response
<p>Issues relating to public safety, crime prevention and after hours building security should be addressed by other means.</p> <p>The owners appear to want to roof top area for private functions.</p> <p>The Entrance Masterplan suggests a link between The Entrance Bridge and the roof top area. The proposal is inconsistent with this plan.</p>	<p>The erection and use of the security door for the purposes of access control which will minimise opportunity for crime and anti social behaviour is considered reasonable and warranted in the circumstances of the case.</p> <p>The roof terrace observation deck is able to be used for private functions now under the current development consent; however any function held in this area is carried out with the understanding that the area is also shared with the public and is not available for the exclusive use of the tenant(s) and their patrons. If approval was granted to the proposed modifications, the tenants and patrons would be able to use this area to the exclusion of the public between the hours of 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT).</p> <p>The provision of a walkway between The Entrance Bridge and subject site could still be undertaken at a later date. The use of the security door would not prohibit or hinder this type of future development.</p>
<p>Strong objection to placement of security door to observation deck.</p> <p>The original approval promised access to the public boardwalk at all times.</p>	<p>The roof terrace observation deck will continue to be available to the public between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT) ensuring the public continue to have adequate access and use of this public open space.</p> <p>No changes are sought under the current application for any changes to the use or functioning of the existing public walkway.</p>
<p>The public will suffer as a result of the proposed changes.</p>	<p>It is unclear why the writer believes that the public will "suffer as a result of the changes". The roof terrace observation deck will still be made available to the public between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT) ensuring the public continue to have unrestricted, safe and convenient access.</p>
<p>The owner is already advertising the use of the roof top deck for private functions.</p>	<p>The roof terrace observation deck is able to be used for private functions now under the current development consent; however any function held in this area is carried out with the understanding that the area is also shared with the public and is not available for exclusive use by the tenant(s)/patrons. When there is no requirement for public access to the roof terrace observation deck after 5.00pm (AEST) and 7.00pm (AEDT), then the tenant(s) and patrons will be able to use this area to the exclusion of the public and this is considered reasonable.</p>

Summary of Issues	Response
The application does not provide sufficient justification for why the hours of access should be reduced.	It is considered that the proposed modification to the existing development consent is considered reasonable and warranted in the circumstances of the case.
If adequate security were provided on site there should be no security issues with the observation deck.	Disagree. Although security measures are required to be provided on the site as per the conditions of development consent, it is unreasonable to assume that security would be provided to the roof terrace observation deck at all times. The use of the proposed security door will assist in providing security to the roof terrace observation deck and other premises within the development.
The public toilets are not available as required by the conditions of consent for the site.	Council has been dealing with these matters of non-compliance as a separate issue.
Inappropriate events have been held on the site which has not included security.	Council has been dealing with these matters of non-compliance as a separate issue.
The reduced access appears to only be for commercial purposes and not for social amenity reasons.	Disagree. There is merit in restricting use of the roof terrace observation deck to the public after 5.00pm (AEST) and 7.00pm (AEDT) and restricting use of the area to any person after 10.00pm, for safety and security reasons.
There is no objection to the placement of the security door provided it is only for the normal operating hours.	Noted.

Any submission from public authorities.

There are no submissions from public authorities.

THE PUBLIC INTEREST (s79C(1)(e)):***Any Federal, State and Local Government interests and community interests.*****The Entrance Peninsula Strategy 2009**

The Entrance Peninsula Planning Strategy 2009 reviews The Entrance Strategy 2000 (covering The Entrance and part of The Entrance North suburbs) and carries out comprehensive strategic planning for the Long Jetty and The Entrance North suburbs, which has not been previously undertaken.

The subject site is identified as being in Precinct 3 *The Entrance Channel Recreation and Residential* area. The proposed modification to the approved development will not be contrary to the objectives or strategies and recommendations relating to Precinct 3.

The Entrance Masterplan

The Entrance Peninsula Planning Strategy identified the opportunity to prepare a Masterplan for The Entrance Town Centre with the purpose of “providing a framework to improve the viability and vitality of the centre”. The Masterplan provides five (5) key urban design principles:

1. Create Public Spaces
2. Provide Connectivity
3. Adopt an Innovative Approach
4. Create a Strong Urban Framework which embraces the assets of the locality
5. Respect a Rich and Layered History

The modification to the existing development will not be contrary to the five (5) key urban design principles

The subject site is identified in the Masterplan for The Entrance. The Masterplan recommends consideration of opportunities to provide a link between The Entrance Bridge and the Fisherman’s Wharf roof terrace observation deck.

The use of the security door to restrict public access to the roof terrace observation deck after daylight hours would not hinder the ability for the provision of a link between the bridge and the site at a future date. If this link was to be provided, the door could be removed at a later date or an additional door could be provided for access control at the link if required.

CONCLUSION

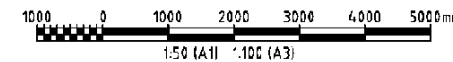
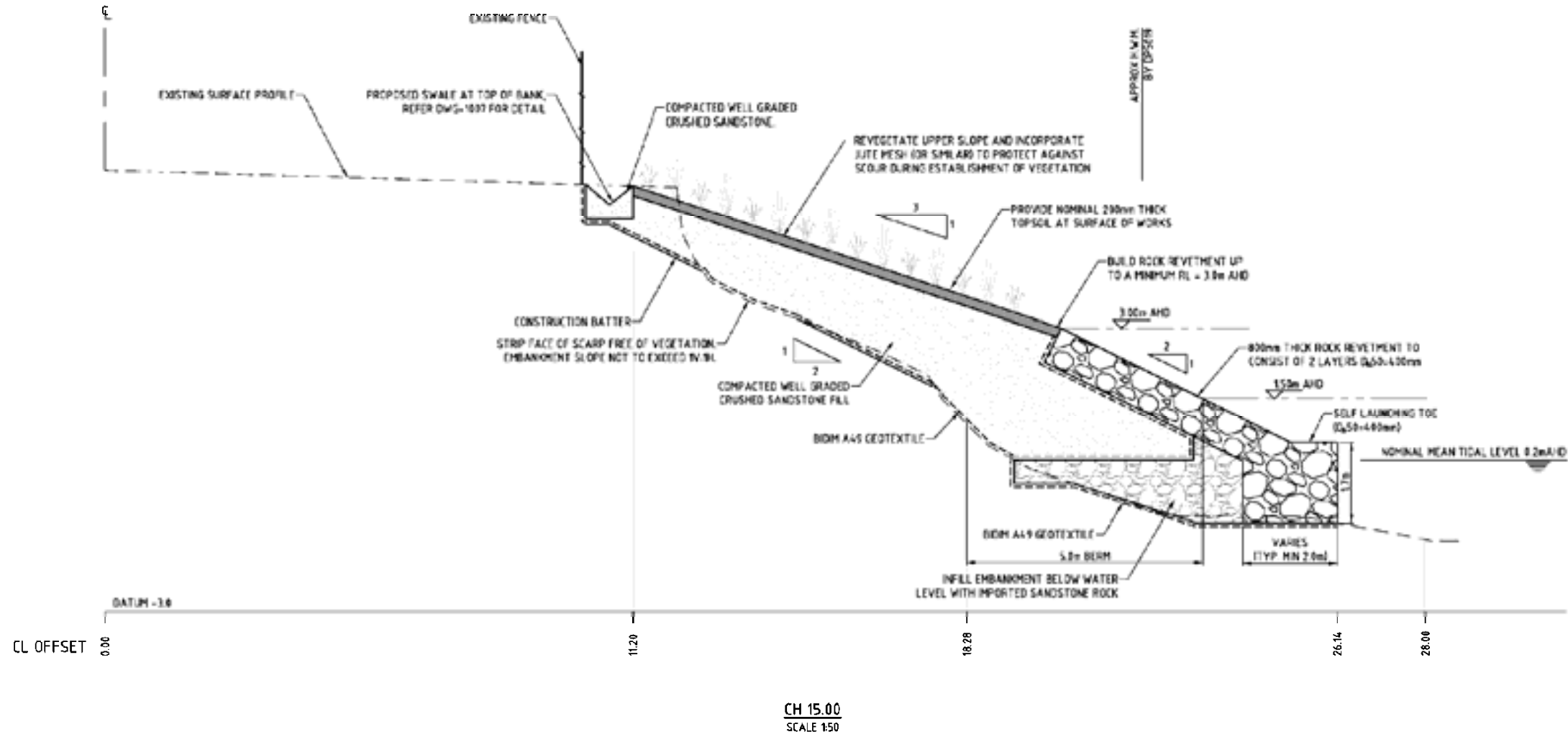
Having regard for the provisions of Sections 96(1A) and 79C of the Environmental Planning and Assessment Act 1979, it is considered that the modification of conditions 1, 23, 24 and 27 and the addition of new conditions 16A, 27A and 27B relating to the restriction of public access to the roof terrace observation deck, the plan identifying the location of the proposed door, the serving of alcohol and providing clarification on the number of patrons for the function centre, are reasonable in the circumstances of the case.

It is considered appropriate to limit the modified access arrangement to a trial period of twelve (12) months. This will enable Council to gauge the suitability of the limited use of the roof terrace observation deck to the general public between limited hours in the evening.

The proposed modifications to the approved development are all considered to have been imposed for a planning purpose and will result in substantially the same development to that which was approved by Council under Development Applications 607/2006 and 1457/2010, as such, the modifications are recommended for approval.

ATTACHMENTS

- | | | |
|---|---|-----------|
| 1 | History of Development Application associated with Fishermans Wharf | D03060163 |
| 2 | Draft Conditions of Consent with highlighted changes | D03060130 |
| 3 | Development Plan (A3 Colour) | D03071040 |



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WORLEYPARSONS PROJECT No.
301015-02874

ENGINEERING AND PERMIT STAMPS (As Required)

CUSTOMER

Wyong Shire Council
CENTRAL COAST

WorleyParsons
ENGINEERING & CONSTRUCTION

**CONSTRUCTION OF ROCK REVETMENT
AT ALISON ROAD, WYONG
DESIGN CROSS SECTIONS
SHEET 1**

DRG No **301015-02874-CI-DWG-1010**

REV **A**

USER NAME: jhillscomah
 CTS FILE: Worley-Tul10b
 LOCATION: S:\302874 - WYONG BUREAU\10 DRAWINGS\DESIGN\1010\101015\DRG101015\DRG101015.dwg
 PLOT DATE & TIME: 21/06/2012 04:35:58 PM
 SAVE DATE & TIME: 21/06/2012 04:35:57 PM
 WORLEYPARSONS AT RPT



Action Plan


June 2012



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 The logo features a stylized black and white graphic on the left, resembling a curved arrow or a path, with the words "MINISTERIAL STATEMENT" in a clean, sans-serif font to its right.

MINISTERIAL STATEMENT

The New South Wales Government has a plan to make NSW number one. We plan to rebuild the economy, return quality services, renovate infrastructure, restore accountability to government, and strengthen our local environment and communities.

Local government has a crucial role to play in delivering these better outcomes for our communities. It has a role to play in ensuring the highest standards of civic leadership to raise the reputation of councils, so it can attract and retain high quality councillors and staff to serve and lead local communities. It has a role to play in driving and supporting economic development in cities, towns and villages. It has a role to play delivering quality services and infrastructure that meet the needs of local people at a level they can afford.

It is widely acknowledged that local government needs to change to do this. There are struggling councils now which are unable to deliver all the services their communities require, while maintaining their infrastructure. If NSW does not take action now it will have councils that are 'haves' and councils that are 'have nots'.

The NSW Government and Councils came together last year to develop a plan to tackle these issues. I would like to thank the councils of NSW, who in participating in Destination 2036, have demonstrated their commitment to the essential change that must occur to deliver better outcomes for local communities. I would also like to thank the members of the Implementation Steering Committee (ISC) who, in developing this plan through extensive consultation, have harnessed the desire for change to deliver a solid plan of action.

Many of the issues that we need to tackle are challenging and complex. I am pleased that the Local Government and Shires Association asked me to establish an Independent Local Government Review Panel to draw on independent expertise to help tackle these issues and identify how councils can best govern and be structured to support the future wellbeing and prosperity of NSW communities.

Action cannot be delivered by the ISC, the Independent Panel or councils alone, and nor should it be. Local people, businesses and business groups, unions and other representative groups all have a stake in delivering the Destination 2036 vision of creating strong communities through partnerships. Many of these people and groups have already made a strong contribution to shaping the action plan. I would like to thank them for their contribution. As we continue the journey towards creating stronger communities through partnership, I am committed to continuing to involve this diverse range of interests and stakeholders. This action plan sets out how this will be achieved.

Destination 2036 provides a once in a generation opportunity to make sure we have councils that can support the changing needs of communities. This action plan will ensure that we seize this opportunity with both hands for the benefit of NSW.


 A handwritten signature in black ink, appearing to read "Don Page".

The Hon. Don Page MP



IMPLEMENTATION STEERING COMMITTEE FOREWORD

Local Government in NSW has come a long way over the last 150 years. As our communities have changed and progressed so have the institutions that support and serve them, including local government. In many ways, local government is the fabric that binds people together as a community. It is therefore incumbent upon us, as a sector, to ensure that we can continue to support and serve our communities with strength, resilience and flexibility.

On the 17th and 18th August 2011, NSW civic leaders were afforded the rare opportunity to pause from the day-to-day activities of council life and come together to consider the future of our communities. At this event we began to develop a plan for how we can best serve them over the next 25 years.

The Destination 2036 project is both ambitious and exciting. As members of the Implementation Steering Committee (ISC), we have worked hard to capture and build upon the energy, vision and goodwill that was displayed at Dubbo. We believe we have prepared an action plan that will serve as a blueprint for the changes we all know must occur in local government to deliver better outcomes for communities. Based on consultation feedback, we believe we now have an action plan that is clear, focused and has widespread support as a tool for driving reform.

Our challenge now is to turn plans into action. Indeed this is already happening. Members of the ISC and councils have been making progress on a number of actions since we came together in Dubbo, for example developing a new model code of conduct and tackling the infrastructure backlog. Many councils and Regional Organisations of Councils have been identifying opportunities for increasing

collaboration. Importantly, the recently announced Independent Local Government Review Panel will bring considerable expertise and drive to identify options to improve the strength and effectiveness of local government in NSW.

The members of the ISC, collectively and individually, are committed to seeing this action plan delivered. The ISC will draw on the expertise in councils and the wider community to ensure progress on actions in this plan for which it is responsible. It will monitor progress and ensure that the identified lead agency delivers on each activity, in a continued spirit of collaboration with the sector and other key stakeholders, such as business and unions. A number of key actions in this plan will be taken forward by the Independent Local Government Review Panel. The ISC will contribute thinking to support the Independent Panel in developing recommendations to strengthen local government.

Destination 2036 is a long-term reform agenda that will lead us to stronger communities through partnerships. This action plan sets out the important first steps we will take together on the journey towards reform.



Ross Woodward
Chief Executive, Local Government
A Division of the Department of Premier
and Cabinet



Cr Ray Donald
President
Shires Association of NSW



Cr Keith Rhoades AFSM
President
Local Government Association of NSW



Mr Mark Ferguson
President
Local Government Managers Australia (NSW)



Over the next 25 years our local communities will undergo considerable transformation. Demographic, economic, technological and environmental change will present significant challenges and opportunities for both our communities and the councils that serve them.

On the 17th and 18th August 2011, the NSW Government, in partnership with the Local Government and Shires Associations of NSW (LGSA) and Local Government Managers Australia (NSW) (LGMA (NSW)), hosted an historic event in Dubbo - *Destination 2036*. The event sought to consider these issues, and to develop a clear, achievable and shared path to a strong and resilient local government sector, responsive to the current and future needs of our communities.

The *Destination 2036* workshop was the first of its kind for NSW. Every one of the State's 152 general purpose councils was represented, both at the elected and executive levels. Most of the State's County Councils and all of the Regional Organisations of Councils (ROCs) were represented and participated in their own right.

The results from the event have been reported back to the sector, and to stakeholders, through the *Destination 2036 Outcomes Report*, which was prepared by the workshop facilitators, Elton Consulting. That report provided a comprehensive record of what transpired over the two days, including the processes and techniques used at the workshop to identify issues for further discussion and consultation.

The *Outcomes Report* presented a draft Vision for NSW Local Government, which was developed and endorsed by participants at the event, together with possible medium

term 'Directions' to achieve that Vision. It also included a large number of shorter term priority actions that were suggested by participants, based primarily around local government functions, structure, governance, finance and capacity.

Immediately following the *Destination 2036* workshop, the Minister for Local Government, the Hon Don Page MP, announced the formation of an Implementation Steering Committee (ISC) to build on the work of the *Destination 2036* workshop and to refine the list of suggested actions into a draft Action Plan for stakeholder consultation. The ISC comprises the Presidents of the Local Government Association of NSW, the Shires Association of NSW and Local Government Managers Australia (NSW) and the Chief Executive of the Division of Local Government, Department of Premier and Cabinet (DLG) as chair. Secretariat support is provided by the DLG.

It is important to appreciate that in the most part, this Action Plan does not seek to answer or implement the actions that were suggested at Dubbo. Rather, it provides a pathway and a process for their more detailed consideration. It represents the opening dialogue in a conversation that the sector, its stakeholders and our communities will be having throughout 2012 and beyond.

Many of the suggested actions will require extensive research and consultation before a preferred position can be determined. Some require the engagement of independent experts, which is why the Minister established the Independent Local Government Review Panel following a request by the LGSA. For some suggested actions, their implementation would require legislative change, which in itself would necessitate further consultation and

consideration. Conversely, there are other suggested actions that have already commenced outside of the *Destination 2036* umbrella, such as the review of the *Environmental Planning and Assessment Act 1979*. There are other actions, such as the review of the Model Code of Conduct, which were being progressed even while the Action Plan was being finalised.

The next steps in the *Destination 2036* process will be exciting. There is a lot of work to be done, and some hard decisions to be made. The end result will be stronger councils providing better services to their communities more efficiently. There is enthusiasm across the sector to tackle the big issues head on. This Action Plan is the next step in the journey that began in Dubbo in August 2011.

We all want a strong and robust Local Government sector, for the communities that we serve, for the ratepayers that fund our operations and for the vast number of employees that work in our councils – not just for today, but for the long term. The *Destination 2036* Action Plan provides a clear pathway to achieve that aim. But it will require the entire sector, together with the State and Commonwealth Governments, to work constructively and in partnership with the community and stakeholders to achieve the required reforms.



Since the *Destination 2036* workshop, the ISC has met frequently to fulfil its brief. It appointed a small group of officers with representation from the DLG, LGSA, LGMA (NSW) and the Australian Centre of Excellence for Local Government (ACELG) to prepare initial drafts for ISC consideration.

The Action Plan was prepared in four stages:

Stage 1:

Refining the draft Vision for Local Government

Stage 2:

Refining the Directions identified at the Dubbo workshop and the Strategic Initiatives contained in the Communiqué to determine the medium term Strategic Directions (i.e. the roadmap), then grouping the suggested actions into logical and achievable Initiatives, with Actions, under the relevant Strategic Directions

Stage 3:

Incorporating feedback from the *Destination 2036 Outcomes Report* consultations

Stage 4:

Incorporating consultation feedback on the draft Action Plan and making links to the Independent Local Government Review Panel



During the first interactive session of the Dubbo workshop, participants considered a number of suggested elements of a Vision for the NSW Local Government sector. On the second day, a small group of volunteer participants worked together to develop a proposed draft based on the key agreed elements. That draft was then presented to the workshop for broader consideration. As noted in the *Destination 2036 Outcomes Report*, participants overwhelmingly supported the draft Vision "...as a basis for further consultation and development"¹.

As noted below (Stage 3), of those councils that commented on the draft Vision in their submission to the *Destination 2036 Outcomes Report*, the vast majority supported its adoption. The ISC has, however, made one minor amendment to the draft based on feedback, by including "economies" in the second last point.



¹A total of 270 participants responded to this question, with 246 (91%) supporting the draft.



Toward the end of the first day of the Dubbo workshop, the facilitators crafted a number of draft 'Directions', which they believed captured the broad sentiment in the room. Those draft Directions represented a summary of the key issues that participants believed needed to be addressed in the medium to longer term in order to make Local Government stronger and more sustainable.

The Communiqué that was issued at the conclusion of the event listed a number of 'Strategic Initiatives' that needed to be achieved in order to make Local Government strong and sustainable. While there was significant overlap between the Directions developed by the facilitators and the Strategic Initiatives listed in the Communiqué, the ISC has combined and refined them into the following five Strategic Directions. In doing so, the ISC is mindful that the Strategic Directions are inter-related and all are of equal importance and priority.

STRATEGIC DIRECTIONS FOR NSW LOCAL GOVERNMENT

Over 70 actions were suggested at the Dubbo workshop. Some of these suggested actions were quite broad while others were very specific. In addition, there was some overlap between certain actions. The ISC therefore considered each of the suggested actions and their context, and then 'grouped' them where appropriate. As a result, all of the suggested actions were incorporated into one or more initiatives (see Appendix B).

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INCORPORATING FEEDBACK ON THE DESTINATION 2036 OUTCOMES REPORT

The Destination 2036 Outcomes Report was released on 21 September 2011. Councils and other stakeholders were invited to consider the Report and to provide comments by 4 November 2011 on the following:

1. Do you support the draft Vision contained in the Outcomes Report?
2. If not what changes would you suggest?
3. What do you believe should be the priorities for the draft Action Plan?

The ISC received 73 submissions from 69 interested stakeholders.

Overall, most stakeholders were positive about the Destination 2036 process. Of those that attended the event in Dubbo, the vast majority believed that the Outcomes Report represented an accurate reflection of what transpired over the two days.

Fifty-two submissions commented on the draft Vision, with 75% of those supporting it without change. Twelve submissions supported the draft with amendments, while one stakeholder did not support the draft Vision.

In terms of prioritisation of actions, 30% of submissions did not identify priorities, but many of these expressed support for all of the suggested actions to be included in the draft Action Plan.

The most commonly identified priority from submissions is a comprehensive review of the *Local Government Act 1993*. The focus of comments in this regard is that the Act review should take into account that "one size does not fit all", allowing flexibility in structure and service delivery, and enabling the implementation of new funding models.

The suggested actions regarding finance and revenue-raising elicited some conflicting views. Of the submissions received from industry groups, 80% expressed strong objection to the suggested action 4a (Review options to increase sustainability), particularly around the deregulation of fees and charges, establishing more flexible rating categories and moving to rates valuations based on the improved value of land. Conversely, this suggested action received strong support in submissions from councils.

Similarly, the submissions from industry groups supported the forced amalgamation of councils, while submissions from employee representatives and councils clearly expressed the view that they did not want to see forced amalgamations.

Another clear message from the submissions was that appropriate consultation needed to be undertaken with all stakeholders, including industry groups, employee representatives and the community, in progressing the Action Plan, and that the consultation period for the draft Action Plan needed to be extended until at least February 2012.

Wherever possible, the views expressed in submissions were considered both in the draft Action Plan and in developing the process for its progression, including extending the consultation period.



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INCORPORATING CONSULTATION FEEDBACK ON THE DRAFT ACTION PLAN

INCORPORATING FEEDBACK ON THE DRAFT ACTION PLAN

The draft Destination 2036 Action Plan was released for consultation on 3 December 2011 and the closing date for comments was 15 February 2012. One hundred and eleven submissions were received by the Division. Around two-thirds of responses were from councils.

Overall, the vast majority of submissions were supportive of the overall process and content. There were a number of largely one-off suggestions for how the plan could be improved and therefore no identifiable consensus for significant change to the Plan.

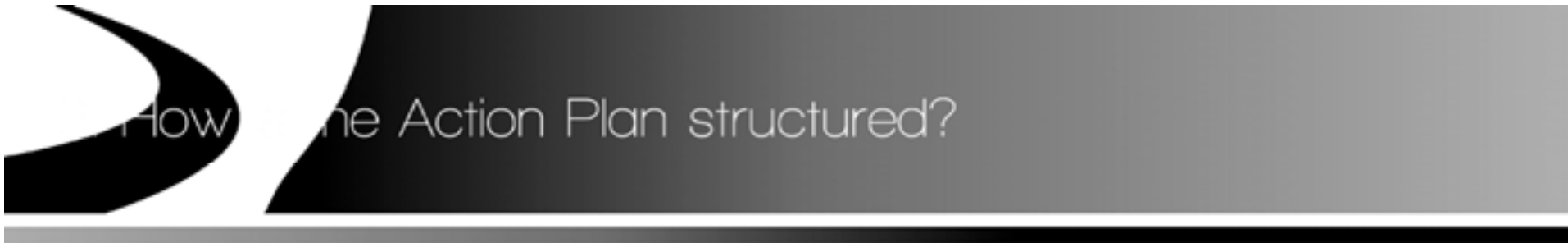
In relation to progressing the Action Plan, the submissions indicated that it would be important that there is adequate consultation/engagement with the sector and other stakeholders, such as employee organisations and the broader community. Feedback also suggested that it would be important that timeframes were realistic, particularly if there is to be adequate consultation/engagement. It was suggested that it may be appropriate to prioritise actions in the Action Plan to give priority to those which involve potentially major strategic change and will have the greatest benefit for councils and their communities.

A detailed analysis of the consultation feedback is available at: www.dlg.nsw.gov.au along with individual submissions.

Based on the consultation feedback, the ISC made minor changes to the draft action plan.

Key changes include:

- The number of initiatives under which the actions were grouped was reduced and some actions merged to simplify the plan
- Minor wording changes were made to some actions to clarify their scope
- A small number of actions were deleted from the plan on the basis that the purpose was unclear
- More specific and realistic timescales for completion have been included
- Actions that fall directly within the Independent Local Government Review Panel terms of reference, and will therefore be referred to the Panel for detailed analysis, have been identified. So too have the actions that will still continue under the direction of the ISC but which will be submitted to the Panel for consideration.



The Action Plan is grouped under the five Strategic Directions with each of the 12 Initiatives considered in turn.

For each Initiative, the following information is provided:

- **WHY IS THE INITIATIVE IMPORTANT?**
- **WHAT IS THE CURRENT SITUATION?**
- **WHAT ACTIONS NEED TO BE UNDERTAKEN?**
- **LINKAGES WITH OTHER INITIATIVES**
- **WHO IS RESPONSIBLE FOR THE INITIATIVE?**

The Actions for the Initiative are then summarised in tabular form.

How will the Action Plan be progressed?

WHO IS RESPONSIBLE FOR DELIVERING ACTIONS IN THE ACTION PLAN?

The actions in this plan are about achieving a shared vision of strong communities through partnerships. Anyone with a stake in this vision - local communities, business groups, unions, councillors, council staff and other stakeholders – therefore has a contribution to make to help deliver the actions.

The ISC will play an important role in facilitating the contribution from these diverse interests and ensuring the actions for which it is responsible for are delivered. The ISC will have a key role in coordinating these actions, monitoring progress and ensuring delivery. Each action the ISC is responsible for identifies a "Coordinating Agency". The Coordinating Agency will be responsible for ensuring that the tasks set out under the Initiative are undertaken and completed within the timeframes set out in the Action Plan. To support delivery of the Plan, the ISC will make recommendations to the Minister for Local Government as appropriate and share the outputs of key actions with the Independent Panel to inform its work.

The Independent Local Government Review Panel is responsible for providing recommendations to Government on key actions relating to governance, structure and financial sustainability, as outlined in its terms of reference, to improve the strength and effectiveness of Local Government in NSW. It too will play a vital role in facilitating the contribution of the community, councils and other stakeholders. The ISC will also contribute thinking to support the Panel in developing recommendations.

The proposed review of the Local Government Act 1993 (see Initiative 3 – Ensure the Local Government Act supports stronger Local Government) is the third vehicle for delivering actions in the action plan. This will ensure the legislative implications of both the ISC and the Independent Panel's work as agreed by Government, are captured and enabled. The proposed timeframes in the Plan for the initiatives with legislative implications have been set to ensure that they feed into the proposed review of the Act at an appropriate juncture.

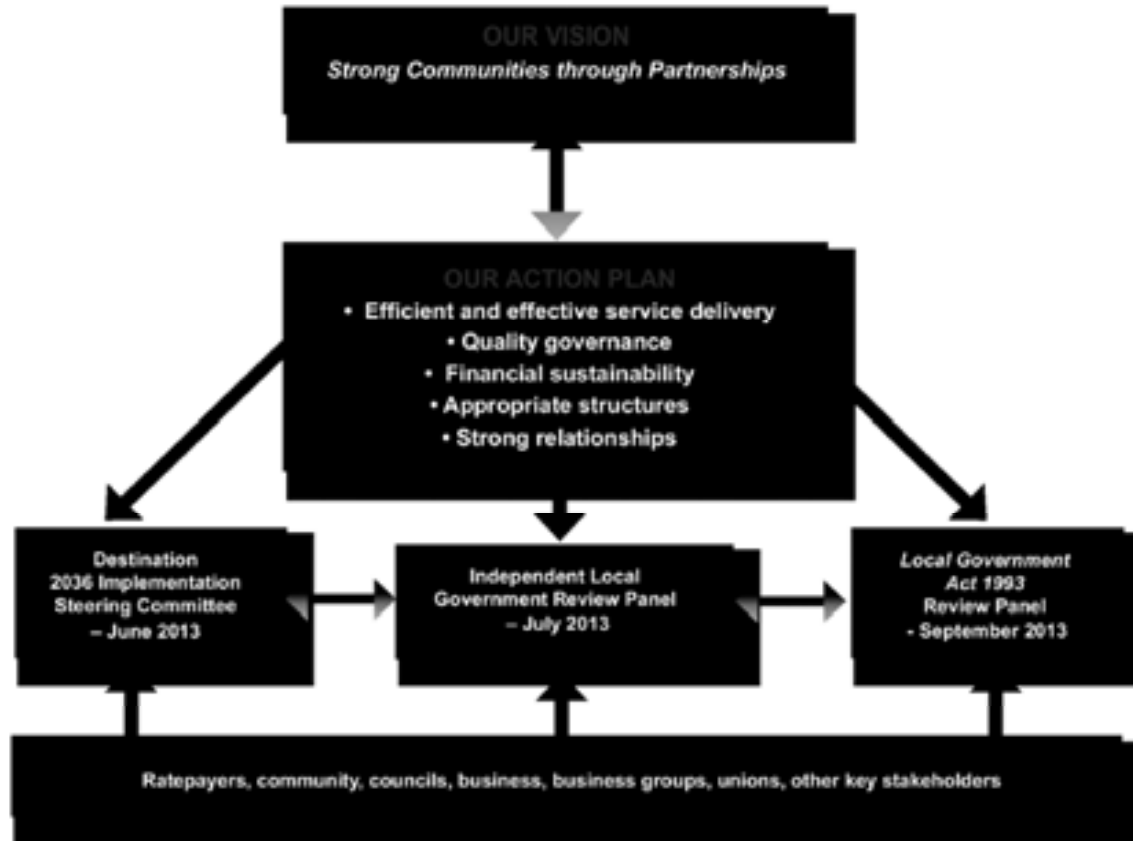
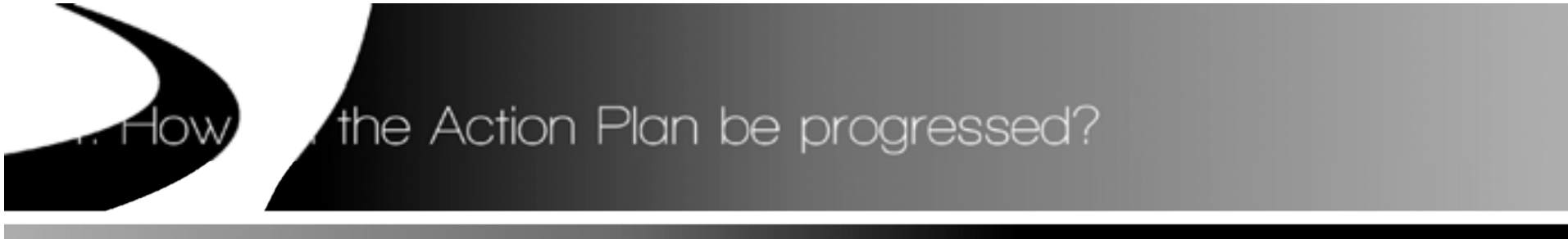
HOW WILL KEY STAKEHOLDERS BE INVOLVED?

The Minister for Local Government, members of the ISC and the Independent Local Government Review Panel are committed to involving all interested stakeholders in implementing the actions to create stronger communities through partnerships.

A wide range of consultative arrangements will be established to ensure this, including a community and ratepayer forum, a reference group, focus groups and working parties to draw on the knowledge, skills and experience of those willing and able to contribute.

Details of these will be made available as work on the actions is scoped and developed.

The link between the ISC, Independent Review, Act Review and key stakeholders to deliver the Destination 2036 vision and initiatives is shown in the chart below.





How will the Action Plan be progressed?

DEVELOPMENT OF PROJECT PLANS

In most instances, before commencing an action the Coordinating Agency will be required to develop a project plan for consideration by the ISC. If the action is to be progressed by a working group, the Coordinating Agency should consult with the working group when preparing the project plan. The project plans are to include:

- The objective of the action
- How the initiative will be achieved
- How linkages with related initiatives and actions will be maintained
- Engagement with key stakeholders
- Resource requirements
- Timeframes and milestones

REPORTING PROGRESS AND OUTCOMES ON THE ACTION PLAN

The ISC will report quarterly on progress against actions for which it is responsible for. Coordinating Agencies will be required to submit to the ISC a schedule listing the actions they are responsible for, together with their project plans, or a status report on their project plans if they have not been completed. The ISC will provide a report on the outcomes achieved by June 2013, to inform both the Independent Local Government Review Panel and the Minister for Local Government in making and considering recommendations and next steps in arrangements for delivering the vision for local government.



The action plan comprises 5 Strategic Directions, 12 Initiatives and 34 actions to achieve the vision of Strong Communities through Partnerships. These are detailed in this section and summarised in Appendix A.

STRONG COMMUNITIES THROUGH PARTNERSHIPS

EFFICIENT AND EFFECTIVE SERVICE DELIVERY	QUALITY GOVERNANCE	FINANCIAL SUSTAINABILITY	APPROPRIATE STRUCTURES	STRONG RELATIONSHIPS
<ol style="list-style-type: none"> 1 Establish Local Government as an employer of choice. 2 Encourage and facilitate innovation. 	<ol style="list-style-type: none"> 3 Ensure the Local Government Act supports stronger local government. 4 Ensure strong and effective local governance. 	<ol style="list-style-type: none"> 5 Review the revenue system to ensure greater flexibility and self reliance. 6 Develop strategies that maximise opportunities to secure funding from other levels of government. 7 Establish a range of funding models to enable the long term maintenance, replacement and creation of different classes of assets. 	<ol style="list-style-type: none"> 8 Develop a number of different structural models for local government. 	<ol style="list-style-type: none"> 9 More clearly define the functions, roles and responsibilities of Local and State Government. 10 Align State and Local Government planning frameworks. 11 Negotiate a new Inter-Governmental Agreement (IGA). 12 Recognise Local Government as a legitimate and important sphere of government.



Local Government is all about delivering services to the local community. Any initiatives that can increase the efficiency and effectiveness of service delivery will result in improved outcomes for the community. It will also provide councils with greater flexibility to expand service delivery, increase opportunities for employees and enable new and innovative ways of doing things.

This Direction will be achieved through the following Initiatives:

INITIATIVE 1

Establish Local Government as an employer of choice

INITIATIVE 2

Encourage and facilitate innovation



Initiative: Establish Local Government as an employer of choice

Why is this important?

Many councils, particularly in rural areas, have difficulty recruiting and retaining skilled staff, while councils in metropolitan and regional areas can have difficulty competing with other sectors of the economy, such as private planners and the mining industry, to retain qualified staff. The sector recognises the need to make Local Government an attractive, interesting and rewarding place to work if it is to attract and retain a highly skilled workforce to provide communities with the services they want and deserve.

What is the current situation?

A number of initiatives have been pursued in recent years to increase the profile of Local Government as an employer of choice, to increase diversity and to assist in addressing skills shortages. In 2005, the DLG established a Skills Shortages Taskforce, which included a range of key stakeholders and which resulted in a number of positive outcomes, not least of which was to raise awareness of the issue and to encourage councils to be proactive.

By 1 July 2012, all councils should have in place a Workforce Management Plan, in accordance with Integrated Planning and Reporting, and they should be using those plans to increase the diversity and skills of their workforce.

Councils should also be looking to grow their own workforce through the establishment of apprenticeships, cadetships and traineeships. A number of councils have been very successful in building their workforce capacity through such processes. These types of positions provide an entry level opportunity for young local people which helps to offset the ageing workforce. It also helps to grow the pool of talent in the NSW Local Government sector.

However, there continues to be a mixed public perception of Local Government as a preferred place to work.

What actions need to be undertaken?

A number of specific actions were suggested at Destination 2036 related to ensuring a more flexible workplace, both for employers and employees, establishing shared specialist teams and formalising rural/city partnership arrangements. The establishment of apprenticeships, cadetships and traineeships should be seen as a key way to increase the diversity and skill range of council staff.

Participants at Destination 2036 suggested that the legislation should be reviewed to more easily allow councils to establish contractual arrangements to provide services to each other and to remove barriers to sharing staff, including general managers and senior staff, and commercialising services.



Linkage with other Initiatives

Initiative 2 (Encourage Innovation)

Who is responsible for this Initiative?

Both the LGSA and LGMA (NSW) have a key role in coordinating this Initiative. As a registered employer body, the LGSA plays a pivotal role in industrial matters. As a body that represents the broad range of local government professionals and senior managers, the LGMA has a direct interest in efficiencies, innovation and flexibility also.

Whilst the LGSA and LGMA will coordinate this initiative, it is vital that they draw on the skills, knowledge and experience of employees in councils and actively involve those who represent them. Actions under this initiative will be developed and delivered in partnership with the employee bodies who represent council workers – the United Services Union, Local Government Engineers Association and the Development and Environmental Professionals Association.

Key Actions	Coordinating Agency	Expected completion
1a Develop a program for sharing specialist professional, technical and other staff between councils in rural areas on a regional basis and between urban and rural councils	LGMA (NSW)	June 2013
1b Develop a program for partnering and mentoring between large/small and urban/rural councils	LGSA	June 2013
1c Explore opportunities for increasing flexible working arrangements to support a variety of models of local government	LGMA (NSW)/LGSA Submit to Panel	April 2013
1d Identify barriers to establishing inter-council contractual arrangements sharing staff, including general managers and senior staff, as well as commercialising services	LGMA (NSW) Submit to Panel	April 2013
1e Develop and implement strategies to increase the diversity and skill range of council staff	LGMA (NSW)	Ongoing



Encourage and facilitate innovation

Why is this important?

There are a number of initiatives that councils could be pursuing to reduce costs to ratepayers and improve service delivery to local people. It is therefore important to identify any barriers that are currently preventing councils from being innovative and exploring new ways of delivering services.

Technological advances are also providing opportunities for councils to operate in new ways. With this new technology comes new ways of thinking. Public sector organisations must embrace these technologies and look at how they can use them to be more innovative, efficient and effective.

Most councils are involved in different forms of resource sharing and cooperation, whether it be through project-specific bilateral arrangements or through formal structures such as Regional Organisations of Councils (ROCs), alliances, or through the peak bodies including LGSA and LGMA (NSW). Participants at the Destination 2036 workshop recognised the significant benefits these arrangements provide in terms of improved efficiency, enhanced service delivery, reduced duplication, financial savings, consistency of processes and practices, and addressing skills shortages. However, it is clear that there are a number of barriers to achieving a greater level of resource sharing and cooperation.

While there are a number of legitimate regulatory functions for councils at the local level, their primary role is to provide services to their communities. It is therefore important that council resources are freed up to the maximum extent possible to focus on providing services to meet local needs, rather than being bogged down in process and compliance activities.

What is the current situation?

The NSW Government, through the new State Plan - NSW 2021, is committed to encouraging and nurturing a culture of innovation in the public sector. Goal 30 of the State Plan (Restore trust in State and Local Government as a service provider) states "Through innovation, we can shape a modern, forward-thinking public sector that embraces new ideas to improve services and efficiency".

Many councils pursue and encourage innovation through their Business Improvement Systems, but more can be done at a sector level to encourage a culture of innovation and to share learning.

The Local Government legislation can make it difficult for councils to provide services to each other, to operate specific services more commercially and to share senior staff. These legislative barriers are sometimes reinforced by administrative and political barriers, all of which can reduce the capacity of councils to improve services to their communities. This issue was the most commonly identified priority from submissions to the Destination 2036 Outcome Report.

Commencing in 2005, DLG began systematically collecting information about and promoting collaborative arrangements between NSW councils. The information was summarised in *Collaboration and Partnerships between Councils – A guidance paper* which was released at the 2007 Strategic Alliance Network Conference.

Collaboration and Partnerships provided a strategic context for council resource sharing and practical guidance to councils about a range of issues including strategic/business planning, stakeholder engagement, business models, benefits realisation and managing relationships. At the time it was released, councils were advised that this was a starting point and it would be updated.

In January 2010, DLG surveyed councils and council managed collaborative arrangements to update its database of collaborative arrangements. It also sought to obtain councils' views on factors supporting collaborative arrangements as a means of meeting community needs. Over 110 councils responded to that request.

Over 600 council partnerships were identified and over 160 detailed project descriptions were submitted. In addition, comprehensive information was provided about the projects managed by ROCs. The information was compiled and analysed in the *Collaborative Arrangements between Councils Survey Report* which was released by the Minister for Local Government at the June 2011 NSW Shires Association Annual Conference.

Continued support for collaboration between councils, as well as strengthened recognition of ROCs as a mechanism for regional strategic planning, regional Local Government service delivery and Local Government capacity building, emerged as significant issues worthy of detailed consideration. These findings were reinforced by the participants at the Destination 2036 workshop and reflected in the Outcomes Report suggested actions.

Furthermore, the NSW Government is looking to ROCs as a key regional planning, consultation and delivery mechanism for the new State Plan – NSW 2021, as well as other regional planning initiatives, such as Regional Transport Plans.

What actions need to be undertaken?

The sector needs to develop and nurture relationships with education and research institutions to identify new innovative approaches and better practice in Local Government, both in Australia and internationally. The National Broadband Network (NBN) will also provide new opportunities and councils need to link in with these developments.



Importantly, learnings and developments need to be shared throughout the sector, so mechanisms will need to be put in place to facilitate this sharing.

Given the wide recognition of the important role ROCs can play, ROCs should be, and are, working with their member councils, and with each other, to identify the range of services or activities ROCs can undertake on behalf of their member councils. In doing so, ROCs are encouraged to strengthen their network and help each other to identify opportunities and learn from each other. Similarly, councils should be seeking out the opportunities that their ROCs, or other alliances, can provide. The State Government has indicated that it is keen to work with ROCs on regional planning matters and ROCs are encouraged to leverage off these opportunities and to develop networks within State Government agencies.

In this context, the limited capacity of some of the smaller ROCs will need to be considered.

Looking forward, there is a need to examine how the role of ROCs can be strengthened in regional strategic planning, tendering and procurement and Local Government service delivery; and how the current barriers, including legislative, attitudinal, financial and administrative, can be overcome.

There is also a need to further develop regional collaborative models (including ROCs, county councils, strategic alliances and service specific projects).

There are also opportunities to examine and develop state-wide models for shared services capturing the benefits of large scale procurements (e.g. electricity) and technology (e.g. library operating systems) which could result in significant savings and improved service delivery outcomes for communities.

There is a need to identify those areas of the legislation that create unnecessary red tape and that could be removed or reduced without adversely impacting on accountability and good governance. The Productivity Commission

recently undertook a national review Business Regulation Benchmarking – Role of Local Government and the findings from that review may provide valuable input.

Finally, it is important to consider how performance measurement and programs to support improvement, such as the Promoting Better Practice Program, encourage and facilitate innovation as well as drive continuous improvement.

Linkage with other Initiatives

Initiative 1 (Employer of Choice)

Initiative 8 (Structural Models)

Who is responsible for this Initiative?

The LGSA, LGMA, DLG and the Independent Panel have responsibility for coordinating individual actions under this Initiative. Again it will be vital to involve a wide range of key stakeholders, in particular unions and business.

Key Actions	Coordinating Agency	Expected completion
2a Develop options and models to enhance collaboration on a regional basis through ROCs	Independent Review Panel	July 2013
2b Undertake research into innovation and better practice in Local Government in NSW, Australia and internationally	Independent Review Panel	July 2013
2c Ensure councils take advantage of the National Digital Economy Strategy and the National Broadband Network to improve capacity and service delivery	LGSA	June 2014
2d Develop a consistent performance measurement approach for councils and a comprehensive program to support improvement	DLG	June 2013
2e Develop alternative service delivery business models	LGMA (NSW) Submit to Panel	April 2013
2f Examine and develop options for state-wide procurement and technology	LGSA/DLG	December 2013
2g Review all legislation for impact on local government and identify opportunities to reduce red tape while ensuring accountability and not compromising good governance	LGSA Submit to Panel	December 2012



When referring to governance, we mean how the responsibilities of those in power are exercised, how decisions are made and how community members and stakeholders have their say in such decisions. This includes, but is not limited to, the resources and structures that allow good debate and good policy making to occur. Quality governance is critical to the sustainability of councils. The overwhelming majority of council failures in NSW have been caused by issues of poor local governance.

During the course of Destination 2036, a number of suggestions were made about improving the decision making processes of councils, both in terms of enhancing the community's confidence in the performance of elected representatives and in the systems underpinning council decision making processes.

As many of the solutions to these issues rest with the requirements of the Local Government legislation, this Direction includes actions specifically related to the proposed review of the *Local Government Act*.

This Direction will be achieved through the following Initiatives:

INITIATIVE 3

Ensure the Local Government Act supports stronger local government

INITIATIVE 4

Ensure strong and effective local governance