

Wyong Shire Council

ORDINARY COUNCIL MEETING

ENCLOSURES

Wednesday, 24 July, 2013



WYONG SHIRE COUNCIL
ENCLOSURES TO THE
ORDINARY COUNCIL MEETING
 TO BE HELD IN THE COUNCIL CHAMBER,
 WYONG CIVIC CENTRE, HELY STREET, WYONG
 ON WEDNESDAY, 24 JULY 2013 ,
 COMMENCING AT 5:00 PM

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MAP EXTRACT

Scale 1:10000

Note: Data is not survey accurate.
 Scale is representation only.

Projection: Transverse Mercator
 Projected Co-Ordinate System: GDA_1994_MGA_Zone56
 Geographic Co-Ordinate System: GCS_GDA_1994
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 Michael Whittaker
 General Manager





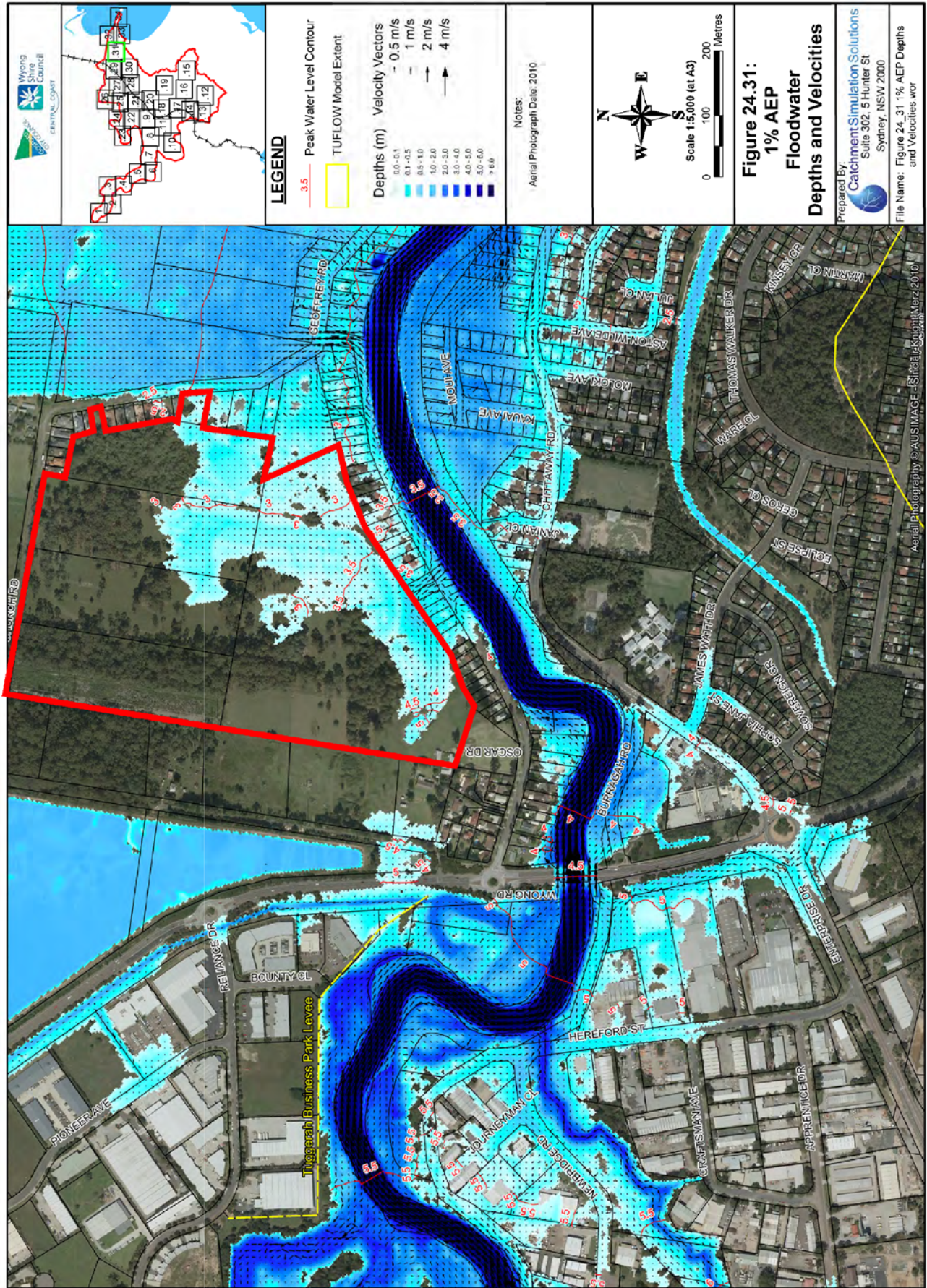
STAGE 1 - CONCEPT MASTERPLAN
Geoffrey Road, Chittaway Bay

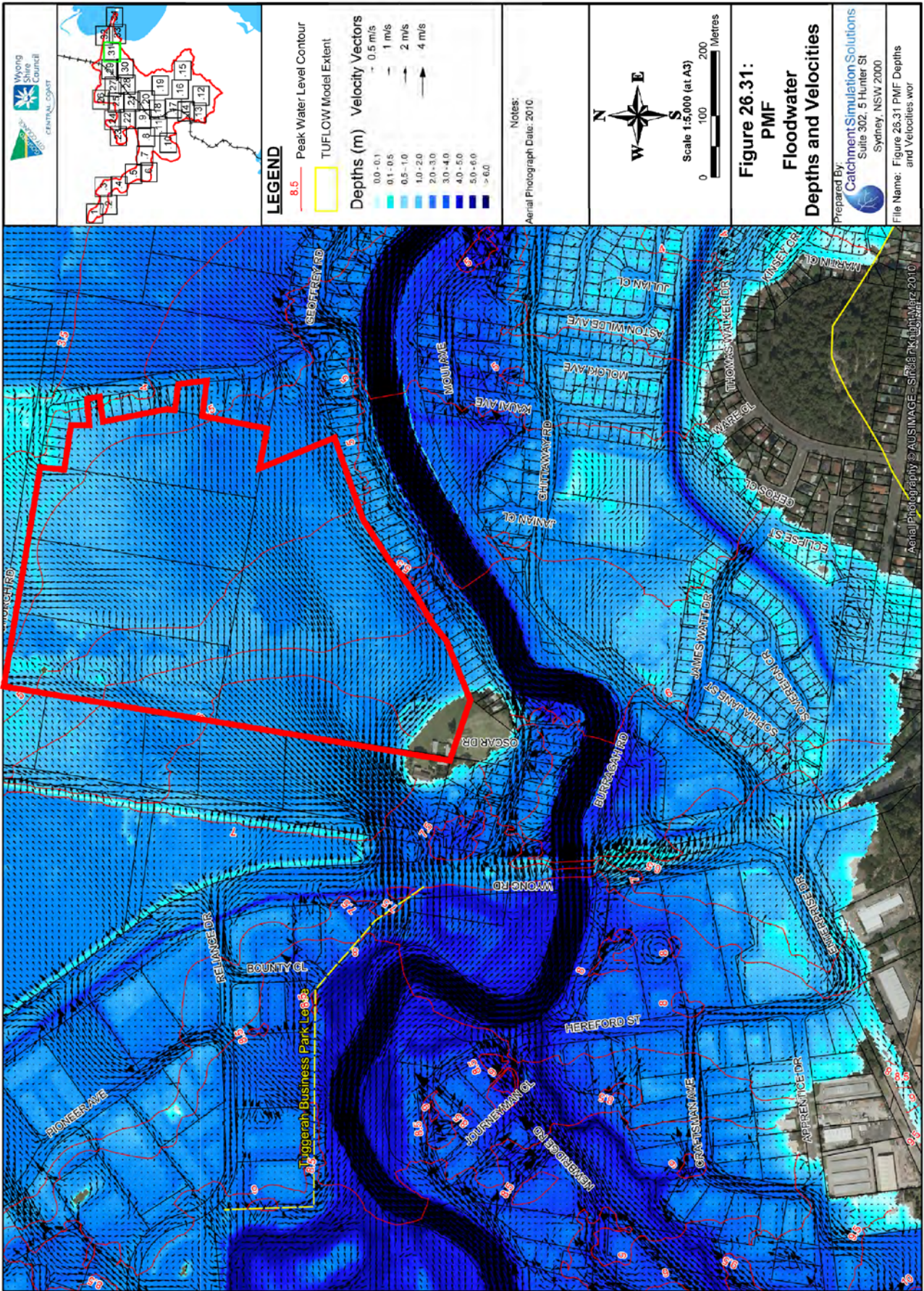


Date: 02 December, 2011 Scale 1 : 3000 @ A3 Project No: 11.040 Sheet: 1/1

DESIGN PARTNERSHIP

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Sustainability Criteria for New Land Release – Central Coast Regional Strategy

Criteria	Requirements	Consistency (Y/N)	Comment
<p>Infrastructure Provision</p> <p>Mechanisms in place to ensure utilities, transport, open space and communication are provided in a timely and efficient way.</p>	<p>Development is consistent with the CCRS, the relevant residential strategy, North Wyong Structure Plan (NWSSP), applicable regional infrastructure plan, Metropolitan Strategy and relevant section 117 directions.</p> <p>The provision of infrastructure (utilities, transport, open space and communications) is costed and economically feasible based on government methodology for determining infrastructure contribution.</p> <p>Preparedness to enter into development agreement</p>	Y	<p>The proposal is considered consistent with the CCRS and is expected to be able to be consistent with relevant s117 Directions, subject to additional studies/reports being prepared.</p> <p>The site is within an area with adequate water supply, sewerage, electricity and communications infrastructure and will only require minor augmentation of services.</p>
<p>Access</p> <p>Accessible transport options for efficient and sustainable travel between homes, jobs, services and recreation to be existing or provided.</p>	<p>Accessibility of the area by public transport and appropriate road access in terms of:</p> <p>Location/land use: to existing networks and related activity centres.</p> <p>Network: the areas potential to be serviced by economically efficient public transport services.</p> <p>Catchment: the area's ability to contain or form part of the larger urban area which contains adequate transport services. Capacity for land use/transport patterns to make a positive contribution to achievement of travel and vehicle use goals</p> <p>No net negative impact on performance of existing sub regional road, bus, rail, ferry and freight management.</p>	Y	<p>The planning proposal identifies an infill residential development within an existing residential area.</p> <p>Access is available to Church Road on the northern and eastern side of the site and flood free access is available to Geoffrey Road which then provides access to Wyong Road at an existing major roundabout.</p> <p>The proposal is located in close proximity to local schools, shops, recreation facilities and other services within a 2.5km radius.</p> <p>The proposal is located in close proximity to public transport stops for public transport services, in particular the close proximity to</p>

Criteria	Requirements	Consistency (Y/N)	Comment
<p>Housing Diversity</p> <p>Provide a range of housing choices to ensure a broad population can be housed.</p>	<p>Contributes to the geographic market spread of housing supply, including any government targets established for housing for the aged or disabled or affordable housing.</p>	Y	<p>public transport routes along Wyong Road.</p> <p>The development will provide new housing opportunities in an area which has almost no spare housing capacity and will therefore contribute significantly to geographic market spread</p>
<p>Employment Lands</p> <p>Provide regional/local employment opportunities to support the Central Coast's expanding role in the wider regional and NSW economies.</p>	<p>Maintains or improves the existing level of subregional employment self containment.</p> <p>Meets subregional employment capacity targets.</p>	Y	<p>The subject site is in close proximity to existing local employment opportunities such as local schools, shops and Business Parks.</p> <p>The proposed site is located in close proximity to existing employment areas (Tuggerah Business Park and Berkeley Vale Industrial Area).</p> <p>Other major employment land such as the Wyong Employment Zone is located within 10km of the subject site.</p> <p>The rezoning is a residential infill close to existing employment areas and is not appropriate for employment uses as it directly adjoins existing residential development to the east and south.</p>
<p>Avoidance of Risk</p> <p>Land use conflicts and risk to human health and life is avoided.</p>	<p>Where relevant, available safe evacuation route (flood and bushfire).</p> <p>No residential development within the 1:100 floodplain.</p>	Y	<p>The site of the proposal is constrained by risks associated with bushfire and flooding.</p> <p>By modifying the proposal concept to avoid these areas, and by undertaking further risk</p>

Criteria	Requirements	Consistency (Y/N)	Comment
	<p>Avoidance of physically constrained land.</p> <p>High Slope</p> <p>Highly erodible</p> <p>Avoidance of land use conflicts with adjacent, existing or future land use and rural activities planned under the Regional Strategy.</p>		<p>management plans, the proposal can be consistent with this criterion.</p> <p>The proposal is not considered to be significantly affected by the odours produced from the Wyong South Sewerage Treatment Plant.</p>
<p>Natural Resources</p> <p>Natural resource limits are not exceeded/environmental footprint minimised.</p>	<p>Demand for water does not place unacceptable pressure on infrastructure capacity to supply water and environmental flows.</p> <p>Demonstrates most efficient/suitable use of land</p> <p>Avoids identified significant agricultural land</p> <p>Avoids impacts on productive resource lands, extractive industries, coal, gas and other mining, fishing and aquaculture.</p> <p>Demand for energy does not place unacceptable pressure on infrastructure capacity to supply energy. Requires demonstration of efficient and sustainable supply solution.</p>	Y	<p>The proposal will be serviceable by existing water supply infrastructure.</p> <p>The proposal is not utilising land which would be better suited to other land uses such as agriculture and advice from the Mine Subsidence Board does not indicate that there are current or future plans for mineral extraction in the locality.</p> <p>Future dwelling construction will need to comply with Council policies, State policy and other legislation to ensure more sustainable utilisation of energy and water and place greater reliance on more sustainable options such as solar.</p> <p>The proposed rezoning does not impact on the sustainable use of water, agricultural land or energy supply infrastructure.</p>
<p>Environment Protection</p> <p>Protect and enhance biodiversity, air quality,</p>	<p>Consistent with the approved Regional Conservation Plan.</p> <p>Maintains or improves areas of regionally significant terrestrial and aquatic biodiversity. This includes regionally</p>	Y	<p>A Regional Conservation Plan has not been released.</p> <p>The flora and fauna study prepared for the</p>

Criteria	Requirements	Consistency (Y/N)	Comment
<p>heritage and waterway health.</p>	<p>significant vegetation communities, critical habitat, threatened species, populations, ecological communities and their habitat. Maintains or improves existing environmental conditions for air quality. Maintains or improves existing environmental conditions for water quality and quantity. Consistent with community water quality objectives for recreational water use and river health. Consistent with catchment and stormwater management planning. Protects areas of Aboriginal cultural heritage values.</p>		<p>proposal indicates there is no significant impact to the vegetation/fauna on site. The site is partially cleared and contains isolated pockets of known habitat and can be developed without impact on regional biodiversity. Further studies will be required in relation to environmental offset justification, Acid Sulfate Soils and Contaminated Land and Stormwater and Drainage should the proposal be supported. The subject site is not known to contain and areas or objects of Aboriginal cultural significance.</p>
<p>Quality and Equity in Services Quality health, education, legal, recreational, cultural and community development and other government services are accessible.</p>	<p>Available and accessible services.</p>	<p>Y</p>	<p>It is considered that the proposal is provided with adequate available and accessible services. As infill development in an established area the proposal will make use of available capacity in existing services.</p>

Section 117 Ministerial Directions Assessment

Direction	Comment
Employment & Resources	
1.1 Business & Industrial Zones	
<p>Aims to encourage employment growth in suitable locations, protect employment land in business and industrial zones and to support the viability of identified strategic corridors.</p> <p>Applies when a planning proposal affects land within an existing or proposed business or industrial zone.</p>	<p>Not Applicable.</p> <p>The proposal does not affect land within an existing or proposed business or industrial zone.</p>
1.2 Rural Zones	
<p>Aims to protect the agricultural production value of rural land.</p> <p>Applies when a planning proposal affects land within an existing or proposed rural zone.</p>	<p>Not Applicable.</p> <p>The proposal does not affect land within an existing or proposed rural zone.</p> <p>Whilst the site is zoned 1(c) Non-urban constrained lands, the site is not considered to be a rural zone. The objectives of this zone are not consistent with those of a rural zone.</p>
1.3 Mining, Petroleum Production and Extractive Industries	
<p>Aims to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.</p> <p>Applies when a planning proposal would have the effect of prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or restricting the potential of development resources of coal, other mineral, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.</p>	<p>Not Applicable.</p> <p>The proposal does not seek to prohibit mining of coal, other minerals, petroleum and extractive materials or restrict potential development of coal, other minerals, petroleum and extractive materials.</p>
1.4 Oyster Aquaculture	
<p>Aims to ensure that Priority Oyster Aquaculture Areas and oyster aquaculture outside such an</p>	<p>Not Applicable.</p>

Direction	Comment
<p>area are adequately considered, and to protect Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and the health of oysters and consumers.</p> <p>Applies when a planning proposal could result in adverse impacts on a Priority Oyster Aquaculture Areas or current oyster aquaculture lease in the national parks estate or results in incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or current oyster aquaculture lease in the national parks estate and other land uses.</p>	<p>The Planning Proposal is not located in Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area as identified in the <i>NSW Oyster Industry Sustainable Aquaculture Strategy</i> (2006)</p>
1.5 Rural Lands	
<p>Aims to protect the agricultural production value of rural land; and facilitate the orderly and economic development of rural lands for rural and related purposes.</p> <p>Applies to local government areas to which State Environmental Planning Policy (Rural Lands) 2008 applies and prepares a planning proposal that affects land within an existing or proposed rural or environment protection zone.</p>	<p>Not Applicable.</p> <p>This direction does not apply to the Wyong LGA.</p>
Environment & Heritage	
2.1 Environmental Protection Zones	
<p>Aims to protect and conserve environmentally sensitive areas.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>Applicable.</p> <p>The site of the proposal is zoned 1(c) Non-urban constrained land.</p> <p>An objective of this zone is <i>To prohibit development that is likely to prejudice the environmental quality of the land.</i></p> <p>The proposal seeks to modify the land by rezoning it to residential, enabling higher density development than permitted under the current zoning.</p> <p>It is considered that modification of the proposal to avoid development of sensitive land results in the proposal being consistent with this Direction.</p>

Direction	Comment
2.2 Coastal Protection	
<p>Aims to implement the principles in the NSW Coastal Policy.</p> <p>Applies when a planning proposal applies to land in the coastal zone as defined in the <i>Coastal Protection Act 1979</i>.</p>	<p>Applicable.</p> <p>The proposal has been identified as being within the Coastal Zone.</p> <p>The proposal seeks a zoning amendment to Wyong LEP 1991 or Wyong Council SI (timing dependant). Given these plans are consistent with the principles with the NSW Coastal Policy; it is considered that this proposal is consistent with this Direction.</p>
2.3 Heritage Conservation	
<p>Aims to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>Applicable.</p> <p>The proposal does not identify an impact on any European or Indigenous heritage items or objects. It is therefore considered that the proposal is consistent with this Direction.</p>
2.4 Recreational Vehicle Areas	
<p>Aims to protect sensitive land or land with significant conservation values from adverse impacts from recreational vehicles.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>Applicable.</p> <p>The proposal does not seek to enable development for recreational vehicle use. It is therefore considered that the proposal is consistent with this Direction.</p>
Housing, Infrastructure and Urban Development	
3.1 Residential Zones	
<p>Aims to encourage a variety and choice of housing types to provide for existing and future housing needs, to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and to minimise the impact of residential development on the environmental and resource lands.</p> <p>Applies when a planning proposal affects land</p>	<p>Applicable.</p> <p>The proposal seeks to rezone the site for residential purposes.</p> <p>The proposal is considered as infill development. It is located in close proximity to existing residential areas, therefore is able to access and augment existing services and infrastructure for any new dwellings constructed. This is confirmed by comments received during consultation with</p>

Direction	Comment
within an existing or proposed residential zone, and any other zone in which significant residential development is permitted or proposed to be permitted.	Council's Design and Transport Engineers. It is therefore considered that the proposal is consistent with this Direction.
3.2 Caravan Parks and Manufactured Home Estates	
Aims to provide for a variety of housing types and provide opportunities for caravan parks and manufactured home estates. Applies when the relevant planning authority prepares a planning proposal.	Applicable. The planning proposal does not seek to rezone land to provide for caravan parks or manufactured home estates It is therefore considered that the proposal is consistent with this Direction.
3.3 Home Occupations	
Aims to encourage the carrying out of low impact small business in dwelling houses. Applies when the relevant planning authority prepares a planning proposal.	Applicable. The proposal does not seek to prohibit home occupations. It is therefore considered that the proposal is consistent with this Direction.
3.4 Integrating Land Use & Transport	
Aims to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts to achieve: improving access to housing, jobs and services by walking, cycling and public transport; increasing choice of available transport and reducing transport on cars; reducing travel demand; supporting efficient and viable public transport services; and provide for efficient movement of freight. Applies when a planning proposal creates alters or moves a zone or provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.	Applicable. It is considered that the proposal is consistent with the aims, objectives and principles of Improving Transport Choice – Guidelines for Transport and Development. The site of the proposal is considered as an infill site and located in close proximity to local schools, shops, recreation facilities and other services. It is therefore considered that the proposal is consistent with this Direction.
3.5 Development Near Licensed Aerodromes	
Aims to ensure the effective and safe operation of aerodromes, their operation is not compromised by development which constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity, development for residential purposes or	Not Applicable. The proposal does not seek to create, alter or remove a zone or provision relating to land in the vicinity of a licensed aerodrome.

Direction	Comment
<p>human occupation (within the ANEF contours between 20 & 25) incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.</p> <p>Applies when a planning proposal creates, alters or removes a zone or provision relating to land in the vicinity of a licensed aerodrome.</p>	
3.6 Shooting Ranges	
<p>Aims to maintain appropriate levels of public safety and amenity when rezoning land adjacent to an existing shooting range, to reduce land use conflict arising between existing shooting ranges and rezoning of adjacent land, and to identify issues that must be addressed when giving consideration to rezoning land adjacent to an existing shooting range.</p> <p>Applies when a relevant planning authority prepares a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to and/ or adjoining an existing shooting range.</p>	<p>Not Applicable.</p> <p>The proposal is does not propose to affect, create, alter or remove a zone or a provision relating to land adjacent to and/ or adjoining an existing shooting range.</p>
Hazard & Risk	
4.1 Acid Sulfate Soils	
<p>Aims to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.</p> <p>Applies when a planning proposal applies to land having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps.</p>	<p>Applicable.</p> <p>A desktop mapping exercise has identified that the site contains Class 2, 3, 4 and 5 acid sulfate soils.</p> <p>Subject to the endorsement of the proposal by Council and the Gateway, the proponent will be required to undertake an acid sulfate soil assessment of the site.</p> <p>By undertaking these investigations, it is considered that the proposal will be able to consistent with this Direction.</p>
4.2 Mine Subsidence & Unstable Land	

Direction	Comment
<p>Aims to prevent damage to life, property and the environmental on land identified as unstable or potentially subject to mine subsidence.</p> <p>Applies when a planning proposal permits development on land which is within a mine subsidence district, or identified as unstable in a study or assessment undertaken by or on behalf of the relevant planning authority or other public authority and provided to the relevant planning authority.</p>	<p>Not Applicable.</p> <p>The site of the proposal is not located within a mine subsidence district.</p>
4.3 Flood Prone Land	
<p>Aims to ensure: development on flood prone land is consistent with NSW Government's Flood Prone Land Policy and principles of the Floodplain Development Manual 2005; and provisions of an LEP on flood prone land are commensurate with flood hazard and include consideration of the potential flood impacts both on and off the subject land.</p> <p>Applies when a planning proposal creates, removes or alters a zone or provision that affects flood prone land.</p>	<p>Applicable.</p> <p>The site of the proposal is identified as being flood prone land.</p> <p>Flood modelling undertaken by the proponent identifies that a revised development footprint and minor filling will enable the proposal to proceed with minimal risk to life and property.</p> <p>Subject to endorsement by Council and the Gateway, the Proponent will be required to prepare a Flood Risk Management Plan which identifies appropriate mitigation strategies to manage risk associated with higher risk (and less likely) flood events.</p> <p>By undertaking the above, it is considered that the proposal will be able to consistent with this Direction.</p>
4.4 Planning for Bushfire Protection	
<p>Aims to protect life, property and the environment from bushfire hazards, and encourage sound management of bushfire prone areas.</p> <p>Applies when a planning proposal affects or is in proximity to land mapped as bushfire prone land.</p>	<p>Applicable.</p> <p>The site of the proposal contains Category 2 bushfire prone vegetation and bushfire buffer zones.</p> <p>Subject to endorsement by Council and the Gateway, the Proponent will be required to undertake a bushfire assessment of the proposal, Bushfire Risk Management Plan which may require modification to the current concept plan.</p> <p>By undertaking the above, it is considered that</p>

Direction	Comment
	the proposal will be able to consistent with this Direction.
Regional Planning	
5.1 Implementation of Regional Strategies	
<p>Aims to give legal effect to the vision, land use strategy, policies, outcomes and actions contained within regional strategies.</p> <p>Applies when the relevant planning authority prepares a planning proposal that is located on land addressed within the Far North Regional Strategy, Lower Hunter Regional Strategy, Central Coast Regional Strategy, Illawarra Regional Strategy & South Coast Regional Strategy.</p>	<p>Applicable.</p> <p>The proposal is considered to be consistent with the Central Coast Regional Strategy.</p> <p>It is therefore considered that the proposal is consistent with this Direction.</p>
5.2 Sydney Drinking Water Catchments	
<p>Aims to protect water quality in the hydrological catchment.</p> <p>Applies when a relevant planning authority prepares a planning proposal that applies to Sydney's hydrological catchment.</p>	<p>Not Applicable.</p> <p>The proposal is not located within Sydney's hydrological catchment.</p>
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	
<p>Aims to: ensure that the best agricultural land will be available for current and future generations to grow food and fibre; provide more certainty on the status of the best agricultural land, assisting councils with strategic settlement planning; and reduce land use conflict arising between agricultural use and non-agricultural use of farmland caused by urban encroachment into farming areas.</p> <p>Applies to Ballina, Byron, Kyogle, and Tweed Shire Councils, Lismore City Council and Richmond Valley Council.</p>	<p>Not Applicable.</p> <p>The proposal is not located within the Far North Coast Region.</p>
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	
<p>Aims to manage commercial and retail development along the Pacific Highway, North Coast.</p>	<p>Not Applicable.</p> <p>The proposal is not located between Port</p>

Direction	Comment
Applies to all councils between and inclusive of Port Stephens and Tweed Shire Councils.	Stephens and Tweed Shire Councils.
5.8 Second Sydney Airport: Badgerys Creek	
<p>Aims to avoid incompatible development in the vicinity of any future second Sydney Airport at Badgerys Creek.</p> <p>Applies to land located within the Fairfield, Liverpool and Penrith City Council and Wollondilly Shire Council Local Government Areas.</p>	<p>Not Applicable.</p> <p>The proposal is not located within the Fairfield, Liverpool and Penrith City Council or Wollondilly Shire LGA.</p>
Local Plan Making	
6.1 Approval and Referral Requirements	
<p>Aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>Applicable.</p> <p>The planning proposal does not seek to include provisions which require concurrence from other agencies.</p> <p>It is therefore considered the proposal is consistent with this Direction.</p>
6.2 Reserving Land for Public Purposes	
<p>Aims to facilitate the provision of public services and facilities by reserving land for public purposes, and facilitate the removal of reservations of land for public purposes where land is no longer required for acquisition.</p> <p>Applies when the relevant planning authority prepares a planning proposal.</p>	<p>Applicable.</p> <p>The proposal does not seek to alter or create land for public purposes.</p> <p>It is therefore considered the proposal is consistent with this Direction.</p>
6.3 Site Specific Provisions	
<p>Aims to discourage unnecessarily restrictive site specific planning controls.</p> <p>Applies when the relevant planning authority prepares a planning proposal to allow particular development to be carried out.</p>	<p>Not Applicable.</p> <p>The proposal does not seek to enable a specific use on the site which is not permissible under the proposed zone (2(a) Residential or R2 Low Density Residential).</p> <p>It is therefore considered the proposal is consistent with this Direction.</p>

Direction	Comment
Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	
<p>Aims to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in the Metropolitan Strategy.</p> <p>Applies when the planning authority within a Metropolitan Local Government Area prepares a planning proposal.</p>	<p>Not Applicable.</p> <p>This Direction does not apply to Wyong LGA.</p>

State Environmental Planning Policy Assessment

SEPP	Comment
SEPP No. 44 – Koala Habitat	
<p>Aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline:</p> <p>(a) by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and</p> <p>(b) by encouraging the identification of areas of core koala habitat, and</p> <p>(c) by encouraging the inclusion of areas of core koala habitat in environment protection zones</p>	<p>The flora and fauna report submitted by the Proponent identified that a targeted koala survey was undertaken as part of the investigation of the site.</p> <p>Only one food species tree was identified (<i>Eucalyptus robusta</i>) and there were no actual or indicative (scats, scratches etc) or sightings of koalas on the subject site.</p>
SEPP No. 55 – Contaminated Land	
<p>Aims:</p> <p>to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment</p> <p>(a) by specifying when consent is required, and when it is not required, for a remediation work, and</p> <p>(b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and</p> <p>(c) by requiring that a remediation work meet certain standards and notification requirements.</p>	<p>Whilst the preliminary desktop mapping/assessment exercise has not identified any contamination of the site, this issue still requires formal assessment.</p> <p>Should the proposal proceed beyond a Gateway determination, the proponent will be required to undertake a contaminated land assessment to comply with the provisions of this SEPP.</p>
SEPP No. 71 Coastal Protection	
<p>Aims:</p> <p>(a) to protect and manage the natural, cultural, recreational and economic attributes of the</p>	<p>The proposal is consistent with the aims and objectives of the SEPP 71 Policy.</p> <p>The proposal seeks to enable additional</p>

SEPP	Comment
<p>New South Wales coast, and</p> <p>(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</p> <p>(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</p> <p>(d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and</p> <p>(e) to ensure that the visual amenity of the coast is protected, and</p> <p>(f) to protect and preserve beach environments and beach amenity, and</p> <p>(g) to protect and preserve native coastal vegetation, and</p> <p>(h) to protect and preserve the marine environment of New South Wales, and</p> <p>(i) to protect and preserve rock platforms, and</p> <p>(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</p> <p>(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</p> <p>(l) to encourage a strategic approach to coastal management.</p>	<p>residential development within an existing residential area. In enabling additional population in the Shire, this is consistent as being described as infill development.</p> <p>The proposal does not affect access to and along coastal foreshores, nor is the site affected in a significant manner by coastal processes such as erosion.</p> <p>The proposal enables the protection of flora and fauna.</p> <p>Given the existing residential style development adjacent to the subject site, it is not considered that an increased density will adversely affect the scenic nature of the environment, particularly if the proposed scale of the development is reduced.</p> <p>Any progression of the proposal will be required to manage stormwater consistent with Council policy including draft Chapter 97 – Water Sensitive Urban Design.</p>



DRAFT POLICY No: L4

DRAFT LOCAL APPROVALS POLICY

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History of Revisions:

Version	Date	TRIM Doc. #
1		

A. POLICY SUMMARY

- A1 The Local Approvals Policy clarifies the circumstances where an approval must be obtained from Council prior to the carrying out of any of the activities listed in the Table to *Section 68 of the Local Government Act 1993 (LG Act 1993)*.

B. POLICY BACKGROUND

- A2 In accordance with Section 77 LG Act 1993, "a council must take such steps as are reasonably practicable to bring the existence of any relevant regulations and any relevant local policy adopted under Part 3 (of the LG Act) to the notice of any person it knows to be an intending applicant for an approval".
- B1 In accordance with the requirements of *Section 158 of the LG Act 1993*, this Policy is divided into three parts which address the following matters:
- **Part 1: Exemptions**

This part specifies instances where some activities may be carried out without the need to obtain approval of Council under *Section 68 of the LG Act 1993*.
 - **Part 2 : Assessment Criteria for Approvals**

This part lists the criteria Council must take into consideration in determining whether to give or refuse approval of an application under the *LG Act 1993*.
 - **Part 3 : Other Matters**

This part covers other matters relating to approvals including the assessment criteria for assessment.

C. DEFINITIONS

- C1 **Council** means the elected representatives, Councillors, who form the governing body of Wyong Shire Council.
- C2 **LG Act 1993** means the *Local Government Act NSW 1993*.
- C3 **WSC** means Wyong Shire Council, being the organisation responsible for the administration of Council affairs and operations and the implementation of Council policy and strategies.
- C4 **Approval** means approval of an activity listed in the Table to Section 68 of the *Local Government Act 1993*,
- C5 **Development Consent** - issued in accordance with the provisions of the *Environmental Planning and Assessment Act 1979*.
- C6 **EP&AAct 1979** - *Environmental Planning and Assessment Act 1979*
- C7 **WMAct 2000** – *Water Management Act 2000*

D. POLICY STATEMENTS

- D1 In the event of any future change to the *LG Act 1993*, in accordance with *Section 163 LG Act 1993*. "a local policy adopted under this Part by a council, to the extent to which it is inconsistent with this Act or the regulations, is void".

E. POLICY IMPLEMENTATION**Part 1: EXEMPTIONS**

Table 1 below list activities that are exempted from obtaining approval by compliance with the criteria specified within an Act or a Regulation. It is a condition of exemption that the person carrying out an activity specified in this Part must comply with the relevant conditions and performance standards currently prescribed in the *Local Government Act 1993* associated Regulations and the *Building Code of Australia* where relevant.

Note: The EP&A Act 1979 exemptions listed below relate to concurrent development consents under that Act.

PART A - STRUCTURES OR PLACES OF PUBLIC ENTERTAINMENT	Is an exemption provided by any Act?	Is an exemption provided by any Regulation?
1. Install a manufactured home, moveable dwellings or associated structure on land.	<i>EP&AAct 1979 s.78A.</i>	<i>Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005, Clauses 9, 74, 77 & 78.</i>

Note: Approval under the Local Government Act 1993 is not conducted in Wyong Shire for Items 1, 2, 3, 4 and 6 below. Where require, these activities are approved under the Water Management Act 2000.

PART B - WATER SUPPLY, SEWERAGE AND STORMWATER DRAINAGE WORK	Is an exemption provided by any Act?	
1. Carry out water supply work.	<i>WMAct 2000 EP&AAct,1979 s.78A</i>	
2. Draw water from a Council water supply or standpipe or sell water so drawn.	<i>WMAct 2000 EP&AAct,1979 s.78A</i>	
3. Install, alter, disconnect or remove a meter connected to a service pipe.	<i>WMAct 2000 EP&AAct,1979 s.78A</i>	
4. Carry out sewerage work.	<i>WMAct 2000 EP&AAct,1979 s.78A</i>	
5. Carry out stormwater drainage work.	<i>EP&AAct,1979 s.78A</i>	
6. Connect a private drain or sewer with a public drain or sewer under the control of a Council or with a drain or sewer which connects with such a public drain or sewer.	<i>WMAct 2000 EP&AAct,1979 s.78A</i>	

PART C - MANAGEMENT OF WASTE	Is an exemption provided by any Act?	Is an exemption provided by the Regulations?
1. For fee or reward, transport waste over or under a public place.	<i>EP&AAct,1979 s.78A</i>	<i>Local Government (General) Regulation Clause 48(a)</i>
2. Place waste in a public place.	<i>EP&AAct,1979 s.78A</i>	<i>Local Government (General) Regulation Clause 48(b)</i>
3. Place a waste storage container in a public place.	<i>EP&AAct,1979 s.78A</i>	<i>NO</i>
4. Dispose of domestic waste into a sewer of the Council.	<i>EP&AAct,1979 s.78A</i>	<i>Local Government (General) Regulation Clause 48(c)</i>
5. Install, construct or alter a waste treatment device or a human waste storage facility or a drain connected to any such device or facility.	<i>EP&AAct,1979 s.78A</i>	<i>Local Government (General) Regulation Clause 48(e)</i>
6. Operate a system of sewage management (within meaning of Section 68A of the LG Act 1993)	<i>NO</i>	<i>Local Government (General) Regulation Clause 48(f)</i>

PART D - COMMUNITY LAND	Is an exemption provided by any Act?	Is an exemption provided by the Regulations? Which Regulation?
1. Engage in a trade or business.	NO	NO
2. Direct or procure a theatrical, musical or other entertainment for the public.	NO	NO
3. Construct a temporary enclosure for the purpose of entertainment.	NO	NO
4. For fee or reward, play a musical instrument or sing.	NO	NO
5. Set up, operate or use a loudspeaker or sound amplifying device.	NO	Local Government (General) Regulation Clause 49
6. Deliver a public address or hold a religious service or public meeting.	NO	NO

PART E - PUBLIC ROADS	Is an exemption provided by any Act?	Is an exemption provided by the Regulations?
1. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway.	EP&AAct 1979 s.78A	NO
2. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.	NO	NO

PART F - OTHER ACTIVITIES	Is an exemption provided by any Act?	Is an exemption provided by the Regulations?
1. Operate a public carpark.	EP&AAct,1979 s.78A	Local Government (General) Regulation Clause 66
2. Operate a caravan park or camping ground.	EP&AAct,1979 s.78A	NO
3 Operate a manufactured home estate.	EP&AAct,1979 s.78A	NO
4. Install a domestic oil or solid fuel heating appliance, other than a portable appliance.	EP&AAct,1979 s.78A	Local Government (General) Regulation Clause 70
5. Install or operate amusement devices.	EP&AAct,1979 s.78A	Local Government (General) Regulation Clause 71 & 75
7. Use a standing vehicle or any article for the purpose of selling any article in a public place.	NO	NO
10. Carry out an activity prescribed by the regulations or an activity of a class or description prescribed by the regulations.	EP&AAct,1979 s.78A	Local Government (General) Regulation Clause 75A

Note: The exemption criteria in this Policy do not apply where buildings or structures are proposed to be erected over an existing sewer main or any easement or where other works such as vegetation removal is required.

Part 2: ASSESSMENT CRITERIA FOR APPROVALS

The matters for consideration for determining applications are listed under *Section 89 of the LG Act 1993*. *Section 89* also requires the consideration of any additional criteria listed in a local policy.

Additional Council Assessment Criteria – all applications

- The conditions imposed by any development consent applying to the land
- Odour, noise and lighting impacts
- The likely effect of the building or structure on the streetscape and visual appearance of the locality.
- Any adopted Council Policy

Additional Council Assessment Criteria - Part E2 - Street Vendors

- In considering applications for approval to offer goods or articles for sale from a standing vehicle on a public road (includes the footpath) or to expose (whether for sale or otherwise) any article so as to overhang any part of the footpath or road, or outside a shop window, doorway or from an awning overhanging that road, Council shall have regard to the *Guidelines for Street Vending Control* published by the Department of Local Government.

Note: Any application for approval made as part of a Development Application in accordance with s.78A of the Environmental Planning and Assessment Act 1979 will also be subject to assessment under the provisions of any adopted Development Control Plan.

Part 3: OTHER MATTERS RELATING TO APPROVALS

Requirements for the lodgement of applications, information regarding review and amendment of applications and provisions for variation to the application of regulations and local policies are dealt with under *Chapter 7 of the LG Act 1993 (Sections 75 to 113)*.

Exemption of Application Fees

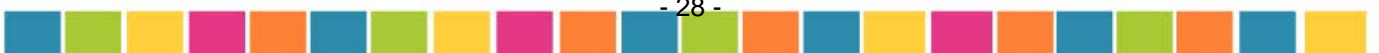
Consideration will be given by Council to the waiving of application fees in relation to community based projects. These may include applications made by non-profit organisations and applications for community facilities, community activities and events, and places of worship. A written request stipulating the reason for waiving of fees is to be submitted with the application.



POLICY No: L2

DRAFT LOCAL ORDERS POLICY

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AUTHORITY	NAME & TITLE	SIGNATURE	DATE
AUTHOR			
MANAGER			
DIRECTOR			
GENERAL MANAGER	Michael Whittaker		
MAYOR (IF APPLICABLE)			

History of Revisions:

Version	Date	TRIM Doc. #
1		

A. POLICY SUMMARY

A1 This Local Orders Policy is prepared and adopted under Chapter 7, Part 3 of the Local Government Act 1993 (LG Act 1993) and the Local Government General Regulation 2005.

B. POLICY BACKGROUND

B1 The purpose of the Local Orders Policy (LOP) is to supplement provisions of the LG Act 1993 and the Local Government (General) Regulation 2005 by specifying the criteria which Council must take into consideration in determining whether or not to give an Order under sections 124, 125 and 126 of the LG Act 1993.

B2 Where there are any inconsistencies in this Policy with the LG Act 1993 and other relevant Acts, Planning Instruments and/or Regulations the provisions of the Acts, Planning Instruments and/or Regulations prevail.

B3 This policy does not confer any delegated authority upon any person. All delegations to staff are issued by the General Manager.

B4 With regard to the Orders process under the LG Act 1993, this policy aims:

- to promote an integrated framework for dealing with Orders.
- to ensure consistency and fairness in the manner in which the Council deals with Orders.
- to make the Council's policies and requirements for Orders readily accessible and understandable to the public.
- to assist Council to fully pursue its charter under Section 8 of the Act.
- apply common or consistent requirements and procedures to all types of Orders issued under the Act.
- to establish a system which can effectively resolve disputes and conflicts as they arise.
- to apply the principles of natural justice in the consideration of representation made by affected persons.

C. DEFINITIONS

C1 Terms and definitions referred to in this document are derived from the LG Act 1993.

D. POLICY STATEMENTS**Jurisdiction**

D1 The Local Orders Policy applies to:

- all land within the Wyong Shire;
- all land taken to be included in the Council area under Section 205 of the LG Act 1993;

- all premises and all areas associated with those premises;
 - any vehicle used for the manufacture, preparation, storage, sale, transportation or other handling or use of food.
- D2 This policy does not confer any delegated authority upon any person. All delegations to staff are issued by the General Manager.

General

- D3 In instances where Council becomes aware of situations where an Order issued under the Local Government Act 1993 may be justified, the following will be considered:
- the circumstances described in the Table to s124 LG Act 1993; or
 - the activity constitutes a public nuisance under s125 LG Act 1993; or section 126 when giving Orders to public authorities and
 - the relevant provisions of the Act, Regulations, Local Approvals Policy and any additional criteria adopted in a Local Orders Policy have been considered (s131 LG Act 1993).

E. POLICY IMPLEMENTATION – PROCEDURES

E1 Notice of Proposed Order

In accordance with the LG Act 1993, Councils are required to observe certain procedures before giving Orders. In particular Section 132 requires that the following be carried out prior to issuing an Order.

- Before giving an Order, Council must give notice to the person(s) to whom the Order is proposed to be given of its intention to give the Order, the terms of the proposed Order and the period proposed to be specified as the period within which the Order is to be complied with (s132(1) LG Act 1993).
- Council's notice must indicate that the person to whom the Order is proposed to be given. This person may make representations to Council as to why the Order should not be given or as to the terms of or period for compliance with the Order. (s132 (2) LG Act 1993).
- The notice may indicate that the representations are to be made to the Council or a specified committee of the Council. This is an opportunity for the person to make representations to council to explain why a proposed Order should not be given or that the terms of, or period for compliance are, unreasonable.

E2 Representations

A person, to whom an Order is proposed to be given, when making representations may be represented by an Australian legal practitioner or agent (s133 LG Act 1993).

Representations can be made in writing or verbally to the Council, a nominated Committee or Council Officer. The immediate supervisor of the issuing officer or another officer with greater Council Delegated Authority than the issuing officer must hear and consider any representations made regarding proposed Orders (s134 LG Act 1993).

If modifications are made to the Order as a result of the representations a further notice of intention is not required (s135 (2) LG Act 1993).

After hearing and considering any representations made concerning the proposed Order, the supervising officer concerned may determine:

- (a) to give an Order in accordance with the proposed Order; or
- (b) to give an Order in accordance with modifications made to the proposed Order; or
- (c) not to give an Order (s135 LG Act 1993).

E3 Council Considerations

The Orders that Council may issue under the LG Act 1993, the circumstances under which they may be given and the criteria that must be considered if any are listed in Section 124 of the LG Act 1993.

Under Section 126 of the LG Act 1993 Council may not give an Order in respect of the following land, without the prior written consent of the Minister.

- Vacant Crown land
- A reserve within the meaning of Part 5 of the Crown Lands Act 1989
- A Common

NOTE: The giving of an Order is not mandatory and is at the discretion of the council authorised investigating officer whether or not the circumstances meet the applicable criteria for that Order (s 124 LGA 1993). When an Order is given, if possible, Council will continue to work towards resolving a preferred outcome for all parties.

E4 Information to be included in Orders

Orders issued by this Council must contain:

- The name of the person for whom the Order is intended.
- Indicate the things the person/occupant must do or refrain from doing or instead specify the standard that the premises are required to meet and/or indicate the nature of the work that would satisfy that standard. The Order may also specify that the owner or occupier submit particulars of work required (s139 LG Act 1993).
- The reasons for the Order (s136(1) LG Act 1993) except in urgent cases when reasons must be given the next working day (s136(3) LG Act 1993).
- Specify a reasonable period in which the terms of the Order are to be complied with. If there is a serious risk to health and safety or an emergency, compliance can be required immediately (s137 LG Act 1993).
- Clause 99 of the Local Government (General) Regulation 2005 requires the following information be included:
 - (a) any relevant provision of the LG Act 1993, this policy or regulations made under the Act that is not being or has not been complied with,

- (b) that it is an offence not to comply with an Order and the maximum penalty for the offence,
- (c) that, if the Order is not complied with, the Council may give effect to the Order and recover the costs of doing so from the person concerned.

E5 Modification of Orders

- Council may modify an Order given to a person at any time (including period of compliance) providing the person agrees to the modification. (s152 LG Act 1993)
- Council may revoke an Order at any time. (s153 LG Act 1993)

E6 Non - Compliance with Order

- It is an offence not to comply with an Order. The act specifies penalties for such offences and provides mechanisms for enforcement, including Court action for non-compliance (s628 LG Act 1993).
- Council may do all such things as are necessary or convenient to give effect to the Order, including the carrying out of any work requested by the Order (s678 LG Act 1993). Costs incurred in giving effect to the terms of the Order may be recovered in Court as a debt due to Council by the person concerned.
- Person on whom the Order is served may appeal to the Land and Environment Court (s180, 181, 182 LG Act 1993).

E7 Penalties for non-compliance

Penalties for non-compliance with the terms of Orders issued by Council are prescribed under section 628 of the LG Act 1993.

- Maximum penalty for Orders 1, 3, 5 and 7-12 is 50 penalty units in the case of an individual and 100 penalty units in the case of a Corporation.
- Maximum penalty for Orders 15, 16 or 17 is 100 penalty units in the case of an individual and 200 penalty units in the case of a Corporation.
- Maximum penalty for Orders 18-25 and 27-29 is 20 penalty units.
- Maximum penalty for Order 30 - refer to Section 627 LG Act 1993.
- A person who fails to comply with an Order given to the person under section 125 to abate a public nuisance is guilty of an offence. Maximum penalty: 20 penalty units.

Note: In accordance with the Crimes (Sentencing Procedure) Act 1999 No.92; one penalty unit is currently valued at \$110.00.

PUBLIC EXHIBITION

Expires 17 June 2013

Proposed Amendments to Wyong Shire Council

Section 94 & 94A Development Contribution Plans

Complying Development, Certifying Authority & Deferred Payment Provisions

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1.0 BACKGROUND

Council has prepared amendments to all of its Section 94 and Section 94A development contributions plans pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

The Act provides that an existing contributions plan may be amended by a subsequent contributions plan, and as such, the proposed amendments to each existing contributions plan represent a draft contributions plan for the purpose of the Act.

The proposed amendments involve the insertion or substitution of 3 newly drafted standard clauses into all the Section 94 & 94A contributions plans relating to:

- 1 Complying development
- 2 Certifying authorities
- 3 Deferred payments

It is also proposed to restructure / reorganise the provisions within the contributions plans that apply to Wyong, The Entrance Toukley and Warnervale.

Amendment Process

The process for making amendments to existing adopted contributions plan is as follows:

- 1 Preparation of draft contributions plan/amendments
- 2 Public notification of exhibition of draft contributions plan/amendments
- 3 Exhibition of draft contributions plan/amendments for 28 days
- 4 Submission made to Council during exhibition period
- 5 Council considers submissions
- 6 Council adopts the draft contributions plan/ amendments either as exhibited or amendments in consideration of public submissions.
- 7 Public notice is given of the adoption of draft contributions plan/amendments and the date it becomes effective from.

A copy of the relevant Sections and clauses that determine the process for making amendments to contributions plans is provided in **Appendix 1**.

Amendment 1 – Complying Development & Certifying Authority Provisions

At its meeting dated 14 November 2012, Council considered a report regarding the extension of a trial period for the relaxation of Section 94 contributions for granny flats.

This report disclosed that because of a missing provision within 4 of Council's district contributions plans, certifying authorities are not compelled or empowered to require the payment of development contributions in complying development certificates under the contributions plans that apply to those districts.

Council resolved to *"support the revision of the Section 94 Contributions 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."*

Section 94EC(1) requires that a contributions plan must specify whether or not the accredited certifier must impose a contribution as a condition in complying development certificates. A copy of this provision is contained in **Appendix 2**.

In accordance with Council's resolution and the desire to ensure consistency across all plans, it is proposed to insert or substitute 2 newly drafted standard clauses in all Section 94 & 94A contributions plans, that:

- 1 Compels accredited certifiers to impose a condition in complying development certificates requiring the payment of Section 94 contributions in accordance with those plans.
- 2 Require certifying authorities to ensure that contributions required under development consents have been paid prior to the issue of construction certificates.

A further paragraph is proposed in respect of the newly drafted "complying development" clause in the Section 94A Levy Development Contributions Plan clarifying that no Section 94A Levy is required where a contribution is required to be paid under a Section 94 Contributions Plan. This recognises the limitation under Section 94A of the *Environmental Planning & Assessment Act* that prohibits both a Section 94A and a Section 94 contributions being imposed for the same development.

The details of the proposed amendments are provided in **Section 3**.

Amendment 2 – Deferred Payment Provision

The payment of Section 94 and 94A contributions under all of Council's adopted contributions plans is currently required to be made either:

- Prior to the release of the Subdivision Certificate for subdivisions,
- Prior to the release of the Construction Certificate for buildings, or
- Prior to the commencement of use for other types of developments.

A Policy for the deferral of the payment of development contributions was adopted by Council at its Meeting of 12th December 2012. The adopted Policy sets out criteria for the deferment of contributions based on 3 types of development categories.

The aim of Council's policy is to encourage/stimulate development by reducing the borrowing costs and increased cash flow for developers.

The criteria and process for making an application to defer the payment of contributions is outlined in the adopted Policy contained in **Appendix 3**.

Council also resolved to *"approve the necessary changes to the contributions plans which allows Council to delegate consideration and approval of application for deferment in accordance with the adopted policy"*.

In accordance with this resolution and the desire to ensure consistency across all contributions plans it is proposed to insert or substitute a newly drafted standard clause into all current adopted contributions plans that enables the implementation of Council's existing deferred payment Policy.

A variation of the standard clause is proposed for the Section 94A Levy Development Contributions Plan having regard to the fact that Council's existing deferred payment policy will not apply to Section 94A Levy Contributions.

The details of the proposed amendments are provided in **Section 3**.

Amendment 3 – Restructuring Contributions Plans

It is also proposed to restructure / reorganise the provisions within the contributions plans that apply to Wyong, The Entrance, Toukley and Warnervale so that the format and style is consistent with Council's current standard template. The proposed amendments will involve **NO** changes to provisions and have **NO** impact on the operations of these Plans

The details of the proposed amendments are provided in **Section 3**.

2.0 EXHIBITION NOTICE**PUBLIC NOTICE
WYONG SHIRE COUNCIL****Amendments to Development Contributions Plans**

Pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*, Council has prepared amendments to all of its Section 94 and Section 94A development contributions plans.

The amendments include the insertion or substitution of three newly drafted standard clauses in all Council's Section 94 & 94A Development Contributions Plans that:

- 1 Compels accredited certifiers to impose a condition in complying development certificates requiring the payment of contributions in accordance with those plans.
- 2 Requires certifying authorities to ensure that contributions required under development consents have been paid prior to the issue of construction certificates.
- 3 Provides for the deferred payment of development contributions in accordance with Council's recently adopted policy.

It is also proposed to restructure / reorganise the provisions within the contributions plans that apply to Wyong, The Entrance, Toukley and Warnervale so that the format and style is consistent with Council's current standard template.

The proposed amendments will be on public exhibition (along with an explanatory note) during normal business hours from Wednesday, 15 May 2013 until Monday, 17 June at Council's Civic and Administration Centre in Hely Street, Wyong.

A copy of the draft plan amendments and the explanatory note is also available on Council's website www.wyong.nsw.gov.au. Any enquiries relating to the draft plans should be directed to Sharron Colquhoun on (02) 4350 5409.

The public is invited to make submissions to the exhibition to the undersigned by 4.30 pm up until 17 June 2013.

Your attention is drawn to the provisions of the Government Information (Public Access) Act 2009 which allows for possible access to certain public and personal documentation. Should you require general information about this Act, Council's Public Officer may be contacted on (02) 4350 5555.

Dated: 15 May 2013

PO Box 20
WYONG NSW 2259

Michael Whittaker
GENERAL MANAGER

To be published in the Central Coast Express Advocate on Wednesday, 15 May 2013

3.0 DETAILS OF AMENDMENT

Amendment 1a –Insertion of the following clauses in Section 94 Contributions Plans:

“Complying Development and Obligation of Accredited Certifiers

In accordance with Section 94EC(1) of the EP&A Act:

- 1 *Accredited certifiers must in issuing a complying development certificate impose a condition under Section 94 that requires the payment of monetary contributions calculated in accordance with this development contributions plan. The condition of consent shall also require the payment to be made prior to the commencement of works where building works are involved or prior to the commencement of use where no building works are involved.*
- 2 *This plan authorises accredited certifiers to impose such a condition. The condition must include a notation that the contribution amounts are indexed on a quarterly basis.*
- 3 *The amount of contributions and timing of payment shall be strictly in accordance with the provisions of this contributions plan.*

It is the responsibility of accredited certifiers to:

- 1 *Accurately calculate the quantum of contributions or alternatively seek advice and assistance directly from Council; and*
- 2 *Apply the section 94 condition correctly.*

Construction Certificates and Obligation of Accredited Certifiers

In accordance with Clause 146 of the EP&A Regulation, a certifying authority must not issue a construction certificate for building work or subdivision work under a development consent unless it has verified that each condition requiring the payment of monetary contributions has been satisfied.

In particular, the certifier must ensure that the applicant provides a receipt(s) confirming that contributions have been fully paid and copies of such receipts must be included with copies of the certified plans provided to the Council in accordance with clause 142(2) of the EP&A Regulation. Failure to follow this procedure may render such a certificate invalid.

The only exceptions to the requirement are where a works in kind or dedication of land has been agreed by Council. In such cases, Council will issue a letter confirming that an alternative payment method has been agreed with the developer.”

After:

- Clause 3.0 in Section 94 Contributions Plan No. 1 -Wyong District November 2006
- Clause 3.0 in Section 94 Contributions Plan No. 3 - The Entrance District November 2006
- Clause 3.0 in Section 94 Contributions Plan No. 6 - Toukley District November 2006
- Clause 3.0 in Section 94 Contributions Plan 7A - Warnervale District September 2005

In substitution of:

- Clauses B8 & B9 in Contributions Plan No. 11 Shire-wide Infrastructure, Service & Facilities July 2007
- Clauses 1.9 & 1.10 in Gorokan District Development Contributions Plan August 2010
- Clauses 1.9 & 1.10 in Ourimbah District Development Contributions Plan August 2010
- Clauses 1.9 & 1.10 in San Remo District Development Contributions Plan August 2010
- Clauses 1.9 & 1.10 in Southern Lakes District Development Contributions Plan August 2010
- Clauses 1.9 & 1.10 in Budgewoi District Development Contributions Plan August 2010
- Clauses 2.4.1 & 2.5 in the Warnervale Town Centre Contributions Plan

Amendment 1b – Insertion of the following clauses in the Section 94A Contributions Plan:**“Complying Development and Obligation of Accredited Certifiers**

In accordance with Section 94EC(1) of the EP&A Act:

- 1 *Accredited certifiers must in issuing a complying development certificate impose a condition under Section 94A that requires the payment of monetary contributions calculated in accordance with this development contributions plan. The condition of consent shall also require the payment to be made prior to the commencement of works where building works are involved or prior to the commencement of use where no building works are involved.*
- 2 *This plan authorises accredited certifiers to impose such a condition. The condition must include a notation that the contribution amounts are indexed on a quarterly basis.*
- 3 *The amount of contributions and timing of payment shall be strictly in accordance with the provisions of this contributions plan.*

It is the responsibility of accredited certifiers to:

- 1 *Accurately calculate the quantum of contributions or alternatively seek advice and assistance directly from Council; and*
- 2 *Apply the section 94A condition correctly.*

A certifier shall not impose a Section 94A Levy contribution under this plan where a Section 94 contribution is required to be paid under another contributions plan.

Construction Certificates and Obligation of Accredited Certifiers

In accordance with Clause 146 of the EP&A Regulation, a certifying authority must not issue a construction certificate for building work or subdivision work under a development consent unless it has verified that each condition requiring the payment of monetary contributions has been satisfied.

In particular, the certifier must ensure that the applicant provides a receipt(s) confirming that contributions have been fully paid and copies of such receipts must be included with copies of the certified plans provided to the Council in accordance with clause 142(2) of the EP&A Regulation. Failure to follow this procedure may render such a certificate invalid.

The only exceptions to the requirement are where a works in kind or dedication of land has been agreed by Council. In such cases, Council will issue a letter confirming that an alternative payment method has been agreed with the developer.”

In substitution of:

Clauses 1.10 & 1.11 in the Section 94A Levy Development Contributions Plan

Amendment 2a - Insertion of the following clause in Section 94 Contributions Plans:**"Deferred and Periodic Payment**

Council will generally not accept arrangements for the periodic payment of contributions required under this plan. Notwithstanding this position, an application for periodic payments may be made to Council, and Council after giving consideration to it may in extenuating circumstances accede to such a request subject to conditions that it considers appropriate. Such conditions may include the confirmation of the payment schedule via a legal agreement and the payment of fee.

Council will generally only consider permitting the deferred payment of contributions in accordance with its "Deferred Payment of Section 94 Contributions Policy" current at the time of application."

After:

Clause 3.0 in Section 94 Contributions Plan No. 1 -Wyong District November 2006
 Clause 3.0 in Section 94 Contributions Plan No. 3 - The Entrance District November 2006
 Clause 3.0 in Section 94 Contributions Plan No. 6 - Toukley District November 2006
 Clause 3.0 in Section 94 Contributions Plan 7A - Warnervale District September 2005

In substitution of:

Clause B10 in Contributions Plan No. 11 Shire-wide Infrastructure, Service & Facilities July 2007
 Clause 1.11 in Gorokan District Development Contributions Plan August 2010
 Clause 1.11 in Ourimbah District Development Contributions Plan August 2010
 Clause 1.11 in San Remo District Development Contributions Plan August 2010
 Clause 1.11 in Southern Lakes District Development Contributions Plan August 2010
 Clause 1.11 in Budgewoi District Development Contributions Plan August 2010
 Clause 2.10 in the Warnervale Town Centre Contributions Plan

Amendment 2b - Insertion of the following clause in the Section 94A Contributions Plan:**"Deferred and Periodic Payment**

Council will generally not accept arrangements for the periodic payment or deferred payment of contributions required under this plan. Notwithstanding this position, an application may be made to Council, and Council after giving consideration to it may in extenuating circumstances accede to such a request subject to conditions that it considers appropriate. Such conditions may include the confirmation of the payment schedule via a legal agreement and the payment of fee. "

In substitution of:

Clause 1.13 in the Section 94A Levy Development Contributions Plan

Amendment 3 –Restructuring / reorganising the provisions within the following Contributions Plans:**Section 94 Contributions Plan No. 1 – Wyong District November 2006** by:

- 1 The inclusion of Sections 1.0, 2.0, 3.0, 4.0, 6.0, 7.0, 8.0, 9.0, 11.0, 12.0, 13.0 & 14.0 in a new section titled "*Administration and Operation of this Plan*".
- 2 The inclusion of Section 5.0 in a new section titled "*Urban Characteristics and Population*".
- 3 The inclusion of the remaining sections in a new Section titled "*Community Infrastructure and Contributions*".
- 4 The renumber of provisions, figures and tables.

Section 94 Contributions Plan No. 3 – The Entrance District November 2006 by:

- 1 The inclusion of a "*Summary Schedule*" at the beginning of the Plan that provides a summary of the applicable contribution rates under the plan.
- 2 The inclusion of Sections 1.0, 2.0, 3.0, 4.0, 6.0, 7.0, 8.0, 9.0, 11.0, 12.0, 13.0 & 14.0 in a new section titled "*Administration and Operation of this Plan*".
- 3 The inclusion of Section 5.0 in a new section titled "*Urban Characteristics and Population*".
- 4 The inclusion of the remaining sections in a new section titled "*Community Infrastructure and Contributions*".
- 5 The renumber of provisions and tables.

Section 94 Contributions Plan No. 6 – Toukley District November 2006 by:

- 1 The inclusion of Sections 1.0, 2.0, 3.0, 4.0, 6.0, 7.0, 8.0, 9.0, 11.0, 12.0, 13.0 & 14.0 in a new section titled "*Administration and Operation of this Plan*".
- 2 The inclusion of Section 5.0 in a new section titled "*Urban Characteristics and Population*".
- 3 The inclusion of the remaining sections in a new section titled "*Community Infrastructure and Contributions*".
- 4 The renumber of provisions and tables.

Section 94 Contributions Plan 7A – Warnervale District September 2005 by:

- 1 The inclusion of Sections 1.0, 2.0, 3.0, 5.0, 6.0, 7.0, 8.0, 9.0, 11.0, 12.0 & 13.0 in a new section titled "*Administration and Operation of this Plan*".
- 2 The inclusion of Section 4.0 in a new section titled "*Urban Characteristics and Population*".
- 3 The inclusion of the remaining sections in a new section titled "*Community Infrastructure and Contributions*".
- 4 The renumber of provisions, figures and tables.

APPENDIX 1 – LEGISLATION REQUIREMENTS – PLAN AMENDMENTS

Environmental Planning and Assessment Act 1979 No 203

Current version for 8 March 2013 to date (accessed 6 May 2013 at 12:00)

[Part 4](#) [Division 6](#) [Subdivision 3](#) [Section 94A](#) << page >>

94A Fixed development consent levies

- (1) A consent authority may impose, as a condition of development consent, a requirement that the applicant pay a levy of the percentage, authorised by a contributions plan, of the proposed cost of carrying out the development.
- (2) A consent authority cannot impose as a condition of the same development consent a condition under this section as well as a condition under section 94.
- (2A) A consent authority cannot impose a condition under this section in relation to development on land within a special contributions area without the approval of:
- (a) the Minister, or
 - (b) a development corporation designated by the Minister to give approvals under this subsection.
- (3) Money required to be paid by a condition imposed under this section is to be applied towards the provision, extension or augmentation of public amenities or public services (or towards recouping the cost of their provision, extension or augmentation). The application of the money is subject to any relevant provisions of the contributions plan.
- (4) A condition imposed under this section is not invalid by reason only that there is no connection between the development the subject of the development consent and the object of expenditure of any money required to be paid by the condition.
- (5) The regulations may make provision for or with respect to levies under this section, including:
- (a) the means by which the proposed cost of carrying out development is to be estimated or determined, and
 - (b) the maximum percentage of a levy.

Environmental Planning and Assessment Act 1979 No 203

Current version for 8 March 2013 to date (accessed 1 May 2013 at 10:22)

[Part 4](#) [Division 6](#) [Subdivision 3](#) [Section 94B](#)

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94B Section 94 or 94A conditions subject to contributions plan

- (1) A consent authority may impose a condition under section 94 or 94A only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).
- (2) However, in the case of a consent authority other than a council:
- (a) the consent authority may impose a condition under section 94 or 94A even though it is not authorised (or of a kind allowed) by, or is not determined in accordance with, a contributions plan, but
 - (b) the consent authority must, before imposing the condition, have regard to any contributions plan that applies to the whole or any part of the area in which development is to be carried out.
- (3) A condition under section 94 that is of a kind allowed by a contributions plan (or a direction of the Minister under this Division) may be disallowed or amended by the Court on appeal because it is unreasonable in the particular circumstances of that case, even if it was determined in accordance with the relevant contributions plan (or direction). This subsection does not authorise the Court to disallow or amend the contributions plan or direction.
- (4) A condition under section 94A that is of a kind allowed by, and determined in accordance with, a contributions plan (or a direction of the Minister under this Division) may not be disallowed or amended by the Court on appeal.

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Current version for 8 March 2013 to date (accessed 1 May 2013 at 10:22)

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94EA Contributions plans—making

- (1) A council, or two or more councils, may, subject to and in accordance with the regulations, prepare and approve a contributions plan for the purpose of imposing conditions under this Division (other than Subdivision 4).
- (2) If a contributions plan authorises the imposition of conditions under section 94A, the plan is to specify the type or area of development in respect of which a condition under section 94A may be imposed and is to preclude the imposition of a condition under section 94 in respect of that type or area of development.
- (2A) A contributions plan does not authorise the imposition of a condition under section 94 on a grant of development consent if the public amenities or public services to which that condition relates are, in whole or in part, infrastructure provided, or to be provided, in relation to the development out of contributions collected under Subdivision 4.
- (3) The regulations may make provision for or with respect to the preparation and approval of contributions plans, including the format, structure and subject-matter of plans.
- (4) A council is, as soon as practicable after approving a contributions plan, to provide the Minister with a copy of the plan.

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94EB Contributions plans—judicial notice, validity etc

- (1) Judicial notice is to be taken of a contributions plan and of the date on which the plan came into effect.
- (2) It is to be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of a contributions plan have been complied with and performed.
- (3) The validity of any procedure required to be followed in making or approving a contributions plan is not to be questioned in any legal proceedings except those commenced in the Court by any person within 3 months after the date on which the plan came into effect.
- (4) The amendment or repeal, whether in whole or in part, of a contributions plan does not affect the previous operation of the plan or anything duly done under the plan.

Environmental Planning and Assessment Regulation 2000

Current version for 8 March 2013 to date (accessed 1 May 2013 at 10:24)

[Part 4](#) [Division 1C](#)

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Division 1C Preparation of contributions plans

26 In what form must a contributions plan be prepared?

(cf clause 25 of EP&A Regulation 1994)

- (1) A contributions plan must be prepared having regard to any relevant practice notes adopted for the time being by the Director-General, copies of which are available for inspection and purchase from the offices of the Department.
- (2) One or more contributions plans may be made for all or any part of the council's area and in relation to one or more public amenities or public services.
- (2A) Despite subclause (2), a contributions plan may be made for land outside the council's area for the purposes of a condition referred to in section 94CA of the Act.

- (3) The council must not approve a contributions plan that is inconsistent with any direction given to it under section 94E of the Act.
- (4) A draft contributions plan must be publicly exhibited for a period of at least 28 days.

27 What particulars must a contributions plan contain?

(cf clause 26 of EP&A Regulation 1994)

(1) A contributions plan must include particulars of the following:

- (a) the purpose of the plan,
 - (b) the land to which the plan applies,
 - (c) the relationship between the expected types of development in the area to which the plan applies and the demand for additional public amenities and services to meet that development,
 - (d) the formulas to be used for determining the section 94 contributions required for different categories of public amenities and services,
 - (e) the section 94 contribution rates for different types of development, as specified in a schedule to the plan,
 - (f) if the plan authorises the imposition of a section 94A condition:
 - (i) the percentage of the section 94A levy and, if the percentage differs for different types of development, the percentage of the levy for those different types of development, as specified in a schedule to the plan, and
 - (ii) the manner (if any) in which the proposed cost of carrying out the development, after being determined by the consent authority, is to be adjusted to reflect quarterly or annual variations to readily accessible index figures adopted by the plan (such as a Consumer Price Index) between the date of that determination and the date the levy is required to be paid,
 - (g) the council's policy concerning the timing of the payment of monetary section 94 contributions, section 94A levies and the imposition of section 94 conditions or section 94A conditions that allow deferred or periodic payment,
 - (h) a map showing the specific public amenities and services proposed to be provided by the council, supported by a works schedule that contains an estimate of their cost and staging (whether by reference to dates or thresholds),
 - (i) if the plan authorises monetary section 94 contributions or section 94A levies paid for different purposes to be pooled and applied progressively for those purposes, the priorities for the expenditure of the contributions or levies, particularised by reference to the works schedule.
- (2) In determining the section 94 contribution rates or section 94A levy percentages for different types of development, the council must take into consideration the conditions that may be imposed under section 80A (6) (b) of the Act or section 97 (1) (b) of the [Local Government Act 1993](#).
 - (3) A contributions plan must not contain a provision that authorises monetary section 94 contributions or section 94A levies paid for different purposes to be pooled and applied progressively for those purposes unless the council is satisfied that the pooling and progressive application of the money paid will not unreasonably prejudice the carrying into effect, within a reasonable time, of the purposes for which the money was originally paid.

Environmental Planning and Assessment Regulation 2000

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[Part 4](#) [Division 2](#) [Clause 28](#)

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28 Draft contributions plan must be publicly exhibited

(cf clause 27 of EP&A Regulation 1994)

Following the preparation of a draft contributions plan, the council:

- (a) must give public notice in a local newspaper of the places, dates and times for inspection of the draft plan, and
- (b) must publicly exhibit at the places, on the dates and during the times set out in the notice:
 - (i) a copy of the draft plan, and
 - (ii) a copy of any supporting documents, and
- (c) must specify in the notice the period during which submissions about the draft plan may be made to the council (which must include the period during which the plan is being publicly exhibited).

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Current version for 8 March 2013 to date (accessed 1 May 2013 at 10:25)

[Part 4](#) [Division 2](#) [Clause 29](#)

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29 Copies of draft contributions plans to be publicly available

(cf clause 28 of EP&A Regulation 1994)

Copies of the draft contributions plan, and of any supporting documents, are to be made available to interested persons, either free of charge or on payment of reasonable copying charges.

Environmental Planning and Assessment Regulation 2000

Current version for 8 March 2013 to date (accessed 1 May 2013 at 10:25)

[Part 4](#) [Division 2](#) [Clause 30](#)

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30 Who may make submissions about a draft contributions plan?

(cf clause 29 of EP&A Regulation 1994)

Any person may make written submissions to the council about the draft contributions plan during the relevant submission period.

Environmental Planning and Assessment Regulation 2000

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[Part 4](#) [Division 3](#) [Clause 31](#)

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31 Approval of contributions plan by council

(cf clause 30 of EP&A Regulation 1994)

- (1) After considering any submissions about the draft contributions plan that have been duly made, the council:
 - (a) may approve the plan in the form in which it was publicly exhibited, or
 - (b) may approve the plan with such alterations as the council thinks fit, or
 - (c) may decide not to proceed with the plan.
- (2) The council must give public notice of its decision in a local newspaper within 28 days after the decision is made.
- (3) Notice of a decision not to proceed with a contributions plan must include the council's reasons for the decision.
- (4) A contributions plan comes into effect on the date that public notice of its approval is given in a local newspaper, or on a later date specified in the notice.

Environmental Planning and Assessment Regulation 2000

Current version for 8 March 2013 to date (accessed 1 May 2013 at 11:04)

[Part 4](#) [Division 4](#) [Clause 32](#)

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32 How may a contributions plan be amended or repealed?

(cf clause 31 of EP&A Regulation 1994)

- (1) A council may amend a contributions plan by a subsequent contributions plan.
- (2) A council may repeal a contributions plan:
 - (a) by a subsequent contributions plan, or
 - (b) by public notice in a local newspaper of its decision to repeal the plan.
- (3) A council may make the following kinds of amendments to a contributions plan without the need to prepare a new contributions plan:
 - (a) minor typographical corrections,
 - (b) changes to the rates of section 94 monetary contributions set out in the plan to reflect quarterly or annual variations to:
 - (i) readily accessible index figures adopted by the plan (such as a Consumer Price Index), or
 - (ii) index figures prepared by or on behalf of the council from time to time that are specifically adopted by the plan,
 - (c) the omission of details concerning works that have been completed.

Environmental Planning and Assessment Regulation 2000

Current version for 8 March 2013 to date (accessed 1 May 2013 at 10:26)

[Part 4](#) [Division 4](#) [Clause 33A](#)

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33A Review of contributions plan

- (1) A council is required to keep a contributions plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.
- (2) A council is also to consider any submissions about contributions plans received from public authorities or the public.

APPENDIX 2 – LEGISLATIVE REQUIREMENTS - COMPLYING DEVELOPMENT**Environmental Planning and Assessment Act 1979 No 203**

Current version for 8 March 2013 to date (accessed 1 May 2013 at 08:51)

[Part 4](#) [Division 3](#) [Section 85A](#)

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85A Process for obtaining complying development certificates**(1) Application**

An applicant may, in accordance with the regulations, apply to:

- (a) the council, or
 - (b) an accredited certifier,
- for a complying development certificate.

(2) (Repealed)**(3) Evaluation**

The council or accredited certifier must consider the application and determine:

- (a) whether or not the proposed development is complying development, and
- (b) whether or not the proposed development complies with the relevant development standards, and
- (c) if the proposed development is complying development because of the provisions of a local environmental plan, or a local environmental plan in relation to which the council has made a development control plan, that specifies standards and conditions for the complying development, whether or not the proposed development complies with those standards and conditions.

(4) A council or accredited certifier must not refuse to issue a complying development certificate on the ground that any building product or system relating to the development does not comply with a requirement of the *Building Code of Australia* if the building product or system is accredited in respect of that requirement in accordance with the regulations.

(5) A council, an employee of a council and an accredited certifier do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) Determination

The council or an accredited certifier may determine an application:

- (a) by issuing a complying development certificate, unconditionally or (to the extent required by the regulations, an environmental planning instrument or a development control plan) subject to conditions, or
- (b) by refusing to issue a complying development certificate.

(7) The council or an accredited certifier must not refuse to issue a complying development certificate if the proposed development complies with the development standards applicable to it and complies with other requirements prescribed by the regulations relating to the issue of a complying development certificate.

(8) The determination of an application by the council or accredited certifier must be completed within the period prescribed by the regulations (or such longer period as may be agreed to by the applicant) after lodgment of the application.

(9) **In determining the application, the council or the accredited certifier must impose a condition that is required to be imposed under Division 6 in relation to the complying development.**

(10) There is no right of appeal against the determination of, or a failure or refusal to determine, an application for a complying development certificate by a council or an accredited certifier.

(10A) Payment of long service levy

Where a council or accredited certifier completes a complying development certificate, that certificate is not to be forwarded or delivered to the applicant, unless any long service levy payable under section 34 of the [Building and Construction Industry Long Service Payments Act 1986](#) (or, where such a levy is payable by instalments, the first instalment of the levy) has been paid.

(11) Post-determination notification

On the determination of an application for the issue of a complying development certificate:

- (a) the council or accredited certifier must notify the applicant of the determination, and
- (b) the accredited certifier must notify the council of the determination, and
- (c) if the determination is to issue a complying development certificate, the council or accredited certifier must notify any other person, if required to do so by the regulations, in accordance with the regulations.

(12) For the purposes of subsection (7), *development standard* includes a provision of a development control plan that would be a development standard, within the meaning of section 4, if the provision were in an environmental planning instrument.

Environmental Planning and Assessment Act 1979 No 203

Current version for 8 March 2013 to date (accessed 1 May 2013 at 08:54)

[Part 4](#) [Division 6](#) [Subdivision 3](#) [Section 94EC](#)

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94EC Contributions plans—complying development

(1) In relation to an application made to an accredited certifier for a complying development certificate, a contributions plan:

- (a) is to specify whether or not the accredited certifier must, if a complying development certificate is issued, impose a condition under section 94 or 94A, and
- (b) can only authorise the imposition by an accredited certifier of a condition under section 94 that requires the payment of a monetary contribution, and
- (c) must specify the amount of the monetary contribution or levy that an accredited certifier must so impose or the precise method by which the amount is to be determined.

(1A) The imposition of a condition by an accredited certifier as authorised by a contributions plan is subject to compliance with any directions given under section 94E (1) (a), (b) or (d) with which a council would be required to comply if issuing the complying development certificate concerned.

(2) This section does not limit anything for which a contributions plan may make provision in relation to a consent authority.

(3) The regulations may make provision for or with respect to anything for which a contributions plan may make provision under this section (being provisions that apply despite anything to the contrary in the contributions plan). The regulations may provide that the amount of a monetary contribution or levy be determined in a manner and by a person or body authorised by the regulations.

Environmental Planning and Assessment Regulation 2000

Current version for 8 March 2013 to date (accessed 1 May 2013 at 09:07)

[Part 8](#) [Division 2](#) [Clause 142](#)

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142 Procedure for determining application for construction certificate

(cf clause 79D of EP&A Regulation 1994)

(1) The determination of an application for a construction certificate must be in writing and must contain the following information:

- (a) the date on which the application was determined,
- (b) whether the application has been determined:
 - (i) by approval, or
 - (ii) by refusal, and

- (c) if the application has been determined by refusal:
 - (i) the reasons for the refusal, and
 - (ii) if the certifying authority is a consent authority, of the applicant's right of appeal under the Act against the refusal,
- (d) if a construction certificate has been issued subject to conditions of the kind referred to in clause 187 or 188:
 - (i) the reasons for the conditions, and
 - (ii) if the certifying authority is a consent authority, of the applicant's right of appeal under the Act against any such conditions.
- (2) **The certifying authority must cause notice of its determination to be given to the consent authority, and to the council, by forwarding to it, within 2 days after the date of the determination, copies of:**
 - (a) the determination, together with the application to which it relates, and
 - (b) any construction certificate issued as a result of the determination, and
 - (c) any plans and specifications in relation to which such a construction certificate has been issued, and
 - (d) any fire safety schedule or fire link conversion schedule attached to such a construction certificate, and
 - (e) **any other documents that were lodged with the application for the certificate** (such as any relevant decision on an objection under clause 187 or 188) or given to the certifying authority under clause 140, and
 - (f) the record of any inspection made for the purposes of clause 143B in relation to the issue of the construction certificate.

Note. See also clause 168 which requires a fire safety schedule to be attached to a construction certificate when it is issued.
- (2A) A copy of a record of inspection referred to in subclause (2) (f) need not be given to a consent authority or council that carried out the inspection.
- (3) In this Part, a reference to the issuing of a construction certificate includes a reference to the endorsement of the construction certificate on any relevant plans and specifications, as referred to in section 109C (1) (b) of the Act.

Environmental Planning and Assessment Regulation 2000

Current version for 8 March 2013 to date (accessed 1 May 2013 at 08:58)

[Part 8](#) [Division 2](#) [Clause 146](#)

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146 Compliance with conditions of development consent

(cf clause 79H of EP&A Regulation 1994)

A certifying authority must not issue a construction certificate for building work or subdivision work under a development consent unless each of the following have been complied with:

- (a) each condition or agreement requiring the provision of security before work is carried out in accordance with the consent (as referred to in section 80A (6) of the Act),
- (b) **each condition requiring the payment of a monetary contribution or levy before work is carried out in accordance with the consent (as referred to in section 94 or 94A of the Act),**
- (c) each other condition of the development consent that must be complied with before a construction certificate may be issued in relation to the building work or subdivision work.

APPENDIX 3 – ADOPTED POLICY FOR THE DEFERRED PAYMENT OF SECTION 94 CONTRIBUTIONS

Council adopted the following policy for the deferred payment of Section 94 Contributions at its Ordinary Meeting of 12 December 2012:

All Developments

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

- 1 *The bank guarantee shall be unconditional and irrevocable.*
- 2 *Payment being made within **2 years** with the lodgement of the guarantee.*
- 3 *The bank guarantee is from a financial institution acceptable to Council*
- 4 *The guaranteed amount includes a contingency for inflation as determined by Council.*
- 5 *The payment of an administration fee equivalent to 1% p.a. of the outstanding indexed deferred contributions invoiced quarterly.*
- 6 *Requests to defer contributions being referred the Iconic Sites Governance Panel for consideration and determination*

Greenfield subdivisions

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

- 1 *The deferred payment of contributions shall be restricted to:*
 - a *large "greenfield" subdivisions that have the potential to generate employment and economic activity.*
 - b *subdivisions where the construction of dwellings are not included in the development application.*
- 2 *The deferred payment of contributions shall be supported by the execution of a deed of agreement with the following features:*
 - a *The owner of the land and, if relevant, any mortgagees of the property being a parties to the agreement.*
 - b *The agreement binding the applicant's land with the obligation to repay the contributions.*
 - c *The agreement binding the mortgage(s) to give Council priority for payment of contributions.*
 - d *The agreement and Council's rights under the agreement being registered in the form of a caveat on the title of the land to be subdivided prior to the issue of the subdivision certificate.*
 - e *The agreement shall provide that the caveat shall be in a form that acts as a bar to transfer of ownership of any lot within the subdivision unless Council has provided its agreement to remove the caveat.*

- f Council's agreement to removal of the caveat from a subdivided lot being provided upon receipt of payment of the deferred contributions in accordance with the terms of the agreement.
 - g The agreement shall set out the contribution rate applicable on a per lot basis at the time the agreement is made and the means for determining the contribution rate applicable at the time of payment.
 - h The Section 94 contributions shall be paid upon settlement of each lot **or within 2 years of the deferment, which ever is earlier.**
 - i All costs involved in the operation of the agreement are to be at the expense of the developer/applicant
- 3 Deed of Agreement shall:
- a preferable be submitted as part of the development application.
 - b be executed prior shall be the issue of the 1st construction certificate for the subdivision works relating to the applicable stage.
- 4 No development of any lots with structures/ buildings or the use of land shall be undertaken until deferred contributions have been paid in respect of that lot.
- 5 A requirement for the payment of an administration fee equivalent to 1% p.a. of the outstanding indexed deferred contributions invoiced quarterly.
- 6 Requests to defer contributions being referred the Iconic Sites Governance Panel for consideration and determination

Built Developments

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

- 1 The deferred payment of contributions shall be restricted to development that make a significant contribution towards employment generation, affordable housing or provide significant economic stimulus.
- 2 Each stage having no less than 10 units.
- 3 The request to defer the payment of contributions being made as part of the development application or via a Section 96 Amendment application.
- 4 The payment of development contributions being made for the entire stage of a development prior to the release of the first occupation certificate for any unit in that stage **or within 2 years of the deferment, which ever is earlier.**
- 5 Payment of an administration fee equivalent to 1% p.a. of the outstanding indexed deferred contributions invoice.
- 6 Requests to defer contributions being referred the Iconic Sites Governance Panel for consideration and determination.