

Wyong Shire Council

ORDINARY MEETING

ENCLOSURES

Wednesday, 11 May, 2011



WYONG SHIRE COUNCIL
ENCLOSURES TO THE
ORDINARY MEETING
TO BE HELD IN THE COUNCIL CHAMBER,
WYONG CIVIC CENTRE, HELY STREET, WYONG
ON WEDNESDAY, 11 MAY 2011 ,
COMMENCING AT 5:00:00 PM

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27 April 2011
To the Ordinary Meeting

Director's Report
Environment and Planning Services
Department

4.2 DA 1340/2010 - Demolition of Existing Structures, Removal of Six Trees and Construction of a Dwelling, Machinery Shed and Inground Pool at Wyong

TRIM REFERENCE: DA/1340/2010 - D02540467

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SUMMARY

An application as been received for the demolition of existing structures, removal of six trees & construction of a dwelling, machinery shed & inground swimming pool at 93 Alison Road, Wyong (Lot 2 DP 1067114). The application has been assessed having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act (EP& A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

Applicant	Mr M J Lusted & Mrs B J Lusted
Owner	Mr M J Lusted & Mrs B J Lusted
Application No	DA/1340/2010
Description of Land	Lot 2, DP 1067114, No 93 Alison Road, Wyong
Proposed Development	Demolition of Existing Structures, Removal Of Six Trees & Construction Of Dwelling, Machinery Shed & Inground Swimming Pool
Site Area	5030m ²
Zoning	1(c) Non Urban Constrained Lands
Existing Use	Dwelling and outbuildings
Estimated Value	\$600,000

RECOMMENDATION

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

PRECIS

- The application seeks approval for the demolition of existing structures on the site, removal of six trees and construction of a dwelling, machinery shed and inground swimming pool.
- The site is zoned 1(c) Non Urban Constrained Lands under the provisions of Wyong Local Environmental Plan 1991 (WLEP). A single dwelling is permissible with consent.

- The site is wholly flood affected.
- The property is located within the High Hazard Floodway and High Hazard Flood Storage Area. Under the Lower Wyong River Floodplain Risk Management Plan structures, including buildings and filling, are deemed “unsuitable” for development on land within the 1(c) Non Urban Constrained Lands Zone.
- 1% Annual Exceedance Probability (AEP) flood level for this property is RL 5.81m above Australian Height Datum (AHD) with an average ground level of 4.3m AHD resulting in flood depths of up to approximately 1.5m.
- The applicant has requested Council to use the provisions of State Environmental Planning Policy No 1 (SEPP 1) to vary the minimum allotment size for dwellings under Clause 16 of the WLEP. The area variation is 1/80th of the required minimum area of 40 hectares.

INTRODUCTION

The Site

The site is located at 93 Alison Road, Wyong (Lot 2 DP 1067114), on the southern side of that road and adjacent to the Wyong River which forms the southern and eastern boundaries of the site. The site is an irregular-shaped allotment of approximately 5030m². The lot has vehicular access to Wyong Road via a 10-metre-wide, 40-metre-long battle-axe handle extending along the western side of the site. The site is elevated approximately 3.5 metres above Wyong River and generally contains a gentle 1 metre fall from the western boundary towards the north-eastern boundary, with an average ground level of around 4.3m AHD (refer Figure 1).

The site currently contains a part one and part two-storey cottage located in approximately the same position as the proposed dwelling and there are numerous outbuildings all of which are proposed to be demolished as part of this application. The majority of the site is covered in Alluvial Riparian Blackbutt Forest being within the Ecologically Endangered Community of Riverflat Eucalypt Forest – a number of trees are proposed to be removed from this area.

The site is surrounded by Wyong River to the south and east, a recently constructed dwelling with a finished floor level of 6.29m AHD (DA/2863/2003) to the west, numerous vacant allotments to the north and the Wyong Christian Community School to the north-west. The entire area is flood affected (refer to Figure 3).



FIGURE 1: Aerial photograph of 93 Alison Road, Wyong and surrounds (including locality insert).

The Proposed Development

The proposal consists of a part one and part two-storey dwelling development involving the following aspects:

- Four-bedroom dwelling (approx 400m²) comprised of:
 - Cellar (floor level 3.68m AHD);
 - Three-car garage (floor level 4.52m AHD), laundry, studio and sauna (floor level 4.67m AHD);
 - Lower foyer (floor level 4.94m AHD);
 - Study, lounge, living, dining, kitchen and upper foyer (floor level 6.38m AHD);
 - Master bedroom and ensuite (floor level 7.19m AHD);
 - Bedrooms 2, 3, 4, bathroom and family room (floor level 7.64m AHD);

Construction material: mixture of glazing, prefinished expressed panels and precast concrete panels with metal roofing.

- Swimming pool;
- Two-storey machinery shed:
 - Ground floor machinery storage (floor level 4.22m AHD);
 - Mezzanine flood-free storage (floor level 7.64m AHD);

Construction materials: precast concrete panels, prefinished expressed panels, fixed blade ventilation louvres, metal roofing with a maximum ridge height of 8m;

- 6 underground rainwater tanks with total 75,000-litre capacity; and

- Removal of six trees although subsequent assessment confirms seven trees are to be removed.

The plans of the proposed development can be seen in Attachment 4.

Summary

Flood Hazard

The entire site is flood liable – the land has an average ground level of 4.3m AHD and the 1% AEP flood level for the site is RL 5.81m AHD. On 27 October 2007 Council adopted the *Lower Wyong River Floodplain Risk Management Plan* (hereafter referred to as “the Plan”) in accordance with the NSW Government’s NSW Floodplain Development Manual. The Plan identified the subject site as being either in the category of High Hazard Flood Storage or High Hazard Floodway. The Plan identifies that for “structures, including buildings and filling” both categories of hazard are “unsuitable for development”.

Variation to Minimum Lot Size

Clause 16 (1) of WLEP permits the erection of a dwelling house on land in the 1(c) Non Urban Constrained Zone only if the land has a minimum area of 40 hectares or was in existence on 15 February 1991. The subject land has an area of only 5030m² and was created in 2004. In recognition of the fact that the proposal does not satisfy the development standard contained in Clause 16(1) the applicant has submitted a formal objection to the standard together with supporting arguments as to why Council should vary the standard in this instance, as is required under the provisions of State Environmental Planning Policy No 1 – Development Standards.

Compensatory Flood Storage

The development application did not include a flood risk assessment when lodged. Council requested a flood risk assessment be prepared and this assessment was submitted in February 2011. The assessment, in part, proposes that the development should include, as one option, that 300m³ of compensatory flood storage be provided (to be created by excavating part of the site) if the dwelling is to be sited within the High Hazard Flood Storage area. However, the assessment has provided no details of where this excavation is to occur on site, the storage’s dimensions or potential impact on acid sulphate soils, ground water and trees. This aspect of the development has also not been considered by the NSW Office of Water (NOW).

VARIATIONS TO POLICIES

Standard	Clause 16 – Minimum lot size (40ha)
Policy	Wyong Local Environmental Plan 1991
Departure basis	Allotment created after the appointed day and does not meet the 40ha minimum area to erect a dwelling

Standard	Figure 12 – Structures, including buildings and filling are “unsuitable ” for development”
Policy	Lower Wyong River Floodplain Risk Management Plan
Departure basis	Proposes to site dwelling in High Hazard Flood Storage area and High Hazard Floodway

Standard	Section 5.2.2 – Setback from side boundary (10m)
Policy	Wyong DCP Chapter 100 Quality Housing
Departure basis	Proposed to site dwelling minimum of six metres from western boundary

Standard	Section 5.2.2 – Setback from top of bank (40m)
Policy	Wyong DCP Chapter 100 Quality Housing
Departure basis	Proposed to site dwelling minimum of 18.345 metres from western boundary

HISTORY

- 05.06.2003: Council grants consent to a two-lot subdivision (boundary adjustment) to create current lot.
- 23.04.2004: The boundary adjustment (creating subject lot) registered with Land Titles Office.
- 27.04.2010: Council provides detailed flood advice with regards to development of the subject property.

PERMISSIBILITY

The subject site is zoned 1(c) (Non Urban Constrained Lands) under the WLEP. A dwelling-house is permissible with consent. However, Clause 16(1) of WLEP permits the erection of a dwelling-house in the 1(c) zone only if the lot has an area of greater than 40 hectares or was in existence at the appointed day (15 February 1991). The lot was created in 2004 and has an area of 5030m². The applicant has submitted an objection to this development standard, made under the provisions of State Environmental Planning Policy No 1 – Development Standards. The objection is considered in detail in a later section of this report.

The three objectives of the 1 (c) Non Urban Constrained Zone are:

- (a) to limit the development of land that may be affected by flooding, coastal erosion, slope, and other physical constraints (including lack of adequate water supply and sewerage), and*
- (b) to prohibit development that is likely to prejudice the present and future environmental quality of the land, and*
- (c) to ensure that development is carried out in a manner that minimises risks from natural hazards and does not detract from the scenic quality.*

In regards to Objective (a), the property is located within the High Hazard Floodway and High Hazard Flood Storage Area where the 1% Annual Exceedance Probability (AEP) flood level is RL 5.81m AHD. The site has an average ground level of 4.2m AHD resulting in flood depths of up to 1.68m. Despite there being an existing dwelling on site, the existing dwelling has a possible construction life of 40 years whereas the proposed dwelling will have a average construction life of 70 years resulting in a further 30 years of residency on an allotment which is affected by flooding. This is inconsistent with the objective of limiting the development of land that is affected by flooding.

In regards to Objective (b) it is considered that the proposal prejudices the environmental quality of the land by proposing the excavation of 300m³ of soil to enable the development to occur without reducing currently available high hazard flood storage on site. The proposed excavation's potential environmental impacts such as acid sulphate soils, ground water interception and loss of trees, has not been considered or quantified by the applicant.

In regards to Objective (c) it is considered that the proposal, by being sited within a High Hazard Flood Storage area and a High Hazard Floodway, does not minimise risk but increases the risk of danger to future occupants of the dwelling.

Clause 10(3) of the Wyong Local Environmental Plan 1991 states:

(3) Except as otherwise provided by this plan, the Council must not grant consent to the carrying out of development on land to which this plan applies unless, in the opinion of the Council, the proposed development is compatible with the objectives of the zone within which the development is proposed to be carried out.

Taking the above into account, it is considered that the proposed detached dwelling does not satisfy the objectives of the 1(c) Non Urban Constrained Lands Zone.

RELEVANT STATE/COUNCIL POLICIES AND PLANS

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

- State Environmental Planning Policy 1 – Development Standards
- State Environmental Planning Policy 71 – Coastal Protection
- Wyong Local Environmental Plan 1991
- Development Control Plan 2005, Chapter 67 (Engineering Requirements)
- Development Control Plan 2005, Chapter 69 (Waste Management)
- Development Control Plan 2005, Chapter 100 (Quality Housing)
- Lower Wyong River Floodplain Risk Management Plan
- F5 – Flood Prone Land Development Policy

ECOLOGICALLY SUSTAINABLE PRINCIPLES

The proposal is considered to be inconsistent with the following ESD Principles:

- The precautionary principle – the proposal does not adequately account for inundation as a consequence of flooding.
- Inter-generational equity – the proposal does not have regard for maintaining the quality of the environment for future generations. The proposal would be highly vulnerable to risk of flooding which would potentially result in damage to the built environment and injury or loss of life to occupants and others.

Taking the above into consideration the proposal is considered to be inconsistent with the Ecologically Sustainable Development (ESD) principles.

ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act 1979 and other statutory requirements and Council's policies the assessment has identified the following key issues, which are elaborated upon for Council's information.

THE PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/ POLICIES (s79C(1)(a)(i-iv):**State Environmental Planning Policy 1 (Development Standards)**

The applicant proposes to demolish an existing dwelling and, in part, erect a new dwelling on the subject site. The subject allotment was created in 2004 through a realignment of boundaries of two existing lots and has an area of 5030m².

Clause 16 (1) of WLEP states:

“16(1) Except as otherwise provided by this plan, one dwelling-house only may be erected, with the consent of the Council, on an allotment of land that was in existence on the appointed day or with an area not less than the applicable minimum area specified in clause 14 (2) or (3) (b), within Zone No 1 (a), 1 (c), 7 (a), 7 (b), 7 (c), 7 (d), 7 (e), 7 (f), 7 (g) or 10 (a).”

Given the requirements of Clause 16(1), the proposed development does not comply with the 40ha minimum lot size requirement and can only be approved through the use of the provisions of State Environmental Planning Policy No 1 – Development Standards (SEPP 1). SEPP 1 provides flexibility in the application of planning controls of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objectives specified in Section 5(a)(i) and (ii) of the Act, which are to encourage proper and appropriate land management within the natural environment.

Clause 6 of SEPP 1 allows for a written objection to be submitted with a development application. The written objection is required to state that compliance with a specific development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection. Clause 7 of SEPP 1 allows the consent authority to grant consent to a development application notwithstanding the non-compliance with the development standard referred to in Clause 6 of SEPP 1. It is incumbent upon the consent authority to seek the concurrence of the Director General of the Department of Planning (DOP), however, in most cases concurrence is delegated to consent authorities to determine the SEPP No. 1 Objection. However, in this case, the concurrence of the Director General is required if Council determines that the application should be granted consent.

Clause 8 of SEPP No. 1 identifies the following matters which are required to be taken into consideration in deciding whether concurrence should be granted or not:-

- “8. (a) Whether non-compliance with the development standard raises any matter of significance for State or Regional Environmental Planning, and*
- (b) The public benefit of maintaining the Planning controls adopted by the Environmental Planning Instrument”.*

Matters to be considered in the use of SEPP No. 1 are also detailed in the DOP's Circular No. B1 which states: -

"If the development is not only consistent with the underlying purpose of the Standard, but also with the broader Planning Objectives of the locality, strict compliance with the Standard would be unnecessary and unreasonable".

In *Winten Property v North Sydney* (2001) NSWLEC 46 Justice Lloyd sets out a five-part test for considering SEPP 1 objections. The applicant has submitted an objection to the development standard and provided written arguments as to why the development standard should be varied in this instance. The following considers those arguments against that five-part test:

1. Is the planning control in question a development standard?

The applicant notes that Clause 16(1) of the WLEP is a provision within the applicable environmental planning instrument for the subject site which regulates the subdivision of land and the permissibility for the erection of a dwelling-house on that allotment of land by imposing a minimum site area or acknowledging that the "dwelling-house" enjoys existing development rights if it were in existence on the appointed day (15 February 1991). It is therefore a development standard pursuant to Section 4 of the EP&A Act 1979.

Comment:

It is agreed with the applicant that the 40ha minimum lot size is a development standard. However, Clause 16(1) permits the erection of a dwelling house on a lot in existence at the appointed day (15 February 1991) regardless of the lot's area, subject to consent being granted.

2. What is the underlying object or purpose of the standard?

The applicant has argued that the purpose of Clause 16(1) is to provide existing dwelling-houses, as at the appointed day, the right to enjoy existing development rights, and to limit the extent of new subdivisions or new dwelling-houses on land which was not previously developed as such on the appointed day, other than for lots with a minimum area of 40ha in the 1(c) Non Urban Constrained Zone. The applicant believes that the underlying purpose of the standard is achieved because the application is for the replacement of an existing dwelling-house which was in existence on the appointed day and was subsequently reaffirmed in the 2004 subdivision approval. No new dwelling-houses are sought under this application.

The applicant concludes that this application is consistent with the zoning objectives and does not propose any development which is inconsistent with that of the surrounding lots and recognises the constraints of the land.

Comment:

The applicant's arguments are not agreed with. The purpose of the standard is to ensure that development on land containing site constraints (in this case flooding), has sufficient area to address those constraints that may affect the land. An allotment which was in existence on 15 February 1991 (the appointed date) maintains the right to have a dwelling house erected on it despite not satisfying the minimum site requirements.

3. Is compliance with the development standard consistent with the aims of the policy and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a) (i) and (ii) of the EP&A Act?

The applicant has argued that the subject dwelling was in existence on the appointed day, on an allotment size significantly less than the 40ha minimum as prescribed in Clause 16(1) of WLEP. As such, the dwelling-house was in compliance with the provisions of the WLEP as the dwelling-house was in existence on the appointed day.

The applicant points out that in 2004, a subdivision approval was granted by Council, which was a realignment of boundaries between two allotments within the 1(c) zone, each well below the 40ha minimum and both in existence on the appointed day. The subject dwelling-house remained wholly on one of the newly created allotments and the other original parent allotment was granted a subsequent development consent for a new dwelling house after the appointed day. That consent has since lapsed.

The applicant then considers the proposal against the objects of the Act and notes that Clause 3 of SEPP 1 states that non-compliance with a development standard must not hinder the attainment the objects specified in Section 5(a) (i) and (ii) of the EP&A Act 1979. The objectives of the Act are to encourage:

- i. *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purposes of promoting the social and economic welfare of the community and the environment;*
- ii. *the promotion and co-ordination of the orderly and economic use and development of the land."*

In the applicant's view, the proposed non-compliance with Clause 16 (1) of WLEP would not hinder the attainment of the objectives of the Act and in this instance, strict compliance with Clause 16(1) would be unreasonable for the following reasons:

- No additional lots, dwelling-houses or demand on existing services are sought by this application;
- No existing agricultural land, minerals, cities, towns or villages are proposed to be affected by the proposal;
- The proposed development is not likely to have a significant effect on threatened species, populations or ecological communities or their habitats;
- An improved on-site wastewater treatment system is proposed which will reduce the impact of the existing residential use of the site on the natural ecosystem, particularly the river in regards to water quality;
- The redevelopment of the same uses on the site with no increase in demand on either the environment or local infrastructure, is considered an economic and orderly use and development of the land;
- The proposal will complement the residential use of the surrounding area; and
- There is no increase on traffic generation, social, infrastructure or population density anticipated as a result of the proposal.

Comment:

While several of the applicant's points are not disagreed with, those same points are also not particularly relevant to the question of whether non-compliance with the standard would tend to hinder the attainment of the objectives of the Act. It is considered that compliance with the development standard is necessary as it ensures compliance with Section 5(a) (i) and (ii) of the EP&A Act in that it prevents development on an allotment with a significant flood hazard.

4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The applicant states that the subject site already has an existing dwelling-house (currently below flood level) which was in existence on the appointed day. The subsequent boundary realignment granted by Council in 2004 recognised the existence of the dwelling-house. To refuse the replacement of the existing dwelling house with a new dwelling house and shed with habitable floor levels and flood-free storage areas above the flood level and an on-site wastewater treatment system which reduces the impact on the environment, in order to comply with a development standard, would be unreasonable in this instance.

Comment:

In the applicant's view, it is unreasonable to maintain a standard to prevent a new dwelling from replacing the existing dwelling house. A new dwelling that would be more appropriately constructed and serviced by a better sewage treatment system in the Applicant's view.

In this instance it is considered that compliance with the development standard is reasonable and necessary to prevent unsustainable development which is highly likely to be affected by flooding.

5. Is the objection well founded?"

The applicant believes that the objection is considered well founded because the dwelling-house which currently exists on the subject site was in existence on the appointed day even though a boundary realignment was granted subsequent to that day which did not increase the number of dwelling-houses or allotment number as part of the consent.

Comment:

The Council need to consider whether a development which complies with the development standard is unreasonable or unnecessary in the circumstances. The assessment of SEPP 1 objections was given significant consideration by Chief Judge Preston in *Wehbe v Pittwater Council* (2007) NSWLEC 827 wherein the Chief Judge provided clarification of the criteria to be used when assessing a SEPP No. 1 Objection. The criteria set by Preston CJ are as follows:-

- "1. The Court must be satisfied that "the objection is well founded" (Clause 7 of SEPP No. 1). The objection is required to be in writing and be an objection that "compliance with that development standard is unreasonable or unnecessary in the circumstances of the case", and specify "the grounds of that objection" (Clause 6 of SEPP No. 1).
2. The Court must be of the opinion that "granting of consent to that Development Application is consistent with the Aims of this policy as set out in Clause 3" (Clause 7 of SEPP No. 1). Further clarification is provided by the statement that the Aims and Objects of SEPP No. 1 set out in Clause 3 are to provide "flexibility in the application of Planning controls operating by virtue of Development standards in circumstances where strict compliance with those standards would, in any particular case, be

unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5(a) (i) and (ii) of the Act”.

3. *The Court must be satisfied that a consideration of the matters in Clause 8 (a) and (b) of SEPP No. 1 justifies the upholding of the SEPP No. 1 Objection. The matters in Clause 8 (a) and (b) are:-*
 8. (a) *Whether non-compliance with the development standard raises any matter of significance for State or Regional Environmental Planning, and*
 - (b) *The public benefit of maintaining the planning controls adopted by the environmental planning instrument”.*

Preston CJ set the following five criteria to establish the way in which an objection under SEPP No. 1 may be well founded and be consistent with the Aims set out in Clause 3 of the Policy.

These criteria are as follows:-

- "1. *Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the Development standard are achieved notwithstanding non-compliance with the standard.*
2. *Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the Standard is unnecessary and unreasonable.*
5. *Establish that the zoning of the particular land was unreasonable or inappropriate so that the development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary”.*

In regards to the above criteria, the following responses are provided:

- The objective of the development standard is not achieved if the standard is not maintained as it will permit the building of a dwelling house in on a site that is subject to significant flooding.
- The underlying objective is relevant to the development as the standard prevents the dwelling from being sited on flood liable land.
- The underlying objective would not be thwarted if the standard was maintained.
- The land is zoned 1(c) Non Urban Constrained Land and is considered to be appropriately zoned given its significant flood liability.

It is concluded that the SEPP 1 objection submitted by the applicant is not considered to be well founded and does not satisfies the test in Winten Property. It is concluded that it is both necessary and reasonable to maintain the 40ha minimum lot size development standard in this instance.

State Environmental Planning Policy 71 – Coastal Protection

The provisions of SEPP No 71 Coastal Protection requires Council to consider the Aims and Objectives of the SEPP together with the matters for consideration listed in Clause 8 of the SEPP when determining an application within the Coastal Zone. The Coastal Zone is an area defined on maps issued by the DOP with the subject property falling within this zone.

The aims of the policy are:

- (a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and*
- (b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
- (c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
- (d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and*
- (e) to ensure that the visual amenity of the coast is protected, and*
- (f) to protect and preserve beach environments and beach amenity, and*
- (g) to protect and preserve native coastal vegetation, and*
- (h) to protect and preserve the marine environment of New South Wales, and*
- (i) to protect and preserve rock platforms, and*
- (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991, and*
- (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*
- (l) to encourage a strategic approach to coastal management.*

The development is considered to be inconsistent with objective (j) because the proposal does not accord with the principles ecologically sustainable development as previously discussed and (l) because the proposal is inconsistent with Lower Wyong River Floodplain Risk Management Plan which provides a strategic approach to the management of those areas within the Plan that are also within the operation of SEPP 71.

Furthermore, the proposal has been considered against the matters listed under Clause 8 as shown in Attachment 2. That assessment shows that the proposal fails to satisfy the matters:

- Clauses 8 (a) owing to its inconsistency with the abovementioned objectives;
- Clause 8 (d) owing to it being considered not suitable development because its type, location and design and its relationship with the surrounding area.
- Clause 8 (j) owing to the likely impact of the development on the coastal processes through removal of trees (extent unknown), site excavation (extent unknown), filling, potential impact on acid sulphate soils and potential impact on groundwater.

It is concluded that the proposal is inconsistent with several aims of SEPP 71 and does not satisfy certain matters listed under Clause 8 of SEPP 71.

Wyong Local Environmental Plan 1991

Clause 15 Development on land containing acid sulphate soils

Clause 15(2) states:

“15(2) A person must not, without the consent of the Council, carry out works described in the following Table on land of the class or classes specified for those works in that Table and shown on the Acid Sulfate Soils Planning Map, except as provided by subclause (4).”

The subject site contains Class 4 soils where works beyond 2 metres below the natural ground surface or works by which the watertable is likely to be lowered to any point beyond 2 metres below the natural ground surface require further investigation.

The Flood Risk Assessment submitted by the applicant includes, as part of that risk assessment, the proposal for 300m³ of excavation to be undertaken to provide for compensatory floods storage. The assessment provides no details of the excavation in regards to its location on the site or its dimensions including the proposed depth of excavation.

This excavation might have any combination of dimensions including possible dimensions of 10m long x 10m wide x 3m deep which may have a significant impact on the acid sulphate soils if they are found to be present. At this stage the applicant has provided insufficient information to allow this issue to be properly assessed.

Clause 16 Dwelling-houses

Clause 16 states:

“16(1) Except as otherwise provided by this plan, one dwelling-house only may be erected, with the consent of the Council, on an allotment of land that was in existence on the appointed day or with an area not less than the applicable minimum area specified in clause 14 (2) or (3) (b), within Zone No 1 (a), 1 (c), 7 (a), 7 (b), 7 (c), 7 (d), 7 (e), 7 (f), 7 (g) or 10 (a).”

The proposal does not comply with the 40ha development standard that applies to the site. The applicant's SEPP 1 objection to the development standard has been assessed, as discussed in a previous section of this report, as being not well founded.

Clause 19 – Development near lakes, rivers and creeks

Clause 19 requires Council, for any land adjoining Wyong River to consider the impacts that any development may have on water quality and quantity, existing vegetation, fish aquatic life and the location of the watercourse. In addition, The clause also requires a consideration of the development's effect on water supply and any detrimental effects on the watercourse through erosion, sedimentation or the emission of pollutants. The clause further requires Council to consider if the development incorporates best practice water sensitive urban design techniques.

In most regards, the proposal is assessed as satisfying the matters raised in Clause 19. However, in respect of vegetation, water quality and erosion, the applicant initially identified the need to remove six (now confirmed as seven to be removed) trees in order for the development to proceed. This removal has been assessed and found to be satisfactory subject to the imposition of certain conditions including their replacement of trees on a one-to-one basis.

Subsequent to this assessment the applicant now proposes to excavate 300m³ from the site to provide compensatory flood storage. The applicant has provided no details on the location or dimensions of this excavation which may have significant ramifications for existing vegetation and on water quality potentially affected by acid sulphate soils. The applicant has not provided any information on these matters when proposing the 300m³ of flood storage so Council is unable to properly assess the impacts on the river as required by Clause 19.

Clause 23 – Flood Prone Lands

Clause 23 requires the applicant to seek development consent for the erection of a building or carrying out of works on flood prone land in a number of zones including the 1 (c) Non Urban Constrained Lands Zone. The applicant has complied with this requirement.

In addition, Clause 23 allows Council to set a minimum floor height to a building or work to reduce the incidence of flooding if it determines to grant consent and in making that determination is to consider the effect of the proposed development on flooding. This effect is considered in under the heading “Lower Wyong River Floodplain Risk Management Plan” in a later section of this report.

Clause 28 – Tree Management

The proposed clearing of the six trees has been assessed as not likely to significantly impact soil stability, water quality, amenity, vegetation systems or fauna habitats, and recommendations have been made to further mitigate the impact of the proposed clearing.

However, as noted previously, the lack of information concerning the proposed 300m³ of compensatory flood storage and its potential impact on vegetation does not allow Council to make a proper assessment of the importance of the vegetation that may be removed in relation to: soil stability, land degradation, water quality, scenic and environmental quality, and vegetation systems and wildlife habitats.

Clause 29 – Services

Clause 29 of WLEP prohibits Council from granting consent to development unless satisfactory water, sewer and drainage services are available to the development. The site is serviced by reticulated water and is proposed to be serviced by an on-site aerated sewage treatment system.

The applicant submitted a wastewater management report which concluded that the site had a high capacity for on-site wastewater management owing to the high quality of the soils, excellent turf cover, moderate climate and good exposure to the sun and prevailing winds. A review of this report found the 5% AEP flood level had been mistaken as 4.6m AHD rather than the actual 5% AEP flood height of 5.2m AHD. However, the review also found that the error did not significantly change the assessment.

The inlets of all sanitary fixtures must be raised above the 1% AEP flood height of 5.81m and all non-flood compatible electrics be positioned above the 1% AEP flood height plus 500mm (6.31m AHD).

The applicant proposes to install six rainwater tanks around the perimeter of the cellar but within the external walls of the dwelling. The accompanying BASIX certificate requires these tanks to have a minimum cumulative volume of 50,000 litres. This water is to be used for toilet flushing, landscaping and topping up of the swimming pool. All water entering the tanks must first pass through screening devices to exclude gross pollutants.

Wyong Local Development Control Plan 2005

Development Control Plan 2005, Chapter 67 (Engineering Requirements)

Chapter 67 lists specifications which set out minimum standards and guidelines for the engineering works required for developments within Wyong Shire. The detailed design, construction and any engineering requirements contained within any consent will be based on this specification. The chapter also notes that where no reference exists within the specification for particular design and construction details, Council will determine the requirements in accordance with best industry practice and appropriate standards.

Development Control Plan 2005 – Chapter 69 (Waste Management)

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

Development Control Plan 2005 – Chapter 100 (Quality Housing)

Clause 3.8.3. of Chapter 100 states:

Requirements are to be applied in accordance with Council's Floodprone Lands Development Policy.

As already noted in previous sections of this report, the development does not comply with Council's Lower Wyong River Floodplain Risk Management Plan (being the most up-to-date flood study).

In addition, Clause 5.2.2 requires a minimum side setback of 10m and a minimum setback to a creek line of 40m. The proposed development provides a 6 metre setback to the western boundary and 18.345m setback to Wyong River representing a 40% and 54% non-compliance respectively. The proposal's non-compliance with the side setback is not considered to be significant. This side setback non-compliance was the issue raised in the single submission received as a result of the exhibition of the application. This issue is considered in detail and in the context of the submission in a later section of this report.

In regard to the proposal's non-compliance with the 40m setback, the non-compliance is considered to be significant – setting the dwelling back 40m from the river would not reduce the extent or frequency to which the dwelling would be flooded but would reduce the distance that would have to be travelled to and from the proposed dwelling to a place of safety in the event of an emergency evacuation. A complete assessment against Chapter 100 has been provided at Attachment 3.

Lower Wyong River Floodplain Risk Management Plan

Flood Liability

The development is located at the confluence of two significant upstream catchments. The principle source of flooding is from Wyong River with an upstream catchment of approximately 360 square kilometres and the secondary source from Porters Creek with an upstream catchment approximately 55 square kilometres. The property is considered to be fully flood affected by the 1%, 2% and 5% Annual Exceedance Probability (AEP) design flood events.

The 1% Annual Exceedance Probability (AEP) flood event is defined as the probability or likelihood that a location will experience a flood of a particular size, in any one year. If a location has a 1% chance of a particular sized flood occurring each year, then it can also be expressed as having a chance of that particular sized flood occurring once in 100 years. However, this does not mean that if a location experiences that particular size flood one year, it will definitely not experience the same sized again flood for the next 99 years. Nor, if it has not experienced a flood of a particular size for 99 years, will it necessarily occur the next year.

The predicted 1% AEP flood event (100 year ARI) affects the development to a level of 5.81 metres AHD, which is approximately 1.5 metres above the natural surface level at the location of the proposed dwelling. The average flood velocity during this event is 0.84m/s. The predicted 5% AEP flood event (20 year ARI) affects the development to a level of 5.20m AHD, which is approximately 0.9 metres above the natural surface level at the proposed dwelling. The average velocity during this event is 1.0 m/s.

Plotting the abovementioned 1% and 5% AEP flood characteristics on the Provisional Hydraulic Hazard Category matrix within the NSW Floodplain Development Manual conclusively defines the development as High Hazard for both events discussed, as can be seen in Figure 2 below.

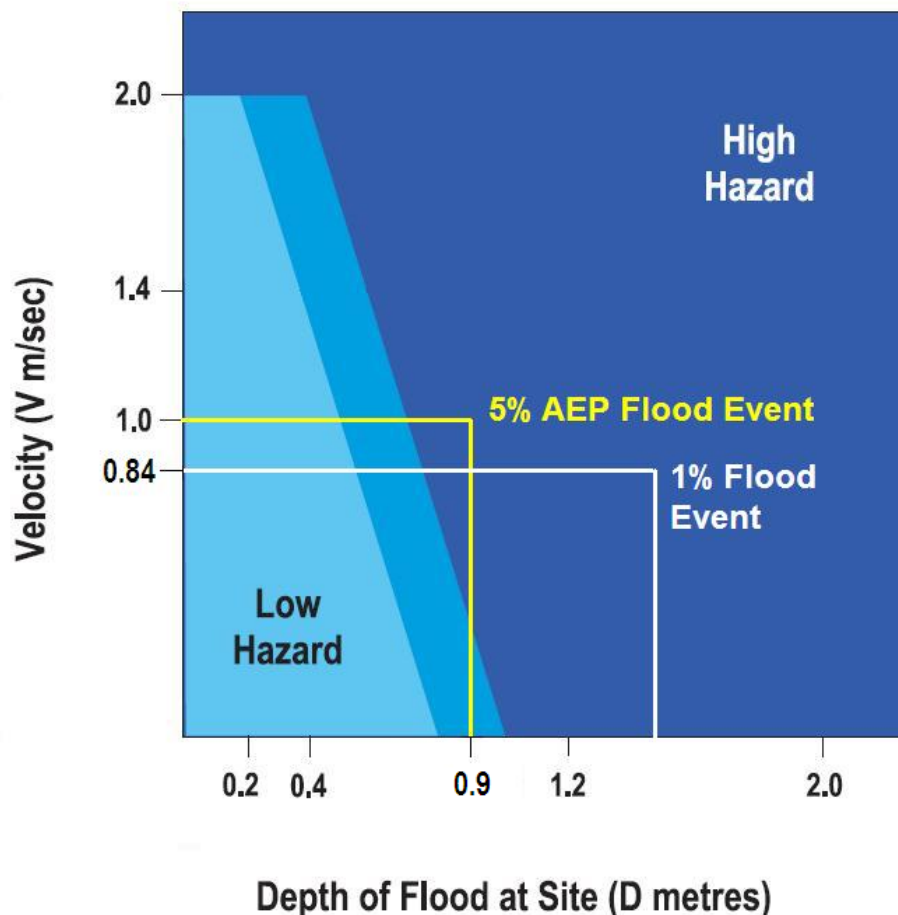


Figure 1 - Provisional Hydraulic Hazard Flood Risk Category

The potential for fast rates of rise of flood waters and long duration of high hazard conditions is likely due to the confluence of Porters Creek and Wyong River catchments adjacent to this site. The critical duration of flooding in Porters Creek is 9 hours, and that of Wyong River is 36 hours. As such, the site may experience a fast rate of rise of floodwaters due to flooding in Porters Creek and then prolonged elevated water levels as the peak of Wyong River will take approximately 27 hours to reach the site.

The *Lower Wyong River Floodplain Risk Management Plan* further refines this provisional hazard categorisation by assessing all factors that influence flood hazard, such as the size of the flood; effective warning time; flood readiness; rate of rise of floodwaters; duration of flooding; evacuation problems; effective flood access and type of development.. These factors determine the Adopted or final Flood Hazard categories for a floodplain.

The Adopted Flood Hazard mapping for the Lower Wyong River catchment confirms that the property is classified as both high hazard floodway and high hazard flood storage during a 1% AEP design flood event. An extract of the mapping is shown in Figure 3 below.

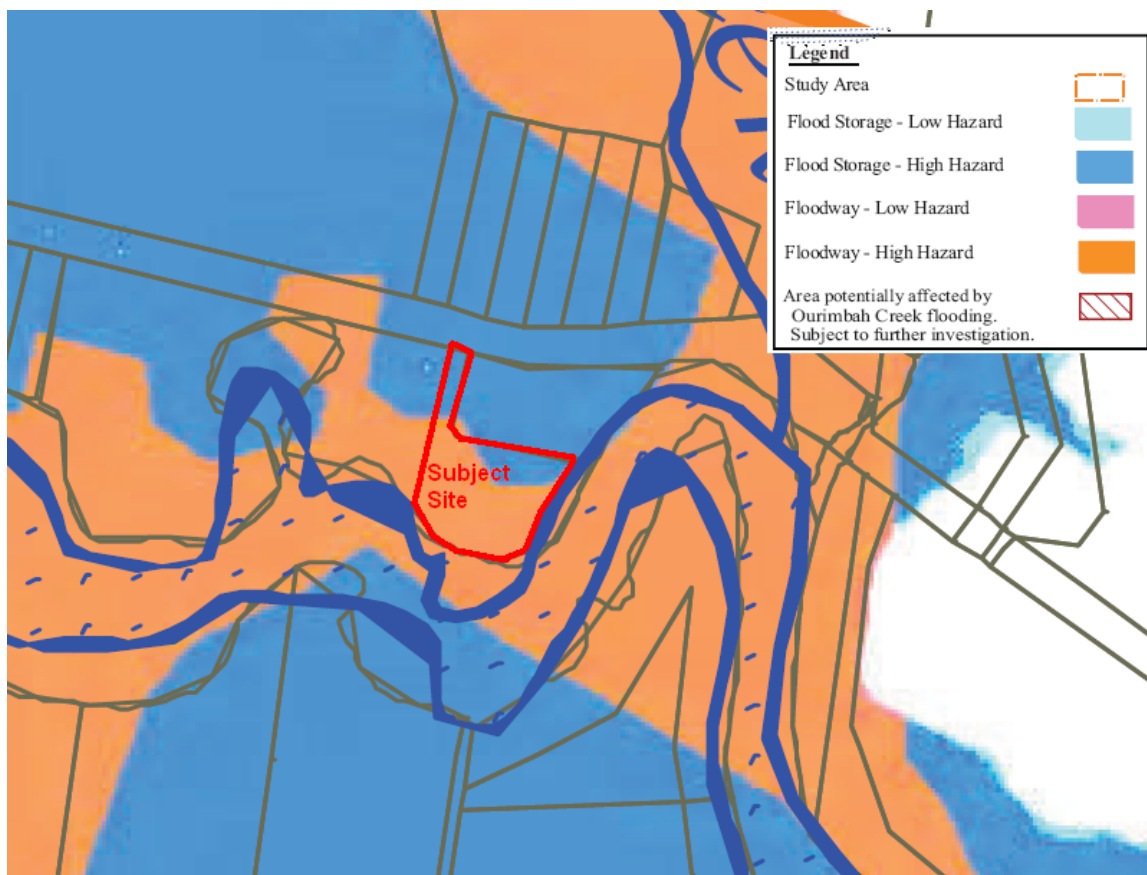


FIGURE 3 - Hazard Mapping Extract – Lower Wyong River Flood Risk Management Plan (Figure 12)

Floodways = those areas where a significant volume of water flows during floods which, even if only partially blocked, would cause a significant redistribution of flow.

Flood storage = those areas which provide temporary storage of floodwaters and flow velocities are generally low.

In considering the above figure, the applicant has concluded that the boundaries of the flood hazard categories are incorrect. This conclusion is based on the fact that the property boundaries do not exactly align with the hazard mapping at this location in Figure 3 above (that is, the actual boundary of the floodway category differs to the cadastral river boundaries). The Flood Risk Assessment completed on behalf of the applicant also queries the boundary between the floodway and flood storage areas on the site. The consultant is of the view that the discrepancy could be in the order of 30 to 40 metres and that the majority of the site is flood storage, however, no updated mapping was produced by the consultant to support this argument.

It is acknowledged that there may be discrepancies between the hazard category boundaries. It is considered that the discrepancies are primarily due to the size of the grid mapping used in the Lower Wyong River Floodplain Risk Management Plan and the finer detail provided as part of the ground survey carried out by the applicant as part of their development application process.

However, irrespective of the extent of any discrepancy between the proposed and actual boundaries between floodway and flood storage on this site, the site is still classified as a "high hazard floodway" or "high hazard flood" storage classification. As such, the assessment of the development application in terms of floodplain risk management has been considered on this basis.

The June 2007 flood event is the largest flood event experienced at this location in recent times. The flood caused significant disruption and damage within this local catchment, with approximately 75% of the subject property inundated by flood waters during this event which reached a flood level of approximately 4.26m AHD at this location.

It is difficult to precisely estimate the annual exceedance probability of the June 2007 flood event because the peak levels experienced were significantly less than the most frequent flood event analysed in the Lower Wyong River Flood Study – the 5% AEP flood event. A review of the upstream rain and stream gauges from the actual flood event, and relevant parameters in the Flood Study indicate that the June 2007 event was approximately a 10% AEP flood event at this location.

The image shown in Figure 4 below shows the Alison Road crossing of Wyong River approximately 1.5km west of the subject site, looking eastward, on 9 June 2007. The actual Wyong River crossing is in the back of the photo – the foreground of the photo is the overland flow of Wyong River, as it overtopped its banks further upstream and travelled overland for approximately 1.5 kilometres where the floodwaters merged with Deep Creek. The depth of water across Alison Road in the photo is estimated at approximately 1 metre deep as reported by a post-flood survey prepared on behalf of Council by ADW Johnson (TRIM Ref: D01498563).

The velocity was not recorded but the water surface turbulence that can be seen in the photo confirms significant flood velocities were experienced at this location. This image provides a representation of the likely appearance of flood waters on the subject site during an event of approximately equal to or less than the 5% AEP flood event.

The 1% AEP flood level at this location is predicted to be 2.6m higher than the water level shown.



FIGURE 4 –Observing Alison Road river crossing approximately 1.5km west of the development, looking eastward, on 9 June 2007. The predicted 1% AEP flood level is 2.6m higher than the water level pictured.

Development Controls of the Lower Wyong River Floodplain Risk Management Plan

The flood-related development controls relevant to the site are contained within the *Lower Wyong River Floodplain Risk Management Plan (the Plan)*, which Council adopted at its Ordinary Meeting on the 27 October 2010. The adoption of the Plan, and thus the flood-related development controls contained within it, lead to the replacement of the development controls and requirements contained within Council's Policy F5 - *Flood Prone Land Development* for the Lower Wyong River catchment by those listed in the Plan.

The Plan was completed in accordance with the *NSW Floodplain Development Manual (2005)*. Following initial data collection, the *Lower Wyong River Floodplain Risk Study* was completed in 1991. The study analyses the Lower Wyong River catchment to determine flood flow characteristics. Based upon this technical assessment, the *Lower Wyong River Floodplain Risk Management Study* was prepared in 2009 to assess and map the flood hazards for the Lower Wyong River catchment and examine a range of flood mitigation options to manage or reduce the flood risk. Following consideration of all of the flood mitigation options presented in the Study, the *Lower Wyong River Floodplain Risk Management Plan* was prepared in 2009. The Plan identifies which mitigation options Council chose to improve floodplain management of the Lower Wyong River floodplain. Public consultation was completed with both the Risk Management Study and the Plan prior to adoption.

With the bulk of flood-liable land within the Lower Wyong River catchment already developed, the Plan concentrates on land use planning and development controls to mitigate future flood risk. These controls seek to balance social, economic, environmental and flood risk parameters to ascertain whether a particular development or use within the floodplain is appropriate and sustainable. An extract of the development controls applicable to the Lower Wyong River catchment has been reproduced in Figure 5 below.

Type of Development ⁽⁷⁾	Flood Hazard Categories					
	Flood Fringe		Flood Storage		Floodway	
	Low Hazard	High Hazard	Low Hazard	High Hazard	Low Hazard	High Hazard
LAND ZONED RECREATION, OPEN SPACE, CONSERVATION ZONE, NON URBAN CONSTRAINED LANDS, SPECIAL USES⁽¹⁾⁽²⁾⁽³⁾⁽⁴⁾⁽⁵⁾⁽⁶⁾						
Structures, including buildings and filling	On Merits	On Merits	On Merits	Unsuitable for Development	Unsuitable for Development	Unsuitable for Development
Other developments permissible in zone, i.e wetlands, playing fields, parks, walkways, etc...	On Merits	On Merits	On Merits	On Merits	On Merits	On Merits

Figure 2 - Extract of Development Controls Table for the Lower Wyong River catchment

The development of a floodplain risk management plan enables the cumulative impacts of developments in floodplains to be considered, including the filling of land and the construction of structures. The resultant development controls for the Lower Wyong River catchment indicate that introducing additional fill and/or structures into the Lower Wyong River floodplain, particularly in the high hazard areas, is not a desirable outcome, and these areas have been assessed as “unsuitable for development”.

Based upon the proposed development being located upon land zoned ‘Non-Urban Constrained Lands’ and located within high hazard flood storage and high hazard floodway, the resultant development controls of the Plan do not support the proposed residential development.

Flood Risk Assessment

The NSW Floodplain Development Manual defines ‘risk’ as the “*chance of something happening that will have an impact. It is measured in terms of consequences and likelihood*”. The applicant has submitted a *Flood Risk Assessment* report in support of the development.

The report included consideration of many economic, social/health, safety and environmental factors. In considering each of these factors the report identified flood risks associated with these factors and completed a qualitative assessment of each risk identified. In addition, a quantitative assessment was also completed to assess the combined/total flood risk and competing priorities between the factors identified. The author concluded that:

“the proposed redevelopment of the site is in accordance with the aims of the NSW Government Floodplain manual provided that it is undertaken in accordance with development controls introduced by Council and specialist consultants”.

The report has been reviewed and it is considered that the assessment did not adequately identify, manage or reduce flood risks to an acceptable and sustainable level. A summary of the difference in assessment of each sub category is provided below;

1. Safety

As previously mentioned, the most frequent event analysed in the *Lower Wyong River Flood Study* was the 5% AEP (once-in-20-year average reoccurrence interval) design flood. It has been determined that high hazard conditions exist during this relatively frequent event. It follows that the 'last chance' opportunity for self-sufficient low hazard evacuation passes significantly before the design 5% AEP conditions occur.

As demonstrated below in Figure 6, evacuation by wading or by vehicle is considered unsafe/unstable significantly before peak flows from a 5% AEP flood event occur. The occupants of the proposed dwelling or rescuers would be forced to employ high hazard style evacuation methods by flood boats in fast moving, debris-loaded flood waters or by aerial evacuation. The development design has not catered for high hazard evacuation.

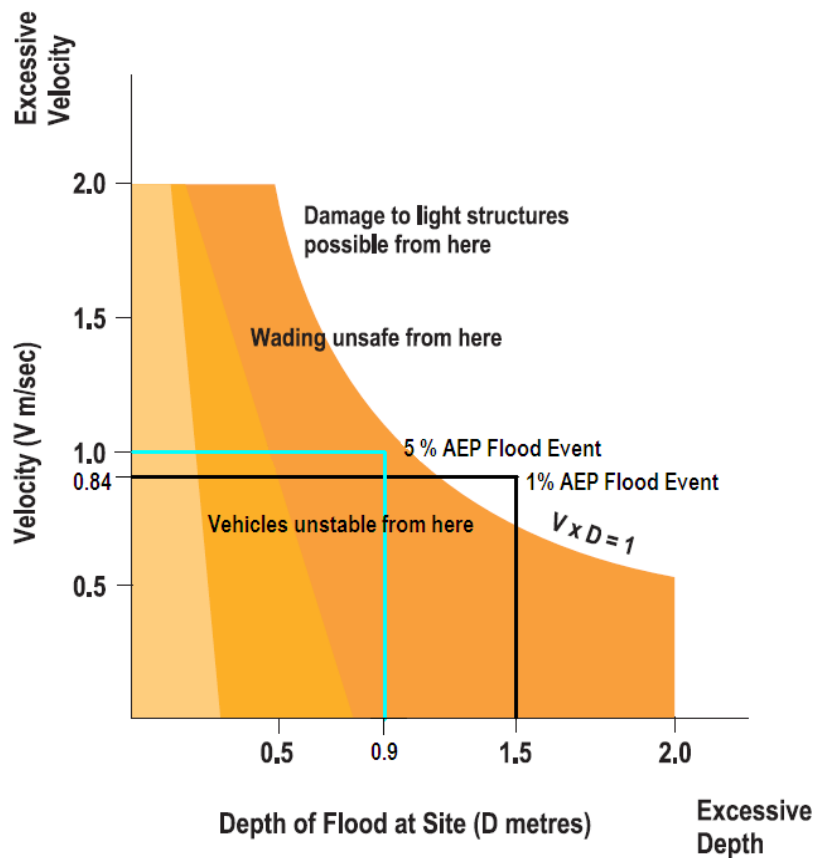


FIGURE 6 - Velocity and Depth Relationship

This situation is unchanged from that of the existing dwelling, however, the assertion within the Northrop report is that safe harbourage during the design flood event is sufficient to protect human life and property. The report also provides support for the proposed dwelling based upon the ability to structurally design the dwelling to withstand the flood forces and debris loading for the design 1% AEP flood event.

It is agreed with the Northrop report to the extent that the immediate hazard is reduced, however, the service life of a dwelling on this site in high-hazard conditions is increased by replacement of the existing dwelling with a new dwelling, thereby increasing the long-term risk. Also, the increased ability to “shelter in place” for the proposed development can lead to an induced potential for the State Emergency Services (SES) to place rescuers at risk during a flood event, as the occupants of the dwelling have an increased, and false, sense of security to shelter in place rather than decide on early evacuation from the property.

Interruption to services such as potable water, on-site sewer treatment, telephone, gas, electricity and road access during flood times must be expected with the predicted flood events and recovery periods. This may make the decision to remain in the proposed dwelling unsustainable for any extended periods of time.

The adopted Lower Wyong River Flood Risk Management Plan has identified this locality (combined zoning and flood hazard) as unsuitable for any structures. If the development controls are applied as written, the dwellings within this locality will in time incrementally exceed their service life and be removed. The existing dwelling was built approximately 50 years ago and would be considered to be approaching the end of its service life. The building materials and construction types associated with the proposed dwelling would result in the use of this land to sustain a dwelling for the long term to likely exceed 100 years.

Consideration must also be given to the scenario where the 1% AEP design flood is exceeded. The Lower Wyong River Flood Study indicates the largest flood that could occur – the Probable Maximum Flood (PMF) - would reach a level of 6.53m AHD at this site. This level exceeds the main living area floor level of the dwelling by approximately 150mm and the water depth would be approximately 2.2 metres above natural surface level.

While peak flooding characteristics are used for numerical flooding assessments and determination of flood planning levels, due consideration must be given to the full range of factors that influence the flooding at a particular location. The issues of concern regarding this site on Alison Road is that it is located at the confluence of two major catchments and this results in an increased likelihood of prolonged flood inundation as well as an increased frequency of flood inundation.

Additionally, climate change predictions indicate an increase in rainfall intensity is expected in future years. Increases in rainfall intensity have not been quantified at this point in time. Any increase in rainfall intensity will further increase likelihood frequency and severity of flood inundation of this property.

2. Economic

The proposed dwelling is a substantial size, which includes four bedrooms, study, studio, generous living spaces, triple car garage, swimming pool, sauna, outdoor decks, sub-floor cellar and 11m x 13m (approximately, as the submitted plan is not dimensioned) machinery shed. Construction costs have been estimated at \$600,000 by the applicant.

By comparison, the existing dwelling is a modest part one and two-storey residence with double garage. It is estimated that the dwelling was constructed in the mid-1960s and is approaching fifty years of age. The applicant describes the dwelling as “run down and incompatible with surrounding rural residential development”. It is reasonable to deduce that the existing dwelling is nearly at the completion of its economic life.

The Applicant's flood Risk Assessment report states that "*Risk of damage to proposed site decreases due to increased structural design controls*". As discussed above, the economic risk is considered to be higher with redevelopment due to the existing dwelling imminently fulfilling its economic life and the substantial nature of the proposed dwelling.

3. Council Liability

Council has a duty of care to consider the residual risk to a development once any flood modification measures have been introduced or constructed. The development application has been demonstrated to be contrary to development controls under the *Lower Wyong River Floodplain Risk Management Plan* and is regarded as being unsuccessful in adequately managing or reducing flood risks to life and property to an acceptable and sustainable level.

It is concluded that the proposed development is not supported on engineering and floodplain management grounds. There have been insufficient arguments presented by the applicant regarding the residual flood risk to occupants of the proposed development, and an approval would be contrary to "good faith" of Council's decision-making authority.

F5 – Flood Prone Land Development Policy

This Policy has the primary objective of reducing the impact of flooding and flood liability on individual owners and occupiers of flood prone property, and to reduce private and public losses resulting from floods using ecologically positive methods wherever possible.

In this instance, the recently adopted Lower Wyong River Flood Risk Management Plan (the Plan) provides detailed guidance for the assessment of the proposed development in order to achieve the primary objective of the Policy. The assessment of the proposed development against the Plan and the Policy is discussed in the previous section of this report.

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

The relationship to the regional and local context and setting.

The proposed development is considered acceptable in its appearance and in relation to the scale and massing of existing built structures in the immediate area. The development is domestic in scale and the proposed external materials and finishes are acceptable.

The access, transport and traffic management measures.

Vehicular access to the site is gained from Alison Road which provides suitable access to the proposed dwelling except during flood periods when this road is inundated.

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

No issues to report.

The impact on utilities supply.

No significant impact on utilities in terms of demand but utilities will have to continue to be supplied and maintained through flood liable land if the dwelling is approved.

The effect on heritage significance.

No issues to report.

Any effect on other land resources.

No issues to report.

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

The site is identified as having Class 4 soils according to the Acid Sulphate Soils Planning Map. In accordance with WLEP Clause 15, a preliminary site investigation is justified where works by which the watertable is likely to be lowered beyond 2 metres below natural surface. The applicant has now proposed that 300m³ of compensatory flood storage be provided on site but has provided no details of location or depth of excavation. Without this detail Council and without any acid sulphate spoils assessment being undertaken this issue can not be properly assessed.

Any effect on quality of air and microclimate conditions.

No issues to report.

Any effect on the flora and fauna.

The applicant submitted a Tree Assessment Report and Threatened Species Assessment. These documents have been assessed and following further consultation with the applicant who confirmed that seven trees would be removed, it was concluded that that it was unlikely that the proposed development would lead to a significant impact on threatened species, communities and their habitat. The loss of trees was to be compensated by replacement with an appropriate nominated species on a one-to-one basis.

However, following the initial assessment report, the applicant submitted the requested flood risk assessment which included the option of providing 300m³ of compensatory flood storage on site by excavating part of the site. No details of this excavation have been provided so it is unknown what impact this excavation may have on fauna and flora and can not be properly assessed on the information provided by the applicant.

The provision of waste facilities.

The proposed dwelling would continue to be serviced by Council's household waste and recycling collection services.

Whether the development will be energy efficient.

A BASIX Certificate accompanies the development.

Whether the development will cause noise and vibration.

One submission was received as a result of the development proposal being publicly notified. The submission raised concern that the dwelling was proposed to be sited only six metres from the common side boundary even though the minimum setback required by Chapter 100 was 10 metres. The concerns were that the variation would lead to an increase in noise and lessen the objector's privacy.

The objector noted that their own house was located only five metres from the common boundary although it is opposite the driveway into the subject lot.

Comment:

A review of the plans shows that the objector's dwelling is located well forward and over 30 metres from the proposed dwelling. It is also noted that the design of the proposed dwelling has the active rooms of the dwelling located on the opposite side of the dwelling and away from the objector's house. It is considered that the dwelling will not be a significant source of noise and that it does not represent a significant loss of privacy and that moving the dwelling four metres further from the boundary will achieve little, if anything, in regards to these two issues. In addition, moving the proposed dwelling four metres eastward would then move the dwelling to within 40 metres of the river which forms the eastern boundary thus creating a further variation to Council's setbacks.

It is concluded that the dwelling will not represent a significant loss of privacy or noise in its proposed location and that moving it four metres eastwards will not change that situation.

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

1. Flooding

See assessment in previous section of this report.

2. Bushfire

The building is located within a bushfire prone area, accordingly the requirements of the NSW Planning for Bushfire Protection 2006 document requires consideration in the application. A Bushfire Assessment report has been submitted with the application and makes appropriate recommendations as to the construction level required for the dwelling.

Any risks from technological hazards.

No issues to report.

Whether the development provides safety, security and crime prevention.

As a result of a review of the initial plans submitted with the development Council raised a number of concerns over safety issues related to design aspects of the swimming pool and surrounds. The applicant responded to these concerns by preparing amended plans that addressed all issues raised by Council.

Any social impact in the locality.

The proposed development is likely to place both people and property vulnerable to flooding events and this is considered as having a negative social impact on the locality.

Any economic impact in the locality.

The proposed development is considered likely to have negative economic impacts if it were to be approved by Council, as a result of reliance on emergency services personnel to assist occupants in the event of a flood, in rectifying flood damaged property, and placing greater demands on surrounding services and infrastructure in this locality in order to sustain the development in its vulnerable location.

Any impact of site design and internal design.

The site design is not considered appropriate in that it proposes a dwelling within a High Hazard Floodway and High Hazard Flood Storage.

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

In respect of construction activities, appropriate conditions can be applied to developments, requiring appropriate site management measures be put in place prior to construction occurring to ensure that soil erosion and sedimentation do not occur. These site management measures can be required to be maintained throughout the duration of the construction.

Any cumulative impacts.

Consenting to new development in high hazard areas as identified in the Plan would result in undesirable cumulative impacts by placing increasing numbers of people and a higher value of developments at risk.

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

The proposal would fit within the locality except for the site's flood liability.

Whether the site attributes are conducive to development.

As mentioned above, the low-lying nature of the site creates the potential for frequent future flooding and is therefore not conducive to the proposed development.

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

The application was advertised in accordance with DCP 2005 Chapter 70-Notification of Development Proposals with one submission being received. The issues raised in the submission 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 submission is detailed in the table below:

Doc. No	Summary of Issues	Response
D02456235	The dwelling is sited only six metres from the common side boundary resulting in loss of privacy. The dwelling should be sited 10 metres from the boundary in accordance with Council's setback.	The proposed dwelling, owing to its design, function and distance from the objector's dwelling, is not assessed as being a significant loss of privacy or source of noise. Moving the dwelling to achieve numerical compliance will not have a significant impact on likely noise generation or on privacy.

Any submission from public authorities.

The application was referred to the previous NSW Office of Water (NOW) because development was proposed within 40 metres of the bank of the Wyong River. NOW has responded and advised that:

The proposed works are exempt from the need to obtain a Controlled Activity Approval under clause 39A of the Water Management (General) Regulation 2004.

Clause 39A of the Act exempts certain developments from the need to obtain a Controlled Activity Approval and includes activities carried out in connection with the erection of a dwelling house. However, NOW's advice goes on to say:

Should the proposed development be varied in any way that results in "works" or more extensive 'works on waterfront land (i.e. land in or within 40 metres of the highest bank of the watercourse) the NSW Office of Water should be notified."

Since receiving that advice from NOW the applicant has proposed the excavation of 300m³ to provide compensatory flood storage on site. The applicant has provided no details of the location or depth of this excavation and the applicant may need to liaise with NOW as to whether the activity remains exempt.

In addition, the proposed excavation may not be exempt from requiring an aquifer interference licence depending on the depth of excavation proposed, its location and the results of any groundwater testing that may need to be undertaken. Again, the applicant will need to liaise with NOW to establish its requirements in this regard.

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

The information currently available to Council shows that the site will be inundated if a designated flood event (1%AEP) occurs during the life of the proposed development. The information relied upon to make this prediction includes Council's flood studies in particular the Lower Wyong River Floodplain Risk Management Plan. Having assessed the proposal in accordance with the Lower Wyong River Flood Risk Management Plan; the development is not considered suitable for the site. To permit the development on the basis may result in lives and property being placed under threat. As such, the proposal is not considered to be in the public interest.

OTHER MATTERS FOR CONSIDERATION***Deeds of agreement etc.***

There are no deeds of agreement relevant to this proposed dwelling house.

CONCLUSION

The proposal has been assessed having regard to Section 79C of the EP&A Act, WLEP 1991, SEPP 71, DCP 2005 - Chapter 100 (Quality Housing), DCP 2005 - Chapter 69 (Waste Management), DCP 2005 - Chapter 67 (Engineering Requirements) and Lower Wyong River Floodplain Risk Management Study and is considered unsatisfactory for the reasons listed in Attachment 1 of this report.

ATTACHMENTS

1	Reasons for Refusal	D02571855
2	Plans of Proposed Development	D02568755
3	SEPP 71 Compliance Table	D02571497
4	DCP 2005 - Chapter 100 Compliance Table	D02571499



Management Plan

To minimise the spread of Myrtle Rust (*Uredo rangelii*) in the Wyong LGA



Version: 2
 Last Updated: December 2010
 Revision: December 2012

Name: Colleen Rogers
 Sign: [Signature]
 Date: 15-12-10
 Author

Name: Brett Shearer
 Sign: [Signature]
 Date: 15-12-10
 Manager

Exotic Plant Pest Hotline ph: 1800 084 881

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Aim: To outline the measures implemented by Wyong Shire Council to minimise the risk of spreading Myrtle Rust and to ensure it is managed effectively.

Objectives:

- To ensure that all operations undertaken by Wyong Shire Council are carried out in a way that minimises the potential spread of Myrtle Rust within the Wyong Shire LGA.
- To ensure that all operations undertaken by Wyong Shire Council are carried out in accordance with all relevant Commonwealth and State legislation and regulations.
- To ensure that Industry and Investment NSW are notified immediately of all suspected or detected occurrences of Myrtle Rust so that treatment measures can be implemented immediately.
- To ensure that all employees and contractors for Wyong Shire Council are aware of their responsibilities in terms of managing risk and implementing appropriate measures and actions to identify cases of Myrtle Rust and prevent spreading.
- To ensure that Wyong Shire Council complies with all Industry and Investment notices and work orders.

Responsibilities:

Industry and Investment NSW

Industry and Investment are responsible for the overall management of Myrtle Rust including the co-ordination of treatment, implementing on-site quarantine at sites where Myrtle Rust has been identified, and the dissemination of relevant information to government departments, businesses and the community.

Wyong Shire Council

Wyong Shire Councils responsibility is to ensure that its operations minimise the impact of Myrtle Rust within Wyong LGA and prevent further spreading. Wyong Shire Council will provide training for all personnel in the identification of Myrtle Rust, identification of potential host species, and appropriate procedures to ensure good hygiene and prevent the spread of Myrtle Rust. Council will also provide appropriate materials and equipment for all crews who have the potential to come in contact with Myrtle Rust. Council will ensure that all of its operations comply with all relevant legislation and regulation, and all notices and work orders from Industry and Investment NSW. Council will also be responsible for consulting with Industry and Investment regarding suspected cases of Myrtle Rust and management procedures.

Supervisor

The Supervisor is required to ensure that all staff comply with the procedures outlined within this management plan. They will be responsible for checking sites on a regular basis to ensure that all personnel are complying with this management plan. They are also responsible for ensuring that all personnel are provided with the appropriate training and induction and that all personnel are aware of their roles and responsibilities as outlined in this plan and that all vehicles are equipped with an appropriate materials and equipment to be used in the event that Myrtle rust is suspected or detected.

Exotic Plant Pest Hotline ph: 1800 084 881

3

Other staff and contractors

All staff, contractors and volunteers are required to comply with the requirements outlined in this management plan, including completion of checklist, daily record keeping and appropriate procedures to minimise risk. Staff are responsible for immediately notifying the Exotic Plant Pest Hotline and the relevant Supervisor if a suspected case of Myrtle Rust is found.

Myrtle Rust: Myrtle Rust (*Uredo rangelii*) is a fungus which affects plants belonging to the Myrtaceae family. Myrtle Rust infects the actively growing leaves, shoots and sepals of young plants. Early symptoms are generally not obvious, however as the fungus matures, bright yellow uredinial pustules can be found on the leaf surfaces, stems, and shoots. Leaves may also become buckled or twisted as a result of infection. Older spore filled lesions turn grey/brown with age.

Hosts: Myrtle Rust has been found within the Gosford and Wyong LGA on eleven species of native plants including:

ENDEMIC	ORNAMENTAL
<i>Acmena sp.</i> (lilly pillly)	<i>Acmena sp.</i> (lilly pillly)
<i>Backhousia citriodora</i> (lemon-scented myrtle)	<i>Agonis flexuosa</i> (willow myrtle) 'Afterdark',
<i>Backhousia myrtifolia</i> (grey myrtle)	'Burgundy', 'Jeddas Dream'
<i>Callistemon salignus</i> (willow bottlebrush)	<i>Austromyrtus inophloia</i> (see <i>Gossia inophloia</i>)
<i>Choricarpia leptopetala</i> (brown myrtle or rusty turpentine)	<i>Callistemon viminalis</i> (weeping bottlebrush)
<i>Eucalyptus agglomerata</i> (blue-leaved stringybark)	<i>Chamelaucium uncinatum</i> (Geraldton wax)
<i>Eucalyptus deanii</i> (round-leaved Gum)	<i>Gossia inophloia</i> 'Aurora' and 'Blushing Beauty' (syn. <i>Austromyrtus inophloia</i>)
<i>Eucalyptus pilularis</i> (blackbutt)	<i>Lophomyrtus x ralphii</i> 'Red Dragon' and 'Black Stallion'
<i>Leptospermum rotundifolium</i> (round-leaved tea tree)	<i>Metrosideros collina</i> 'Tahiti' and 'Fiji'
<i>Melaleuca quinquenervia</i> (broad-leaved paperbark)	<i>Syzygium australe</i> 'Meridian Midget'
<i>Rhodomyrtus psidioides</i> (native guava)	<i>Syzygium jambos</i> (rose apple)
<i>Rhodamnia rubescens</i> (scrub turpentine)	<i>Syzygium luehmannii</i> x <i>Syzygium wilsonii</i> 'Cascade' (lilly pillly)
<i>Syncarpia glomulifera</i> (turpentine)	<i>Tristania neriifolia</i> (water gum)
<i>Syzygium luehmannii</i> (small-leaved lilly pillly)	<i>Xanthostemon chrysanthus</i> (golden penda)
<i>Tristania neriifolia</i> (water gum)	<i>Melaleuca linariifolia</i> 'Claret tops'

Although Myrtle Rust has only been identified on the above species, there are approximately 160 Genera in the Myrtaceae family (as listed on the following page), and over 3000 species within this family. Myrtle Rust may have the potential to devastate a large population of Australia's native species.

Impacts: Myrtle Rust could have a significant impact on the environment, the economy and the community. This fungus could cause a number of species to become endangered or extinct having a chain affect on other flora and fauna. It could have a significant economic impact on a number of industries including forestry, and gardening, and could impact on Australia's export industry. These potential impacts will all have a significant impact on Australia; therefore preventing the spread of Myrtle Rust is imperative.

Genera in Myrtaceae

Ref: <http://data.kew.org/vpfr1992/vascprint.html>

R. K. Brummitt 1992 *Vascular Plant Families and Genera*, Royal Botanic Gardens, Kew

REF: Australian – APC <http://www.anbg.gov.au/chah/apc/index.html> & APNI <http://www.anbg.gov.au/cgi-bin/apni>

Some of these genera are not native but naturalised

Tasmanian taxa can be found at the Census: <http://tmag.tas.gov.au/index.aspx?base=1273>

Future reference: <http://tmag.tas.gov.au/floratasmania> [Myrtaceae is being edited at mo]

Acca O. Berg	Euryomyrtus Schaur	Osbornia F. Muell.
Accara Landrum	Feijoa O. Berg	Paragonis J.R. Wheeler & N.G. Marchant
Acmena DC. [= Syzigium]	Gomidesia O. Berg	Paramyrciaria Kausel
Acmenosperma Kausel [= Syzigium]	Gossia N. Snow & Guymer	Pericalymma (Endl.) Endl.
Actinodium Schauer	Heteropyxis Harv.	Petraeomyrtus Craven
Agonis (DC.) Sweet	Hexachlamys O. Berg	Phymatocarpus F. Muell.
Allosyncarpia S.T. Blake	Homalocalyx F. Muell.	Pileanthus Labill.
Amomyrtella Kausel	Homalospermum Schauer	Pilidiostigma Burret
Amomyrtus (Burret) D. Legrand & Kausel	[=Leptospermum]	Piliocalyx Brongn. & Gris
Angasomyrtus Trudgen & Keighery	Homoranthus A. Cunn. ex Schauer	Pimenta Lindl.
Angophora Cav.	Hottea Urb.	Pleurocalyptus Brongn. & Gris
Archirhodomyrtus (Nied.) Burret	Hypocalymma (Endl.) Endl.	Plinia L.
Arillastrum Pancher ex Baill.	Kania Schltr.	Pseudanamomis Kausel
Astartea DC.	Kardomia Peter G. Wilson	Psidium L. [naturalised]
Asteromyrtus Schauer	Kjellbergiodendron Burret	Psiloxylon Thouars ex Tul.
Austromyrtus (Nied.) Burret	Kunzea Rchb.	Purpureostemon Gugerli
Babingtonia Lindl.	Lamarckia Gaudich.	Regelia Schauer
Backhousia Hook. & Harv.	Legrandia Kausel	Rhodamnia Jack
Baeckea L.	Lenwebia N. Snow & ZGuymer	Rhodomyrtus (DC.) Rchb.
Balaustion Hook.	Leptospermum J.R. Forst. & G. Forst.	Rinzia Schauer
Barongia Peter G. Wilson & B. Hyland	Lindsayomyrtus B. Hyland & Steenis	Ristantia Peter G. Wilson & J.T. Waterh.
Basisperma C.T. White	Lithomyrtus F. Muell.	Scholtzia Schauer
Beaufortia R. Br.	Lophomyrtus Burret	Sannantha Peter G. Wilson
Blepharocalyx O. Berg	Lophostemon Schott	Siphoneugena O. Berg
Callistemon R. Br. [= Melaleuca]	Luma A. Gray	Sphaerantia Peter G. Wilson & B. Hyland
Calothamnus Labill.	Lysicarpus F. Muell.	Stereocaryum Burret
Calycolpus O. Berg	Malleostemon J.W. Green	Stenostegia A.R. Bean
Calycorectes O. Berg	Marlierea Cambess.	Stockwellia D.J. Carr, S.G. M. Carr & B. Hyland
Calyptranthes Sw.	Melaleuca L.	Syncarpia Ten.
Calyptrigenia Burret	Meteoromyrtus Gamble	Syzygium Gaertn.
Calythropsis C.A. Gardner [= Calytrix]	Metrosideros Banks ex Gaertn.	

Calytrix Labill.	Micromyrtus Benth.	Taxandria (Benth.) J.R.Wheeler &
Campomanesia Ruiz & Pav.	Mitrantes O.Berg	N.G.Marchant
Carpolepis (J.W.Dawson) J.W.Dawson	Mitrantia Peter G.Wilson & B.Hyland	Tepualia Griseb.
Chamelaucium Desf.	Monimiastrum J.Gueho & A.J.Scott	Thaleropia Peter G.Wilson
Chamguava Landrum	Mosiera Small	Thryptomene Endl.
Choricarpia Domin	Myrceugenia O.Berg	Triplarina Raf.
Cleistocalyx Blume	Myrcia DC. ex Guill.	Tristania R.Br.
Cloezia Brongn. & Gris	Myrcianthes O.Berg	Tristaniopsis Brongn. & Gris
Conothamnus Lindl.	Myrciaria O.Berg	Ugni Turcz.
Corymbia K.D.Hill & L.A.S.Johnson	Myrrhinium Schott	Uromyrtus Burret
Corynanthera J.W.Green	Myrtastrum Burret	Verticordia DC.
Cupheanthus Seem.	Myrtella F.Muell.	Waterhousea B.Hyland
Darwinia Rudge	Myrteola O.Berg	Welchiodendron Peter G.Wilson &
Decaspermum J.R.Forst. & G.Forst.	Myrtus L. [naturalised]	J.T.Waterh.
Eremaea Lindl.	Neofabricia Joy Thomps.	Whiteodendron Steenis
Eucalyptopsis C.T.White	Neomitranthes Legrand	Xanthomyrtus Diels
Eucalyptus L'Her.	Neomyrtus Burret	Xanthostemon F.Muell.
Eugenia L.	Ochrosperma Trudgen	
	Octamvrtus Diels	

Quarantine Area: Industry and Investment NSW has declared Gosford and Wyong Local Government Areas (LGA's) a Quarantine area on account of the presence of Myrtle Rust, effective Friday 23 July 2010. The movement of any host material and any covering, packaging, machinery etc used in the culture, harvesting or packing of the host material which may have come in contact with Myrtle Rust, out of the quarantine area is prohibited, unless the consignment meets the required movement conditions outlined in CA-02.

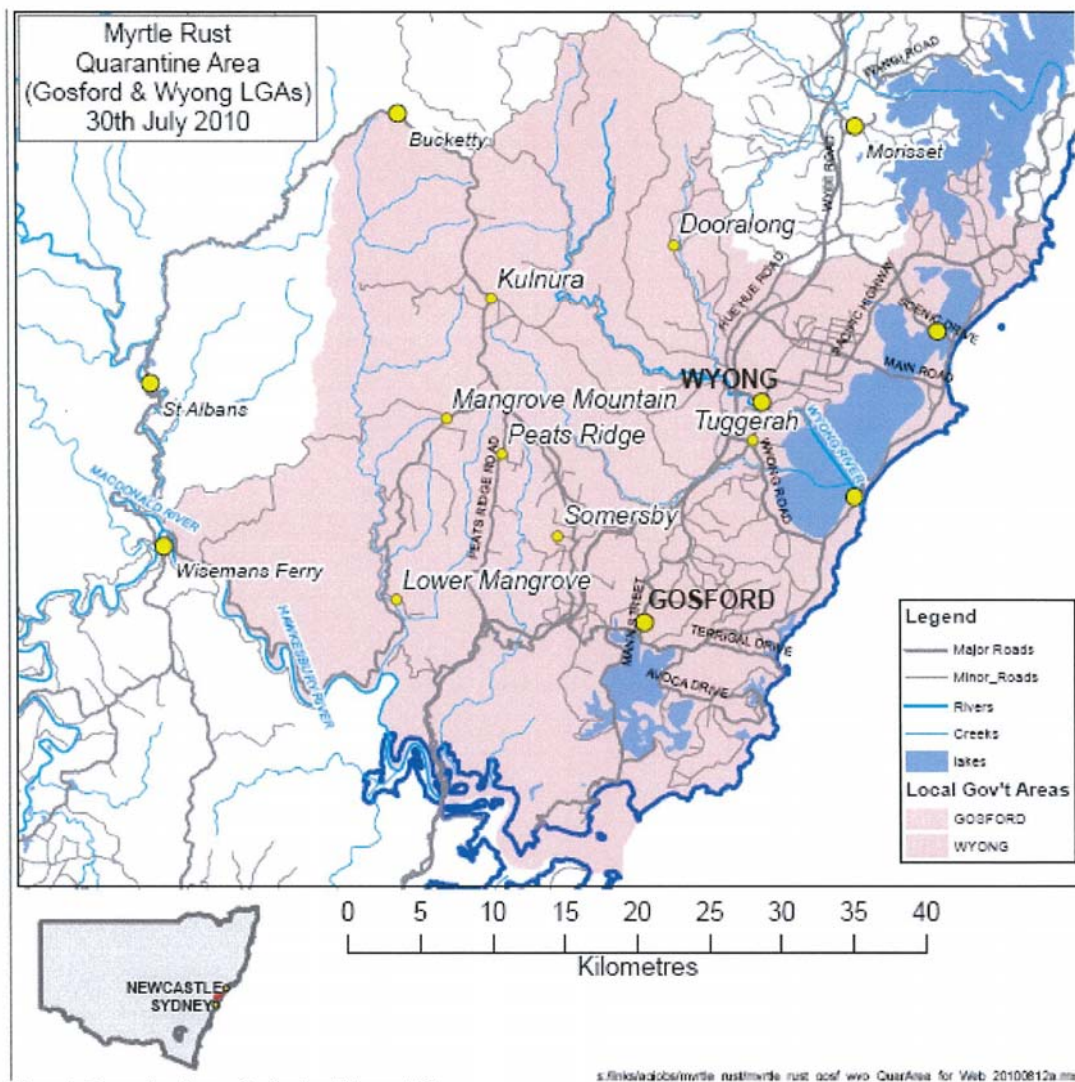


Figure 1: Quarantine Area – Gosford and Wyong LGA

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Spreading: Myrtle Rust spores can travel long distances and can be spread by wind as well as contact with birds, insects, equipment/machinery and people. Although there is not much that can be done to prevent the natural spreading of Myrtle Rust there are a number of good hygiene practices that can be undertaken by humans, to minimise the spread of this fungus.

Actions: In order to minimise the spread of Myrtle Rust the following measures must be implemented by all staff working on sites which contain plants from the Myrtaceae family.

Procedure to Prevent the Spread of Myrtle Rust

When entering the site:

- Have only the necessary people and equipment on site.
- Designate and mark safe access point(s) to the site, avoiding contact with vegetation from the Myrtaceae family where possible.
- Park vehicles in areas not surrounded by Myrtaceae plants in a designated car parking area.

Prior to commencing work

- Ensure that all workers are aware of the requirements under this management plan prior to commencing works.
- Keep daily records which include:
 - Names of all personnel on-site: _____
 - sites visited: _____
 - times visited: _____
 - equipment used: _____
- Commence an on-site inspection for plants from the Myrtaceae Family around the worksite. If any species are found conduct an examination for evidence of Myrtle Rust. Stop work immediately if Myrtle Rust is suspected, and immediately call the Exotic Plant Pest Hotline on 1800 084 881.

Leaving the site

- Wash hands, arms and face using an alcohol-based wash or soap.
- Ensure that all plant material remains within the Gosford and Wyong LGA quarantine area. and is either mulched or disposed of at Buttonderry landfill in accordance with AS4454
- Ensure that all equipment, machinery and vehicles are washed weekly using Farm Cleanse if it has potentially come into contact with species of the Myrtaceae family.
- Ensure that all workers have showered and clothes (including hats, gloves and footwear) are washed daily using detergent, soap or an alcohol-base sanitiser.
- Ensure that cleaning occurs away from native vegetation to prevent impacts from run off.
- Dispose of detergent from footbaths or other containers from the 'wash down' area in an area where it will be dispersed without impact on the environment. If this is not possible, empty into a waste container and remove from site.

Exotic Plant Pest Hotline ph: 1800 084 881

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Procedure for detected or suspected Myrtle Rust: Under the *Quarantine Act 1908*, Myrtle Rust is an Emergency Plant Pest and all land owners or occupiers are required to notify the Department within 24 hours if Myrtle Rust is detected or suspected by calling the Exotic Plant Pest Hotline on 1800 084 881.

The following details must be provided to Industry and Investment NSW:

- Name and contact details
- Site details - ownership, location, map (latitude and longitude using GPS equipment if available)
- Species of the affected plant/s
- Number of plants affected
- GPS points (where possible) of the infected plants
- Number of people and contact details of all workers on-site.

Immediately after notifying Industry and Investment NSW, the appropriate Supervisor should also be notified of the suspected or detected Myrtle Rust. The Supervisor is then required to notify Wyong Shire Council's Environmental Management Co-ordinator:

Paul Marynissen	Noxious Weeds and Pest Species Officer	Ph: 43501690 Mob: 0434 324 890
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Suspected contaminated or infested material should not be moved unless directed by an officer of Industry and Investment NSW.

Procedure Checklist to Prevent the Spread of Myrtle Rust

When entering the site:

- Have only the necessary people and equipment on site.
- Designate and mark safe access point(s) to the site, avoiding contact with vegetation from the Myrtaceae family where possible.
- Park vehicles in areas not surrounded by Myrtaceae plants in a designated car parking area.

Prior to commencing work

- Ensure that all workers are aware of the requirements under this management plan prior to commencing works.
- Keep daily records which include:
 - Names of all personnel on-site: _____
 - sites visited: _____
 - times visited: _____
 - equipment used: _____
- Commence an on-site inspection for plants from the Myrtaceae Family around the worksite. If any species are found conduct an examination for evidence of Myrtle Rust. Stop work immediately if Myrtle Rust is suspected, and immediately call the Exotic Plant Pest Hotline on 1800 084 881.

Leaving the site

- Wash hands, arms and face using an alcohol-based wash or soap.
- Ensure that all plant material is either mulched onsite or disposed of at Buttonderry landfill in accordance with AS4454 and remains within the Gosford and Wyong LGA quarantine area.
- Ensure that all equipment, machinery and vehicles are washed weekly using Farm Cleanse if it has potentially come into contact with species of the Myrtaceae family.
- Ensure that all workers have showered and clothes (including hats, gloves and footwear) are washed daily using detergent, soap or an alcohol-base sanitiser.
- Ensure that cleaning occurs away from native vegetation to prevent impacts from run off.
- Dispose of detergent from footbaths or other containers from the 'wash down' area in an area where it will be dispersed without impact on the environment. If this is not possible, empty into a waste container and remove from site.

Completed by: _____
Name Signature

When completed, return to the Depot Administration Officer so the document can be saved to Council's record management Database in container f2010/02071.

Exotic Plant Pest Hotline ph: 1800 084 881

Decontamination Materials

- 5L tub for washing (with the hotline number on the side)
- Brush for cleaning boots
- Hand sanitiser
- Liquid soap
- Pen
- Paper
- Myrtle Rust Management Plan
- Checklists

**These items are to be located in all Wyong Shire Council vehicles which enter a site that may contain species from the Myrtaceae family.*

- Farm cleanse mix 10% solution
- Hand sanitiser
- Liquid soap

**These items to be located at all Wyong Shire Council Depots.*

Images of Myrtle Rust (*Uredo rangelii*)

To assist surveillance teams in identifying symptoms in the field on various hosts.

Myrtle Rust on *Agonis Flexuosa*

Newly formed bright yellow pustules of Myrtle Rust on *Agonis flexuosa* cv. 'Afterdark'



Photo: Dr Angus Carnegie © I&I NSW

Older lesions of Myrtle Rust on *Agonis flexuosa* cv. 'Afterdark'



Photo: Dr Angus Carnegie © I&I NSW

Exotic Plant Pest Hotline ph: 1800 084 881



Photo: Dr Angus Carnegie © I&I NSW



Photo: Dr Angus Carnegie © I&I NSW

Myrtle Rust on *Agonis flexuosa* cv. 'Burgundy'



Photo: Dr Angus Carnegie ©I&I NSW

Various stages of disease development on *A. flexuosa* (willow myrtle) cv. 'Afterdark'



Photo: Dr Louise Morin © CSIRO



Photo: Dr Louise Morin © CSIRO

Various stages of disease development on *A. flexuosa* (willow myrtle) cv. 'Afterdark' (cont.)



Photo: Dr Louise Morin © CSIRO



Photo: Dr Louise Morin © CSIRO

Myrtle Rust on turpentine

Newly formed bright yellow pustules of Myrtle Rust on turpentine

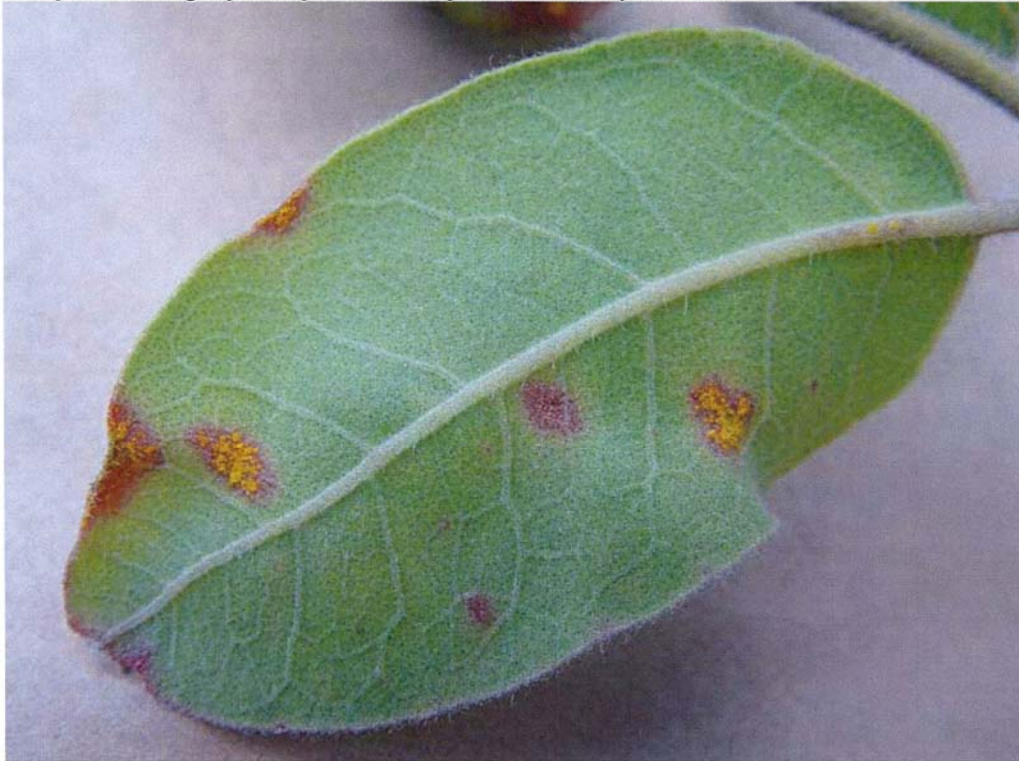


Photo: Dr Angus Carnegie © I&I NSW



Photo: Dr Angus Carnegie © I&I NSW

Older lesions of Myrtle Rust on turpentine



Photo: Dr Angus Carnegie © I&I NSW



Photo: Dr Angus Carnegie © I&I NSW

Exotic Plant Pest Hotline ph: 1800 084 881

Myrtle Rust on *Metrosideros collina* – advanced symptoms



Photo: Jonathan Lidbetter ©I&I NSW



Photo: Jonathan Lidbetter ©I&I NSW

Exotic Plant Pest Hotline ph: 1800 084 881

Myrtle Rust on *Austromyrtus (Gossia) inophloia*



Exotic Plant Pest Hotline ph: 1800 084 881



Myrtle Rust on *Tristania neriifolia* (water gum)



Photo: Dr Angus Carnegie ©I&I NSW



Photo courtesy of Kerrie Sims © I & I NSW

Myrtle Rust on *Callistemon* sp. (bottlebrush)



Photo: Dr Angus Carnegie ©I&I NSW

Myrtle Rust on *Rhodamnia rubescens*



Photo: Greg Alterator © TAFE NSW

Myrtle Rust on *Syzygium leumannii* x *Syzygium wilsonii* (lilly pilly)



Photo: Dr Angus Carnegie ©I&I NSW

10 November 2010

To the Ordinary Meeting

9.3 Notice of Motion - Call to Close Dirty Coal Generator

TRIM REFERENCE: F2006/00249 - D02412885

AUTHORS:

Councillors Best and Wynn have given notice that at the Ordinary Meeting to be held on 10 November 2010 they will move the following Motion:

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

ORDINARY MEETING HELD ON 10 NOVEMBER 2011

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

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

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

- 1 That Council investigate reports that the State Government through Delta Electricity is seeking to divest itself of the aging Munmorah Station with a view to retaining the soon to be upgraded Colongra portion. As this station was constructed in the mid 60s and upgraded in the early 1980s it is the most polluting power station and clearly the general site is significantly environmentally degraded.

- 2 ***That further residents and ratepayers of the Shire's north have endured dust, noise and health challenges associated with dirty coal generation it is with this understanding that Council seek to confirm the State's intention subject to confirmation, Council on behalf of our residents and ratepayers call on the State Government to demolish the aging Station and utilise the land for more conventional and environmentally friendly employment generating opportunities.***
- 3 ***That Council request staff investigate appropriate notations to be attached to the Section 149 Certificate for the land associated with the Power Station to deal with the degraded and likely contamination issues associated with the site.***

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

AGAINST: COUNCILLORS MATTHEWS AND MCBRIDE

COUNCILLORS' NOTE

Newcastle Herald article dated 13 October 2010 attached.

- 1 Resurrecting Munmorah - The Herald 13 October 2010 D02421001

23 February 2011
To the Ordinary Meeting

Director's Report
Environment and Planning Services
Department

9.3 Request for NSW State Government to Close Aging Munmorah Power Station

TRIM REFERENCE: F2006/00249 - D02504955

AUTHORS: Jane Doyle; Senior Administration Support Officer

MANAGER: Gina Vereker, Director Environment and Planning Services

SUMMARY

Reporting on a response from Mr Glenn Sharrock, General Manager, Delta Electricity in relation to future plans for Munmorah Power Station.

RECOMMENDATION

That Council receive the report on Request for NSW State Government to Close Aging Munmorah Power Station.

ORDINARY MEETING HELD ON 23 FEBRUARY 2011

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

- 1 That, after the State Election in March, Council request the relevant Minister to close the aging Lake Munmorah Power Station.***
- 2 That Council receive the report on Request for NSW State Government to Close Aging Munmorah Power Station.***
- 3 That Council request a full site inspection of both Lake Munmorah and Colongra Power Stations.***

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

AGAINST: COUNCILLORS MCBRIDE AND MATTHEWS.

Council at its meeting held on 10 November 2010, resolved unanimously on the motion of Councillor Best and seconded by Councillor Wynn:

- "1 That Council investigate reports that the State Government through Delta Electricity is seeking to divest itself of the aging Munmorah Station with a view to retaining the soon to be upgraded Colongra portion. As this station was constructed in the mid 60s and upgraded in the early 1980s it is the most polluting power station and clearly the general site is significantly environmentally degraded.*
- 2 That further residents and ratepayers of the Shire's north have endured dust, noise and health challenges associated with dirty coal generation it is with this*

understanding that Council seek to confirm the State's intention subject to confirmation, Council on behalf of our residents and ratepayers call on the State Government to demolish the aging Station and utilise the land for more conventional and environmentally friendly employment generating opportunities.

- 3 *That Council request staff investigate appropriate notations to be attached to the Section 149 Certificate for the land associated with the Power Station to deal with the degraded and likely contamination issues associated with the site."*

Correspondence has now been received from Mr Glenn Sharrock, General Manager of Delta Electricity (attached) advising Council that its letter has been referred to the Premier for further advice on the matter.

ATTACHMENTS

- | | | |
|---|---|-----------|
| 1 | Letter from Delta Electricity | D02476871 |
| 2 | Letter to Delta Electricity dated 8 December 2010 | D02463605 |