



Staff from Gosford and Wyong Councils raised more than \$1200 for WaterAid in National Water Week as part of their Casual Friday fundraising. Whizzy the water drop was on hand to collect the staff donations.

Wyong Shire Council

Business Paper

ORDINARY COUNCIL MEETING

14 November 2012

This page is intentionally blank

MEETING NOTICE

The **ORDINARY COUNCIL MEETING**
of **Wyong Shire Council**
will be held in the **Council Chamber,**
Wyong Civic Centre, Hely Street, Wyong on
WEDNESDAY 14 NOVEMBER 2012 at 5.00 pm,
for the transaction of the business listed below:

OPENING PRAYER

ACKNOWLEDGEMENT OF COUNTRY

RECEIPT OF APOLOGIES

1 PROCEDURAL ITEMS

1.1	Disclosure of Interest.....	5
1.2	Proposed Inspections and Briefings.....	6
1.3	Confirmation of Minutes of Previous Meeting.....	10
1.4	Address by Invited Speakers.....	30
1.5	Notice of Intention to Deal with Matters in Confidential Session.....	31

2 MAYORAL MINUTES

2.1	Mayoral Minute - Extension of Trial Period for Relaxation of Contributions for Granny Flats	33
2.2	Mayoral Minute - Coastal Conference Bid.....	35

3 PLANNING REPORTS

3.1	DA 1099/2011 - Proposed Temporary Use of an Existing Machinery Shed as a Dwelling at Tumbi Umbi.....	36
3.2	DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong.....	58
3.3	RZ/5/2012 - 7 Mingara Drive, Tumbi Umbi Rezoning Proposal.....	83
3.4	Classification of Land - Lot 232 DP 1162569 at Johns Road, Wadalba	104
3.5	Proposed Amendment to Clause 16 of the Wyong Local Environmental Plan, 1991.....	107

4 PROPERTY REPORTS

4.1	Classification of Land - Lot 1000 DP 1170365 Settlement Drive, Wadalba.....	115
-----	---	-----

5 CONTRACT REPORTS

5.1	CPA/186620 - Construction of a Solar Tower at Scaddens Ridge.....	118
5.2	Evaluation and Selection of Tenders for Contract CPA 210714 - Construction of Stormwater Culvert, Minnesota Road, Hamlyn Terrace.....	122
5.3	Outcome of Negotiations on the Formation of a Contract for Contract CPA/217073 - Relocation of 11kV and LV Mains in Minnesota Road, Hamlyn Terrace and Associated Water Works.....	126

6 GENERAL REPORTS

6.1	Central Coast Research Foundation Sponsorship	129
6.2	Review of Code of Meeting Practice	151
6.3	Revised Internal Audit Plan To 30 June 2013	154
6.4	Draft Minutes of the 19 September 2012 and 5 October 2012 Governance Committee meetings	163
6.5	Membership of Statutory Committees, Advisory Groups and Working Parties.....	173
6.6	Employment and Economic Development Strategic Committee and Heritage Statutory Committee Terms of Reference	181
6.7	Wrack Harvesting	197

7 INFORMATION REPORTS

7.1	Information Reports	204
7.2	Quarterly Update on Section 94 Contributions.....	205
7.3	Operational Activities and Trends Associated with the Animal Care Facility	207
7.4	Chinese Theme Park Proposal - Status Update	212
7.5	Outstanding Questions on Notice and Notices of Motion.....	216

8 NOTICES OF MOTION

8.1	Notice of Motion - Northern Lakes Rugby League Sport and Recreation Club	231
8.2	Notice of Motion - Lakes Federal Funding Expenditure Report	237
8.3	Notice of Motion - Council Advocate for End to So-called Scientific Whaling.....	238
8.4	Notice of Motion - Mobility Scooter Recharge Initiative.....	239
8.5	Notice of Motion - Erosion of Yellawa Island, The Entrance	240

9 CONFIDENTIAL ITEMS

9.1	Strategy for Reducing Contribution Credits	
-----	--	--

10 QUESTIONS ON NOTICE ASKED

At the conclusion of the meeting and at the discretion of the Mayor, Council may meet with staff in an informal, non-decision making mode for a period of no more than 30 minutes.

Michael Whittaker
GENERAL MANAGER

1.1 Disclosure of Interest

TRIM REFERENCE: F2012/00026 - D03174237

MANAGER: Lesley Crawley; Manager Corporate Governance

AUTHOR: Jacquie Elvidge; Councillor Services Officer

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

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

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

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

RECOMMENDATION

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

1.2 Proposed Inspections and Briefings

TRIM REFERENCE: F2012/00026 - D03174242

MANAGER: Lesley Crawley; Manager Corporate Governance

AUTHOR: Jacque Elvidge; Councillor Services Officer

SUMMARY

Inspections proposed to be conducted on 21 November 2012:

Time	Location/ Summary	Director/ Department
Depart 4.00pm	Council Chambers	Nil
4.20-4.40pm	Tumbi Creek Bridge - The existing timber bridge has structurally deteriorated and reached the end of its asset life. The existing bridge and approaches design is also a significant deviation from design standards and has been the scene of a number of accidents and resulting claims against Council. The priority design and procurement of a replacement bridge was completed in late 2011/2012 for two different route options. Council has received submissions for and against both options. A report is proposed to go to Council for the November 28 meeting seeking a resolution for Council's preferred option.	Infrastructure Management
5.00- 5.20pm	DA 125/2012 - 33 Dunks Lane, Jilliby 2 Lot Subdivision (Called up by Cr Best in July 2012 see D03053769)	Environment and Planning Services
5.30pm	Return to Council Chambers	Nil

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

Time	Topic	Summary	Presented by
12.00- 12.30pm	Frank Balance Park Design	Presentation of the draft concept design for Frank Balance Park, Wyong	Land Management – Manager Place Management, Urban Designed Place Management and representative from Group GSA

1.2 Proposed Inspections and Briefings (contd)

12.30-1.00pm	Porters Creek Floodplain Risk Management Plan	<p>The plan was finalised in May 2012. It recommends floodplain risk management measures that, if implemented, will alleviate flood risks within the Porters Creek catchment that include the suburbs of Kanwal, Warner vale and Hamlyn Terrace.</p> <p>The plan is scheduled for consideration for approval by Council in its meeting on 14 November 2012. A recommendation for approval by Council has been made by the TLECFMC in its meeting on 1 November 2012</p>	Infrastructure Management/ Waterways and Asset Management – Manager Asset Management
1.00-1.30pm	Media and Communications Protocol	To advise the new Council on current media and communications protocols	Community and Recreation Services/ Communications – Communications and Marketing Coordinator and Manager Customer Communications Relations
1.30-2.00pm	Tuggerah Lakes Floodplain Risk management Study and Plan	<p>The briefing will provide information on the status of this work.</p> <p>Draft implementation actions were presented to the TLECFM Committee on 7 June 2012. Further consultation has been undertaken on the proposed implementation actions and the proposed development control matrix.</p> <p>The document will require revision in the light of the 10 October Council resolution in regard to sea level rise considerations.</p>	Infrastructure Management/ Waterways and Asset Management – Manager Asset Management
2.00-2.30pm	Central Coast Regional Organisation of Councils (CCROC) Paper	Discussions CCROC paper	General Manager
2.30 - 3.00pm	Business paper discussion	Nil	Nil
3.00-4.00pm	Councillor Discussion	At the conclusion of the scheduled briefings issues raised by Councillors will be discussed on an informal basis at the discretion of the Mayor	Mayor

Briefings proposed for future meetings of Council are attached.

1.2 Proposed Inspections and Briefings (contd)

RECOMMENDATION

That Council receive the report on Proposed Inspections and Briefings.

ATTACHMENTS

1 Proposed Briefing Schedule - 14 November 2012 D03183953

PROPOSED DATE	IF MORE THAN 30MINS IS REQUIRED	BRIEFING TITLE	DIRECTOR
14-Nov-12		Dart Energy - Presentation to Council	Infrastructure Management
14-Nov-12		Frank Ballance Park Design	Environment and Planning Services
14-Nov-12		Porters Creek Floodplain Risk Management Plan	Infrastructure Management
14-Nov-12		Media and Communications Protocol	Community & Recreation Services
14-Nov-12		Tuggerah Lakes Floodplain Risk management Study and Plan	Infrastructure Management
14-Nov-12		Central Coast Regional Organisation of Councils (CCROC) Paper	GMs Unit
28-Nov-12		Australia China Theme Park	Corporate Services
28-Nov-12		Annual Report	GM's Unit- Integrated planning
28-Nov-12		Industrial Land and employment Lands study - Prior to exhibition	Environment and Planning Services
28-Nov-12		Q1 Report - Strategic Plan and Financial Update - presented by GM	Corporate Services
28-Nov-12		Tumbi Creek Bridge	(to be confirmed by DirectorIM)
28-Nov-12		GM's mid year performance review	Corporate Services
05-Dec-12	full session 12-4pm	Capital Expenditure Proposals – 1st stage consideration-Business Strategies going forward	corporate services
12-Dec-12		Retail Strategy Review	Environment and Planning Services
12-Dec-12		Precincts	Community & Recreation Services
12-Dec-12		Precinct 7A Masterplan - Feedback following exhibition	Environment and Planning Services
12-Dec-12		Wyong Employment Zone - results of DCP and S94 Contributions Plan/Biocertification update, DCP amendment update	Environment and Planning Services
12-Dec-12		plan of management central coast caravan parks	Community & Recreation Services
12-Dec-12		Customer Service Charter	Community & Recreation Services

1.3 Confirmation of Minutes of Previous Meeting

TRIM REFERENCE: F2012/00026 - D03174253

MANAGER: Lesley Crawley; Manager Corporate Governance

AUTHOR: Jacque Elvidge; Councillor Services Officer

SUMMARY

Confirmation of minutes of the previous Ordinary Meeting of Council held on Wednesday 24 October 2012.

RECOMMENDATION

That Council confirm the minutes of the previous Ordinary Meeting of Council held on Wednesday 24 October 2012.

ATTACHMENTS

1 MINUTES - Ordinary Council Meeting - 24 October 2012 D03169806

WYONG SHIRE COUNCIL
MINUTES OF THE
ORDINARY COUNCIL MEETING OF COUNCIL
HELD IN THE COUNCIL CHAMBER
WYONG CIVIC CENTRE, HELY STREET, WYONG
ON 24 OCTOBER 2012
COMMENCING AT 5:00 PM

PRESENT

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

IN ATTENDANCE

General Manager, Director Environment and Planning Services, Director Infrastructure Management, Director Community and Recreation Services, General Counsel, Manager Building Certification and Health, Manager Environment and Natural Resources, Executive Manager to the General Manager, Chief Financial Officer, Principal Transport Engineer and two administration staff.

The Mayor, Councillor Eaton, declared the meeting open at 5.02 pm and advised in accordance with the Code of Meeting Practice that the meeting is being recorded.

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

APOLOGY

An apology for the inability to attend the meeting was received on behalf of Councillor Matthews due to family commitments.

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

That Council accept the apology and grant leave of absence from the meeting.

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

AGAINST: NIL

At the commencement of the ordinary meeting report nos 1.1, 7.1, 7.2 and 5.1 were dealt with first then the remaining reports in order. However for the sake of clarity the reports are recorded in their correct agenda sequence.

1.1 Disclosure of Interest

3.4 Adoption of DCP 2005 - Development Controls for Wyong Shire – Part of the Matter that Relates to Chapter 36 – North Wyong Industrial Area

Councillor Eaton declared a pecuniary interest in the part of the matter relating to Chapter 36 of the DCP as it relates to the North Wyong Industrial Area and his family owns a company in North Wyong, left the chamber at 8.51 pm, took no part in discussion, did not vote and returned to the chamber at 8.53 pm.

5.3 Youth Employment Strategy

Councillor Eaton declared a non-pecuniary insignificant interest in the matter for the reason that he is a Council representative and an appointee to the Board of CCGT and participated in consideration of this matter.

Councillor Eaton stated:

“I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty.”

5.3 Youth Employment Strategy

Councillor Best declared a pecuniary interest in the matter for the reason that he is the General Manager of Central Coast Group Training the coasts largest employer of local youth and may be effected by Council's Youth Strategy, left the chamber at 8.54 pm, took no part in discussion, did not vote and returned to the chamber at 9.04 pm.

7.2 Notice of Motion – Daily Traffic Jams Through Wyong Township

Councillor Nayna declared a non-pecuniary insignificant interest in the matter for the reason that he is employed as an Electorate Officer, in the office of Mr Darren Webber MP, the Member for Wyong and participated in consideration of this matter.

Councillor Nayna stated:

“I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty.”

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

That Council receive the report on Disclosure of Interest and note advice of disclosures.

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

AGAINST: NIL

PROCEDURAL MOTION

SUSPENSION OF MEETING PRACTICE

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

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

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

AGAINST: NIL

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

That Council adopt the recommendations contained in the remaining reports, with the exception of report numbers 2.1, 2.3, 3.1, 3.2, 3.3, 3.4, 5.1, 5.3, 6.7 and Notices of Motion.

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

AGAINST: NIL

PROCEDURAL MOTION

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

That Council consider items 7.1- Notice of Motion – Increase Wrack Collection from Tuggerah Lakes and 7.2 - Notice of Motion – Daily Traffic Jams Through Wyong Township after item 3.2 – DA/401/2012 – Proposed Dwelling at Chittaway Bay.

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

AGAINST: NIL

1.2 Proposed Inspections and Briefings

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

That Council receive the report on Proposed Inspections and Briefings.

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

AGAINST: NIL

1.3 Confirmation of Minutes of Previous Meeting

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

That Council confirm the minutes of the previous Ordinary Meeting of Council held on Wednesday 10 October 2012.

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

AGAINST: NIL

Business Arising

There was no business arising.

1.4 Address by Invited Speakers

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

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

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

AGAINST: NIL

2.1 Mayoral Minute - Tuggerah Lakes Estuary, Coastal and Floodplain Management Committee Commencement Time

RESOLVED on the motion of Councillor EATON:

That Council amend the Tuggerah Lakes Estuary, Coastal and Floodplain Management Committee commencement time to 5.00pm.

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

AGAINST: COUNCILLOR GRAHAM

2.2 Mayoral Minute - Attendance at 50th Anniversary Gala Dinner - Fairhaven Services

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

- 1 That Council authorise any interested Councillors and senior staff members, to attend, accompanied by their partners, the 50th Anniversary Gala Dinner of Fairhaven Services on 10 November 2012**
- 2 That Council endorse reasonable expenses incurred by Councillors and senior staff and partners attending the above event in accordance with Council's Facilities and Expenses Policy for Councillors.**

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

AGAINST: NIL

2.3 Mayoral Minute - Review of Wyong Shire Council Organisation Structure

Councillor Troy left the chamber at 7.35 pm and returned to the chamber at 7.37 pm during consideration of this item.

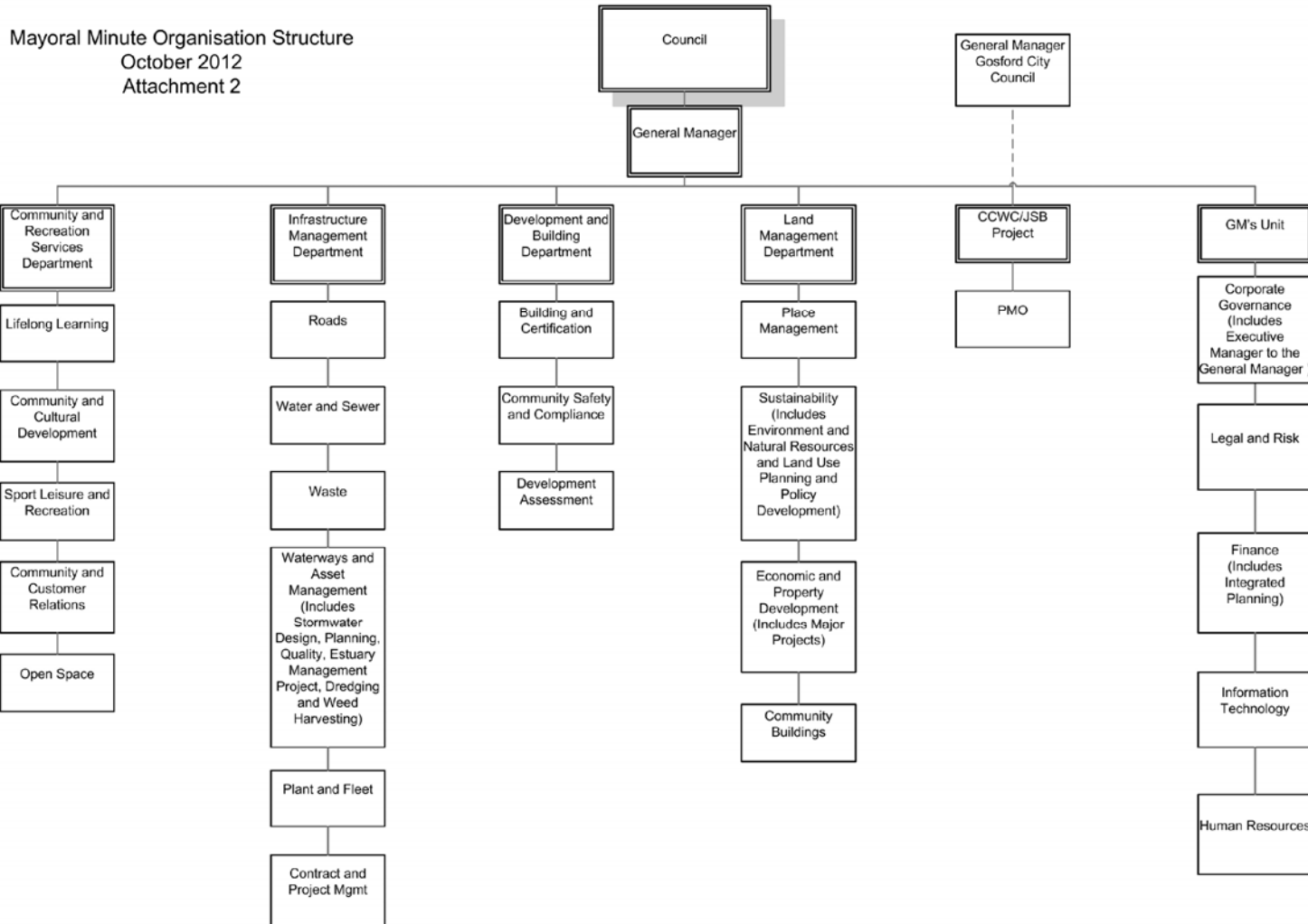
RESOLVED on the motion of Councillor EATON:

- 1 That Council adopts the organisation structure as presented in Attachment 2 as the Wyong Shire Council Organisation Structure.**
- 2 That Council designates the positions of Director Development and Building, Director Land Management, Manager Sustainability and Manager Waterways and Asset Management as Senior Designated Officers.**
- 3 That Council provides the assurance of job security for all permanent staff below Service Unit Manager**
- 4 That Council invites staff, Consultative Committee and the Unions to make submissions on this structure for 21 days.**
- 5 That Council gives consideration to those submissions on 28 November 2012.**

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

AGAINST: COUNCILLOR VINCENT

Attachment 2: Proposed Council Structure



2.4 Mayoral Minute - Ourimbah Soccer Club

Councillor Greenwald left the chamber at 8.03 pm and returned to the chamber at 8.05 pm during consideration of this item.

RESOLVED unanimously on the motion of Councillor EATON:

That Council authorise the Mayor and General Manager to negotiate a resolution with Ourimbah Soccer Club as to the water and sewerage developer charges currently levied on the new amenities building.

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

AGAINST: NIL

Matter Arising – Northern Lakes Rugby League Club

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

That Council consider a Notice of Motion at the next council meeting to be held on 14 November 2012 regarding the history of the Northern Lakes Rugby League Club water and sewerage developer charges.

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

AGAINST: NIL

3.1 DA/260/2012 Proposed New Dwelling, Swimming Pool and Demolition of Existing Structures at The Entrance North

Councillor Vincent left the chamber at 8.24 pm and returned to the chamber at 8.27 pm during consideration of this item.

Councillor Best left the chamber at 8.25 pm and returned to the chamber at 8.29 pm during consideration of this item.

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

That Council grant consent in accordance with the approved development plans and specifications listed in the conditions of approval as tabled.

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

AGAINST: COUNCILLORS GREENWALD AND VINCENT

3.2 DA 401/2012 - Proposed Dwelling at Chittaway Bay

Mr Mal Rowson, Community Representative, addressed the meeting at 5.11pm, answered questions and retired at 5.22 pm.

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

That Council grant consent subject to the conditions detailed in the schedule attached to the report having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues.

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

AGAINST: COUNCILLORS GREENWALD AND VINCENT

**3.3 RZ/3/2012 - Planning Proposal (Rezoning) - Craigie Avenue Precinct
Kanwal**

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

- 1 That Council initiate the Local Environmental Plan "Gateway" process, pursuant to Section 55 of the Environmental Planning and Assessment Act 1979 by preparation of a Planning Proposal.**
- 2 That Council forward the Planning Proposal to the Department of Planning and Infrastructure requesting a "Gateway" determination, pursuant to Section 56 (1) of the Environmental Planning and Assessment Act.**
- 3 That subject to the determination of the Gateway Process, Council negotiate a Funding Agreement with the applicant to finance the ongoing assessment of the rezoning proposal and to ensure the inclusion of the entire Craigie Avenue Precinct in the rezoning proposal.**
- 4 That Council undertake community consultation regarding the Planning Proposal, subject to the determination of the Gateway Process.**
- 5 That a further report be submitted to Council to report on results of the community consultation.**

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

AGAINST: NIL

PROCEDURAL MOTION

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

That Council deal with Chapter 36 of the revised DCP 2005, as an individual item.

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

AGAINST: NIL

3.4 Adoption of DCP 2005 - Development Controls for Wyong Shire

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

- 1 That Council adopt revised Development Control Plan 2005: Development Controls for Wyong Shire (DCP 2005) and direct the General Manager to provide appropriate public notice within 28 days that:**
 - **That the carparking rate for Cinemas be amended to a rate of 1 to 10 seats.**
 - **Chapters 1, 2, 4, 8, 17, 18, 19, 22, 26, 31, 32, 33, 34, 37, 44, 46, 54, 59, 72, 74, 85, 86, 87, 89, 92, 105, and 111 have been repealed and:**
 - **That draft Chapters 61, 66 and 67 will come into effect as Chapters 61 (including consequential amendments to Chapters 11, 58, 62, 63, 64, 99, and 100 to reflect revised parking rates), 66 and 67 within DCP 2005 on the date specified within that Notice.**
- 2 That Council direct the General Manager to forward a copy of revised DCP 2005 to the Director General of the NSW Department of Planning and Infrastructure within 28 days of the making of the Plan.**
- 3 That Council direct the General Manager to include a notation on Council's Section 149 Certificates to reflect the revised Chapters.**
- 4 That Council refer these chapters of the DCP 2005 to the Employment and Economic Development Committee (EEDC) to undertake further analysis and revision if considered appropriate.**

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

AGAINST: NIL

Councillor Eaton declared a pecuniary interest in the part of the matter relating to Chapter 36 of the DCP as it relates to the North Wyong Industrial Area and his family owns a company in North Wyong, left the chamber at 8.51 pm, took no part in discussion, did not vote and returned to the chamber at 8.53 pm.

Councillor Eaton vacated the chair and Councillor Webster assumed the chair for consideration of this item.

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

That Council adopt revised Development Control Plan 2005: Development Controls for Wyong Shire (DCP 2005) and direct the General Manager to provide appropriate public notice within 28 days that chapter 36 will come into effect within DCP 2005 on the date specified.

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

AGAINST: NIL

Councillor Eaton resumed the chair.

PROCEDURAL MOTION

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

That Council extend the meeting by 30 minutes.

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

AGAINST: NIL

4.1 CPA/181538 - Hire of Minor Plant and Equipment

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

- 1 That Council accept all conforming tenders received for a period of up to 2 years with a 1 year Principal actionable extension for Contract CPA/181538 – Hire of Minor Plant and Equipment.**
- 2 That Council determine the Tender Evaluation Report in Attachment A remains confidential in accordance with Section 10 A (2) (d) of the Local Government Act 1993 as the report contains commercial information of a confidential nature.**

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

AGAINST: NIL

4.2 CPA/181540 - Revised ranking list for the Evaluation and Selection of tenders for the Hire of Tipping and Other Trucks.

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

That Council approves a revised ranking order for the purposes of Tipping and Truck hire allocation for Contract CPA/181540 – Hire of Tipping and Other Trucks.

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

AGAINST: NIL

4.3 CPA/181543 - Revised ranking list for the Evaluation and Selection of tenders for the Hire of Plant and Machinery

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

That Council approves a revised ranking order for the purposes of Plant and Machinery hire allocation for Contract CPA/181543 – Hire of Plant and Machinery.

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

AGAINST: NIL

4.4 CPA/191877 - Construction of Warnervale Town Centre Sewer Trunk Main

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

- 1 That Council accepts the tender from the company nominated as Tenderer '4' in the attached Tender Evaluation Report for the estimated total value of \$2,298,628.00 (excl GST) for Contract CPA/191877 – Construction of Warnervale Town Centre Sewer Trunk Main.***
- 2 That Council determines the Tender Evaluation Report in Attachment A remains confidential in accordance with Section 10A(2)(d) of the Local Government Act 1993 as the report contains information of a confidential nature.***
- 3 That Council approve the contingency sum as detailed in the Tender Evaluation Report in Attachment A.***

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

AGAINST: NIL

5.1 Presentation on 2011/12 Annual Financial Reports

Councillor Best left the chamber at 6.42 pm and returned to the chamber at 6.47 pm during consideration of this item.

Councillor Greenwald left the chamber at 6.42 pm and returned to the chamber at 6.47 pm during consideration of this item.

Councillor Nayna left the chamber at 6.47 pm and returned to the chamber at 6.49 pm during consideration of this item.

Councillor Troy returned to the chamber at 6.48 pm during consideration of this item.

Councillor Taylor left the chamber at 6.49 pm and returned to the chamber at 6.50 pm during consideration of this item.

Mr Dennis Banecevic, External Auditor representing PricewaterhouseCoopers, addressed the meeting at 6.47 pm, answered questions and retired at 6.58 pm.

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

- 1 That Council present the Audited Financial Reports for 2011/12 in accordance with the Local Government Act 1993.**
- 2 That Council invite the External Auditor, Mr Dennis Banicevic (representing PricewaterhouseCoopers) to formally present the Auditor's report on Council's Annual Financial Reports for 2011/12.**

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

AGAINST: NIL

5.2 Conference Attendance - 2012 ALGWA National Conference

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

- 1 That Council authorise interested Councillor/s, to attend the 2012 ALGWA National Conference being held in Ipswich, QLD from Thursday 8 to Saturday 10 November 2012.**
- 2 That Council meet reasonable expenses incurred in Councillors attending the above conference in accordance with Council's Facilities and Expenses Policy for Councillors.**

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

AGAINST: NIL

5.3 Youth Employment Strategy

Councillor Eaton declared a non-pecuniary insignificant interest in the matter for the reason that he is a Council representative and an appointee to the Board of CCGT and participated in consideration of this matter.

Councillor Eaton stated:

"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty."

Councillor Best declared a pecuniary interest in the matter for the reason that he is the General Manager of Central Coast Group Training the coasts largest employer of local youth and may be effected by Council's Youth Strategy, left the chamber at 8.54 pm, took no part in discussion, did not vote and returned to the chamber at 9.04 pm.

It was MOVED by Councillor NAYNA and SECONDED by Councillor WEBSTER:

- 1 That Council adopt the 2012-2016 Youth Employment Strategy**
- 2 That Council endorse management's contracting approach to the provision of apprentices for training opportunities within Council.**

An AMENDMENT was MOVED by Councillor VINCENT and SECONDED by Councillor GREENWALD:

- 1 That Council adopt the 2012-2016 Youth Employment Strategy
- 2 That Council endorse management's contracting approach to the provision of apprentices for training opportunities within Council.
- 3 That Council request a report from staff advising on a way the strategy could be amended to allow council to employ 25% of the apprentice trainees inhouse.

The AMENDMENT was put to the VOTE and declared LOST.

FOR: COUNCILLOR VINCENT

AGAINST: COUNCILLORS EATON, GRAHAM, GREENWALD, NAYNA, TAYLOR, TROY AND WEBSTER

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

- 1 That Council adopt the 2012-2016 Youth Employment Strategy
- 2 That Council endorse management's contracting approach to the provision of apprentices for training opportunities within Council.

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

AGAINST: NIL

5.4 Policy for Establishment of Policies

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

That Council endorse that Council staff no longer use the policy for Establishment of Policies.

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

AGAINST: NIL

5.5 Service Standards Review - Results of Stage 1 Community Consultation

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

- 1 That Council receive the report on the Service Standards Review and note the conclusion.

- 2 That Council **conduct** a second phase of detailed community consultation during November/December 2012, on the community's willingness to pay for each of the three Funding Scenarios.
- 3 That Council **request** the General Manager to report the results of this consultation as soon as possible after completion.
- 4 That Council **delegate** to the General Manager the authority to take necessary action to comply with IPART deadlines for a Special Rate Variation application during December, 2012, subject to:
- a) the results of the November consultation showing community support for such action
 - b) any such action being reported to the first Ordinary meeting of Council in 2013
 - c) there is no prejudice to Council's ability to stop any subsequent action on a Special Rate Variation application.

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

AGAINST: NIL

6.1 Information Reports

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

That Council receive the report on Information Reports.

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

AGAINST: NIL

6.2 Activities of the Development Assessment and Building Certification and Health Units

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

That Council receive the report on Activities of the Development Assessment and Building Certification and Health Units.

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

AGAINST: NIL

6.3 General Works in Progress

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

That Council receive the report on General Works in Progress.

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

AGAINST: NIL

6.4 CCJSP Project Status Update - August/September 2012

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

That Council receive and note the report on CCJSP Project Status Update - August/September 2012.

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

AGAINST: NIL

6.5 Results of Water Quality Testing for Beaches and Lake Swimming Locations

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

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

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

AGAINST: NIL

6.6 Works in Progress - Water Supply and Sewerage

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

That Council receive the report on Works in Progress - Water Supply and Sewerage.

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

AGAINST: NIL

6.7 Investment Report for September 2012

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

That Council receive the Investment Report for September 2012.

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

AGAINST: NIL

6.8 Annual Disclosure of Interest Returns 2011-12

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

That Council receive the report on Annual Disclosure of Interest Returns 2011-12.

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

AGAINST: NIL

6.9 Outstanding Questions on Notice and Notices of Motion

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

1 *That Council receive the report on Outstanding Questions on Notice and Notices of Motion.*

2 *That Council take no further action for items 1 – 8, 11, 13 and 14.*

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

AGAINST: NIL

7.1 Notice of Motion - Increase Wrack Collection from Tuggerah Lakes

Councillor Nayna left the chamber at 5.46 pm and returned to the chamber at 5.47 pm during consideration of this item.

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

1 *That Council recognise the need to double the wrack collection from Tuggerah Lakes, both through increased weed harvester operation and by collection from the lake foreshores.*

2 *That Council include in its draft budget for 2013 – 2014 provision for such increased collection costs.*

- 3 That Council **request** the General Manager to submit a report to Council on “green tape” restrictions curtailing wrack collection/removal.
- 4 That Council **direct** the Mayor and the General Manager to raise the State Government agencies’ “green tape” restrictions with the Minister for the Central Coast at their regional forum meeting on 9 November 2012 and seek exemption/relaxation.
- 5 That Council **request** the General Manager to submit a report to Council on the adequacy of existing equipment to achieve significant increase in wrack removal.

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

AGAINST: NIL

7.2 Notice of Motion - Daily Traffic Jams Through Wyong Township

Councillor Nayna declared a non-pecuniary insignificant interest in the matter for the reason that he is employed as an Electorate Officer, in the office of Mr Darren Webber MP, the Member for Wyong and participated in consideration of this matter.

Councillor Nayna stated:

“I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty.”

Councillor Troy left the chamber at 6.08 pm and returned to the chamber at 6.09 pm during consideration of this item.

Councillor Vincent left the chamber at 6.23 pm and returned to the chamber at 6.27 pm during consideration of this item.

Mr John Lusted, resident, addressed the meeting at 6.10 pm, answered questions and retired 6.22 pm.

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

- 1 That Council **recognise** the importance of delivering the Pacific Highway upgrade through Wyong, linking up with the new Tuggerah Straight works as this is an economically vital road corridor providing business and job opportunities.
- 2 That Council **recognise** that having regard to the State Government annual budgetary processes, the need to now facilitate its agreement/concurrence on this road upgrade to meet the new budgetary cycle.
- 3 That Council **give** certainty to the hundreds of residents that live with the real prospect of the Pacific Highway upgrade bypass being funnelled through their residential streets, resulting in major loss of amenity, safety and property values/forced resumptions.
- 4 That Council **formally give** the RMS its support and concurrence for the through town Pacific Highway upgrade favouring the maximum parking option to assist local businesses and finally get this road started.

- 5 That Council request the General Manager to provide a report to Council in support of the RMS's preferred option along the existing Pacific Highway corridor that was exhibited in November 2011.**
- 6 That Council note opportunity in the existing Pacific Highway corridor option to provide incremental improvements through the life of the project.**

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

AGAINST: NIL

PROCEDURAL ITEM

RESOLVED unanimously on the motion of Councillor EATON and seconded by Councillor

That Council adjourn the meeting for a period of 2 minutes to allow the public to exit the gallery.

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

AGAINST: NIL

Councillor Best left the chamber at 6.42 pm and as a result took no part in voting.

Councillor Greenwald left the chamber at 6.42 pm and as a result took no part in voting.

Councillor Troy left the chamber at 6.42 pm and as a result took no part in voting.

PROCEDURAL ITEM

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

That Council consider item 5.1 – Presentation of 2011/12 Annual Financial Statements next as the external auditor is present.

FOR: COUNCILLORS EATON, GRAHAM, NAYNA, TAYLOR, VINCENT AND WEBSTER

AGAINST: NIL

8.1 Rescission Motion - CPA/191877 - Construction of Warnervale Town Centre Sewer Trunk Main

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

That Council reconsider this item as listed on this agenda as item 4.4 – CPA/191877 – Construction of Warnervale Town Centre Sewer Trunk Main.

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

AGAINST: NIL

QUESTIONS ON NOTICE

Q33/12 EPA Pile Burning Penalties
Councillor Greg Best
F2012/01734

“Mr Mayor, could you confirm if the EP&A, under the protection of the Environment Operations (clean air) Regulations 2010, only have the right to issue pile burning permits, could staff look into this and what affect it may have, if any, on Council’s Draft Pile Burning Policy?”

Q34/12 Extension of Draft Pile Burning Policy Exhibition
Councillor Greg Best
F2012/01734

“Mr Mayor, to assist our local rural community on the issue of the Draft Pile Burning Policy now on public display, could Council extend the exhibition period for one month until the 26 November 2012?”

Q35/12 Purchase of Sections of Remaining Undeveloped Land at Wadalba Hill
Councillor Ken Greenwald
F2005/00562

“Could staff please advise of any State of Federal Funding Schemes that may be available to purchase sections of remaining undeveloped land at Wadalba Hill for conservation purposes?”

Q36/12 Update on Charmhaven Walkway
Councillor Doug Vincent
F2008/02625

“Could staff please advise and update on the pedestrian crossing, ramp, slow bars, bench and ends for the Charmhaven walkway at Moala parade, Charmhaven?”

THE MEETING closed at 9.15 pm.

1.4 Address by Invited Speakers

TRIM REFERENCE: DA/194/2012 - D03174257

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Jacque Elvidge; Councillor Services Officer

SUMMARY

The following person has been invited to address the meeting of Council:

SPEAKERS	REPORT	PAGE NO	DURATION
Clive Adams – DA Applicant, speaking against the item	3.2 - DA/194/2012 – Proposed Two Storey Addition to an Existing Dwelling at Wyong	57	5 mins
Amanda Lee - representing the Chinese Theme Park, speaking in favour of the item	7.4 - Chinese Theme Park Proposal - Status Update	211	5 mins
Craig Lang - representing Toukley Cycle and Scooter Shop, speaking in favour of the item	8.4 - Notice of Motion - Mobility Scooter Recharge Initiative	238	5 mins

RECOMMENDATION

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

1.5 Notice of Intention to Deal with Matters in Confidential Session

TRIM REFERENCE: F2004/11710 - D03184223

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Jacquie Elvidge; Councillor Services Officer

SUMMARY

It is necessary for the Council to adopt a resolution to formalise its intention to deal with certain matters in Confidential Session. The reports are incorporated in the "Confidential" business paper which has been circulated to Councillors.

The Local Government Act, 1993 requires the General Manager to identify those matters listed on the business paper which may be categorised as confidential in terms of Section 10A of the Local Government Act, 1993.

RECOMMENDATION

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

9.1 – Strategy for Reducing Contribution Credits

- 2 That Council note its reason for considering Report No 9.1 – Strategy for Reducing Contribution Credits, as it contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting, or proposes to conduct business with.**
- 3 That Council request the General Manager to report on this matter in open session of Council.**

Note: Explanation - Section 10A of the Local Government Act 1993 states:

“2(a) personnel matters concerning particular individuals (other than Councillors),

2(b) the personal hardship of any resident or ratepayer,

2(c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business,

2(d) commercial information of a confidential nature that would, if disclosed:

(i) prejudice the commercial position of the person who supplied it, or

(ii) confer a commercial advantage on a competitor of the Council, or

(iii) reveal a trade secret,

2(e) information that would, if disclosed, prejudice the maintenance of law,

1.5 Notice of Intention to Deal with Matters in Confidential Session (contd)

- 2(f) matters affecting the security of the Council, Councillors, Council staff or Council property,*
- 2(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,*
- 2(h) information concerning the nature and location of a place or an item of Aboriginal significance on community land.”*

2.1 **Mayoral Minute - Extension of Trial Period for Relaxation of Contributions for Granny Flats**

TRIM REFERENCE: F2004/00552 - D03178260

MANAGER: Gina Vereker, Director

AUTHOR: Martin Johnson; Manager Land Use Planning and Policy Development

BACKGROUND

At its meeting held on 8th February 2012, Council resolved to adopt a trial policy that provided for a process whereby Section 94 Contributions could be waived by Council for "granny flats" (secondary dwellings) for the purpose of encouraging affordable housing. This trial policy was adopted in conjunction with a similar trial policy by Gosford City Council. Both Councils committed to ending the trial policy in September 2012.

Gosford City Council's Contributions Officer has indicated that it is intended to submit a report to that Council on its trial policy, which is continuing in the interim. In both cases, the trial has been carried out for Section 94 contributions only (water & sewer contributions under the Water Management Act still apply).

For the purposes of the trial, a granny flat has been defined as a secondary dwelling with a floor area of less than 60m² as defined under the State Environmental Planning Policy (Affordable Housing) 2009.

During the trial Period any development application for a granny flat was reported to the elected Council for its determination.

COUNCILLOR BRIEFING

A Councillor Briefing was held on 24 October 2012 where the results of the trial period and related issues were discussed.

During those discussions it was suggested that a secondary dwelling was equivalent to 35% of a standard dwelling otherwise known as a development unit (DU). The current DU rate under all the contributions plans for a one bedroom unit is 0.73 DUs and for a one bedroom is 0.52 DUs.

During the briefing, Council was also advised of the need to amend a number of the older contributions plans, so as to include the standard "*complying development*" provision. At present a complying development certificate can be obtained without the payment of contributions under four of the older plans. It is proposed that this anomaly be addressed by making the necessary amendments to those contributions plans.

It is suggested that a further 6 month trial period be adopted on the basis that further information will likely be forthcoming in respect of the Gosford City Council trial, the draft Affordable Housing Strategy and a review of the occupancy rates under the 2011 Housing & Population Census.

2.1 Mayoral Minute - Extension of Trial Period for Relaxation of Contributions for Granny Flats (contd)

I formally move:

- 1 That Council extend the trial for a period of 6 months.**
- 2 That Council levy secondary dwellings (Granny Flats) during the trial period on the basis that they are equivalent to 35% of a Development Unit for the purpose of Section 94 contributions in accordance with the applicable contributions plans.**
- 3 That Council implement the trial by way of those affected development applications being reported to Council for determination.**
- 4 That Council support the revision of the Section 94 Contribution Plans for Toukley, The Entrance, Wyong and Warnervale to include the provision that Section 94 contributions apply to Complying Development Certificates subject to the appropriate public exhibition process.**
- 5 That Council receive a comprehensive report on the outcomes of the trial prior to the end of the trial period.**

2.2 Mayoral Minute - Coastal Conference Bid

TRIM REFERENCE: F2004/10946 - D03184123

AUTHOR: Doug Eaton; Councillor

On the 25 October 2012 the Manager of Environment and Natural Resources proposed to the General Manager that Council submit a late bid to host the 2013 Coastal Conference as nominations to host this event closed on the 12 October 2012.

The General Manager sought direction from the Mayor, who consulted with Councillors Taylor, Troy and Webster, delegates on the Committee for the preparation of the bid proposal and also members of the Tuggerah Lakes Estuary, Coastal and Floodplain Management Committee.

It was concluded that as a result of the Council restructure, resolved at the 24 October 2012 Ordinary Council meeting, Council does not have the capacity to hold this conference and therefore will no longer be submitting a bid to host this event.

I formally move:

That Council receive and note the Mayoral Minute - Coastal Conference Bid.

3.1 DA 1099/2011 - Proposed Temporary Use of an Existing Machinery Shed as a Dwelling at Tumbi Umbi

TRIM REFERENCE: DA/1099/2011 - D03159963

MANAGER: Jamie Loader, Manager Building Certification and Health

AUTHOR: Paul Koen; Principal Health and Building Surveyor

SUMMARY

An application has been received for the temporary use of the existing machinery shed as a dwelling on an existing allotment at Haley Close, Tumbi Umbi. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment Act (EP&A Act) 1979, and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

The property was subdivided in 1992 and a building envelope was created on this lot to address the significant bushfire threat. The existing shed is located outside of this envelope in an area of the property that is exposed to a significant bushfire threat and consequently would require clearing of vegetation on the adjoining property to reduce the Bushfire Attack Level or significant modifications to the building to comply with construction standards for a Flame Zone. There is no legal ability for Council to require the clearing of land on the adjacent property to achieve the necessary APZ (Asset Protection Zones). In addition, the applicant has failed to submit information requested to demonstrate compliance with the required construction standards as outlined by the Rural Fire Service (RFS).

It is noted that the structure also does not achieve an acceptable standard of appearance for a dwelling as it has the appearance of a large metal outbuilding which would detract from the amenity of the locality and contravenes the relevant requirements of Development Control Plan (DCP) 2005.

Under these circumstances, the proposed dwelling is not considered to be acceptable and the application is not supported.

Applicant	SJH Planning and Design
Owner	Peter Beaver
Application No	DA/1099/2011
Description of Land	Lot 1131 DP 1158064, No 6A Haley Close, Tumbi Umbi
Proposed Development	Temporary use of existing machinery shed as a dwelling.
Site Area	1.022 ha
Zoning	7(c) Scenic Protection – Small Holdings
Existing Use	Rural Shed (outbuilding)
Estimated Value	\$35,000

3.1 DA 1099/2011 - Proposed Temporary Use of an Existing Machinery Shed as a Dwelling at Tumbi Umbi (contd)

RECOMMENDATION

That Council, having regard to the matters for consideration detailed in Section 79 C of the Environmental Planning and Assessment Act 1979 and other relevant issues, refuse the application subject to the reasons for refusal detailed in the schedule attached to the report.

- An application has been received for the temporary use of the existing machinery shed as a dwelling.
- The machinery shed has been subject to substantial unauthorised internal building works including the construction of a two storey dwelling within the southern portion of the structure.
- The site is zoned 7(c) Scenic Protection – Small Holdings under the provisions of the Wyong Local Environmental Plan 1991 (WLEP 1991).
- The property was subdivided in 1992 and a building envelope was created on this lot to take into account the substantial bushfire threat. The shed is located outside of this envelope and accordingly is not a suitable location for a dwelling.
- The proposed change of use does not comply with the 7(c) zone objectives and DCP 2005, Chapter 100 Quality Housing.
- The application has not demonstrated compliance with the Rural Fire Service (RFS), Planning for Bush Fire Protection Guidelines.

INTRODUCTION

The Site

The property is located at the northern end of Hayley Close Tumbi Umbi and is accessed via a right of carriageway across the adjoining lot to the south. The land is irregular in shape and falls gently towards the rear north – east boundary.

3.1 DA 1099/2011 - Proposed Temporary Use of an Existing Machinery Shed as a Dwelling at Tumbi Umbi (contd)



The existing green colourbond machinery shed as can be seen from Haley Close roadway.

The Proposal

The proposed development involves the change of use of an approved colourbond metal clad machinery shed to a dwelling. This application seeks consent for the temporary residential use and occupation of a two storey dwelling illegally constructed internally within the southern end of the structure for a period of 5 years.

The machinery shed has an approximate floor area of 192m² with approximate dimensions of 9.45 metres by 20.4 metres in length and is 7.0 metres in height.

The unauthorised two storey dwelling modifications within the machinery shed include at the ground floor level; dining, living, kitchen, pantry and laundry facilities and at first floor level; two bedrooms one with ensuite, bathroom and lounge room. The owner's submission states the illegal conversion of the machinery shed was to facilitate short term utility as his primary place of residence.

The application is not supported on the basis that the machinery shed does not have a satisfactory appearance to be considered as a dwelling and its failure to adequately demonstrate that it would not have a significant impact upon Flora and Fauna or achieve compliance with the RFS Planning for Bushfire Protection Guidelines.

3.1 DA 1099/2011 - Proposed Temporary Use of an Existing Machinery Shed as a Dwelling at Tumbi Umbi (contd)

The existing machinery shed was approved in 1992 and being an outbuilding was exempt from any bushfire considerations. The adjacent lot to the west is zoned 7(a) conservation and unsuitable for clearing to create an asset protection zone to reduce the Bushfire Attack Level. A restriction to user requiring the siting of a dwelling within the registered building envelope was imposed as part of the subdivision consent to address these site constraints.

The building envelope for this lot was created to address the bush fire threat and to improve amenity within the context of the site constraints. Residential development on the site is only considered to be appropriate within the building envelope created under the subdivision development consent. The machinery shed is sited outside of this area and is only approximately 10 metres from the interface of forest vegetation resulting in the structure needing to address flame zone construction and additional vegetation removal.

3.1 DA 1099/2011 - Proposed Temporary Use of an Existing Machinery Shed as a Dwelling at Tumbi Umbi (contd)



Aerial photo of lot layout

3.1 DA 1099/2011 - Proposed Temporary Use of an Existing Machinery Shed as a Dwelling at Tumbi Umbi (contd)

VARIATIONS TO POLICIES

Clause	2.0 Applications (Development plans & supporting information)
Standard	<p>Include a written Statement of Environmental Effects demonstrating how the proposal addresses relevant Requirements and Guidelines contained in this Development Control Plan, the likely environmental effects of the proposal and measures proposed to minimise those impacts.</p> <p>This must be in the format specified on the form, to show at least the following information:</p> <p>Methods of upgrading the building to demonstrate compliance with this Development Control Plan and address the bushfire risk, including recommendations from the NSW Rural Fire Service.</p>
LEP/DCP	DCP 2005 Chapter 100 Quality Housing
Departure basis	The supporting information and plans for the existing machinery shed does not provide for adequate "upgrading" to comply with objectives for streetscape, building material use, building and site design, and bushfire protection to BAL (40) flame zone.

Clause	3.4 Streetscape
Standard	<ul style="list-style-type: none"> • The design and location of the proposed dwelling shall have regard to the character of existing development - including materials, setbacks, height and style. • Dwelling houses shall provide an attractive face to the street and/or adjoining reserve or open space.
LEP/DCP	DCP 2005 Chapter 100 Quality Housing
Departure basis	The design and location of the existing structure has not had regard to provide an attractive streetscape development within this rural setting. The existing machinery shed does not provide an attractive rural dwelling appearance to the street or adjoining lands.

Clause	3.5 Building Materials
Standard	A design which uses materials that leads to a finish compatible with those in the neighbourhood.
LEP/DCP	DCP 2005 Chapter 100 Quality Housing
Departure basis	The design and construction of the existing machinery shed does not incorporate a form or materials which complement and integrate with other dwellings in the immediate rural neighbourhood.

Clause	3.6 Building Design (bulk and scale)
Standard	The building design uses architectural treatment including articulation of facades and horizontal elements to reduce the appearance of bulk.
LEP/DCP	DCP 2005 Chapter 100 Quality Housing
Departure basis	The machinery shed does not incorporate architectural relief and modulation of facades and presents poorly to the streetscape. The design and location of the existing structure again has not had regard to provide an attractive streetscape development within this rural setting.

3.1 DA 1099/2011 - Proposed Temporary Use of an Existing Machinery Shed as a Dwelling at Tumbi Umbi (contd)

HISTORY

A colourbond rural machinery shed was approved on the parent lot of the subject property in 1992. It was subsequently constructed adjacent to the north western boundary approximately 45 metres distance from the then existing single storey brick and tile residence on the property.

In 2008, consent was granted for the two (2) lot Rural Subdivision of the parent property. The registration of this subdivision resulted in the existing machinery shed and dwelling being on separate but adjacent allotments, (see aerial photo above).

DA/1174/2007 - Two (2) Lot Rural Subdivision

The plan of subdivision and Section 88B instrument established the following restrictive covenants with the Council having the benefit of these covenants and having sole authority to release, vary or modify these covenants. Relevant matters are listed:-

- *“Prohibit the erection of all residential buildings on Lot 1131, (the subject lot), other than within the designated envelope as detailed on the Deposited Plan (DP).*
- *Any future residential development is required to comply with the recommendations as set out in Bushfire Threat & Assessment by Clarke Dowdle & Associates dated July 2007 and RFS Planning for Bushfire Protection 2006.”*

Unauthorised Building Works

During a site inspection by a Council Officer in regard to the application for the On Site Sewage Management System (OSSMS), it was observed that the machinery shed had been converted for use as a dwelling. As a consequence, Council was obliged to issue a Notice of Intention to issue an order under the EP&A Act 1979, requiring the removal of all of the unauthorised building works. This decision was based on an acknowledgement of the significant bush fire threat posed by the residential occupation of the shed.

This action resulted in the current Development Application being lodged with Council.

RELEVANT STATE/COUNCIL POLICIES AND PLANS

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

- Environmental Planning and Assessment Act 1979.
- WLEP 1991
- Wyong Council DCP2005 Chapter 99 Building Lines
- Wyong Council DCP2005 Chapter 100 Quality Housing
- RFS Planning for Bushfire Protection.

ECOLOGICALLY SUSTAINABLE PRINCIPLES

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

Whilst the proposed development is considered capable of incorporating satisfactory stormwater, drainage and erosion control, the application has failed to demonstrate that the removal of native vegetation would not impact on the environment decreasing environmental quality for future generations..

ASSESSMENT

Having regard for the matters for consideration detailed in Section 79C of the EP&A Act 1979, statutory requirements, Council's policies and Section 149 Certificate details, the assessment has identified the following key issues, which are elaborated upon for Council's information.

Environmental Planning and Assessment Act 1979.

The property is designated bushfire prone land and accordingly under the provisions of Section 79 BA of the EP&A Act 1979 Council cannot grant consent unless it is satisfied that the development complies with the RFS Planning for Bushfire Protection Guidelines. This section states;

79BA Consultation and development consent—certain bush fire prone land

- “(1) Development consent cannot be granted for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) on bush fire prone land unless the consent authority:*
- (a) is satisfied that the development conforms to the specifications and requirements of the document entitled Planning for Bush Fire Protection, ISBN 0 9751033 2 6, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (the relevant specifications and requirements), or*
 - (b) has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.*
- (1A) If the consent authority is satisfied that the development does not conform to the relevant specifications and requirements, the consent authority may, despite subsection (1), grant consent to the carrying out of the development but only if it has consulted with the Commissioner of the NSW Rural Fire Service concerning measures to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire.*
- (1B) This section does not apply to State significant development.*
- (2) In this section:*

special fire protection purpose has the same meaning as it has in section 100B of the Rural Fires Act 1997.”

3.1 DA 1099/2011 - Proposed Temporary Use of an Existing Machinery Shed as a Dwelling at Tumbi Umbi (contd)

A Bushfire Threat Assessment Report was submitted by the applicant which was reviewed by the NSW RFS based upon the requirements for a new dwelling in that location. The RFS has indicated that the development may be able to comply with the Guidelines subject to significant modifications to the structure to achieve construction standards for a flame zone.

It is unclear if the current structure could achieve compliance with these construction standards, however despite numerous requests the applicant has failed to submit further information to address this matter. To meet these construction requirements the existing machinery shed would require substantial upgrading works including masonry or other materials that would achieve a similar standard of fire protection to the external walls and external window and door assembly upgrades. A copy of the RFS requirements are attached as an attachment to this report.

It is also important to note that the applicant has investigated the opportunity to provide the asset protection zone on the adjoining property to the north-west to reduce the bush fire attack level. In these circumstances in accordance with FRS policy, it is necessary to demonstrate that there are exceptional circumstances for the APZ to be located on the adjoining property because the requirement to maintain the APZ then becomes the responsibility of the adjoining property owner. However, the applicant has failed to demonstrate that this is the case, particularly due to the fact that a dwelling can be constructed within the building envelope with the APZs being contained wholly within the subject lot.

It is considered that the provisions of Section 79BA have therefore not been satisfied as the applicant has not provided evidence to indicate that if the development can achieve compliance with the RFS Planning for Bushfire Protection Guidelines. Under these circumstances Council should not grant consent to the development.

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

Wyong Local Environmental Plan 1991 (WLEP 1991)

The subject site is zoned 7(c) Scenic Protection – Small Holdings under the WLEP 1991. The proposed development is permissible with consent, however it is considered that it does not comply with the objectives of the zone. The zone objectives are;

(a) to enable development for the purposes of small rural-residential holdings to be carried out on land which is suitable for those purposes and which is unlikely:

- (i) to inhibit the potential for urban expansion, particularly at the urban fringe, or*
- (ii) to create a demand for the uneconomic provision of services, or*
- (iii) to detract from the scenic quality of rural lands, and*

(b) to allow for non-residential uses where those are compatible with rural-residential development and are unlikely to create an unreasonable demand for public services or substantially reduce the adequacy of existing levels of those services.

The existing machinery shed was originally approved for use in conjunction with the existing dwelling prior to the subdivision of the parent property. The building has an appearance of a large outbuilding not a dwelling that would usually be constructed on a small rural property. The endorsement of the structure for this purpose may ultimately detract from the scenic qualities of the rural landscape.

3.1 DA 1099/2011 - Proposed Temporary Use of an Existing Machinery Shed as a Dwelling at Tumbi Umbi (contd)

The property title is burdened by a Section 88B restriction that prohibits the erection of all residential buildings on Lot 1131 other than within the designated building envelope. In this regard the shed, which is located outside of the building envelope, was in existence prior to the approval of the subdivision. Clause 51 of the WLEP 1991 grants authority for Council to vary the restrictions to enable development, however this should only be done when appropriate justification is provided by the applicant and the requirements of Section 79 BA have been satisfied.

In this case it is clear that the approval of the dwelling outside of the envelope would not comply with the objectives of the WLEP 1991 as it would detract from the scenic qualities of the rural environment. The application has also failed to demonstrate that it would not have unacceptable impacts upon the native flora and fauna in the vicinity or that the significant bush fire risk can be addressed.

Under these circumstances, the application has not adequately demonstrated that the restriction should be varied in this instance.

Development Control Plan 2005 Chapter 99 – Building Lines

Clause 3.1 of Chapter 99 – Building Lines requires a side and rear setback of 10 metres to a boundary and the existing machinery shed is fully compliant

Development Control Plan 2005 Chapter 100 – Quality Housing

The proposed change of use to a dwelling house generally does not comply with the objectives and desirable outcome provisions of DCP 2005 Chapter 100 – Quality Housing. The following are considered to be non compliances with applicable provisions of this chapter.

Section 2.0 Applications (Development plans & supporting information)

The supporting information and plans for the proposed development are inadequate as they do not provide details on the required upgrading to comply with the objectives for streetscape, building materials, building and site design and bushfire protection to flame zone. The following issues are relevant on the basis that the applicant has applied to occupy the shed for a period of 5 years.

Section 3.4 Streetscape

The design and location of the existing structure would detract from the streetscape within this rural setting. The existing machinery shed does not provide an attractive rural dwelling appearance to the street or adjoining lands. The design and location of the existing development has little regard to the character of the existing built environment including materials, height and style (building form). The proposed development incorporates unsuitable design features not achieving an acceptable facade to the street elevation.

Section 3.5 Building Materials

The design and construction of the existing machinery shed does not incorporate a form or materials which complement and integrate with other dwellings in the immediate rural neighbourhood. The structure presents as a large machinery shed instead of a dwelling and the applicant has not proposed any external design or material change that would achieve an adequate outcome to meet this objective.

3.1 DA 1099/2011 - Proposed Temporary Use of an Existing Machinery Shed as a Dwelling at Tumbi Umbi (contd)

Section 3.6 Building Design (bulk and scale)

The machinery shed does not incorporate architectural relief and modulation of facades and presents poorly to the streetscape and rural surrounds as a dwelling. The design and location of the existing structure does not provide an attractive development within this rural setting.

Section 3.8 Site Design

Converting the existing machinery shed to a dwelling house does not provide a site design that integrates the building design with the natural features and constraints of the site. The existing structure also does not provide an overall site design that ensures that built elements do not dominate or conflict with natural vegetation and site features.

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

The relationship to the regional and local context and setting

The proposed change of use from machinery shed to a dwelling house is not consistent with the scale and character of the local area of Tumbi Umbi. The existing scale, bulk, height, massing and external materials and finishes of the machinery shed is not considered appropriate for the conversion to a dwelling. Under these circumstances the development would not be in keeping with the local context and would not enhance the rural built environment.

The access, transport and traffic management measures

Access to the site is provided by an existing right of carriage way through an adjoining parcel from Hayley Close, Tumbi Umbi.

Any effect on privacy, view loss and overshadowing

Assessment of the potential privacy impact and over shadowing from the existing machinery shed revealed that there are no matters of concern.

The impact on utilities supply.

Existing services for the site are adequate for the proposed development.

Any impact on the conservation of water.

A BASIX certificate has been submitted with the application and the proposal involves the use of water saving fixtures and a water tank of a minimum 5000 litre capacity. Connection of the tank to an external tap would contribute to the conservation of water.

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

The proposal would not have any effect on the conservation of soils or acid sulphate soils.

3.1 DA 1099/2011 - Proposed Temporary Use of an Existing Machinery Shed as a Dwelling at Tumbi Umbi (contd)

Any effect on the flora and fauna.

The application was referred to the RFS due to the development not complying with the prescriptive requirements of the Planning for Bushfire Protection Guidelines 2006. The RFS has advised that the development can be considered subject to the provisions of maintenance (in perpetuity) appropriate APZ's around the perimeter of the building.

To achieve these asset protection zones it would be necessary to undertake the clearing of native vegetation particularly to the north-east of the structure. The application has failed to provide any information on the impact of this clearing on the native flora and fauna and accordingly has failed to demonstrate that this impact would not be significant.

The provision of waste facilities.

A waste management plan (WMP) has not been submitted with the development application, however given the nature of the proposed development and the limited works that would be necessary to regularise the use this is not considered necessary in this case

The owner has also made application for an on site sewage management system for the proposed change of use and there is adequate area on site to adequately dispose of effluent.

Whether the development will be energy efficient.

A BASIX certificate has been issued as part of the development application and accordingly it would comply with the relevant legislation.

Whether the development will cause noise and vibration.

Construction work associated with the development was undertaken previously without development consent.

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

The property is subject to bushfire risk and as such a bushfire threat assessment report was submitted by the applicant which was reviewed by the NSW RFS based upon the requirements for a new dwelling in that location. The RFS has indicated that the development could comply with the Guidelines subject to the structure being modified to achieve construction standards for a flame zone.

It is unclear if the current structure could achieve compliance with these construction standards and despite numerous requests the applicant has failed to submit further information to address this matter. To meet these construction requirements the existing machinery shed would require substantial upgrading works including masonry or other materials that would achieve a similar standard of fire protection to the external walls and external window and door assembly upgrades. A copy of the RFS requirements included as an attachment to the report.

3.1 DA 1099/2011 - Proposed Temporary Use of an Existing Machinery Shed as a Dwelling at Tumbi Umbi (contd)

It is also important to note that the applicant has investigated the opportunity to provide the asset protection zone on the adjoining property to the north-west to reduce the bush fire attack level. In these circumstances it is necessary to demonstrate that there are exceptional circumstances for the APZ to be located on the adjoining property, however, the application has failed to demonstrate that this is the case. It is particularly relevant to this consideration that a dwelling could be constructed within the building envelope with the APZs being contained wholly within the subject lot.

Under these circumstances it is considered that the application has not adequately demonstrated that the development would be able to be adequately protected from bushfire threat.

Any impact of site design and internal design.

The change of use from a non habitable outbuilding to a habitable structure for the purposes of a dwelling requires consideration of the likely impacts of that development. Internal design considerations that are relevant include;

1. Health and Safety

- Lighting, ventilation and insulation.

Comment

Both lighting and ventilation currently meet the “deemed to satisfy” provisions of the Building Code of Australia, (BCA). Installation of insulation would be necessary to address the energy efficiency requirements which are detailed in the BASIX certificate.

- Likely compliance with the Building Code of Australia.

Comment

An inspection of the internal unauthorised building works was undertaken with the owner to establish the likelihood of the structure to achieve compliance with the performance requirements of the BCA. Compliance with the performance requirements can only be achieved by either:

- (a) complying with the “deemed to satisfy” provisions; or
- (b) formulating an alternative solution which—
 - (i) complies with the performance requirements; or
 - (ii) is shown to be at least equivalent to the “deemed to satisfy” provisions; or
- (c) a combination of (a) and (b)

The internal unauthorised building works have been inspected by Council and have the potential to be upgraded/altered to comply with the performance requirements of the BCA.

3.1 DA 1099/2011 - Proposed Temporary Use of an Existing Machinery Shed as a Dwelling at Tumbi Umbi (contd)

2. Amenity of Occupants

Comment

The amenity of the occupants is considered to be met subject to compliance with the BCA. Should consent be granted this would be achieved through the issue of a Construction Certificate and satisfactory completion of required works prior to the issue of an Occupation Certificate and use of the building.

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

Should consent be granted construction noise from the required upgrading of the building would be minimised via conditions of consent.

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

Whether the proposal fits in the locality.

The existing machinery shed was approved in 1992 and being an outbuilding was exempt from any bushfire considerations. The adjacent lot to the west is zoned 7(a) conservation and unsuitable for clearing to create an asset protection zone to reduce the Bushfire Attack Level. A restriction to user requiring the siting of a dwelling within the registered building envelope was imposed as part of the subdivision consent to address these site constraints.

Under these circumstances it is considered that the development would not fit in the locality.

Whether the site attributes are conducive to development.

The building envelope for this lot was created to address the bush fire threat and to improve amenity within the context of the site constraints. Residential development on the site is only considered to be appropriate within the building envelope created under the subdivision development consent. The machinery shed is sited outside of this area and is only approximately 10 metres from the interface of forest vegetation resulting in the structure needing to address flame zone construction and additional vegetation removal.

Under these circumstances the site of the proposed dwelling is not considered to be conducive to this development.

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

Any submission from the public.

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

Any submission from public authorities.

The application was referred to the RFS for review. This authority has provided a number of recommendations so that the development would achieve compliance with the RFS Planning for Bushfire Protection Guidelines.

3.1 DA 1099/2011 - Proposed Temporary Use of an Existing Machinery Shed as a Dwelling at Tumbi Umbi (contd)

Primary amongst these recommendations is for the building to be designed and constructed to comply with Australian Standard 3959-2009 Construction of buildings in bushfire prone areas for a Bushfire Attack Level of flame zone. The applicant has failed to provide information to demonstrate that this can be achieved.

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

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

The proposed change of use from a machinery shed to a dwelling is not in the interests of the community as it would create an undesirable precedent. Should Council support the use of this outbuilding as temporary or permanent residential accommodation it could lead to many other development requests that fail to comply with WLEP and relevant DCP 2005 Chapter 100.

The RFS Planning for Bushfire Protection Guidelines is relevant to this proposal. As detailed in this report the applicant has failed to demonstrate that compliance with this legislation can be achieved.

CONCLUSION

The development application for a five (5) year temporary use of existing machinery shed as a dwelling house does not comply with WLEP or meet the standards of the relevant Chapter of Council's DCP 2005. The applicant has also failed to demonstrate that the development could achieve compliance with the RFS Planning for Bushfire Protection Guidelines. Although the use is nominated as temporary it is still necessary to achieve compliance with the relevant legislation to achieve adequate development outcomes.

The conversion and use of the machinery shed to a dwelling is considered to be unjustified in this case and accordingly the application is recommended for refusal.

ATTACHMENTS

- | | | |
|----------|------------------------------------|-----------|
| 1 | Rural Fire Service Recommendations | D02877573 |
| 2 | Draft Reasons for Refusal | D03159959 |
| 3 | Development Plans (A3 B&W) | D03159975 |

All communications to be addressed to:

Headquarters
NSW Rural Fire Service
Locked Mail Bag 17
GRANVILLE NSW 2142

Telephone: (02) 8741 5175
e-mail: csc@rfs.nsw.gov.au

Headquarters
NSW Rural Fire Service
15 Carter Street
LIDCOMBE NSW 2127

Facsimile: (02) 8741 5433



The General Manager
Wyong Shire Council
PO Box 20
WYONG NSW 2259

Your Ref: DA/1099/2011

Our Ref: D11/2547
DA11121281276 GB
ID:81276/75138/5

Attention: Paul Koen

16 December 2011

Dear Sir

Land Use Application for 1131//1158064, 6A Hayley Close Tumby Umbi

I refer to your letter dated 6 December 2011 seeking advice regarding bush fire protection for the above Land Use Application in accordance with Section 79BA of the *Environmental Planning and Assessment Act 1979*.

In order for the structure to satisfy the requirements under *Planning for Bush Fire Protection 2006* and the BCA, the Rural Fire Service provides the following recommendations:

Asset Protection Zones

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities.

1. At the commencement of building works and in perpetuity the property around the building shall be managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of *Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service's document *Standards for asset protection zones* as follows:
 - Northeast for a distance of 25 metres;
 - Southeast to the boundary;
 - Northwest to the boundary; and
 - Southwest to the boundary.

Water and Utilities

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

2. Water, electricity and gas are to comply with section 4.1.3 of *Planning for Bush Fire Protection* 2006.

Access

The intent of measures for property access is to provide safe access to/from the public road system for firefighters providing property protection during a bush fire and for occupants faced with evacuation.

3. Property access roads shall comply with section 4.1.3 (2) of *Planning for Bush Fire Protection* 2006.

Design and Construction

4. The structure shall be upgraded to comply with section 9 (BAL FZ) Australian Standard AS3959-2009 *Construction of buildings in bush fire-prone areas*. However, where any material, element of construction or system when tested to the method described in Australian Standard AS1530.8.2 *Methods for fire tests on building materials, components and structures Part 8.2: Tests on elements of construction for buildings exposed to simulated bushfire attack—Large flaming sources*, it shall comply with Clause 13.8 of the Standard except that flaming of the specimen is not permitted.
5. Window assemblies shall comply with one of the following:
 - a) Clause 9.5.2 of AS 3959-2009 as modified above;or
 - b) They shall comply with the following:
 - (i) Completely protected by a non-combustible and non perforated bushfire shutter that complies with Section 3.7 of AS3959-2009 excluding parts (e) & (f).
 - (ii) Window frames and hardware shall be metal.
 - (iii) Glazing shall be toughened glass minimum 6mm.
 - (iv) Seals to stiles, head and sills or thresholds shall be manufactured from materials having a flammability index no greater than 5 or from silicone.
 - (v) The openable portion of the window shall be screened internally or externally with screens that comply with Clause 9.5.1A.
6. External Doors and door frames (not including garage doors) shall comply with one of the following:
 - a) Clause 9.5.3 or 9.5.4 of AS 3959-2009 as modified above;

or

b) They shall comply with the following:

- (i) Completely protected by a non-combustible and non perforated bushfire shutter that complies with Section 3.7 of AS3959-2009 excluding parts (e) & (f).
- (ii) Doors shall be non-combustible.
- (iii) Externally fitted hardware that supports the panel in its function of opening and closing shall be metal.
- (iv) Where doors incorporate glazing, the glazing shall be toughened glass minimum 6mm.
- (v) Seals to stiles, head and sills or thresholds shall be manufactured from materials having a flammability index no greater than 5 or from silicone.
- (vi) Doorframes shall be metal.
- (vii) Doors shall be tight fitting to the doorframe and to an abutting door if applicable.
- (viii) Weather strips, draught excluders or draught seals shall be installed at the base of side-hung external doors.

7. There shall be no external timber on the building.

8. The south east elevation maybe reduced and shall comply with section 8 (BAL 40) of AS3959-2009.

Landscaping

9. Landscaping to the site is to comply with the principles of appendix 5 of *Planning for Bush Fire Protection 2006*.

Consent authority to note

The above recommendations are based upon the current requirements for a new dwelling in that location. The extent to which these recommendations are applied lies with the Council given the circumstances of the proposal.

For any enquiries regarding this correspondence please contact Garth Bladwell.

Yours faithfully,



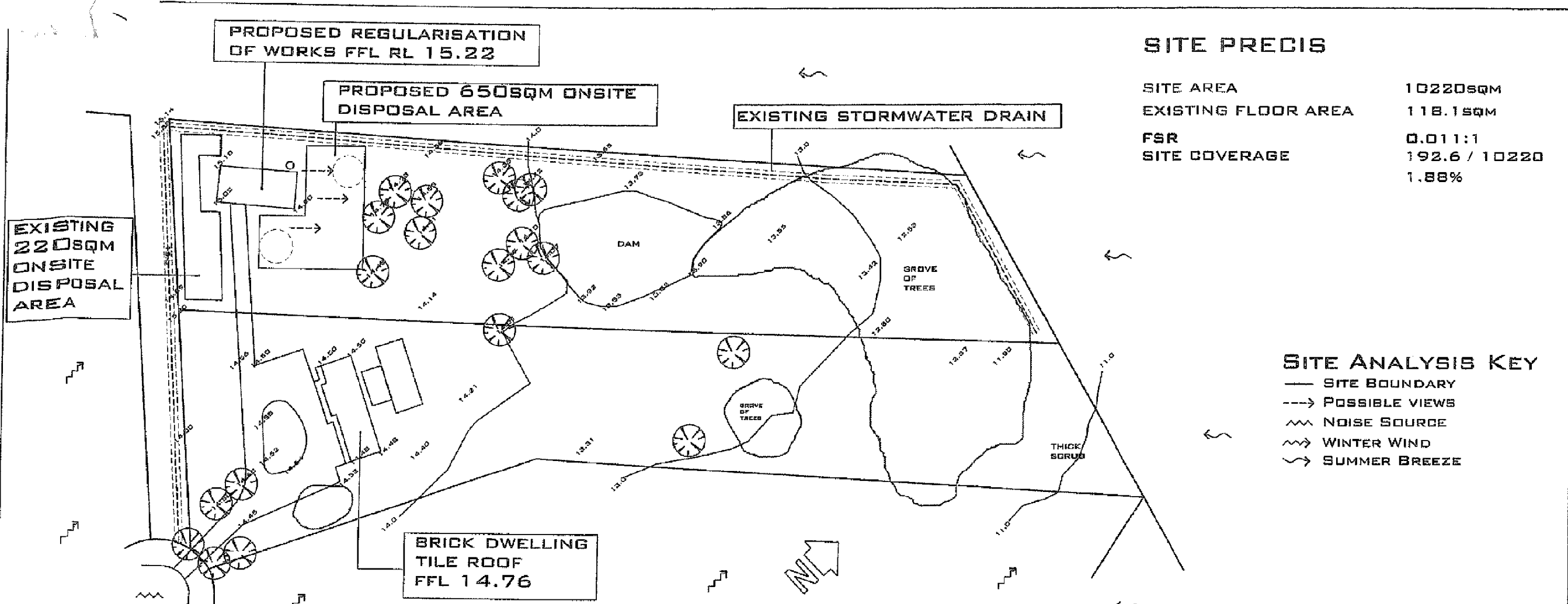
Nika Fomin
Team Leader, Development Assessment

For information on *Planning for Bush Fire Protection 2006* visit the RFS web page www.rfs.nsw.gov.au.

Draft Reasons for refusal

- 1 *Under the provisions of Section 79BA of the Environmental Planning and Assessment Act 1979, the application has failed to demonstrate that the development could comply with the relevant provisions of the Planning for Bushfire Protection Guidelines.*
- 2 *Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the provision of any environmental planning instruments, the application for a change of use to a “Dwelling-house” on Lot 1131 in DP 1158064 fails to satisfy the objectives of the 7(c) Scenic Protection land zone under the provisions of Clause 10 – “Zone Objectives” of Wyong Local Environmental Plan 1991. The application has not adequately demonstrated that the proposal does not detract from the scenic quality of the land inclusive of geographic, fauna and floral values.*
- 3 *Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the provision of any environmental planning instruments, the application for a change of use to a “Dwelling-house” on Lot 1131 in DP 1158064 fails to satisfy the provisions of Clause 51 – “Suspension of Certain Laws” of Wyong Local Environmental Plan 1991 in that the application has not adequately demonstrated that the Section 88B terms of the restriction on the use of the land for the erection of a dwelling should not apply.*
- 4 *Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, any development control plan, the application for a change of use to a “Dwelling-house” is contrary to the general objectives of Part 2.0 of Chapter 100 – “Applications (Development plans & supporting information)” of Development Control Plan 2005 in that the proposal fails to provide “upgrading details and specifications” to comply with objectives for streetscape, building material use, building and design, and bushfire protection to BAL (flame zone).*
- 5 *Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, any development control plan, the application for a change of use to a “Dwelling-house” is contrary to the general objectives of Part 3.4 of Chapter 100 – “Streetscape” of Development Control Plan 2005 in that the proposal fails to provide an attractive streetscape development within this rural setting.*
- 6 *Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, any development control plan, the application for a change of use to a “Dwelling-house” is contrary to the general objectives of Part 3.5 of Chapter 100 – “Building materials” of Development Control Plan 2005 in that the proposal fails to incorporate a form or materials which compliment and integrates with other dwellings in the immediate rural neighbourhood.*
- 7 *Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, any development control plan, the application for a change of use to a “Dwelling-house” is contrary to the general objectives of Part 3.6 of Chapter 100 – “Building design” of Development Control Plan 2005 in that the proposal fails to incorporate architectural relief and modulation of facades and presents poorly to the streetscape.*

- 8 *Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, any development control plan, the application for a change of use to a “Dwelling-house” is contrary to the general objectives of Part 3.8 of Chapter 100 – “Site design” of Development Control Plan 2005 in that the proposal fails to provide a site design that integrates the building design with the natural features and constraints of the site, or dominate and conflicts with natural vegetation and site features.*
- 9 *Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, Flora and Fauna, the application has failed to demonstrate that the clearing of native vegetation for the required asset protection zones would not have a significant impact upon the environment.*
- 10 *Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, Natural hazards, the application has failed to demonstrate that the development would be able to be adequately protected from the bushfire threat.*
- 11 *Pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the public interest, the application for a change of use to a “Dwelling-house” on Lot 1131 in DP 1158064 is not considered to be in the public interest in that it would create an undesirable precedent for similar development on rural or environmental zoned land.*



SITE PRECIS

SITE AREA	10220sqm
EXISTING FLOOR AREA	118.1sqm
FSR	0.011:1
SITE COVERAGE	192.6 / 10220 1.88%

- SITE ANALYSIS KEY**
- SITE BOUNDARY
 - POSSIBLE VIEWS
 - ~ NOISE SOURCE
 - ~ WINTER WIND
 - ~ SUMMER BREEZE

SITE / LANDSCAPE PRINCIPLES / SITE ANALYSIS PLAN SCALE 1:1000 @ A3

GENERAL NOTES.

TREES TO BE REMOVED SHOWN.
 ALL LEVELS TO A.H.D.
 ALL STORMWATER TO COUNCILS SYSTEM VIA DETENTION TANKS & NUTRIENT CONTROL AREAS. WATERCOURSE AS SHOWN.
 ALL DIMENSIONS TO BE CONFIRMED ON SITE. DO NOT SCALE.
 NO CUT OR FILL REQUIRED.
 WATER & SEWER MAINS SHOWN.
 ALL WINDOWS & DOORS TO BE UPGRADED TO INCLUDE EMBER PROOF MESH SCREENS.
 ALL GUTTERS TO BE UPGRADED TO INCLUDE GUTTER GUARD OR SIMILAR.

BASIX NOTES.

ALL FIXTURES TO BE AS PER BASIX CERTIFICATE REQUIREMENTS.
 LOW WATER USE SPECIES LANDSCAPING TO BE USED AS PER BASIX CERTIFICATE REQUIREMENTS.
 A WATER TANK IS TO BE INSTALLED TO COLLECT ROOF WATER AS PER BASIX CERTIFICATE REQUIREMENTS.
 FLOORS, WALLS & CEILING IS TO BE CONSTRUCTED AS OUTLINE IN THE BASIX CERTIFICATE.
 ALL WINDOWS & GLAZED DOORS ARE TO BE SHADED AS & HAVE R-VALUES AS OUTLINE IN THE BASIX CERTIFICATE.
 BREEZE PATHS TO BE AS PER BASIX CERTIFICATE.
 THE HOT WATER HEATER IS TO HAVE A ENERGY EFFICIENCY RATING NOT LESS THAN SPECIFIED IN THE BASIX CERTIFICATE.
 THE HEATING & COOLING SYSTEM IS TO HAVE A ENERGY EFFICIENCY RATING NOT LESS THAN SPECIFIED IN THE BASIX CERTIFICATE.
 ALL EXHAUST FANS TO KITCHEN & BATHROOMS TO BE AS PER THE BASIX CERTIFICATE REQUIREMENTS.
 ALL LIGHT FIXTURES TO BE PRIMARILY LED LIGHTING BUT ARE NOT TO BE DEDICATED TO LED.
 THE COOK TOP & ELECTRIC OVEN IS TO BE AS PER BASIX CERTIFICATE REQUIREMENTS.
 THE REFRIGERATOR SPACE IS TO BE WELL VENTILATED.
 CLOTHES DRYING DEVICES TO BE AS PER BASIX REQUIREMENTS.

LANDSCAPING DETAIL.

- EXISTING TREES TO BE REMOVED
- EXISTING TREES TO BE RETAINED.
- MEDIUM HEIGHT SHRUBS & SCREENING PLANTING.
BAECKEA VIRGATA (HEATH MYRTLE)
ACACIA SOPHORAE (COASTAL WATTLE)
- SMALL HEIGHT SHRUBS & GROUND COVERS.
BANKSIA SPINULOSA (HONEYPOTS)
MELALEUCA THYMIFOLIA (THYME HONEY MYRTLE)

PROJECT: PROPOSED TEMPORARY RESIDENTIAL USE & OCCUPATION OF APPROVED MACHINERY SHED LOT 1131 DP 1158064 HN 6A
 HALEY CLOSE, TUMBI UMBI
 CLIENT: PETER BEAVER

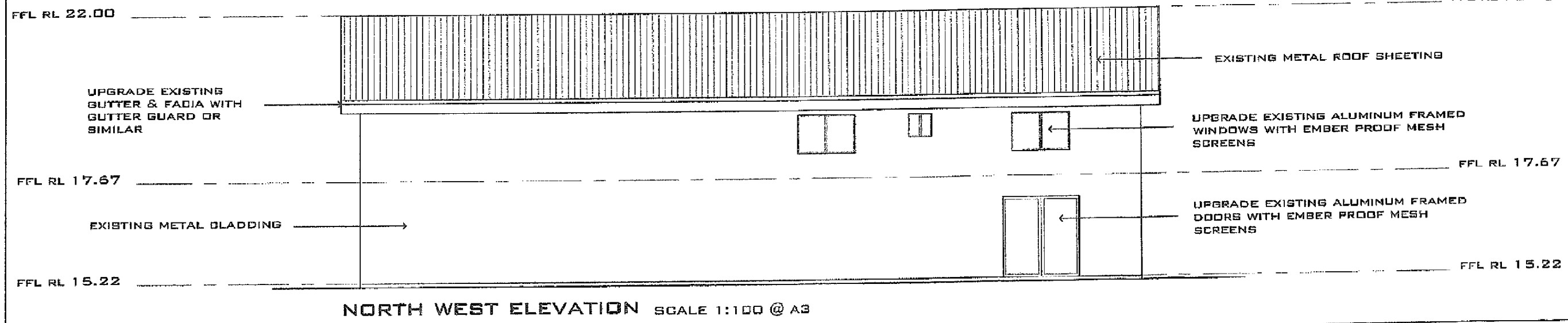
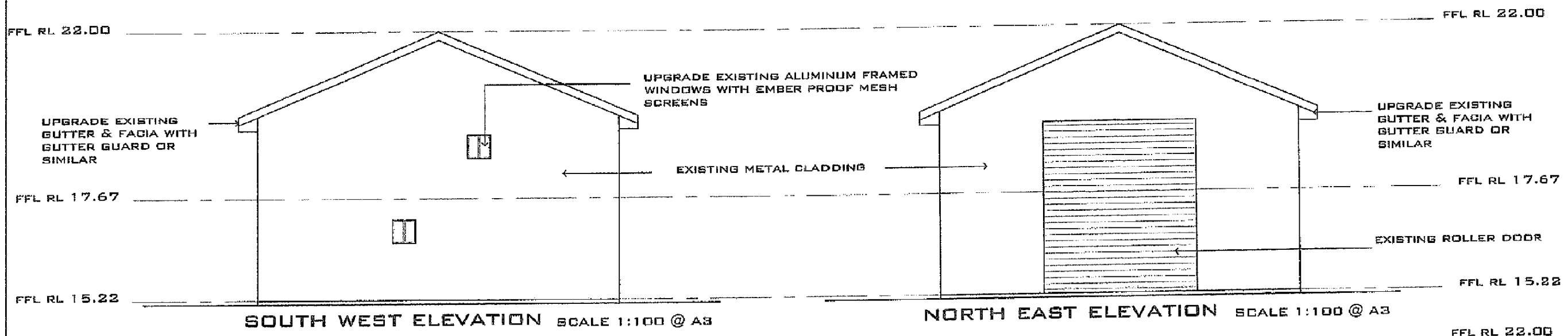
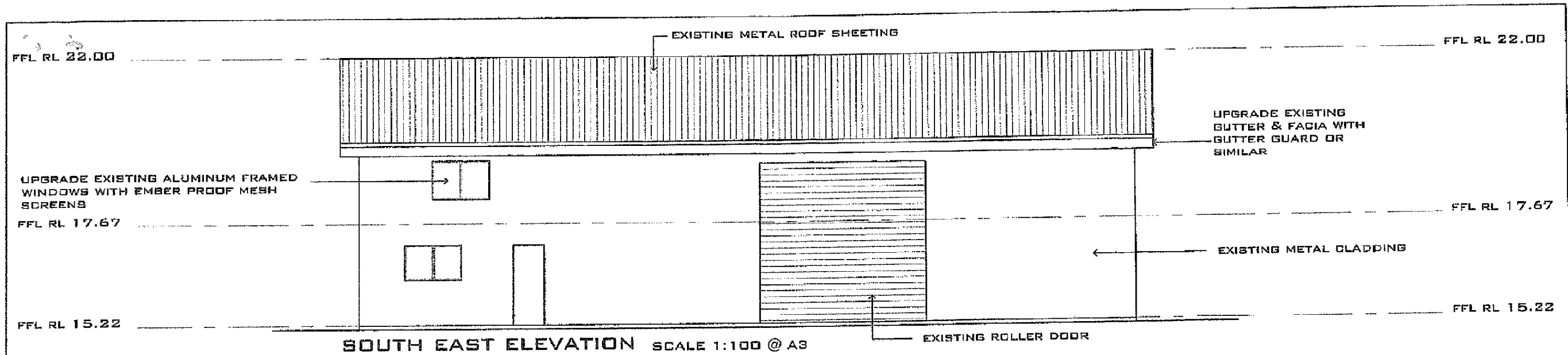
DATE: 29-11-11
 DRAWN BY: C.WHITE
 PROJECT NO: 1950

SHEET NO: 1/4

SJH PLANNING & DESIGN

1 MCDONALD STREET, DAVISTOWN, NSW, 2251 PH: 02 43698111 FAX: 02 43698122
 EMAIL: DESIGN@LONGHILLPLANNING.SJH.AU

NO PART OF THIS DOCUMENT SHALL BE REPRODUCED IN FULL OR IN PART WITHOUT THE EXPRESS WRITTEN PERMISSION FROM THE AUTHOR.



PROJECT: PROPOSED TEMPORARY RESIDENTIAL USE & OCCUPATION OF APPROVED MACHINERY SHED LOT 1131 DP 1158064 HN 6A
 CLIENT: PETER BEAVER

DATE: 29-11-11
 DRAWN BY: G. WHITE
 PROJECT NO: 1950

SHEET NO: 3/4

SJH PLANNING & DESIGN
 1 McCauley Street, Daytown, NSW, 2251 PH: 02 43698111 FAX: 02 43698122
 EMAIL: DESIGN@LINDHULLPLANNING.COM.AU

NO PART OF THIS DOCUMENT SHALL BE REPRODUCED IN FULL OR IN PART WITHOUT THE EXPRESS WRITTEN PERMISSION FROM THE AUTHOR.

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong

TRIM REFERENCE: DA/194/2012 - D03160052

MANAGER: Jamie Loader, Manager Building Certification and Health

AUTHOR: Anderson Lachlan; Health and Building Surveyor

SUMMARY

An application has been received for a two storey addition to an existing dwelling at Wyong. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment Act (EP& A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

The application before Council basically proposes an additional three bedroom dwelling as an extension to the current dwelling which already has three bedrooms. The development therefore doubles the size of the dwelling and the number of bedrooms. The proposed floor space increase and potential doubling in occupancy does not comply with Council's adopted Lower Wyong River (LWR) Flood Plain Risk Management Plan. It also contravenes the State Government Flood Plain Development Manual.

Council's existing LWR Flood Plain Risk Management Plan permits a minor floor space extension to a maximum of 40 sq metres. Staff have investigated a range of options to enable the applicant to achieve some additional floor space and a number of these options have been raised with the owner. To date, the owner has indicated his unwillingness to accept any compromise.

On the basis of this significant non compliance with both Council and State Policy and the potential safety risk to the additional occupants likely to be housed in the extension, it is considered that Council has little option but to refuse the application in it's current form.

Applicant	Mrs P Adams Mr C W Adams
Owner	Mrs P Adams Mr C W Adams
Application No	DA/194/2012
Description of Land	Lot 33 DP 4526 No 65 McDonagh Road, Wyong
Proposed Development	Additions and alterations to an existing dwelling including modifications to the existing boat port, the erection of a garage to the ground floor and a rumpus room and two bedrooms to the first floor.
Site Area	2706 sqm
Zoning	1C Non Urban Constrained Lands
Existing Use	Dwelling
Estimated Value	\$250,000

RECOMMENDATION

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 appropriate reasons for refusal detailed in the schedule attached to the report.

PRECIS

- Existing development on the land is a three bedroom dwelling and a detached carport.
- The application seeks approval for additions and alterations to an existing dwelling including modifications to the existing boat port, the erection of a garage to the ground floor and a rumpus room and three bedrooms to the first floor.
- The site is zoned 1C 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 LWR Floodplain Risk Management Study indicates the 1% AEP flood level in the location of the proposed works as RL 2.71m AHD. During such a flood event the ground floor level will be inundated by 0.81m above the ground floor level of the subject dwelling and a flood depth on average of about 1.21 m deep across the undeveloped parts of the subject site.
- Council's adopted flood hazard based on the 1% AEP flood of the LWR Floodplain Risk Management plan categorises the site as High Hazard Flood Storage.
- Council's adopted development controls in the LWR Floodplain Risk Management Plan, based on the zoning and hazard category, identify the land as being unsuitable for development and therefore the application cannot be supported.
- The setback of the addition and proposed deck to the river frontage does not comply with WLEP 1991 and Council's Development Control Plan (DCP) 2005, Chapter 99 Building Lines.

INTRODUCTION

The Site

The subject site has an area of 2706 m². Existing on the site is a two storey dwelling with a detached carport.

The existing boat port at the rear of the dwelling has a setback of 5.390 metres to the Wyong River frontage and the dwelling is setback over 100 metres to the McDonagh Road frontage.

Existing development in the surrounding area comprises a mix of single and two storey dwellings, which are understood to have similar floor levels to the subject dwelling and accordingly would be subject to similar inundation during a significant flood event.

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong (contd)



The Proposed Development

The application seeks approval for additions and alterations to an existing dwelling to the existing boat port, the erection of a garage to the ground floor and a rumpus room and three bedrooms to the first floor. The applicant's plans show the existing residence having a floor area of 247 sq metres. The proposed extension adds an area of 209 sq metres (basically a 100% increase), bringing the total floor area of the dwelling to 456 sq metres.

The major issue for consideration relates to flooding and the development controls in Council's LWR Floodplain Risk Management Plan. The LWR Floodplain Risk Management Study indicates the 1% AEP flood level in the location of the proposed works as RL 2.71m AHD. The existing and proposed ground floor level is 1.91 AHD. The Plan identifies the land as being unsuitable for development.

It is acknowledged that the proposed first floor will provide a floor level that complies with the 1% AEP flood level plus freeboard. The issue for Council to consider here is the extent of the extension, lack of safe evacuation route and the safety of the increase number of occupants that the addition will likely house.

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong (contd)

VARIATIONS TO POLICIES

Standard	High Hazard Storage & Floodway
Policy	Lower Wyong River Floodplain Risk Management Plan
Departure basis	Due to the property being within a High hazard Floodway it is unsuitable for development.

Clause	Clause 3.1 Chapter 99 Building Lines.
Standard	10.0 metre side boundary setback.
Policy	DCP 2005 Chapter 99 Building Lines
Departure basis	A 2.7 metre setback is proposed to the eastern boundary and a 5.0 metre setback to the western boundary. This represents a 73% and a 50% variation respectively.

HISTORY

Council's records indicate that the existing dwelling and carport were approved in 1967 and 1991 respectively. There is no other history relevant to this application.



Existing dwelling

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong (contd)



Existing boat port to be modified.

Flooding records indicate that the property was inundated by floodwaters in 1964 to a level of approximately 2.91m AHD.

PERMISSIBILITY

The subject site is zoned 1(c) (Non Urban Constrained Lands) under the WLEP 1991. A dwelling-house is permissible with consent. However, Clause 16(1) of WLEP 1991 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 has an area of 9466m² however, was in existence prior to the appointed date. Under these circumstances dwelling alterations and additions are permissible, subject to compliance with any other relevant legislation and or policy.

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.

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong (contd)

In regards to Objective (a), the property is located within the High Hazard Flood Storage & Floodway where the 1% Annual Exceedance Probability (AEP) flood level is RL 2.71m AHD. The site has an average ground level of 1.5m AHD resulting in flood depths of up to 1.21 metres.

The existing dwelling has a possible construction life of 40 years. The approval of the addition could add to the overall life of the dwelling resulting in an estimated construction life of 70 years and a further 30 years of residency on an allotment which is severely affected by flooding. This is inconsistent with the objective of limiting the development of land that is affected by flooding.

In regards to Objective (c) it is considered that the proposal, by being sited within a High Hazard Flood Storage, would not minimise risk but increases the risk of danger to the current and future occupants of the dwelling and to rescue personnel. The proposal would not provide safe egress from the property during a flood event.

Clause 10(3) of the WLEP 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.

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

RELEVANT LEGISLATION STATE/COUNCIL POLICIES AND PLANS

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

- State Environmental Planning Policy 71 – Coastal Protection
- Wyong Local Environmental Plan 1991
- Lower Wyong River Floodplain Risk Management Plan
- Development Control Plan 2005, Chapter 100 (Quality Housing)
- Development Control Plan 2005, Chapter 99 Building Lines
- Council's Contribution's Plan S94A Levies

ECOLOGICALLY SUSTAINABLE PRINCIPLES

The development, if approved, would not be sustainable and is not consistent with the overall objective of, LWR Floodplain Risk Management Plan in particular:

- 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 environs as the ground floor of the proposed structure is considered likely to be significantly damaged by flood waters and associated debris which would impact on the downstream environment.

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong (contd)

- The development, as proposed, does not support social or financial sustainability as it will likely rely on the efforts of volunteer emergency services personnel to provide rescue in times of flood whilst the potential additional occupants that the extension will house may increase the cost of the rescue service and the eventual cost to the community.

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 DoPI 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) and (l) as the proposal is inconsistent with LWR 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. 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.

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong (contd)

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 Sulphate 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 construction of the dwelling additions would utilise concrete pad footings which would not have any implications for acid sulphate soils on this site.

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 under the heading “LWR Floodplain Risk Management Plan” in a later section of this report.

Clause 31 - Foreshore building lines

Foreshore building lines

The addition to the dwelling is proposed at a 9 metre setback and the boat port extension is proposed at a 5.3 metre setback to the rear boundary instead of the 20 metre foreshore building line required under the WLEP 1991. In this respect Clause 31 of the WLEP 1991 states the following;

- 31 (1) *The Council, may, by resolution, fix a line (in this clause called a "foreshore building line") in respect of any land fronting any bay, river, creek, lake, lagoon, harbour or ocean.*
- (2) *A foreshore building line shall, when fixed in accordance with subclause (1), be marked upon a plan or clearly described in the resolution and the plan or resolution shall be available for inspection by the public during the office hours of the Council.*
- (3) *The Council may alter or abolish any foreshore building line, where the levels, depth or other exceptional features of the site make it necessary or expedient to do so.*

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong (contd)

- (4) *A building shall not be erected between a foreshore building line and a bay, river, creek, lake, lagoon, harbour or ocean in respect of which the line is fixed.*
- (5) *The Council may, after consideration of the appearance of the proposed structure and the effect on the locality in relation to the area between the foreshore building line and the high water mark, consent to the erection of -*
- (a) *boat sheds;*
 - (b) *wharves;*
 - (c) *jetties;*
 - (d) *retaining walls;*
 - (e) *swimming pools;*
 - (f) *structures or works not being habitable buildings below or at the surface of the ground; or*
 - (g) *other structures which, in the opinion of the Council, are unobtrusive and acceptable,*
- between a foreshore building line and the bay, river, creek, lake, lagoon, harbour or ocean in respect of which the line is fixed.*

The existing dwelling currently extends for a length of 15 metres parallel to the rear boundary at a 9 metre setback. The addition is proposed in the same alignment as the existing building and extends for a length of 6.6 metres. Similarly, the existing boat port is currently sited at a 5.3 metre setback to the rear boundary and a 1.1 metre side extension is proposed to make the structure more functional.

In consideration of the structures proposed within the 20 metre foreshore building line it is necessary for Council to form an opinion on whether the development is unobtrusive or acceptable. In this regard the relevant issues are;

- Is the development an acceptable design and would it unduly impact upon the amenity of adjoining properties? and,
- Are there circumstances that make the development acceptable?

The addition is compliant with the relevant requirements of Chapter 100 Quality Housing. The structure is not excessive in bulk, scale or height and the applicant has submitted supporting information that demonstrates that it would not impact upon the view corridors from adjoining properties.

The minor addition to the boat port, although a significant encroachment into the foreshore building line, would not unduly impact upon views from the property to the west. Significant view corridors exist for both of the adjoining lots and this development would not unduly impact upon these views.

The existing structures on the subject lot are currently sited well within the 20 metre foreshore building line and this is also the case for most of the properties within the locality.

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong (contd)

The design of the addition is the most simple and practical means of extending the dwelling and no real benefit would be achieved by requiring the addition to be constructed behind the foreshore building line.

Under these circumstances the proposed variation to the foreshore building line could be supported.

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”.

The development does not comply with Council’s LWR Floodplain Risk Management Plan (being the most up-to-date flood study). This is discussed in detail later in the report in the section titled LWR Floodplain Risk Management Plan.

Development Control Plan 2005, Chapter 99 Building Lines

Chapter 99 stipulates a 10 metre setback to the side boundary for dwellings on rural zoned properties. The addition is proposed at a 2.7 metre setback to the eastern boundary which represents a 73% variation to this policy. The extension to the boat port also proposes a 5.0 metre side boundary setback which represents a 50% variation to this policy.

In this locality all of the properties have structures that do not achieve compliance with the side boundary setbacks of the chapter. Although the properties are classified as rural and are larger than a normal residential property, they are also quite narrow at approximately 25 metres in width.

As has been demonstrated in the discussion on the variation to the foreshore building line, the additions would not result in any significant impact upon the amenity of the adjoining properties.

ASSESSMENT

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

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

Lower Wyong River Floodplain Risk Management Plan

The flood-related development controls relevant to the site are contained within the *LWR 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, supersede the development controls and requirements contained within Council’s Policy F5 - *Flood Prone Land Development* for the LWR catchment.

The LWR Plan was prepared and adopted by Council in accordance with the *NSW Floodplain Development Manual (2005)*.

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong (contd)

The *LWR 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 *LWR Floodplain Risk Management Plan* was prepared in 2009. The Plan identifies which mitigation options Council selected and adopted 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. Council does not have any record of the applicant for this development objecting to the Plan.

With the bulk of flood-labile 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 below.

Type of Development	Flood Hazard Categories			
	Flood Fringe	Flood Storage		Floodway
		Low Hazard	High Hazard	
LAND ZONED RESIDENTIAL ^{(1) (2) (3) (4) (5) (6)}				
Concessional (see definition below)	On Merits	On Merits	On Merits	Unsuitable land use
Infill development			On Merits	
New Development			Unsuitable land use	
LAND ZONED COMMERCIAL / LIGHT INDUSTRIAL / INDUSTRIAL OR SIMILAR ^{(3) (4) (5) (6)}				
Concessional (see definition below)	On Merits	On Merits	On Merits	Unsuitable land use
Infill development			On Merits	
New Development			Unsuitable land use	
LAND ZONED RECREATION, OPEN SPACE, CONSERVATION ZONE, NON URBAN CONSTRAINED LANDS, SPECIAL USES ^{(2) (3) (4) (5) (6)}				
Structures, including buildings and filling	On Merits	On Merits	Unsuitable land use	Unsuitable land use
Other developments permissible in zone, i.e wetlands, playing fields, parks, walkways, etc...	On Merits	On Merits	On Merits	Unsuitable land use
REZONING TO MORE INTENSE LAND USE	On Merits	On Merits	Unsuitable land use	Unsuitable land use
ALL ZONE TYPES SUBDIVISION	On Merits	On Merits	Unsuitable land use	Unsuitable land use

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong (contd)

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 financially or socially sustainable outcome, and these areas have therefore 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 within the Plan do not support the proposed residential development.

The LWR Flood Plain Risk Management Plan classifies the site as High Hazard Storage.

Flood Characteristics of the Land

- The principle source of flooding is from Wyong River with an upstream catchment of approximately 360 square kilometres. The property is considered to be fully flood affected by the 1%, 2% and 5% Annual Exceedence Probability (AEP) design flood events.
- The 1% 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 2.71 metres AHD, which is approximately 1.21metres above the natural surface level at the location of the proposed addition.

Risks

- The later the decision is made for evacuation the more people that would require assistance. Evacuation by wading is not encouraged by emergency services personnel due to the potential problems with uneven ground, submersed hazards, animal bites, restricted mobility of the aged and children and the distance to safe higher ground.

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong (contd)

- In respect to the proposed development, McDonagh Road is the only evacuation route and evacuation must be undertaken in a westerly direction as in the easterly direction the road drops further away. Even in a minor flood event, (1:20 year) McDonagh Road becomes flooded to a depth of 0.5 metres which makes it in passable for vehicular traffic. Safe evacuation therefore needs to take place prior to this and therefore before the residents of the subject property may not be aware that a significant flood event is occurring.
- It is noted that the SES recommends that evacuation should not be attempted on foot. However, if residents do attempt to escape on foot, it should not be attempted when the distance to be travelled is greater than 200 metres. In this instance the distance to be walked would be in excess of 1500 metres.
- The NSW Department of Health has also identified a potential health issue should people be forced to wade through flood waters. The Department has previously issued Public Health Warnings to treat all flood waters as contaminated. There is potential for flood water to contain untreated sewage, chemical contaminants or dead animal carcasses. The depth of flood waters and duration of inundation further exacerbates this issue. The time of day and weather conditions can also adversely affect evacuation.
- Historical data and flood modelling for this locality has indicated that the flood characteristics may prohibit access for numerous days, with conditions close to the peak flood remaining for approximately 24 hours.

OPTIONS

Council may wish to consider a range of options in relation to the proposed development. The obvious options are the following:

- Adopt the recommendation and refuse the application in its current form.
- Require the applicant to lodge an amended proposal involving reduced floor space to comply with the LWR Flood Plain Risk Management Plan.
- Approve the application in its current form despite its non compliance.

Staff have also investigated a number of further options as follows:

- 1 A planning proposal to amend the zoning of the subject land from 1C Non Urban Constrained Lands to 2(a) Residential.

Comment

The applicant in his submission to Councillors has requested that his property be rezoned to Residential. The basis for his request is that the subject land is in close proximity to similarly flood affected land that is, however, zoned for Residential purposes. Under the LWR Flood Plain Risk Management Plan if the land was to be zoned Residential the potential for development being considered by Council would change from the category of an “unsuitable for development” to being consideration “on merits”. The applicant is of the opinion that this change in category would result in a changed recommendation from refusal to approval.

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong (contd)

Unfortunately, such a change in category would have no impact on the recommendation for the refusal of the current application. This is on the basis that the proposal would still not comply with the maximum area extension permissible in the LWR Flood Plain Risk Management Plan and the issues relating to the land being affected by high hazard flood storage and the resultant unsafe evacuation would remain.

In addition, any such proposal for rezoning would contravene a direction from the Minister for Planning that no land affected by a flooding constraint should be up zoned. Therefore, it is highly unlikely that the rezoning proposal would be endorsed by the DoPI.

2 The review and amendment of the LWR Flood Plain Risk Management Plan.

Comment

Should Council wish to enable larger extensions to existing dwellings affected by significant flood hazard, the appropriate way to facilitate this would be by way of a formal review of the LWR Flood Plain Risk Management Plan. This would involve a technical review of the flood risk categories and development controls applicable to those categories within the Management Plan and the public exhibition of any proposed amendments to the Plan.

The difficulty for Council should it wish to implement this option, is that the current LWR Flood Plain Risk Management Plan has been prepared in accordance with the Flood Plain Development Manual, such that the flood categories and development controls are generally consistent with those that apply throughout NSW. Any changes to the Plan would also need to comply with the Manual and it is unlikely that major changes to the Flood Risk Categories would meet the criteria established in the Flood Plain Development Manual.

3 A public education programme in partnership with the SES.

Comment

No matter what option Council resolves it is recommended that Council gives serious consideration to the development of a community education programme in relation to the risks involved in living in a flood prone area and the absolute necessity of having a personal/family emergency management evacuation plan.

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.

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong (contd)

The access, transport and traffic management measures

In relation to access, McDonagh Road is the only evacuation route and evacuation must be undertaken in a westerly direction as in the easterly direction the road drops further away. Even in a minor flood event, (1:20 year) McDonagh Road becomes flooded to a depth of 0.5 metres which makes it in passable for vehicular traffic. Safe evacuation therefore needs to take place prior to this and therefore before the residents of the subject property may be aware that a significant flood event is occurring.

It is noted that the SES recommends that evacuation should not be attempted on foot. However, if residents do attempt to escape on foot, it should not be attempted when the distance to be travelled is greater than 200 metres. In this instance the distance to be walked would be in excess of 1500 metres.

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

No issues to report.

The impact on utilities supply.

Whilst the proposed development does not impact on the supply of utilities, during a flood it is likely that services will not be available to the dwelling and therefore, that there will be demands upon Emergency Services personnel to evacuate the occupants.

The effect on heritage significance.

No issues to report.

Any effect on other land resources.

No issues to report.

Any impact on the conservation of water.

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. Therefore there is a low probability of occurrence of acid sulphate soil materials within the soil profile.

Any effect on quality of air and microclimate conditions.

No issues to report.

Any effect on the flora and fauna.

Two trees have been indicated for removal. The trees that are proposed to be removed are not significant and their removal is unlikely to significantly affect threatened species, populations, ecological communities or their habitats.

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong (contd)

The provision of waste facilities.

No issues to report.

Whether the development will be energy efficient.

No issues to report.

Whether the development will cause noise and vibration.

No issues to report.

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

Flooding

See discussion earlier in the report.

Bushfire

The property is subject to a bushfire threat and a bushfire threat assessment has been submitted which indicates that the development would be able to comply with the Planning for Bushfire protection Guidelines.

Any risks from technological hazards.

No issues to report.

Whether the development provides safety, security and crime prevention.

It is acknowledged that the first floor is to be built above the flood level, however, due to the risk from flooding and the fact that there is no safe vehicular or pedestrian evacuation route the development will actually provide a false sense of security for any new occupants.

Any social impact in the locality.

The proposed development is considered likely to have negative social impacts if it were to be approved by Council by placing both people and property at risk and vulnerable to flooding events. The applicant has not provided an evacuation plan for the occupants of the property.

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.

No issues to report.

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

No issues to report.

Any cumulative impacts.

Allowing the proposed development contrary to The LWR Floodplain Risk Management Study development controls would contravene Council's obligation to consider certain matters as specified in Section 79C of the EP&A Act, including the likely impacts of the development, ecologically sustainable development and the public interest.

The consequences of Council failing to meet the requirements of the LWR Floodplain Risk Management Plan is that Council may not have the statutory presumption that it has acted in good faith and hence may find it more difficult to establish a defence that is available to it under s. 733 of the Local Government Act 1993

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

Are the site attributes conducive to development?

As outlined earlier in this report, the property would be significantly affected by floodwaters during a flood occurrence. Due to the risk posed to occupants as a result of the absence of a avenue for safe evacuation, it is considered that the site is not suitable for development and this is supported by the LWR Floodplain Risk Management Study.

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

Any submission from the public.

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

Any submission from public authorities.

No issues to report.

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

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

During the assessment of the application, discussions were held with the Local Controller, Wyong of the SES regarding the issues of safety and evacuation in respect of this development. The advice provided is as follows:

3.2 DA/194/2012 - Proposed Two Storey Addition to an Existing Dwelling at Wyong (contd)

- Development should not be designed or approved on the basis of an assumption of rescue.
- Any development in a flood risk area should only be considered where there is an ability to enable early evacuation.
- Consideration of any development should be based on a risk assessment.
- Whilst building above the flood level may be seen as beneficial, it may actually have the negative outcome of dissuading occupants from evacuation and instead relying on being rescued later when no evacuation is possible. This significantly increases the risk to both the occupants and the rescue personnel and increases the cost to the community.
- Even when a building is above the flood level, occupants are generally compelled to ask for rescue due to the break down in services that result from a flood. ie, it is common that within 24 hours residents will have no fresh water, no power and potentially no sewerage services.
- Any development being considered in a flood risk area must be accompanied by a full emergency management plan not just a flood evacuation plan. It should be noted that no evacuation or emergency plan has been submitted with this application.

OTHER MATTERS FOR CONSIDERATION

Council's Development Contributions Plan levies s94A contributions pursuant to the provisions of Section 94 of The Environmental Planning and Assessment Act 1979 to the value of \$2500 for this project.

Political Donations

The applicant has advised on the Development Application form that no person with a financial interest in the application has made a political donation or gift as outlined in the Local Government Planning Legislation Amendment (Political Donations) Act 2008.

CONCLUSION

The application before Council basically proposes an additional three bedroom dwelling as an extension to the current dwelling which already has three bedrooms. The development therefore doubles the size of the dwelling and the number of bedrooms. The proposed floor space increase and potential doubling in occupancy does not comply with Council's adopted Lower Wyong River (LWR) Flood Plain Risk Management Plan. It also contravenes the State Government Flood Plain Development Manual.

Council's existing LWR Flood Plain Risk Management Plan permits a minor floor space extension to a maximum of 40 sq metres. Staff have investigated a range of options to enable the applicant to achieve some additional floor space and a number of these options have been raised with the owner. To date, the owner has indicated his unwillingness to accept any compromise.

On the basis of this significant non compliance with both Council and State Policy and the potential safety risk to the additional occupants likely to be housed in the extension, it is considered that Council has little option but to refuse the application in it's current form.

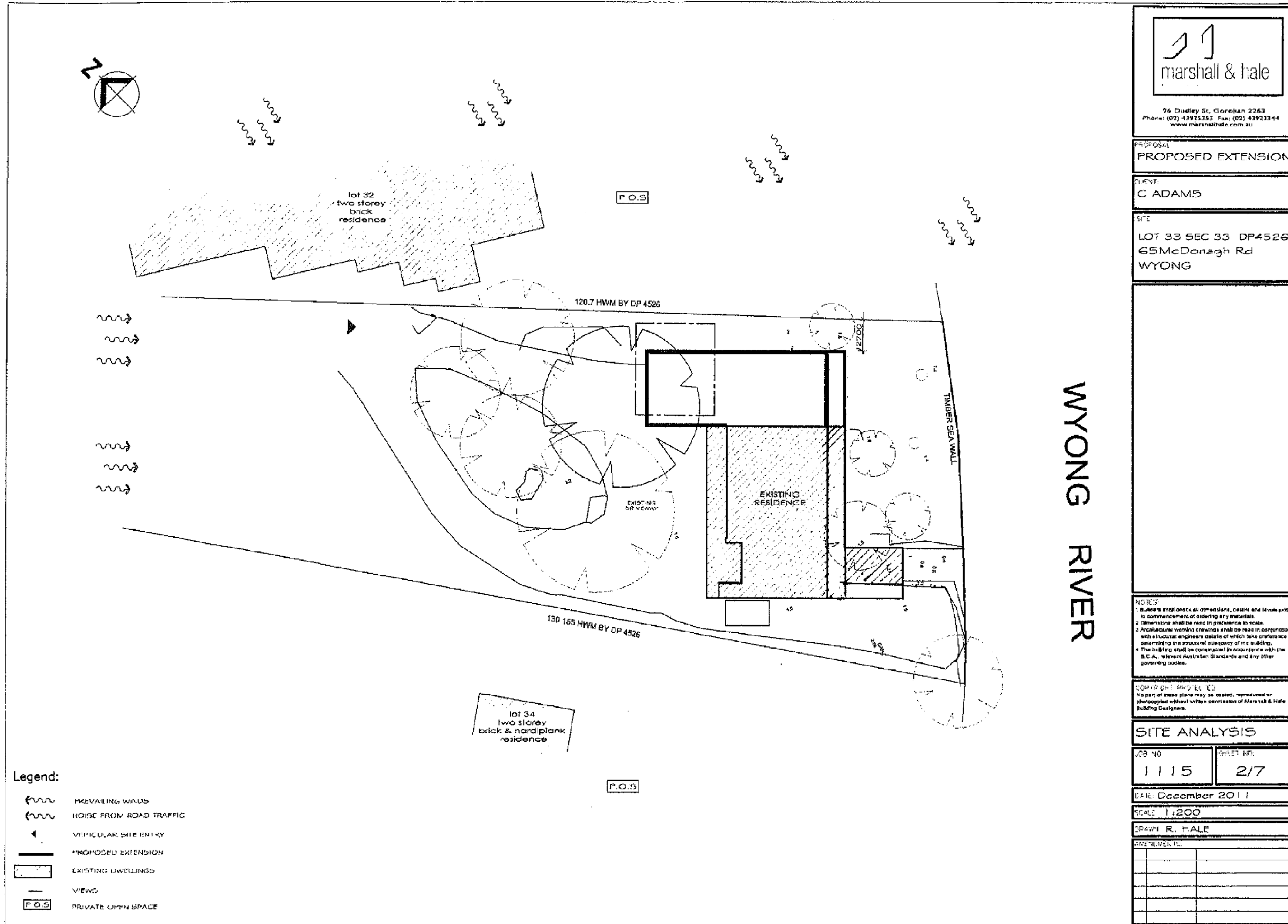
ATTACHMENTS

- | | | |
|---|----------------------------|-----------|
| 1 | Draft Reasons for Refusal | D03160064 |
| 2 | Development Plans (A3 B&W) | D03173148 |

Draft Reasons for Refusal

- 1 Pursuant to Section 79C (1)(c) of the Environmental Planning and Assessment Act 1979 the site is not considered to be suitable for the proposed development having regard to Council's Lower Wyong River Floodplain Risk Management Plan.
- 2 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Clause 2 of State Environmental Planning Policy 71 (Coastal Protection) in the following manner:
 - a The proposed development fails to satisfy Aim 2(1)(j) in that it does not accord with the precautionary principle by proposing to site an addition to a dwelling in a high hazard flood area.
 - b The proposed development fails to satisfy Aim 2(1)(j) in that it does not promote inter-generational equity by proposing to site a dwelling in a high hazard flood area that may result in damage to the addition to the dwelling and injury or loss of life to future occupants.
 - c The proposed development fails to satisfy Aim 2(1)(k) in that it proposes to inappropriately locate a dwelling in a high hazard flood area which exposes the addition to the dwelling to damage and future occupants to danger.
 - d The proposed development fails to satisfy Aim 2(1)(l) in that the proposed development does not encourage a strategic approach to coastal management by proposing to site a dwelling in a high hazard flood area in disregard for the Lower Wyong River Floodplain Management Plan which provides strategic advice on the development potential of land within the Lower Wyong River catchment. This Plan identifies this site as unsuitable for buildings or structures.
- 3 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Clause 8 "Matters for consideration" of State Environmental Planning Policy 71 (Coastal Protection) in the following manner:
 - a The proposed development fails to satisfy Matters for consideration 8 (a) because it does not satisfy Aims 2(1)(j), 2(1)(k) and 2(1)(l) as explained 1 above.
 - b The proposed development fails to satisfy Matters for consideration 8(d) because it proposes to site an addition to a dwelling in a high hazard flood area.
 - c The proposed development fails to satisfy Matters for consideration 8(j) because the development proposes to site an addition to a dwelling where the likely impact of coastal processes (flooding) on the proposed addition and future occupants is classified as "high hazard" under the Lower Wyong River Floodplain Management Plan".

- 4 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Wyong Local Environmental Plan 1991 Clause 2(g)(ii) because the proposed development seeks to locate an addition to a dwelling house in a flood prone area where it is likely to suffer damage and obstruct floodwaters.
- 5 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with the zone objectives (a), of the 1(c) (Non Urban Constrained Lands Zone) in Clause 10 of Wyong Local Environmental Plan 1991 as it proposes to site an addition to a dwelling in a high flood hazard area.
- 6 Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Development Control Plan 2005: Chapter 100 Quality Housing Clause 3.8.3.b because the proposed development is inconsistent with Council's Floodprone Lands Development Policy which, in this area, is based upon the Wyong River Lower Floodplain Management Plan which identifies the site as unsuitable for buildings or structures.
- 7 Pursuant to Section 79C (1)(b) of the Environmental Planning and Assessment Act, 1979 the development is at risk of flooding; would have a negative social and economic impact; does not respond to the specific site attributes and would contribute to the cumulative adverse impact on the environment by way of its unsuitable design for flood prone land.
- 8 Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 the proposal is not considered to be in the public interest given it does not adequately consider the impacts of flooding including the potential damage to the structure and the potential danger to future occupants and rescuers, and the development will set an undesirable precedent for the future.
- 9 Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application fails to satisfy the provisions of Clause 10 – "Zone Objectives" of Wyong Local Environmental Plan 1991 in that the application has not demonstrated that the design of the development can respond to the physical constraints of the land including the impact by natural hazards in the 1(c) Non-urban Constrained land zone.



76 Dudley St, Gorekan 2263
 Phone: (02) 43923353 Fax: (02) 43923344
 www.marshallhale.com.au

PROPOSAL
PROPOSED EXTENSION

CLIENT
C ADAMS

SITE
**LOT 33 SEC 33 DP4526
 65McDonagh Rd
 WYONG**

NOTES
 1. All dimensions, levels, etc. are to be confirmed by the client prior to commencement of ordering any materials.
 2. Dimensions shall be read in accordance to scale.
 3. Architectural working drawings shall be read in conjunction with a structural engineers details of which take precedence in determining the structural adequacy of the building.
 4. The building shall be constructed in accordance with the B.C.A., relevant Australian Standards and any other governing codes.

COPYRIGHT MARSHALL & HALE
 No part of these plans may be copied, reproduced or photocopied without written permission of Marshall & Hale Building Designers.

SITE ANALYSIS

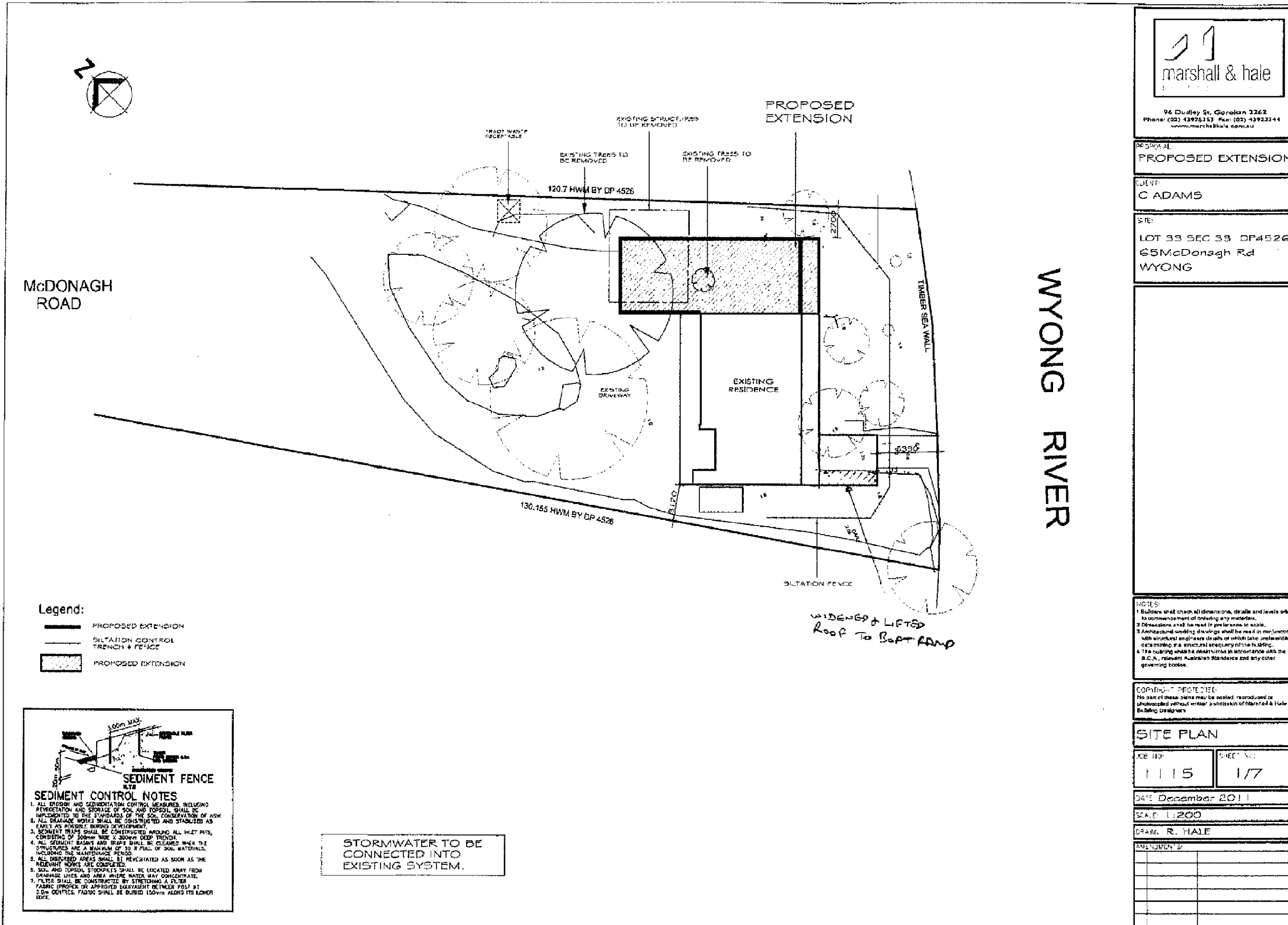
JOB NO: **1115** SHEET NO: **2/7**

DATE: **December 2011**

SCALE: **1:200**

DRAWN: **R. FALE**

DATE	
SCALE	
DRAWN	
CHECKED	
DATE	



Legend:

- PROPOSED EXTENSION
- SILTATION CONTROL TRENCH & FENCE
- PROPOSED EXTENSION

SEDIMENT CONTROL NOTES

1. ALL EROSION AND SEDIMENTATION CONTROL MEASURES, INCLUDING VEGETATION AND STORAGE OF SOIL AND TOPSOIL, SHALL BE IMPLEMENTED TO THE STANDARDS OF THE SOIL CONSERVATION ACT.
2. ALL DRAINAGE WORKS SHALL BE CONSTRUCTED AND STABILIZED AS EARLY AS POSSIBLE DURING DEVELOPMENT.
3. SEDIMENT TRAPS SHALL BE CONSTRUCTED AROUND ALL INLET PITS, CONSISTING OF 300mm WIDE X 300mm DEEP TRENCH.
4. ALL SEDIMENT BASINS AND TRAPS SHALL BE CLEARED WHEN THE STRUCTURES ARE A MAXIMUM OF 30% FULL OF SOIL MATERIALS, INCLUDING THE MAINTENANCE PERIOD.
5. ALL DISTURBED AREAS SHALL BE REVEGETATED AS SOON AS THE RELEVANT WORKS ARE COMPLETED.
6. SOIL AND TOPSOIL STOCKPILES SHALL BE LOCATED AWAY FROM DRAINAGE LINES AND AREAS WHERE WATER MAY CONCENTRATE.
7. FILTER SHALL BE CONSTRUCTED BY STRETCHING A FILTER FABRIC (PROFLEX OR APPROVED EQUIVALENT) BETWEEN POST AT 3.0m CENTRES. FABRIC SHALL BE BURIED 150mm ABOVE ITS LOWER EDGE.

STORMWATER TO BE CONNECTED INTO EXISTING SYSTEM.



96 Dudley St, Geelong 3262
Phone: (03) 43925153 Fax: (03) 43923244
www.marshallhale.com.au

PROJECT:
PROPOSED EXTENSION

CLIENT:
C ADAMS

SITE:
**LOT 33 SEC 33 DP4526
65 McDonagh Rd
WYONG**

NOTES:
1. Builders shall check all dimensions, details and levels prior to commencement of building any materials.
2. Dimensions shall be read in preference to scale.
3. Architectural working drawings shall be read in conjunction with structural engineer details of which take precedence in determining the structural adequacy of the building.
4. The building shall be constructed in accordance with the S.C.A. relevant Australian Standards and any other governing bodies.

COPYRIGHT PROTECTED:
No part of these plans may be copied, reproduced or photocopied without written permission of Marshall & Hale Building Designers.

SITE PLAN

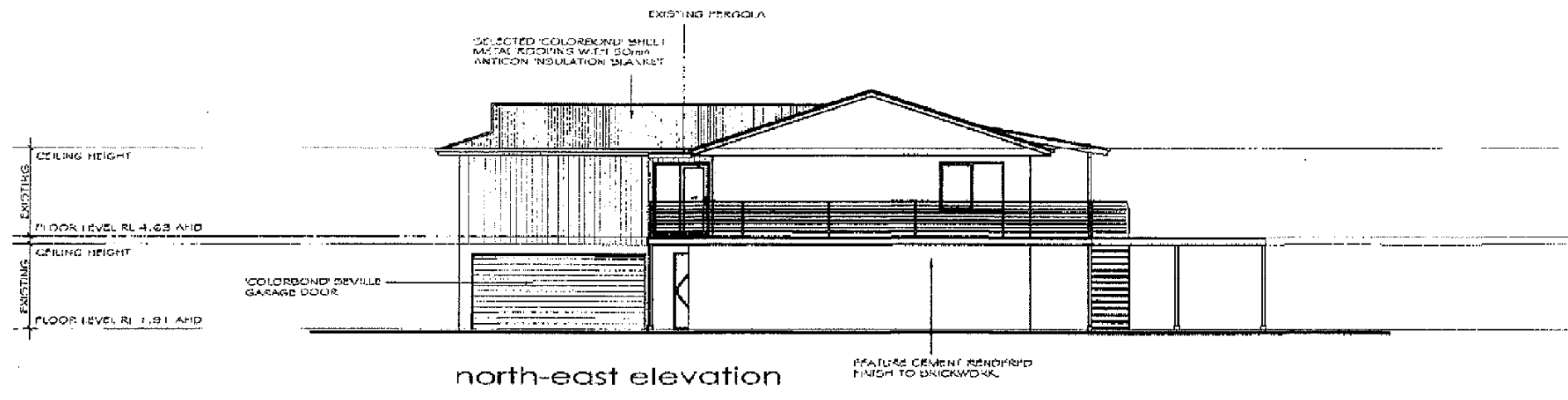
JOB NO: 1115 SHEET NO: 1/7

DATE: December 2011

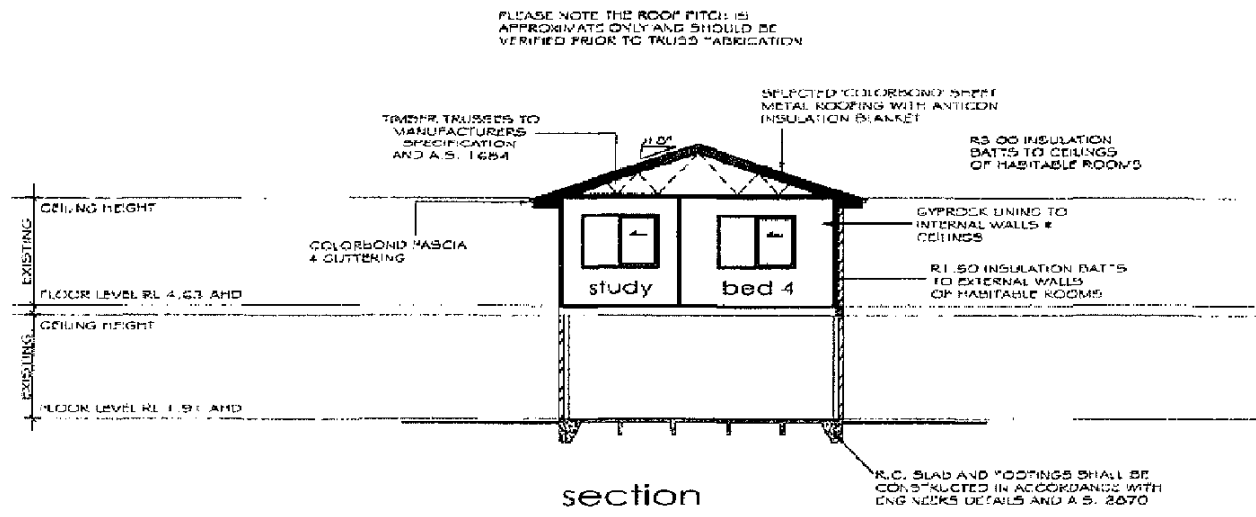
SCALE: 1:200

DRAWN: R. HALE

APPROVED BY:



north-east elevation



section

SUMMARY OF BASIX COMMITMENTS - ALTERATIONS AND ADDITIONS

This is a summary of the BASIX Commitments as detailed in the BASIX Certificate. Refer to the CURRENT BASIX Certificate for complete details. For definitions refer to the certificate.

FIXTURES AND SYSTEMS

Hot Water System (if applicable)

Type / na

Lighting

A minimum of 40% of new or altered light fixtures must be fitted with fluorescent, compact fluorescent, or light-emitting diode (LED) lamps.

Fixtures

All new or altered water fixtures (toilet cisterns, shower roses or taps) must have a minimum 3 Star water rating.

CONSTRUCTION

Insulation to be installed to all new or altered floors, walls, ceilings and roofs as described below. The recommended values are standard construction practice and will exceed or be equal to minimum BASIX requirements.

Floor	Timber	Approved Value	Color Specification
Walls	All	R1.5	as noted on plans
CEILING	Adjacent to roof space	R5.0	as noted on plans
Roofs	Metal	Foil + R1.0	Medium colour

Glazing to all new or altered windows or doors can be as described for clear or low-e glazing. Other glazing systems must have U and SHGC values no greater than those listed.

All values calculated to NRC conditions.

Glazing System	U Value	SHGC Value	Details
Single clear or low-e minimum			To all glazing

Shading details (eaves, sunshades, awnings, blinds etc) are those as drawn on the plans and elevations.

marshall & hale

96 Dudley St, Carokan 2263
Phone: (02) 43923353 Fax: (02) 43923344
www.marshallandhale.com.au

PROPOSED EXTENSION

CLIENT:
C ADAMS

SITE:
LOT 33 SEC 33 DP4526
65 McDonagh Rd
WYONG

NOTES

1. Builders shall check all dimensions, details and levels prior to commencement of building any walls.
2. Dimensions shall be read in preference to notes.
3. Architectural marking drawings shall be used in conjunction with structural engineers details of which the professional is certifying the structural adequacy of the building.
4. The building shall be constructed in accordance with the S.C.A., relevant Australian Standards and any other governing bodies.

COPYRIGHT PROTECTED
No part of these plans may be copied, reproduced or photocopied without written permission of Marshall & Hale Building Designers.

ELEVATION/SECTION

JOB NO: 1115 SHEET NO: 717

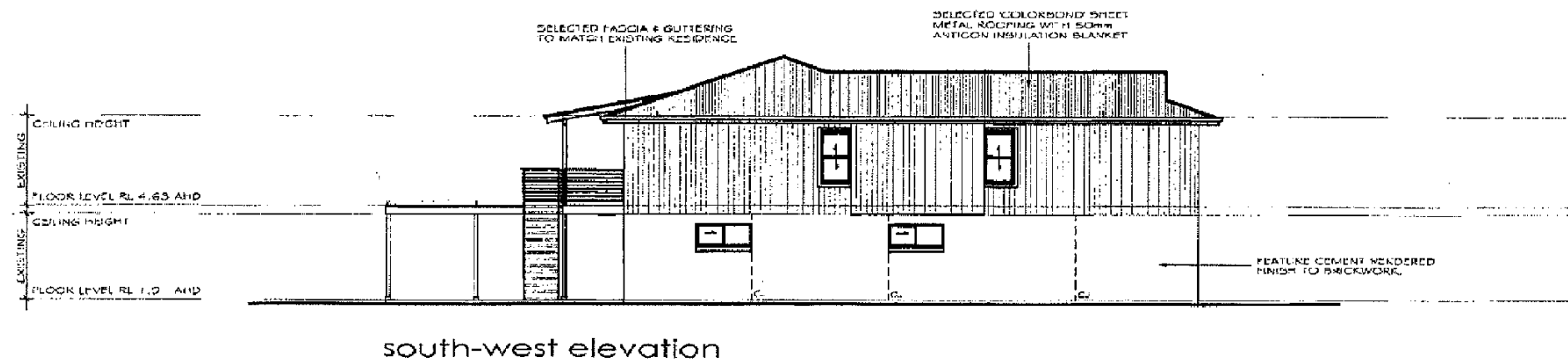
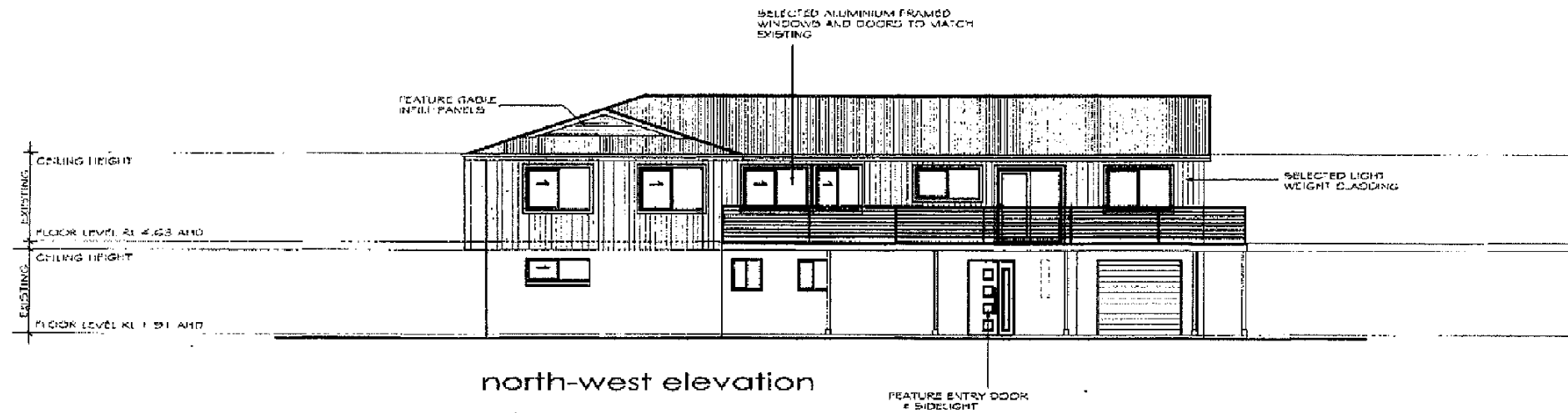
DATE: December 2011

SCALE: 1:100

DRAWN: R. HALE

REVISIONS

NO.	DESCRIPTION



11
marshall & hale
ARCHITECTS

96 Dudley St. Gosford 2263
Phone: (02) 43925353 Fax: (02) 43925344
www.marshallhale.com.au

PROJECT:
PROPOSED EXTENSION

CLIENT:
C ADAMS

SITE:
**LOT 33 SEC 33 DP4526
65McDonagh Rd
WYONG**

- NOTES:
- 1 Builders shall check all dimensions, details and levels prior to commencement of ordering any materials.
 - 2 Dimensions shall be read as per notes to scale.
 - 3 Architectural and shop drawings shall be read in conjunction with structural engineers details of which take preference in determining the structural adequacy of the building.
 - 4 The building shall be constructed in accordance with the S.C.A., relevant Australian Standards and any other governing bodies.

COPYRIGHT PROTECTED:
No part of these plans may be copied, reproduced or photocopied without written permission of Marshall & Hale Building Designers.

ELEVATIONS

DATE NO.	SHEET NO.
1115	6/7

DATE: December 2011

SCALE: 1:100

DRAWN: R. MALE

REVISIONS:	

3.3 RZ/5/2012 - 7 Mingara Drive, Tumbi Umbi Rezoning Proposal

TRIM REFERENCE: RZ/5/2012 - D03131012

MANAGER: Martin Johnson, Manager Land Use Planning and Policy Development

AUTHOR: Peter Kavanagh; Senior Planner

SUMMARY

Council is in receipt of a rezoning application (Planning Proposal) which seeks to rezone Lot 21 DP 883318 Mingara Drive, Tumbi Umbi to the B1 Neighbourhood Centre Zone, under the draft Wyong Local Environmental Plan, 2012 (WLEP,2012), in order to permit the development of a Medical Centre on the site. Alternatively, should the WLEP, 2012, not proceed in a timely manner, the applicant has requested that Lot 21 be rezoned to 3(a) Business Centre Zone, under the Wyong Local Environmental Plan, 1991 (WLEP, 1991), to permit the same use.

A review of the proposal has concluded that the proposal has merit and is recommended to be forwarded for a "Gateway Determination" from the Department of Planning and Infrastructure (DOPI).

Applicant:	John Stevens
Owners:	Stevens Holdings Pty Ltd
Proposal No.:	RZ/5/2012
Description of Land:	Lot 21 DP 883318
Zoning:	7(a) (Conservation). Development for the purposes of a "Car Service Centre" is currently enabled on site by Clause 60B of the Wyong LEP, 1991.
Existing Use:	Vacant Land.
Employment Generation	Potential to create 25 positions.
Estimated Value:	Unknown.

RECOMMENDATION

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

4 That Council direct the General Manager to submit a report to Council on results of the community consultation.

ABBREVIATED HISTORY

- Lot 21 is currently zoned 7 (a) (Conservation), under Wyong LEP 1991, and is also affected by enabling Clause 60B of Wyong LEP 1991.
- The clause provides for restricted additional uses on the subject lands, if the development is, in the opinion of Council, appropriately integrated with the adjacent Mingara Club and Recreation Complex.
- In August 2005, Council received and supported a rezoning request to enable the development of Lot 21 for the Head Office of the Stevens Group by permitting “commercial premises and medical centre”. Draft Amendment No. 177 was forwarded to the NSW Department of Planning (DoP, - now referred to as DoP&I).
- On 14 November 2007, the DoP advised Council that the request was declined, as it was of the opinion that there was no strategic justification for the proposed amendment.
- Council has endeavoured to progress the rezoning, however, the DoP&I has maintained that Council was required to develop a clear direction for the site, consistent with State, regional and local planning policies and strategies, most appropriately in conjunction with the Comprehensive LEP review process.
- This review has been completed and has determined a more suitable zoning arrangement on the site and for the entire ‘Mingara Entry Precinct’, which will be progressed through draft WLEP, 2012, having considered the advice provided by the DoP&I and Council’s Retail Consultants with regard to a potential business zoning of the site.
- In the interim, the current Rezoning application seeks to accelerate the process through an amendment to the WLEP, 1991.

BACKGROUND

Lot 21 is currently zoned 7 (a) (Conservation), under Wyong LEP 1991. The land and adjoining sites are also affected by enabling Clause 60B of Wyong LEP 1991. This clause relates to Lots 4, 7 and 8 DP 863731, Lots 20 and 21 DP 883318 and Lots 100, 101 and 102 DP 1001482, Mingara Drive. The clause provides for restricted additional uses on the subject lands, if the development is, in the opinion of Council, appropriately integrated with the adjacent Mingara Club and Recreation Complex. The area affected by the enabling Clause is commonly referred to as the ‘Mingara Entry Precinct’.

The locality is characterised by a service station, tyre outlet, car wash facility, drive-thru video outlet and take-away restaurants which have been developed for the convenience of Club patrons. These uses are integrated with the Club complex through coordinated access and car parking areas, restricted signage, and common urban design elements, e.g., common building materials, themes, colours and roof forms.

In August 2005, Council received and supported a rezoning request on behalf of the Stevens Group to amend Clause 60B to broaden the uses permissible on Lot 100 to permit "restaurant, drive-thru restaurant, a medical centre; or commercial premises" and to enable the development of Lot 21 for the Head Office of the Stevens Group by permitting "commercial premises and medical centre". Draft Amendment No. 177 was forwarded to the NSW Department of Planning (DoP, - now referred to as DoP&I) on 22 October 2007. This notification requested that Council be issued with Written Authorisation to Exercise Delegation under Section 65 and Section 69 of the Act to publicly exhibit the plan and in due course request the Minister to make the plan.

On 14 November 2007, the DoP advised Council that the request was declined. The reasons provided by the DoP for declining to support the proposal are as follows:

- 1 *"It seeks to provide for out of centre office and retail development which is inconsistent with the draft Central Coast Regional Strategy;*
- 2 *The proposal is not supported by Council's recently reviewed Retail Centres Strategy;*
- 3 *The proposed development would potentially have an adverse economic impact on nearby centres;*
- 4 *There are unresolved flooding issues associated with the site;*
- 5 *The proposed uses would not appear to be compatible with the underlying 7(a) (Conservation Zone); and*
- 6 *The amendment would be inconsistent with a number of Section 117 directions."*

Given the above reasoning, the DoP were of the opinion that there was no strategic justification for the proposed amendment. Regardless of the above, and considering the incorrect references within the clause, the DoP further advised that the anomalous lot references within Clause 60B may be suitable for amendment as a Section 73A amendment, or within a 'house keeping' amendment.

Following this decision, additional work was undertaken by Council, including referral of the proposal to Council's Retail Consultant. These advices were forwarded to the DoP for further consideration. The DoP response in September 2008, identified that;

- Any proposal for the site should be able to respond to the issues raised within the previous correspondence;
- Council was required to develop a clear direction for the site, consistent with State, regional and local planning policies and strategies;
- This should be undertaken holistically, in conjunction with consideration of similar areas within the Shire;
- Such a review of the site would be able to be facilitated most appropriately in conjunction with the Comprehensive LEP review process.

At its meeting held on 10 December 2008, Council RESOLVED unanimously on the motion of Councillor EATON and seconded by Councillor WEBSTER:

- "1 That Council extinguish dLEP Amendment No. 177 and that it be removed from the Future Planning Section's work program.*

- 2 *That Council amend Section 149 Certificates by removing notations in respect of Amendment No. 177.*
- 3 *That Council advise the Department of Planning of this decision.*
- 4 *That Council advise the Applicant of this decision and the fact that Council will not accept any "spot rezoning" under WLEP 1991 for the subject sites.*
- 5 *That Council prepare a Section 73A LEP amendment to rectify the lot identification anomaly for Lot 100.*
- 6 *That Council staff continue to liaise with the applicant to determine the appropriate zoning for the land under Council's Comprehensive LEP process.*

FOR: COUNCILLORS BEST, EATON, GRAHAM, McBRIDE, McNAMARA, MATTHEWS, SYMINGTON,
VINCENT, WEBSTER AND WYNN.
AGAINST: NIL."

Council subsequently sought and obtained process advice from DoP for a Section 73A LEP amendment, and looked to progress the matter through a combined LEP Bundle. However, following a further meeting with the applicant, it was determined that the proposals for the site would more appropriately be considered under the Comprehensive LEP Review. This would enable a strategic analysis to be conducted of the site, including existing land uses and possible future land uses.

This review has been completed and has determined a more suitable zoning arrangement on the site and for the entire 'Mingara Entry Precinct', which will be progressed through draft WLEP, 2012, having considered the advice provided by the DoP&I and Council's Retail Consultants with regard to a potential business zoning of the site.

CURRENT STATUS

The Site



Lot 21 is currently zoned 7 (a) (Conservation), under Wyong LEP 1991. The land and adjoining sites at the entry to the Mingara Club complex are also affected by enabling Clause 60B of Wyong LEP, 1991. This clause relates to Lots 4, 7 and 8 DP 863731, Lots 20 and 21 DP 883318 and Lots 100, 101 and 102 DP 1001482, Mingara Drive, Tumbi Umbi. The clause provides for restricted additional uses on the subject lands, if the development is, in the opinion of Council, appropriately integrated with the adjacent Mingara Club and Recreation Complex. The area affected by the enabling Clause is commonly referred to as the 'Mingara Entry Precinct'.

The locality is characterised by a service station, tyre outlet, car wash facility, drive-thru video outlet and take-away restaurants which have been developed for the convenience of Club patrons. These uses are integrated with the Club complex through coordinated access and car parking areas, restricted signage, and common urban design elements, e.g., common building materials, themes, colours and roof forms.

Comprehensive LEP (WLEP, 2012)

The recommended progression of this rezoning proposal as amendment to the WLEP 1991, is based on the potentially lengthy timeframe for finalisation of the WLEP 2012, and the implementation of the desired strategic zoning arrangements for the Mingara Entry Precinct.

THE PROPOSAL

The proposal seeks to rezone Lot 21 DP 883318 to the B1 Neighbourhood Centre Zone, under WLEP 2012, in order to permit the development of a Medical Centre on the site. This request is in isolation from the rest of the 'Mingara Entry Precinct', covered by Clause 60B of the Wyong LEP, 1991, however, has triggered a strategic review of the zoning of surrounding lands.

It is considered that the proposal for a medical centre is worthy of Council's support as it will generate approximately 25 local jobs, provide services to support local residents, patrons of the adjacent Club, and patrons of the adjacent recreation facilities. In consideration of the site and surrounding lands, a zoning strategy has been determined for the progression of the Planning Proposal as part of the draft WLEP, 2012 (Option 1).

Alternatively (Option 2), the applicant has requested that in the interim Lot 21 be rezoned to 3(a) Business Centre Zone, under the WLEP 1991, to permit the same use, as the proponents are keen to develop the site which has remained vacant since the original enabling Clause was applied in 1994. It is noted that recent amendments to WLEP 1991, have not utilised the existing zone types (i.e., 3(a)), and have instead adopted the Standard Instrument zones and definitions, e.g., the rezoned Gwandalan and Warnervale Town Centre sites. In this instance, the equivalent zoning sought is the B1 Neighbourhood Centre Zone.

Therefore the rezoning strategy which is supported to progress the Alternative Proposal (amend WLEP, 1991) would be to:

- Amend "the map" to show Lot 21, DP 863731 only, as B1 Neighbourhood Centre;
- The remaining lands retain the 7(a) Conservation Zone; and
- Clause 60B amended to remove the reference to the land now described as Lot 21.

In this regard it is noted that the existing references to Lots, and to approved developments referred to within Clause 60B, are currently incorrect. There is also an opportunity to correct these references through this draft LEP process.

REVIEW OF THE PROPOSAL

Issues Analysis

The following issues have been identified as being relevant to the planning proposal.

Bushfire Hazard

A significant corridor of vegetation 50-60m wide remains along the eastern boundary of the subject site, and will continue to do so as this land is owned by Council and zoned for conservation and open space purposes (E3 under the draft WLEP 2012). The majority of this land is classified "Community – Wetlands Management " under the Local Government Act, 1993. An additional portion of land will be added to this reserve system when the residential subdivisions to the south are completed.

This will result in a continuous permanent corridor of riparian vegetation (orientated north - south) along Tumbi Creek. This vegetation structure is classified as forest and therefore Category 1 Vegetation for the purposes of bushfire assessment. The eastern part of this vegetation is also categorised as an Endangered Ecological Community (EEC) referred to as River Flat Eucalypt Forest on Coastal Floodplain (RFEFCF).

The Rural Fire Service (RFS) document, Planning for Bushfire Protection (2006) specifically requires that principles of bushfire hazard management must be applied to commercial and industrial development at the rezoning stage. Development of Lot 21 should incorporate an area (within the lot) along the eastern boundary to provide a minimum setback and access for emergency services personnel. This should be sized accordingly to reflect the relatively low hazard of the vegetation. This assessment relates to the narrow width of the vegetation corridor adjoining, which will limit the ability of a bushfire to impact on the subject site.

Therefore, as part of the proposed rezoning, the developer should be required to exclude any development from an area of 10m width along the eastern boundary of Lot 21. This 10m wide strip will need to be reserved for bushfire protection measures including the incorporation of an access trail and maintenance of vegetation to provide for a reduction in available fuels.

The NSW RFS requires access trails to be a minimum of 4m width construction and an additional 1m of cleared area on each side. The trail therefore, would take up the western 6m of the proposed 10m reservation, and this would leave 4m to incorporate suitable WSUD drainage measures and landscaping to manage development impacts on the adjoining public land having conservation values. Suitable easements to this effect should be placed on the title of Lot 21 as a precondition to the approval of any LEP amendment.

It is noted that the development concept provides for access, carparking and landscaping within the area referred to, which will enable the required setback and access for fire vehicles.

Mine Subsidence

The land is not within a Mine Subsidence District.

Aboriginal and European Cultural Heritage Items

There are no items of Aboriginal or European cultural heritage significance located within the site or will be affected by the proposed land uses.

Contaminated Land

Current and past land uses have been unlikely to result in any contamination on the subject land. There are no notations on the property identifying any land uses which would cause contaminated land. To meet the objectives outlined under SEPP 55, the proponent will be required to undertake a Level 1 Contaminated Land Assessment to determine the existence of any contaminating material that has or may be present on the subject property.

Acid Sulfate Soils

There is a probability of acid sulphate soils on the site. The site is within Land Class 4 as defined within Clause 15 of the WLEP, 1991. Any works proposed beyond 2 metres from the natural ground surface, or works by which the water table would be likely to be lowered to any point beyond 2 metres below the natural ground surface would need to address Clause 15(4) of the WLEP, 1991. The site has been previously filled. Excavation to the depth prescribed would be unlikely, however, this would be assessed at Development Application stage.

Noise

There is an easement for landscaping and acoustic protection 13.0m wide along the southern boundary of the site which incorporates the 5.9m wide drainage easement. The easement appears as a grassed swale and contains screen vegetation atop the banks with a lapped and capped paling noise attenuation fence on its northern side. This fence is designed to provide noise attenuation to the adjacent residences to the south of the site. The condition of this fence and its ongoing maintenance will need to be assessed at Development Application stage.

Flooding and Drainage

Council's Floodplain and Stormwater Management (FSM) Unit has reviewed the rezoning proposal, advising that it supports the proposal in principle, and offers the following comments:

- *'Tumbi Umbi creek runs along the rear eastern boundary of the site. A drainage easement/corridor also exists along the southern boundary. Based on Council's GIS and flood information the lot is partly flood affected and therefore development on this lot will be subject to flood related development controls.'*
- *Stormwater runoff from the lot is to be managed in accordance with Wyong Shire Council's 'Urban Stormwater Quality Management Plan – July 1999'.*

Traffic and Transport

Council's Transport Planning Engineers have reviewed the rezoning proposal and offers the following comments:

"In general, this application needs to be submitted to NSW Roads and Maritime Services (RMS) for comment during the rezoning process. Concerns are raised with regard to the proposed increase in traffic and the affect it will have on the already congested Wyong Road intersection. The RMS will need to identify what, if any, upgrading of the Wyong Road intersection will be required. In this regard it is noted that referral to the RMS would be conducted as part of Government Agency consultation, following a Gateway Determination regarding the proposal."

Other comments provided on the proposal (which would apply as conditions of any Development Consent) included:

- *'Access to Mingara Drive is to be denied. Access to Lot 21 is to be only via the ROW through Lot 20 with an egress through Lot 8 DP 863731.'*
- *A ROW is required across Lot 8 DP 863731 in favour of Lot 21 to accommodate the egress onto Mingara Drive.*
- *The size of the Medical Centre, if approved, would need to be restricted in size to ensure there is sufficient parking on site. The 85 parking spaces identified at present appear to be adequate for normal use of the development.*
- *Constraints need to be placed on the site coverage permitted to ensure there will not be overdevelopment of the site. There is concern that if the site is overdeveloped there will be an ultimate shortfall in number of parking spaces provided.*

- *The roundabout at the service station egress needs to be upgraded to improve safety to Council's requirements. It will require placement of raised pavement markers around the perimeter of the roundabout and for them to be maintained. A concrete median separator at the entry off Mingara Drive leading to the roundabout is also required.*
- *External works will be required to connect the development to public transport. These requirements can be identified and conditioned at time of Development Assessment/Consent'.*

Servicing

Water supply and sewer services is currently available to the property. Contributions for water supply and sewer infrastructure will be applicable at development stage.

Consultation with relevant service providers, including Energy Australia will need to be undertaken.

Retail Strategy

In 1996 Council adopted the Wyong Retail Centres Strategy to guide floorspace increases in the recognised retail centres of the Shire, having regard to population projections. The Strategy has been reviewed on several occasions having regard to NSW Government policy directions. Recently Council has engaged a consultant to conduct a review of the Strategy and Development Control Plan due to the release of the Central Coast Regional Strategy and North Wyong Shire Structure Plan, which provide additional information on the timing and location of future urban land release, particularly new centres within Wyong Shire.

Having regard to the current review, and to the Draft LEP 2012 (which proposed a B1 zone for the entire area covered by Clause 60B), Council's consultant was requested to provide comments on this rezoning proposal. The comments received included opposition to a medical centre at this location, due to vacant lands at Killarney Vale. Further:

"In our opinion, this land (the "Mingara Entry Precinct") should not be zoned B1 (and thus given the status of a "centre" – contrary to the Central Coast Regional Strategy). A B1 zoning effectively opens the door to a range of retail and commercial activities whereas the provisions of the enabling clause are very specific and require the uses to have a connection with the adjacent recreation facility. If a centre was established in this location, it could impact on the capacity of the Killarney Vale local centre to continue to trade effectively, particularly if a supermarket was proposed. It is considered that the most appropriate zoning for the club and these adjacent existing uses would be RE2. This zoning however would not permit a medical centre."

Zone Considerations

Option 1 (WLEP, 2012):

DoPI does not favour the use of enabling clauses within new Standard Instrument LEPs, therefore the determination of appropriate land use zone(s) is required. It is considered that whilst the RE2 zone would address the permissibility of the take away food and drink premises on the western side of Mingara Drive (due to their complimentary nature with the Mingara Club), it is noted that the broad application of the RE2 zone to the Clause 60B area would firstly not permit the requested land use, and secondly would also create new “existing use” rights as the other uses on the Eastern side of Mingara Drive would become “non-conforming existing uses”, potentially widening opportunities for redevelopment in the future due to the nature of the “existing use right” provisions of the Act. This is not a desirable outcome.

The uses on the Eastern side of Mingara Drive would be better addressed by a B1 zone, so that these uses become lawful, thereby not opening any new “existing use” rights. The small area of B1 zone confined to the medical centre and automotive uses sites on the Eastern side of Mingara Drive would not create a competitive “centre”, as they are unlikely to be redeveloped to shop or shop top housing uses in the short to medium term, and not without significant costs in decontamination, consolidation and redevelopment – a disincentive.

The only anomaly created by this proposal would be the “existing use right” created by the RE2 zone for the video shop on the western side of Mingara Drive, however, the shop has a gross floor space of only 264m². Any proposal for change of use would be subject to merit consideration via a Development Application, as Exempt Development under the SEPP does not apply to “existing uses”, and the consideration of that Development Application would need to have regard for the objectives of the zone.

It is therefore considered appropriate to recommend the WLEP, 2012, proceed with a B1 zone for the eastern side of Mingara Drive and the RE2 zone for the western side of Mingara Drive, also incorporating the Club lands.

Option 2 (WLEP, 1991):

It is noted that recent amendments gazetted to the WLEP, 1991, have not utilised the existing zone types within the LEP (i.e., the 3(a) Zone, as requested), and have instead adopted the SI zones and definitions, e.g., the Gwandalan and Warnervale Town Centre sites. The equivalent zoning sought is the B1 Neighbourhood Centre Zone. Further, that the existing references to Lots, and to approved developments within this Clause, are currently incorrect. There is an opportunity to correct these references through this draft LEP process.

Therefore the rezoning strategy applied to progress an amendment to the WLEP, 1991, to facilitate the proposal would be to:

- Amend “The Map” to show Lot 21, DP 863731, only, as B1 Neighbourhood Centre;
- The remaining lands affected by Clause 60B remain within the 7(a) Conservation Zone; and
- Clause 60B be amended to include the additional words as shown in **bold** below:

“60B Development of certain land—Mingara Drive, Tumbi Umbi

(1) This clause applies to the land, being lot **20, DP 883318 and lots 4, 7, and 8, DP 863731, and lots 100, 101 and 102, DP 1001482**, Mingara Drive, Tumbi Umbi, as shown edged heavy black on the map marked “Wyong Local Environmental Plan 1991 (Amendment No **XX**)”.

(2) Nothing in this plan prevents a person, with the consent of the Council, from carrying out development on:

(a) Lots 4, 7, and 8, DP 863731 and Lots 101 and 102, DP 1001482 - for the purpose of a service station, a car wash facility and restaurants, and

(b) Lot 20, DP 863731 - for the purpose of a car service centre, and

(c) Lot 100, DP 1001482 - for the purpose of a drive-thru video outlet and restaurant,

if the development is, in the opinion of the Council, appropriately integrated with development for which consent has been granted in accordance with clause 60A.”

Option 2 is the option recommended to proceed as the Planning Proposal to DoP&I for a Gateway Determination.

STATUTORY COMPLIANCE

State Environmental Planning Policies

The proposal has been assessed having regard for State Environmental Planning Policies. The following policy has been determined to be applicable to this planning proposal:

- State Environmental State Environmental Planning Policy No. 55 – Remediation of Land.

Current and past land uses have been unlikely to result in any contamination on the subject land. There are no notations on the property identifying any land uses which would cause contaminated land. Whilst the proposal does not indicate the presence of Contaminated Land, it would be considered necessary for a preliminary Contaminated Land Study to be undertaken on the subject site to satisfy the requirements of SEPP 55 Remediation of Land prior to the proposal being progressed.

To meet the objectives outlined under SEPP 55 the proponent will be required to undertake a Level 1 Contaminated Land Assessment to determine the existence of any contaminating material that has or may be present on the subject property. A satisfactory assessment is to be provided prior to referral for Gateway Determination.

Central Coast Regional Strategy

The Central Coast Regional Strategy (CCRS) was released by the Department of Planning (DoP) in July 2008. The CCRS identifies the population potential of the Central Coast expected over the next 25 years, expected employment capacity targets and the regional retail hierarchy. The strategy also identifies actions to ensure ongoing growth and prosperity of the region, including actions for centres and housing, economy and employment, environment and natural resources, natural hazards, water supply, regional infrastructure and regional transport.

The population potential as expressed by the CCRS is expected to be an additional 71,100 people in the Shire at 2031, distributed through the Shire's Centres Hierarchy as defined by the Strategy. As a Shire, the strategy anticipates that Wyong will be required to create an additional 27,000 jobs.

This proposal is within an existing entry precinct (developed in 1996) to a major recreation and sporting Club, i.e., not located within a recognised centre, or within the North Wyong Shire Structure Plan (NWSSP) area, which is recognised by the Strategy as the key area of the Shire to provide the majority of new population.

Concerns have been raised that any proposal to rezone the entry precinct land to a Business zone would identify the location as a centre not identified by, and therefore contrary to, the CCRS (refer to the detailed discussion above regarding 'Zone Considerations'). However, this Planning Proposal involves the identification of a small area of B1 zone (approximately half the area of the entry precinct) on the eastern side of Mingara Drive, and confined to the proposed medical centre site and the existing automotive uses sites. This is not considered to create a competitive "centre" as the sites are small, are unlikely to be redeveloped to shop or shop top housing uses in the short to medium term, and without significant costs in decontamination, consolidation and redevelopment – a supermarket is highly unlikely at this location.

It is therefore considered appropriate to recommend the WLEP, 2012 proceed with B1 Neighbourhood Centre zone for the eastern side of Mingara Drive and the RE2 Private Recreation zone for the western side of Mingara Drive, incorporating the entry precinct fast food premises with all of the lands owned by the Club. The area then retains its neighbourhood focus, thus not establishing a competing "centre" with those identified by the CCRS.

It is considered that adoption of the above measures will ensure that the dLEP is not inconsistent with the Central Coast Regional Strategy.

Ministerial Directions under Section 117 of the EPA Act 1979

Section 117 of the EPA Act 1979 provides for the Minister for Planning and Infrastructure to issue directions to Council specifying principles, aims, objectives or policies that must be considered when preparing a local environmental plan. The current 117 directions that apply to the preparation of an LEP associated with this Planning Proposal are addressed in Attachment 1.

OPTIONS

Option 1:

Option 1 is to progress the request as part of the draft WLEP, 2012. This is supported through strategic analysis and is being progressed through the draft WLEP, 2012.

Option 2:

Option 2 is to progress the request as an amendment to the WLEP, 1991. This is the recommended action, supported through strategic analysis and involves both a map and clause amendment to the WLEP, 1991. The Planning Proposal is consistent with the CCRS and consistent with all relevant 117 directions. The Proposal is considered to be justified and recommended for submission to DoPI for a Gateway Determination.

Option 3:

Option 3 is to decline the request to progress the Planning Proposal and advise the Applicant of Council's decision.

STRATEGIC LINKS

Wyong Shire Council Strategic/ Annual Plan

The Annual Plan and 4 Year Delivery Plan are Council's short to medium term plans outlining the strategic role that Council will play in delivering the community's strategic vision. Council has 12 Principal Activities, each activity provides a set of services to the community and the Delivery Plan and Annual Plan show the net cost of each service.

The 12 Principal Activities which identifies any relevant service and related key actions and objectives is found in Attachment 2.

Contribution of Proposal to the Principal Activity

Long term Financial Strategy

The Long Term Financial Strategy recognises that operating revenue (excluding capital grants) has not covered operating expenditure to maintain existing services and levels of service. Additionally, the required maintenance and renewals of existing assets cannot be funded. The Long Term Financial Strategy is aimed at providing a framework in which Council "can assess its revenue building capacity to meet the activities of and level of services outlined in the Community Strategic Plan."

Under the Financial Strategy, it is essential that this Planning Proposal achieves the following funding arrangements:

1. The cost of processing the rezoning is to be fully funded by the developer. This is able to be satisfied through the entering into of a funding agreement with the Proponent, prior to the commencement of Phase 2 of the Council's Rezoning Procedure.
2. The development is to contribute to the cost recovery or funding of any services and or facilities that will be utilised by the development. This is expected to be satisfied through existing developer contributions plans.

3. Any new transport, water or sewer services infrastructure, required to service the development that is not identified in an existing developer contribution plan, is to be fully funded by the developer, unless it is reasonably able to be added to an existing contribution plan as essential infrastructure.
4. Development density should be optimised to achieve cost recovery for services and facilities (water, sewer, drainage, waste) through rate and annual levy charges. This is a development design consideration addressed at development application stage.
5. New assets required to service the development should be minimised as far as possible. With the exception of the possibility of upgraded road and access assets, it is unlikely that development of the existing serviced lot will generate the need for new assets.
6. The proposal should demonstrate and achieve net community benefits resulting from the future development of the land. The development proposed (medical centre and Pharmacy) will contribute to net community benefits.

If approval to forward the proposal to Gateway is granted, it is proposed to discuss these issues with the developer to ensure the funding arrangements are satisfied prior to further progress of the rezoning.

Asset Management Strategy

Council's long term Asset Management Strategy specifies objectives and outcomes for asset management over the next 10 years. The desired outcomes are ensuring the right assets are built, ensuring existing assets are managed well, ensuring a balance between Council operations, new assets and existing assets and ensuring future budgets reflect the asset requirements. In general terms, the intention is to ensure Council has the financial capacity to maintain the asset, renew the asset at the end of its life cycle, or to decommission the asset when it is no longer required.

The proposed rezoning will result in business development of an existing serviced parcel of land. Existing water, sewerage and stormwater drainage assets service the site, built by the developer and dedicated to Council.

The ongoing maintenance of water supply services, sewerage services, drainage services and stormwater management are funded through annual charges levied by Council.

The location of the land, being adjacent to existing businesses, minimises the length of lead in infrastructure, and is able to utilise existing major infrastructure of roads, sewerage treatment and water supply. Provided the existing major infrastructure has the capacity to cater for the additional load, it is considered the proposal has a high potential to provide sustainable assets.

Workforce Management Strategy

Nil. The cost of processing the rezoning is to be fully funded by the developer.

Link to Community Strategic Plan (2030)

The Community Strategic Plan identifies 8 priority objectives, each supported by a range of actions. The Planning Proposal is assessed as follows.

1. Communities will be vibrant, caring and connected.

Increase in business activity and in particular medical related uses will be beneficial to the community.

The Planning Proposal is not inconsistent with the Wyong Shire-wide Settlement Strategy and the Central Coast Regional Strategy.

2. There will be ease of travel.

Any negative impact on local traffic conditions will be dealt with as part of the assessment of the proposal. Any upgrading required as a result of the proposal will be funded by the proponent.

3. Communities will have a range of facilities and services.

The proposal has the potential to increase the range of services and facilities available to the public.

4. Areas of natural value will be enhanced and maintained.

The assessment of the proposal indicates nil impact on natural areas and that access can be made available to address any impacts from the natural environment (potential for bushfire). Any existing contamination and drainage issues will be dealt with in the assessment of the proposal.

5. There will be a sense of community ownership of the natural environment.

The proposed development will not impact natural areas or the community's sense of ownership of the natural environment.

6. There will be a strong sustainable business sector.

The proposal will promote business in an area where there is an expectation of population growth likely to have increased needs for support.

7. Information and communication technology will be world's best.

While the proposal is unlikely to contribute to this objective the land use likely to take up this land will demand high levels of communication be available.

8. The community will be educated, innovative and creative.

The proposal will provide jobs and as a consequence education opportunities.

Budget Impact

The processing of the Planning Proposal is being funded by the developer in accordance with the requirements of Council's Strategic Plan – Statement of Revenue Policy and is intended to be "budget neutral".

CONSULTATION

Council has to date conducted a "Desktop Review" of the Rezoning Proposal. This involved review of the proposal by Council's Flood Engineer, Transport Engineer, Bushfire Planner and Strategic Planner, as well as the views of Consultants currently engaged to review Council's Retail Strategy. There is no external consultation requirement at this stage of the process.

Should the Gateway Panel determine to support the Planning Proposal, formal referrals to NSW Government Agencies and a public engagement process will be undertaken in accordance with that determination. A subsequent report would be provided for Council's consideration of the outcomes of that consultation process.

GOVERNANCE AND POLICY IMPLICATIONS

The processing of the Planning Proposal is being undertaken in accordance with Council's adopted procedure.

Rezoning of the land is undertaken by preparing an amendment to the local environmental plan (currently Wyong LEP 1991) through progressing of a Planning Proposal under sections 55-59 of the Environmental Planning and Assessment Act 1979.

Section 55 requires Council to prepare a Planning Proposal that explains the intended effect of the amendment to the LEP and sets out the justification for the amendment. Section 55 specifies matters to be included in the Planning Proposal.

Section 56 provides for Council to submit the Planning Proposal to the Minister (DoPI) for a Gateway Determination. DoPI will advise whether or not the matter should proceed (with or without variation), and may specify further studies or modification to the Proposal, community and government agency consultation requirements and other matters.

It is recommended that a Planning Proposal be submitted the Minister (DoPI) for a Gateway determination.

MATERIAL RISKS AND ISSUES

Corporate risks to be addressed for the Planning Proposal are:

1. Infrastructure Provision:
 - a. Ensure future development of the land is subject to existing Contributions Plans,

- b. Ensure any new infrastructure required to service the development is funded by the developer or able to be recovered through developer contributions (depending whether infrastructure is already identified in Contributions Plan/s, or the Contributions Plan/s require updating),
2. Service Capacity
 - a. Ensure existing water and sewer headworks and mains have capacity to cater for the increased load, and if not, identify any necessary upgrades required,
 - b. Ensure any upgrades are funded by the developer,
 3. Sustainability
 - a. Ensure road and stormwater/drainage infrastructure is designed to cater for increased storm intensities predicted to occur as a result of climate change,
 4. Political
 - a. Ensure the community consultation process is open and transparent,
 - b. Ensure Councillors are adequately briefed,
 5. Certification/Governance
 - a. Ensure appropriate consultation with other levels of government during the consultation phase,
 - b. Ensure legislative procedures for Planning Proposals are followed,
 6. Asset Management
 - a. Assess long term maintenance requirements and renewal costs of proposed new assets and the capacity for rate/levy income to fund these costs.

CONCLUSION

The proposed rezoning and clause amendments appear to have considerable merit given the location of the site near a regionally significant integrated sporting and recreation complex, a large aged persons housing development and extensive adjoining residential areas. While there are issues that will need to be resolved prior to public exhibition of the proposal, no issues have been raised during the assessment of the Planning Proposal that are unlikely to be resolved.

Subject to the preparation of a formal Planning Proposal the proposed rezoning is suitable for submission to the Minister (DoPI) for a Gateway Determination.

ATTACHMENTS

- | | | |
|---|--------------------------------------|-----------|
| 1 | Section 117 Directions Summary Table | D03177779 |
| 2 | Principal Activity Table | D03177783 |

Section 117 Directions Summary Table – RZ/5/2012

Number	Direction	Applicable	Consistent
Employment & Resources			
1.1	Business & Industrial Zones	Y	Y
1.2	Rural Zones	N	N/A
1.3	Mining, Petroleum Production and Extractive Industries	N	N/A
1.4	Oyster Aquaculture	N	N/A
1.5	Rural Lands	N	N/A
Environment & Heritage			
2.1	Environmental Protection Zones	Y	Y
2.2	Coastal Protection	N	N/A
2.3	Heritage Conservation	Y	Y
2.4	Recreation Vehicle Areas	Y	Y
Housing, Infrastructure & Urban Development			
3.1	Residential Zones	N	N/A
3.2	Caravan Parks and Manufactured Home Estates	Y	Y
3.3	Home Occupations	Y	Y
3.4	Integrating Land Use & Transport	Y	Y
3.5	Development Near Licensed Aerodromes	N	N/A
3.6	Shooting Ranges	N	N/A
Hazard & Risk			
4.1	Acid Sulfate Soils	Y	Y
4.2	Mine Subsidence and Unstable Land	N	N/A
4.3	Flood Prone Land	Y	Y
4.4	Planning for Bushfire Protection	Y	Y
Regional Planning			
5.1	Implementation of Regional Strategies	Y	Y
5.2	Sydney Drinking Water Catchments	N	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	N	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	N	N/A
5.5	Development in the Vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	N	N/A
5.6	Second Sydney Airport: Badgerys Creek	N	N/A

Number	Direction	Applicable	Consistent
Local Plan Making			
6.1	Approval and Referral Requirements	Y	Y
6.2	Reserving Land for Public Purposes	Y	Y
6.3	Site Specific Provisions	N	N/A
Metropolitan Planning			
7.1	Implementation of the Metropolitan Plan for Sydney 2036	N	N/A

Principal Activity	Service	Key Action and Objectives	Funding Source and Description	Impact on Key Performance Indicators/ Service Performance Indicators
1 Community & Education	1.01 Community Cultural Development	Provide and maintain community facilities across the Shire		Proposal is for new business activity. Community facilities exist in this area.
2 Community Recreation	2.01 Open Space 2.02 Sport, Leisure & Recreation	Provide and maintain open space, sports fields and recreation facilities across the Shire	Developer Contributions	The location may result in marginal increase in utilisation of adjacent facilities.
3 Economic & Property Development		There will be a strong sustainable business sector		The development of this site provides opportunity for new business premises.
4 Council Enterprises	None relevant			
5 Regulatory	None relevant			
6 Environment & Land Use	6.02 Environment & Natural Resources	Preparation/implementation of Natural Resources Strategy and Biodiversity Management Plan	Various	Strategies still in preparation – KPIs to be developed
	6.03 Land Use Planning & Policy Development	Increase revenue from full cost recovery and rezoning fees	Developer Funded	No net cost to Council in assessing this proposal.

Principal Activity	Service	Key Action and Objectives	Funding Source and Description	Impact on Key Performance Indicators/ Service Performance Indicators
7 Waste	7.01 Waste	Provide regular domestic waste & recycling service	Revenue	Marginal increase in number of collections per week when developed.
8 Roads & 9 Drainage	None relevant	Ease of Travel	Developer Funded	Potential upgrade of roads and drainage required
10 Water & 11 Sewerage Services	10.01 Water & Sewerage	Provide safe & reliable drinking water and the treatment and disposal of sewerage collected. Provide essential community services in cost effective & sustainable manner	Developer funded Contributions Revenue	Head works contributions will be collected
12 Administration	None relevant			

3.4 Classification of Land - Lot 232 DP 1162569 at Johns Road, Wadalba

TRIM REFERENCE: DA/2144/2006 - D02989441

MANAGER: Michael Whittaker, General Manager

AUTHOR: Gina Vereker; Director

SUMMARY

Council at its meeting of 26 April 2012 sought clarification on the history of the subject parcel and the proposed land classification. It was previously envisaged that the land be classified as Operational land, however the circumstances of lot 232 are unique and are more representative of land described as Community land.

RECOMMENDATION

- 1 That Council confirm its classification of Lot 232 DP 1162569 as Operational land.**
- 2 That Council advertise the proposal in accordance with Section 34 of the Local Government Act 1993.**
- 3 That Council adopt the classification.**

BACKGROUND

Council at its meeting held 26 April 2012 resolved unanimously on the motion of Councillor Graham and seconded by Councillor Webster:

- "1 That Council classify Lot 232 DP 1162569 as Operational land.*
- 2 That Council advertise the proposal in accordance with Section 34 of the Local Government Act 1993.*
- 3 That Council adopt the classification.*
- 4 That Council consider a further report at the next meeting of Council regarding the reasons why this land should be categorised as operational land and not community land.*

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

AGAINST: NIL"

Lot 232 in DP 1162569 is an irregular shaped parcel of land of 154m² and is zoned 2(e) *Urban Release Area Zone*. The land was established in conjunction with, but not part of, the neighbouring subdivision approved under Development Consent 2144/2006 and was registered in DP 1162569 as "public reserve" on 8 March 2012.

Lot 232 came into existence through a series of plan registrations establishing a number of “super” lots and urban release lots all held under the same ownership of Wadalba Central Developments. Ultimately subdivision development extending westward along Johns Road will establish an urban pattern inclusive of open space or drainage requirements as required under Chapter 49 – *Warnervale East and Wadalba North Urban Release of Development Control Plan 2005*.

At the time it was thought that Lot 232 would be absorbed into the land immediately west of the site for the purposes of a drainage reserve. The future drainage reserve will comprise of an existing natural intermittent watercourse extending from Wadalba Hill in the wildlife corridor to a detention basin adjacent to Johns Road.

While Lot 232 is zoned residential, the parameters of the land (irregular size and shape) and site constraints (nearby a water course and heritage site) would logically render the land an undevelopable parcel set aside for the precise purpose of forming part of the drainage reserve.

THE PROPOSAL

Operational Land classification generally applies to drainage land that contains constructions, there will be no fixed infrastructure (i.e., piped culverts, detention basins or similar) constructed in the future drainage reserve extending alongside the residential lots including lot 232. The watercourse will be left in the natural state and contain several known aboriginal heritage sites.

In accordance with the Public Land Classification Table adopted by Council, land owned by Council for drainage purposes should be classified as Operational land. Under Section 34 of the Local Government Act (LGA) 1993 Council is required to give public notice of the proposal to classify land for a period of 28 days before confirming classification.

If no adverse submissions are received, Council’s proposed land classification will be taken as adopted upon expiration of the notification period.

OPTIONS

Council may resolve to apply a “community land” classification or it may take no action to classify the land. As the land is to be used for drainage, the land should be classified as Operational land in compliance with its Public Land Classification Table.

Financial Implications

There is no cost to Council for land classification.

GOVERNANCE AND POLICY IMPLICATIONS

Under Section 31 of the LGA 1993, land acquired by Council is taken to be classified as Community land unless Council resolves that the land concerned be classified as Operational land.

CONCLUSION

Lot 232 DP 1162569 has been dedicated to Council and is considered appropriate to classify as Operational land in accordance with the LGA 1993 (Chapter 6, Part 2, s.25-34).

Locality Plan



ATTACHMENTS

Nil.

3.5 Proposed Amendment to Clause 16 of the Wyong Local Environmental Plan, 1991.

TRIM REFERENCE: F2012/01830 - D03160036

MANAGER: Martin Johnson, Manager Land Use Planning and Policy Development

AUTHOR: Peter Kavanagh; Senior Planner

SUMMARY

This report recommends the preparation of a Planning Proposal to amend Clause 16(1) of Wyong Local Environmental Plan, 1991 (WLEP91), to enable the erection of a rural dwelling on existing allotments which do not comply with the minimum area requirement of their respective zones.

It is considered that the proposal has merit and is recommended to be forwarded to the DOPI for a "Gateway Determination". Dependent upon the outcome of the Gateway Process, consultation with NSW Government Agencies may be required prior to public exhibition and finalisation.

RECOMMENDATION

- 1 That Council initiate the Local Environmental Plan "Gateway" process, pursuant to Section 55 of the Environmental Planning and Assessment Act 1979 by preparation of a Planning Proposal to amend Clause 16(1) of Wyong Local Environmental Plan 1991.**
- 2 That Council forward the Planning Proposal to the Department of Planning and Infrastructure requesting a "Gateway" determination, pursuant to Section 56 (1) of the Environmental Planning and Assessment Act.**
- 3 That Council undertake community consultation regarding the Planning Proposal, subject to such being required by the Gateway Determination.**
- 4 That Council receive a report on the outcomes of any community consultation undertaken.**

BACKGROUND

As a result of a decision in the NSW Court of Appeal (*Agostino v Penrith City Council [2010] NSWCA 20*), Wyong Council's General Counsel has provided advice in relation to the interpretation of Clause 14(2) and Clause 16(1) of Wyong Local Environmental Plan (WLEP 1991). These clauses identify minimum area requirements for the subdivision of land and the erection of a dwelling house within rural and environmental protection zones.

3.5 Proposed Amendment to Clause 16 of the Wyong Local Environmental Plan, 1991. (contd)

WLEP 1991 was gazetted on 15 February 1991. Since this time numerous development applications have been determined (by Council, the Department of Planning and Infrastructure and also the Land and Environment Court) which have created allotments comprising less than the relevant minimum area requirement, using State Environmental Planning Policy (SEPP) No.1 – Development Standards. This process has long been considered entirely appropriate and in compliance with relevant statutory provisions.

However, following the majority interpretation of three judges in the NSW Court of Appeal the minimum area standards (as included in most LEP's within NSW) are now considered mandatory and require strict compliance. Council, therefore, has no legal power to utilise the provisions of SEPP 1 to issue development consents for subdivisions which propose allotments below the minimum area requirement (Cl.14(2)) within the respective zone. If challenged, any existing consent granted for these subdivisions may likely be considered not legally valid as the consent authority did not have jurisdiction (the power) to grant consent. It is clear that Council will be unable to consent to any further subdivisions which do not comply with the minimum area provision within the LEP. It also follows that where the minimum area requirement for the erection of a dwelling house (Cl.16(1)) cannot be met because the lot is undersize, SEPP 1 can not be utilised to grant consent.

This situation is not unique to Wyong Shire, with ramifications extending throughout NSW. Many landowners have already built upon or have purchased vacant land affected by these provisions. In this regard, it is considered appropriate for Council to seek to facilitate future dwellings on these allotments by amending WLEP 1991, and to legalise those dwellings which have already been approved and created.

CURRENT STATUS

Whilst it is not clear how many allotments may be affected by the decision of the Court of Appeal, it is likely that as WLEP91 has been in force for a period exceeding 20 years, they will number in the hundreds. It is not considered feasible to identify these allotments in a schedule to the LEP due to resourcing and the potential that not all allotments may be able to be identified. The preferred method is to modify the wording of the clause to capture all allotments approved by Council and registered under the Real Property Act, 1900, in addition to the existing inclusions.

Clause 16(1) currently permits the erection of a dwelling house only:

... "on an allotment of land that was in existence on the appointed day (15 February, 1991) 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

It is proposed to present a Planning Proposal to DOPI to amend Clause 16(1) of WLEP 1991, to enable the erection of a dwelling house on Council approved existing allotments which do not comply with the minimum area requirement of the respective zone. This approach is endorsed by Wyong Council's General Counsel and the regional office of DOPI.

Therefore, it is proposed to amend Clause 16(1) by adding the following text outlined in **bold** below:

“16 Dwelling-houses

(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 **that was created in accordance with a consent issued by Council and registered in accordance with the Real Property Act, 1900, or which ~~with~~ has** 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).”

OPTIONS

1. Do Nothing

This will result in currently approved subdivisions and existing registered allotments having no development right for the erection of a dwelling as well as existing dwellings being subject to potentially invalid consents which may negatively impact the saleability of affected properties. Council may then be subjected to legal challenges and liability proceedings.

2. Create a Schedule amendment to the LEP

It is not considered feasible to list all the relevant allotments in a schedule to the LEP, as the resources required to identify these would be significant with the potential that not all allotments will be identified.

3. Adopt the Planning Proposal

The identified Planning Proposal will address the issue, such that consent for the erection of a dwelling may legally be issued and existing dwellings will have the benefit of a lawful consent.

STRATEGIC LINKS

Wyong Shire Council Strategic/ Annual Plan

The Annual Plan and 4 Year Delivery Plan are Council's short to medium term plans outlining the strategic role that Council will play in delivering the community's strategic vision. Council has 12 Principal Activities, each activity provides a set of services to the community and the Delivery Plan and Annual Plan show the net cost of each service.

The following Table lists the 12 Principal Activities and identifies any relevant service and related key actions and objectives.

<i>Principal Activity</i>	<i>Service</i>	<i>Key Action and Objectives</i>	<i>Funding Source and Description</i>	<i>Impact on Key Performance Indicators/ Service Performance Indicators</i>
1 Community & Education	None relevant			
2 Community Recreation	None relevant			
3 Economic & Property Development	None relevant			
4 Council Enterprises	None relevant			
5 Regulatory	Applications	Assess Applications and issue Development Consents in compliance with the LEP.		
6 Environment & Land Use	6.03 Land Use Planning & Policy Development	Process Planning Proposal		
7 Waste				
8 Roads & 9 Drainage	None relevant			
10 Water & 11 Sewerage Services	None relevant			
12 Administration	None relevant			

Contribution of Proposal to the Principal Activity

Long term Financial Strategy

The Long Term Financial Strategy recognises that operating revenue (excluding capital grants) has not covered operating expenditure to maintain existing services and levels of service. Additionally, the required maintenance and renewals of existing assets cannot be funded. The Long Term Financial Strategy is aimed at providing a framework in which Council “can assess its revenue building capacity to meet the activities of and level of services outlined in the Community Strategic Plan.”

3.5 Proposed Amendment to Clause 16 of the Wyong Local Environmental Plan, 1991. (contd)

The gazettal of the Planning Proposal will reduce the risk of Council being subjected to legal challenges and liability proceedings.

Asset Management Strategy

Council's long term Asset Management Strategy specifies objectives and outcomes for asset management over the next 10 years. The desired outcomes are ensuring the right assets are built, ensuring existing assets are managed well, ensuring a balance between Council operations, new assets and existing assets and ensuring future budgets reflect the asset requirements. In general terms, the intention is to ensure Council has the financial capacity to maintain the asset, renew the asset at the end of its life cycle, or to decommission the asset when it is no longer required.

The proposed Clause amendment will enable the development of existing serviced and un-serviced parcels of land.

Workforce Management Strategy

Nil.

Link to Community Strategic Plan (2030)

The Community Strategic Plan identifies 8 priority objectives, each supported by a range of actions. The Planning Proposal is assessed as follows.

1. Communities will be vibrant, caring and connected.

The Planning Proposal is not inconsistent with the Wyong Shire-wide Settlement Strategy and the Central Coast Regional Strategy.

2. There will be ease of travel.

The Planning Proposal is unlikely to influence this objective.

3. Communities will have a range of facilities and services.

The proposal will not influence the range of services and facilities available to the public.

4. Areas of natural value will be enhanced and maintained.

This will be determined as part of the assessment of each individual dwelling proposal to address any impacts on the natural environment and other matters such as potential for flood or bushfire.

5. There will be a sense of community ownership of the natural environment.

The proposed development will not impact natural areas or the community's sense of ownership of the natural environment.

3.5 Proposed Amendment to Clause 16 of the Wyong Local Environmental Plan, 1991. (contd)

6. There will be a strong sustainable business sector.

The proposal will not influence the business sector, other than by additional population increasing the range of businesses, services and facilities available to the public

7. Information and communication technology will be world's best.

The proposal is unlikely to influence this objective.

8. The community will be educated, innovative and creative.

The proposal is unlikely to influence this objective.

Budget Impact

The Planning Proposal will be progressed using in-house resources.

CONSULTATION

There is no external consultation requirement at this stage of the process, however, discussions have been held with the Regional Director of DOPI who has indicated support for the Planning Proposal.

Should the Gateway Panel determine to support the Planning Proposal, formal referrals to NSW Government Agencies and a public engagement process may be undertaken in accordance with that determination. A subsequent report will be provided for Council's consideration of the outcomes of that consultation process.

GOVERNANCE AND POLICY IMPLICATIONS

The processing of the Planning Proposal is being undertaken in accordance with Council's adopted procedure.

The amendment of an existing Clause within WLEP 1991, is undertaken by preparing an amendment to the local environmental plan through a Planning Proposal under sections 55-59 of the EP&A Act.

Section 55 requires Council to prepare a Planning Proposal that explains the intended effect of the amendment to the LEP and sets out the justification for the amendment. Section 55 specifies matters to be included within the Planning Proposal.

Section 56 provides for Council to submit the Planning Proposal to the Minister for Planning and Infrastructure for a Gateway Determination. The DoPI will advise whether or not the matter should proceed (with or without variation), and may specify further studies or modification to the Proposal, community and government agency consultation requirements and other matters.

It is therefore recommended that the Planning Proposal be submitted to DOPI for a Gateway determination.

MATERIAL RISKS AND ISSUES

A significant Corporate risk is being addressed by the Planning Proposal. This relates to the reduced risk and likelihood that Council will become involved in litigation proceedings relating to the existing allotments created and dwellings approved.

Specific site risks have been detailed within the application assessments for the approved subdivisions.

General Corporate risks which are relevant to the processing of the Planning Proposal are:

1. Infrastructure Provision:
 - a. Existing development consent conditions ensure that any new infrastructure required to service the developments is funded by the developer or able to be recovered through developer contributions,
2. Service Capacity
 - a. Application assessments have ensured existing water and sewer headworks and mains have capacity to cater for the increased load, and if not, have identified any necessary upgrades required,
3. Sustainability
 - a. Application assessments have ensured road and stormwater/drainage infrastructure is designed to cater for increased storm intensities predicted to occur as a result of climate change, relevant to the site,
4. Political
 - a. Ensure the community consultation process is open and transparent,
 - b. Ensure Councillors are adequately briefed,
5. Certification/Governance
 - a. Ensure appropriate consultation with other levels of government during the consultation phase,
 - b. Ensure legislative procedures for Planning Proposals are followed,
6. Asset Management
 - a. Assess long term maintenance requirements and renewal costs of proposed new assets and the capacity for rate/levy income to fund these costs.

CONCLUSION

The proposed amendment to Clause 16(1) of WLEP 1991 has considerable merit given the corporate risk emanating from the decision of the NSW Court of Appeal. The amendment will also provide certainty for those residents currently impacted by the Court decision and for Council staff in the determination of applications. While there is the potential for minor wording amendments required by NSW Parliamentary Counsel through the process, no issues have been raised during the assessment of the Planning Proposal that are unlikely to be able to be resolved.

Subject to the preparation of a formal Planning Proposal the proposed Clause amendment is suitable for submission to the Minister for Planning and Infrastructure for a Gateway Determination.

ATTACHMENTS

Nil.

4.1 Classification of Land - Lot 1000 DP 1170365 Settlement Drive, Wadalba

TRIM REFERENCE: F2012/01160 - D03159665

MANAGER: David Jack, Director

AUTHOR: Simone Barwick; Officer

SUMMARY

Authority is sought to classify Lot 1000 DP 1170365 as Operational Land.

RECOMMENDATION

- 1** *That Council classify Lot 1000 DP 1170365 as Operational Land.*
- 2** *That Council advertise the proposal in accordance with Section 34 of the Local Government Act, 1993.*
- 3** *That Council adopt the classification if no adverse submissions are received.*

BACKGROUND

Lot 1000 DP 1170365 has been dedicated to Council as road buffer by AV Jennings Properties Limited from the plan of subdivision of Lot 1 DP 180012 (AV Jennings land), pursuant to a condition of development consent.

Lot 1000 DP 1170365 is 2033 m² and is zoned 2E Urban Release Area Zone.

THE PROPOSAL

It is proposed to classify Lot 1000 DP 1170365 as Operational land.

The Local Government Act 1993 provides that land owned by Council for use in association with its functional operations and which is not available for use by the general public should be classified as operational land.

Under Section 34 of the Local Government Act 1993 Council is required to give public notice of the proposal to classify land for a period of 28 days before confirming classification. If no adverse submission is received Council's proposed land classification will be taken as adopted upon expiration of the notification period.



OPTIONS

Council may resolve to adopt an "Operational Land" classification. As the land is to be used for road buffer, the land should be classified as Operational Land as it is to be used for the functional operations of Council and is not available for use by the general public.

If Council does not resolve to classify the land as operational land the land will take on community classification.

STRATEGIC LINKS

Budget Impact

There is no cost to Council for land classification and the dedication of the land to Council pursuant to DA 1722/2004/B is at no cost to Council.

GOVERNANCE AND POLICY IMPLICATIONS

Under Section 31 of the Local Government Act 1993, land acquired by Council is taken to be classified as Community land unless Council resolves that the land be classified as Operational land.

CONCLUSION

Lot 1000 DP 1170365 has been dedicated to Council as road buffer and requires classification in accordance with Local Government Act 1993 (Chapter 6, Part 2, s.25-34).

The land will be used for the functional operations of Council and should be classified as Operational land.

ATTACHMENTS

Nil.

5.1 CPA/186620 - Construction of a Solar Tower at Scaddens Ridge

TRIM REFERENCE: CPA/186620 - D03182934

MANAGER: David Witherdin, Manager Contract and Project Management

AUTHOR: Gary Kinney; Project Director

SUMMARY

Evaluation and selection of tenders for Contract No. 186620 – Construction of a Solar Tower at Scaddens Ridge.

RECOMMENDATION

- 1 That Council accept the tender from the company nominated as Tenderer '8' in the attached Tender Evaluation Report, for the lump sum amount of \$150,000 (excl GST) for Contract CPA/186620 – Construction of a Solar Tower at Scaddens Ridge.**
- 2 That Council determines the Tender Evaluation Report in Attachment A, remains confidential in accordance with Section 10 A (2) (d) of the Local Government Act 1993 as the report contains commercial information of a confidential nature.**
- 3 That Council approve the contingency sum as detailed in the Tender Evaluation Report in Attachment A.**

BACKGROUND

Council at its meeting on 10 October 2012;

“RESOLVED unanimously on the motion of Councillor NAYNA and seconded by Councillor TAYLOR:

223/12 That Council defer consideration of this item until the Ordinary Meeting to be held on 24 October 2012.

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

AGAINST: NIL”

Council has an existing telecommunications tower erected at Scaddens Ridge on land that is part of Ourimbah State Forest, owned by Forests NSW. Council has occupancy of the site under occupancy Licence No 14416 issued by Forests NSW. The land, accessed from Red Hill Road, is described as Lot 111 DP 755249.

This facility is used by Council for its own telemetry network and two-way communication system. It is also used by other authorities for telecommunications transmitters, including emergency service authorities. The electrical power supply for the site is currently provided by a diesel generator.

The proposed contract is for the construction of a 20 metre high tower, beside the existing telecommunications tower, to house a bank of solar panels to provide electricity to the site. It is intended to keep the existing diesel generator on site as back up, considering the essential nature of the purpose served by the existing telecommunications tower.

The Work involves the construction of reinforced concrete piles and footing and fabrication and erection of a structural steel tower. The design provides for hot dip galvanising of all components rather than a paint corrosion protection system to resist damage during bush fire. It also provides for shop prefabricated and on-site bolted connections to eliminate on-site welding which would result in damage to the galvanising.

INVITATION TO TENDER

The tender was advertised in the Sydney Morning Herald on 26 June 2012, the Central Coast Express on 27 June 2012 and eTender on 26 June 2012.

The invitation documents called for lump sum tenders, based on a detailed specification.

A compulsory pre-tender meeting was held on site on 4 July 2012 to allow tenderers to become familiar with site conditions.

The following addenda were issued to all prospective tenderers during the invitation period.

- 1 Minutes of the pre-tender meeting held on 4 July 2012, notification of an extension of closing time by one week and clarification regarding supply and installation of solar panels.
- 2 Answers to questions from tenderers, issued 12 July 2012.

Tenders closed at 2.00 pm on 19 July 2012.

TENDER SUBMISSIONS

Eighteen tenders were received from the following companies and are listed below in alphabetical order.

ACA Ace Construction Australia
Assetmark Group
Australian Prestressing Services
Axis Building Group
Bridge and Civil Pty Ltd
Developing Business Pty Ltd
General Technologies Company Pty Ltd
Gongues Constructions Pty. Ltd.
HB Projects NSW Pty Ltd

Master Fabrication Pty Ltd
Murphy McCarthy & Associates Pty Ltd
Northcote Constructions
Radiolines Pty Ltd
Risle Holdings Pty Ltd
RTCommunications Pty Ltd
Steelworks Engineering Pty Ltd
Talis Civil Pty Ltd
Visionstream Australia Pty Ltd

No late tenders were received.

TENDER EVALUATION

All members of the Tender Evaluation Panel have signed Pecuniary Interest Declarations. No pecuniary interests were noted.

The relative ranking of tenders as determined from the total weighted score is provided in the Confidential Tender Evaluation Report – Attachment A.

All submissions were assessed in accordance with the approved evaluation criteria being:

- Assessed level of Local Content.
- Compliance with Tender documents, including lodgement of tender by specified time.
- Evidence of corporate systems to manage quality, environmental, and safety risk.
- Ability to manage financial risk.
- The tendered price and structure; as well as any other potential costs to Council that may be identified.
- Experience in the specific field or with similar structures.
- Past recent performance of Tenderer in contracts of similar nature, supported by referee reports.
- The Tenderer's ability to complete the works within the required timeframe.

FINANCIAL IMPLICATIONS

There are sufficient funds allocated for this contract within the current year's capital works program under Water & Sewerage project number 15796.

RELEVANT LEGISLATION

The tender has been conducted in accordance with the *Local Government Act 1993*, the *Local Government (General) Regulation 2005* and Council's Procurement Policy.

Information provided by tenderers which is commercial-in-confidence has been protected and will not be disclosed in accordance with section 10A (2) (d) of the *Local Government Act 1993*. A consistent standard for all tenderers has been used in assessing any request for confidentiality by a tenderer.