



A 340 metre missing link in our shared pathway was recently finished along Tuggerah Parade, Long Jetty. Residents can now walk, ride, skate or jog safely along the Tuggerah Lake foreshore from Chittaway Bay to The Entrance.

Wyong Shire Council

# Business Paper

## ORDINARY COUNCIL MEETING

25 July 2012

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# MEETING NOTICE

The **ORDINARY COUNCIL MEETING**  
of **Wyong Shire Council**  
will be held in the **Council Chamber**,  
**Wyong Civic Centre, Hely Street, Wyong** on  
**WEDNESDAY 25 JULY 2012 at 5.00 pm**,  
for the transaction of the business listed below:

## OPENING PRAYER

## ACKNOWLEDGEMENT OF COUNTRY

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**9 QUESTIONS ON NOTICE ASKED**

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

Michael Whittaker  
**GENERAL MANAGER**

## **1.1 Disclosure of Interest**

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TRIM REFERENCE: F2012/00026 - D03054079

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Sonia Witt; TL Governance and Councillor Services

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

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

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

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

### **RECOMMENDATION**

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

## 1.2 Proposed Inspections and Briefings

TRIM REFERENCE: F2012/00026 - D03054084

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Sonia Witt; TL Governance and Councillor Services

### SUMMARY

There were no Inspections scheduled for the 1 August 2012.

Briefings proposed for 25 July 2012 and future meetings to be held in the Wilfred Barrett and Tim Farrell Committee Rooms:

Date	Briefing	Description	Time	Presented by
25 July 2012	Youth Employment Strategy	Provide an overview of the WSC Youth Employment Strategy for 2012-2016	12.00 noon – 12.30 pm	Director Corporate Services
25 July 2012	2012 Councillor Induction	Draft Induction Program for returning and new Councillors	12.30 pm – 1.00 pm	Director Corporate Services
25 July 2012	Possible Committee Structure	Proposal to amend Committee structure for incoming Council	1.00 pm – 1.30 pm	Director Corporate Services
25 July 2012	Chinese Cultural Village Theme Park	To provide an update on the recently received proposal on the Chinese Cultural Theme Park from Australia China Theme Park Pty Ltd	2.00 pm – 2.30 pm	Director Corporate Services
25 July 2012	Norah Head Boat Ramp	Norah Head Boat Ramp - To provide an update on the progression of the Design and Investigation works on the upgrading of Norah Head Boat Ramp and seek approval to proceed to detail design and planning approval.	2.30 pm – 3.00 pm	Director Community and Recreation Services
25 July 2012	Service Standard Review Pt II	Results the Service Standards Review Community Consultation (Feedback from the Community)	2.30 – 3.00pm	Director Community and Recreation Services

### RECOMMENDATION

***That Council receive the report on Proposed Inspections and Briefings.***

1 Proposed Briefing Schedule - 25 July 2012 D03070976

Proposed Quarter	PROPOSED DATE	Briefing Title	Director	STAFF PRESENTING
3rd qtr	25 July 2012	Service Standard Review Pt II-results of the Community Consultation	Community & Recreation Services	CRS/Darryl Rayner
3rd qtr	25 July 2012	2012 Clr induction - Draft Program	Corporate Services	Lesley Crawley
3rd qtr	25 July 2012	Possible Committee Structure	Corporate Services	Lesley Crawley
3rd qtr	25 July 2012	Youth Employment Strategy	Corporate Services	Marie Hanson-Kentwell
3rd qtr	25 July 2012	Chinese Cultural Village theme park Councillor	Corporate Services	Brett Phillips/Garry McLachlan
3rd qtr	25 July 2012	Norah Head Boat ramp Part 2	Community & Recreation Services	Tara Mills/ Tim Burch
3rd qtr	August	Acquisition of Crown Land Tuggerah	corporate services	Brett Phillips
3rd qtr	August	Transfer of vegetation control from Roads & Stormwater to Open Space	Community & Recreation Services	Brett Sherar
3rd qtr	August	Porters Creek Floodplain Risk Management Plan	Infrastructure Management	Robert Fulcher
3rd qtr	August	Section 94 model including credits	Corporate Services/Environment and Planning Services	David Jack
3rd qtr	August	Affordable Housing Study - Pre exhibition	Environment and Planning Services	Martin Johnson / Melati Lye
3rd qtr	August	Employment Lands Study workshop	Environment and Planning Services	Consultants/Martin Johnson/Jonathan Luke
3rd qtr	August	Nth Wyong Industrial Precinct - Pre exhibition	Environment and Planning Services	Martin Johnson / Jonathan Luke
3rd qtr	August	Ausgrid (NOM 9.2 9 May 2012)	Environment and Planning Services	Ausgrid
3rd qtr	August	Plan of management central coast caravan parks	Community & Recreation Services	Tara Mills
3rd qtr	August	Q4 Report - Annual Plan and Financial Update - presented by GM	Corporate Services	

Proposed Quarter	PROPOSED DATE	Briefing Title	Director	STAFF PRESENTING
3rd qtr	Sept	PRECINCTS	Community & Recreation Services	Julie Vaughan
4th qtr	New Councillors	Urban Design Principles & Concepts	Environment and Planning Services	Paul Bowditch / Ana Lage
4th qtr	October	Full introduction CCWC for the new Council	Corporate Services/	Lesley Crawley
4th qtr	Oct/Nov	Tuggerah Lakes Floodplain Risk management Study and Plan	Infrastructure Management	Robert Fulcher
4th qtr	Oct	GM's quarterly expense report	GM unit	
4th qtr	Oct	RZ/7/2009 Chittaway Point Rezoning	Environment and Planning Services	Martin Johnson/Kathryn Heintz
4th qtr	Oct	Precinct 7A Masterplan - Feedback following exhibition	Environment and Planning Services	Scott Duncan / Chris Ferry
4th qtr	Oct	Frank Ballance Park Design	Environment and Planning Services	Paul Bowditch / Ana Lage
4th qtr	Oct	Customer Service Charter	Community & Recreation Services	Sue Ledingham
4th qtr	10-Oct	2011/12 Financial Statements - presented by CFO	Corporate Services	CFO
4th qtr	oct/nov	Bushfire Works Plan	Environment and Planning Services	Greg White
4th qtr	10 October 2012	Comprehensive LEP PRIOR TO exhibition	Environment and Planning Services	Martin Johnson
4th qtr	Nov	mid year performance review	Corporate Services	
4th qtr	28-Nov	Q1 Report - Annual Plan and Financial Update - presented by GM	Corporate Services	
4th qtr	14-Nov	Dart Energy - Presentation to Council	Infrastructure Management	Greg McDonald
4th qtr	End of Dec	Norah Head Boat ramp Part 3	Community & Recreation Services	Tara Mills/ Tim Burch
2nd Qtr		Iconic Development Site No 16 - 216-222 Main Road & Rowland Terrace, Toukley	Environment and Planning Services	Paul Bowditch / Jonathan Luke
3rd qtr		Central Coast Taxis	Infrastructure Management	Bob Burch
2nd Qtr		Natural Resources Strategy	Environment and Planning Services	Greg White
3rd qtr		Provide update of plans and financial viability of The Art House and Cultural Development	Community & Recreation Services	Julie Vaughan
3rd qtr		Draft Shire-Wide Contributions Plan	Environment and Planning Services	martin Johnson/David Kitson
3rd qtr		Toukley Town Centre Masterplan	Environment and Planning Services	Paul Bowditch / Gary Hamer
3rd qtr		Industrial Land and employment Lands study - Post exhibition	Environment and Planning Services	Martin Johnson / Jonathan Luke
4th qtr		Wyong Employment Zone - results of DCP and S94 Contributions Plan/Biocertification update, DCP amendment update	Environment and Planning Services	Martin Johnson
		Sea Level Rise Notification & 149 Certificate	General Counsel/Environment and Planning Services	Brian Glendenning/Martin Johnson/Rod Mergan



### **1.3 Confirmation of Minutes of Previous Meeting**

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TRIM REFERENCE: F2012/00026 - D03054087

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Sonia Witt; TL Governance and Councillor Services

#### **SUMMARY**

Confirmation of minutes of the previous Ordinary Meeting of Council held on 27 June 2012 and the Extraordinary Meeting of Council held on 28 June 2012.

#### **RECOMMENDATION**

***That Council confirm the minutes of the previous Ordinary Meeting of Council held on 27 June 2012 and the Extraordinary Meeting of Council held on 28 June 2012.***

#### **ATTACHMENTS**

- |          |   |           |
|----------|---|-----------|
| <b>1</b> | Minutes - Ordinary Meeting - 27 June 2012   | D03050260 |
| <b>2</b> | Minutes - Extraordinary Meeting - 28 June 2012  | D03052170 |
| <b>3</b> | Minutes - Extraordinary Meeting Confidential Session - 28 June 2012<br>(Distributed under separate cover) | D03052181 |

**WYONG SHIRE COUNCIL**

**MINUTES OF THE  
ORDINARY COUNCIL MEETING OF COUNCIL  
HELD IN THE COUNCIL CHAMBER  
WYONG CIVIC CENTRE, HELY STREET, WYONG  
ON 27 June 2012  
COMMENCING AT 5:00 PM**

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Councillors R L Graham (Chairperson), D J Eaton, L A Matthews, E M McBride, J J McNamara, W R Symington, D P Vincent, L D Webster and S A Wynn.

**IN ATTENDANCE**

General Manager, Director Environment and Planning Services, Director Infrastructure Management, Acting Director Corporate Services, Director Community and Recreation Services, General Counsel and Manager Development Assessment.

Manager Place Management, Manager Building Certification and Health, Communications and Marketing Coordinator and two administration staff.

The Mayor, Councillor Graham, declared the meeting open at 5.00 pm and advised in accordance with the Code of Meeting Practice that the meeting is being recorded.

Councillor Symington delivered the opening prayer and Councillor Matthews read an acknowledgment of country statement.

**APOLOGY**

An apology for the inability to attend the meeting was received on behalf of Councillor Best.

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

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

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

AGAINST: NIL

At the commencement of the ordinary meeting report numbers 1.1, 2.2, 2.3, 2.4, 2.5, 2.6, 4.2, 4.3, 7.1 and 7.2 were dealt with first, then the remaining reports were adopted via the exception method. However for the sake of clarity the reports are recorded in their correct agenda sequence.

## 1.1 Disclosures of Interest

### 9.1 Mayoral Minute – General Manager’s 2012/13 Performance Review Objectives

The General Manager, Mr Michael Whittaker, declared a pecuniary interest in the matter for the reason that it involves his employment contract and did not participate in the item.

### 7.1 Notice of Motion – Housing Jump Start

The Director Environment and Planning Services, Ms Gina Vereker, declared a pecuniary interest in the matter for the reason that her partner is a private certifier and the intention of this Notice of Motion, if adopted, may have a negative financial impact on private certifiers within the Shire and did not participate in the item.

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

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

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

AGAINST: NIL

## **PROCEDURAL MOTION**

### **SUSPENSION OF MEETING PRACTICE**

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

***1 That Council allow meeting practice to be varied.***

***2 That Council use the exception method to deal with the balance of the Agenda.***

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

AGAINST: NIL

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

***That with the exception of report numbers 2.2, 2.3, 2.4, 2.5, 2.6, 4.2, 4.3, 7.1 and 7.2 Council adopt the recommendations contained in the remaining reports.***

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

AGAINST: NIL

**1.2 Proposed Inspections and Briefings**

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

***That Council receive the report on Proposed Inspections and Briefings.***

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

AGAINST: NIL

**1.3 Confirmation of Minutes of Previous Meeting**

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

***That Council confirm the minutes of the previous Ordinary Meeting of Council held on 13 June 2012.***

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

AGAINST: NIL

**Business Arising**

There was no business arising.

**1.4 Address by Invited Speakers**

---

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

**1 *That Council receive the amended report on Invited Speakers.***

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

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

AGAINST: NIL

**1.5 Notice of Intention to Deal with Matters in Confidential Session**

---

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

- 1 That Council consider the following matter in Confidential Session, pursuant to Sections 10A(2)(a) and (c) of the Local Government Act 1993:  
  
9.1 - Mayoral Minute - General Manager's 2012/13 Performance Review Objectives**
- 2 That Council note its reason for considering Report No 9.1 – Mayoral Minute – General Manager's 2012/13 Performance Review, as it deals with personnel matters concerning particular individuals (other than Councillors).**
- 3 That Council request the General Manager to report on this matter in open session of Council.**

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

AGAINST: NIL

**2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley**

---

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

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

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

AGAINST: NIL

**2.2 DA/51/2012 - Additions and Alterations to existing Dwelling at Mardi**

---

Councillor Vincent left the meeting at 5.12 pm and returned to the meeting at 5.13 pm and as a result did not vote on this item.

Ms Emma Blake, speaking on behalf of her parents, addressed the meeting at 5.06 pm, answered questions and retired at 5.07 pm.

**RESOLVED on the motion of Councillor EATON and seconded by Councillor WEBSTER:**

***That Council defer this item for consideration at the next Council meeting on the 25 July 2012.***

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

AGAINST: COUNCILLOR WYNN

**2.3 DA/169/2012 - Proposed Additional Garbage Storage Area including the Construction of a Garbage Enclosure Fence at Fisherman's Wharf, The Entrance**

---

Councillor Vincent left the meeting at 5.12 pm and returned to the meeting at 5.13 pm during consideration of this item.

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

**1 That Council grant a Deferred Commencement consent having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues, subject to the conditions detailed in the schedule attached to the report and including the following additional condition:**

- The garbage enclosure must be amended to incorporate a retractable roof or awning structure to ensure the contents of the garbage storage area are not visible from The Entrance Bridge. Details of the roof structure, including the means of attaching the structure to the wall of the building, colours and materials must be submitted and approved by the Principle Certifying Authority prior to the release of the Construction Certificate.***

**2 That Council advise those who made written submissions of its decision.**

**3 That Council, in consideration and assessment of the Waste Management Plan, request the General Manager to direct staff to give specific attention to odour control, frequency of collections and ensuring that the waste is stored within the specified enclosure.**

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

AGAINST: NIL

**2.4 DA/339/2012 - Proposed Detached Secondary Dwelling at 17 Carlyon Street, Killarney Vale**

---

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

***That Council grant consent, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues, subject to the conditions detailed in the schedule attached to the report with the deletion of the section 94 contributions.***

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

AGAINST: NIL

**2.5 Tuggerah Town Centre State Significant Site**

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**RESOLVED on the motion of Councillor WYNN and seconded by Councillor SYMINGTON:**

***That Council defer this item for consideration at the next Council meeting on the 25 July 2012.***

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

AGAINST: NIL

**2.6 Draft NSW Urban Activation Precincts**

---

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

**1 That Council lodge a formal submission to the Director General of the Department of Planning and Infrastructure in response to the draft Urban Activation Precincts Program in accordance with the matters raised in this report and including its significant concern in respect to the following issues:**

- ***That Council is very concerned that it does not have the financial resources to fund the required infrastructure and consequently the Urban Activation Precinct Program will fail to be delivered in Wyong Shire.***
- ***That the Guidelines are inconsistent with the provisos contained with Council's resolution of 22 February 2012;***
- ***That the Guidelines significantly reduce Council's power to deal with local planning matters;***
- ***That the Guidelines represent a clear position from the Department of Planning and Infrastructure allocating infrastructure funding responsibility upon local government.***
- ***That the Guidelines suggest a lack of meaningful community engagement in the proposed process;***

- *That the Guidelines will result in potential significant impacts on the effectiveness of Council's existing strategic planning documents.*
- *That the State Government honour its past commitment to Local Government that gave the commitment that the management of the precinct rezoning process would lie with Local Government.*

**2** *That Council direct the General Manager to request the proponent of the Wadalba East Precinct to reiterate its previous commitment to fully fund the provision of all required infrastructure within this Precinct.*

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

AGAINST: NIL

### **3.1 CPA/207013 - Sewer Main Rehabilitation**

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

- 1** *That Council accept the tender from the company nominated as Tenderer '3' in the attached Tender Evaluation Report, in the estimated Schedule of Rates amount of \$1,102,936 (excl GST) for Contract CPA/207013 – Sewer Main Rehabilitation -Various Locations in Wyong Shire.*
- 2** *That Council determine the Tender Evaluation Report in Attachment A remains confidential in accordance with Section 10 A (2) (d) of the Local Government Act 1993 as the report contains commercial information of a confidential nature.*
- 3** *That Council approve the budget sum as detailed in the Tender Evaluation Report in Attachment A.*

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

AGAINST: NIL

### **4.1 Review of the Model Code of Conduct for Local Councils - Request for Submissions on Consultation Draft**

---

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

*That Council note the consultation drafts of the Model Code of Conduct, the new procedures for the administration of the Model Code and the proposed amendments to the Local Government Act, 1993.*

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

AGAINST: NIL



#### **4.2 Adjustment of Joint Water Capital Works Budgets**

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

- 1 That Council reduce the budget allocated to Site Improvement Works at Mardi from \$1,725,000 to \$1,395,000.**
- 2 That Council reduce the budget allocated to Toukley Desalination Plant from \$530,000 to \$230,000.**
- 3 That Council increase the budget allocated to Gosford Distribution Works for the Mardi High Lift Pumping Station from \$1,870,000 to \$2,500,000.**
- 4 That Council reduce the budget allocated to Lower Mooney Dam Remedial/Removal Works from \$2,476,119 in 2012/2013 to zero.**
- 5 That Council reduce the budget allocated to Water Trunk Mains from \$1,477,507 to \$577,507.**
- 6 That Council increase the budget allocated to Somersby Filtration Plant Upgrade from \$3,200,000 to \$6,500,000.**

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

AGAINST: NIL

#### **4.3 Community Facilities Strategy**

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**RESOLVED on the motion of Councillor WYNN and seconded by Councillor SYMINGTON:**

- 1 That Council adopt the Community Facilities Strategy – Summary Report.**
- 2 That Council note that the implementation plan will be undertaken as part of day to day business as part of Service Unit Business Plans.**
- 3 That, upon completion of the Community Facility Strategy and Review of Asset Portfolio (RAP), Council consider granting a 2 year time frame to facilities that are deemed to be underutilised and underperforming, to enable them turn that situation around**
- 4 That Council investigate cross subsidisation of the facilities where possible.**

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

AGAINST: COUNCILLORS MATTHEWS, MCBRIDE AND VINCENT

#### 4.4 Learning Community Strategy

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

**That Council adopt the Wyong Shire Learning Community Strategy 2012 – 2015.**

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

AGAINST: NIL

#### 4.5 Contract Variations and Finalisation - April & May 2012

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

- 1 **That Council receive the Contract Variations and Finalisation for April & May 2012.**
- 2 **That Council notes additional expenditure above resolved estimates for the following contracts:**

<b>Contract Title</b>	<b>Contract No</b>	<b>Adjusted Contract Value (Excl GST)</b>	<b>Additional Budget Approval (Excl GST)</b>
<b>In Situ Stabilisation Works on Councils Roads</b>	<b>CPA/163632</b>	<b>\$10,310,430.00</b>	<b>\$3,000,000.00</b>
<b>Fire Protection Inspection, Testing and Maintenance Services</b>	<b>CPA/147221</b>	<b>\$356,720.86</b>	<b>\$246,178.15</b>
<b>Construction Manager Mardi to Mangrove Link Project</b>	<b>CPA/166760</b>	<b>\$4,350,000.00</b>	<b>\$150,000.00</b>

- 3 **That Council note the additional expenditures requested are within approved program budgets.**

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

AGAINST: NIL

**5.1 Information Reports**

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

**That Council receive the report on Information Reports.**

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

AGAINST: NIL

**5.2 Works in Progress - Water Supply and Sewerage**

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

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

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

AGAINST: NIL

**5.3 Activities of the Development Assessment and Building Certification and Health Units**

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

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

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

AGAINST: NIL

**5.4 Mardi to Mangrove Link Project Status**

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

**That Council receive the report on Mardi to Mangrove Link Project Status.**

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

AGAINST: NIL

**5.5 Results of Water Quality Testing for Beaches and Lake Swimming Locations**

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

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

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

AGAINST: NIL

**5.6 Investment Report for May 2012**

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

***That Council receive the Investment Report for May 2012.***

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

AGAINST: NIL

**5.7 Outstanding Questions on Notice and Notices of Motion**

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

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

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

AGAINST: NIL

**7.1 Notice of Motion - Housing Jump Start**

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The Director Environment and Planning Services, Ms Gina Vereker, declared a pecuniary interest in the matter for the reason that her partner is a private certifier and the intention of this Notice of Motion, if adopted, may have a negative financial impact on private certifiers within the Shire and did not participate in the item.

Councillor Vincent left the meeting at 6.19 pm and returned to the meeting at 6.20 pm during consideration of this item.

Councillor Matthews left the meeting at 6.30 pm and returned to the meeting at 6.32 pm during consideration of this item.

**RESOLVED on the motion of Councillor EATON and seconded by Councillor GRAHAM:**

**That Council direct the General Manager to report to Council on the benefits and disbenefits of a short term moratorium on Development Application fees, Construction Certificate fees and Complying Development fees for single detached housing and additions only.**

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

AGAINST: COUNCILLORS MATTHEWS, MCBRIDE, VINCENT AND WYNN

## **7.2 Notice of Motion - Council Calls to Stop Community Building Partnership Cuts**

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*It was MOVED by Councillor VINCENT and seconded by Councillor MATTHEWS:*

- 1 *That Council note that Wyong Shire has received in excess of \$2,000,000 for community and infrastructure projects from the State Government's Community Building Partnership program in 2009, 2010 and 2011.*
- 2 *That Council note that this funding has assisted the Council and the community to undertake many worthwhile projects such as:*
  - a *Wyong Shire Council – Baker Park Northern Carpark and Recreational Space - \$22,400.*
  - b *Wyong Shire Council – Upgrade of Community Reserve - \$30,000.*
  - c *Soldiers Beach Surf Lifesaving Club – Club fitout - \$59,909.*
  - d *Toukley and District Senior Citizens Club Inc – replacement of bowls room roof - \$30,000.*
  - e *San Remo Community Garden - Establishment of a Permaculture Education centre - \$25,000.*
  - f *Northern Lakes Rugby League Sport and Recreation Club – Construction of Clubhouse and Amenities block - \$50,000.*
- 3 *That Council note with concern media reports that the NSW Treasurer will cut the funding provided through the Community Building Partnership by one third (from \$400,000 to \$300,000) in the 2012-13 State Budget.*
- 4 *That Council note with concern any reduction in funding available to Community groups and the Council from the State Government places financial pressure on the Shire's ability to invest in infrastructure and deliver quality local services.*
- 5 *That Council call on the O'Farrell Government not to cut the funding available through Community Building Partnership in the 2012-13 State Budget, and instead make a full allocation of \$35 million available for community groups and Councils to invest in local infrastructure.*

An AMENDMENT was MOVED by Councillor EATON and seconded by Councillor MCNAMARA:

- 1 That Council note that Wyong Shire has received in excess of \$2,000,000 for community and infrastructure projects from the State Government's Community Building Partnership program in 2009, 2010 and 2011.
- 2 That Council note that this funding has assisted the Council and the community to undertake many worthwhile projects such as:
  - a Wyong Shire Council – Baker Park Northern Carpark and Recreational Space - \$22,400.
  - b Wyong Shire Council – Upgrade of Community Reserve - \$30,000.
  - c Soldiers Beach Surf Lifesaving Club – Club fitout - \$59,909.
  - d Toukley and District Senior Citizens Club Inc – replacement of bowls room roof - \$30,000.
  - e San Remo Community Garden - Establishment of a Permaculture Education centre - \$25,000.
  - f Northern Lakes Rugby League Sport and Recreation Club – Construction of Clubhouse and Amenities block - \$50,000.
- 3 That Council note with concern media reports that the NSW Treasurer will cut the funding provided through the Community Building Partnership by one third (from \$400,000 to \$300,000) in the 2012-13 State Budget.
- 4 That Council note with concern any reduction in funding available to Community groups and the Council from the State Government places financial pressure on the Shire's ability to invest in infrastructure and deliver quality local services.
- 5 That Council call on the O'Farrell Government not to cut the funding available through Community Building Partnership in the 2012-13 State Budget, and instead make a full allocation of \$35 million available for community groups and Councils to invest in local infrastructure.
- 6 That Council call on the Federal Government to exempt Council from the Carbon Tax.

**The AMENDMENT was put to the VOTE and declared LOST.**

FOR: COUNCILLORS EATON, MCNAMARA AND WEBSTER

AGAINST: COUNCILLORS GRAHAM, MATTHEWS, MCBRIDE, SYMINGTON, VINCENT AND WYNN

**RESOLVED on the motion of Councillor VINCENT and seconded by Councillor MATTHEWS:**

- 1 That Council note that Wyong Shire has received in excess of \$2,000,000 for community and infrastructure projects from the State Government's Community Building Partnership program in 2009, 2010 and 2011.
- 2 That Council note that this funding has assisted the Council and the community to undertake many worthwhile projects such as:
  - a Wyong Shire Council – Baker Park Northern Carpark and Recreational Space - \$22,400.

- b Wyong Shire Council – Upgrade of Community Reserve - \$30,000.**
  - c Soldiers Beach Surf Lifesaving Club – Club fitout - \$59,909.**
  - d Toukley and District Senior Citizens Club Inc – replacement of bowls room roof - \$30,000.**
  - e San Remo Community Garden - Establishment of a Permaculture Education centre - \$25,000.**
  - f Northern Lakes Rugby League Sport and Recreation Club – Construction of Clubhouse and Amenities block - \$50,000.**
- 3 That Council note with concern media reports that the NSW Treasurer will cut the funding provided through the Community Building Partnership by one third (from \$400,000 to \$300,000) in the 2012-13 State Budget.**
- 4 That Council note with concern any reduction in funding available to Community groups and the Council from the State Government places financial pressure on the Shire’s ability to invest in infrastructure and deliver quality local services.**
- 5 That Council call on the O’Farrell Government not to cut the funding available through Community Building Partnership in the 2012-13 State Budget, and instead make a full allocation of \$35 million available for community groups and Councils to invest in local infrastructure.**

FOR: COUNCILLORS MATTHEWS, MCBRIDE, SYMINGTON, VINCENT, WEBSTER AND WYNN

AGAINST: COUNCILLORS EATON, GRAHAM AND MCNAMARA

The Director of Environment and Planning Services reported the resolutions of the Confidential Item to the Ordinary meeting of Council as follows:

**9.1 Mayoral Minute - General Manager's 2012/13 Performance Review Objectives**

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***That Council endorse the General Manager’s performance review content for the 2012/13 assessment.***

**THE MEETING** closed at 6.52 pm.

**WYONG SHIRE COUNCIL**

**MINUTES OF THE  
EXTRAORDINARY MEETING OF COUNCIL  
THE GOSFORD REGIONAL GALLERY AND ARTS CENTRE  
36 WEBB ST, EAST GOSFORD  
ON 28 JUNE 2012  
COMMENCING AT 7.00 PM**

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**PRESENT**

Councillors R L Graham (Chairperson), D J Eaton, L A Matthews, E M McBride, J J McNamara, W R Symington, D P Vincent and S A Wynn.

**IN ATTENDANCE**

General Manager, Director Environment and Planning Services, Director Infrastructure Management, Acting Director Corporate Services, Director Community and Recreation Services and General Counsel.

Executive Manager to the General Manager, Communications Officer – Program Management Office for Central Coast Joint Services, and two administration staff.

The Mayor, Councillor Graham, declared the meeting open at 7.00 pm and advised in accordance with the Code of Meeting Practice that the meeting is being recorded.

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

**APOLOGIES**

An apology for the inability to attend the meeting was received on behalf of Councillors Best and Webster who have advised that they will not be in attendance at this meeting.

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

***That Council accept the apologies and grant Councillors Best and Webster leave of absence from the meeting.***

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

AGAINST: NIL



**1.1 Notice of Intention to Deal with Matters in Confidential Session**

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

- 1 That Council consider the following matters in Confidential Session, pursuant to Sections 10A(2)(d), (i) and (ii) of the Local Government Act 1993:**

**Report no 3.1 Central Coast Water Corporation - Statement of Corporate Intent**

- 2 That Council note considering item 3.1 in confidential session is the reports require commercial discussion and agreement with another party (Gosford City Council) before they can be presented for Wyong Shire Council's endorsement.**
- 3 That Council note the reason for considering item 3.1 in confidential session is that it would confer a commercial advantage on a competitor of the Council.**
- 4 That Council request the General Manager to report on this matter in open session of Council.**

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

AGAINST: NIL

**1.2 Disclosures of Interest**

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

**That Council receive the report on Disclosure of Interest and the fact that no disclosure was made be noted.**

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

AGAINST: NIL

**2.1 Proposed Legal and Governance Framework for Shared Services - Gosford City Council and Wyong Shire Council**

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

- 1 That Council adopt the Interim Strategic Alliance model to facilitate the initial stages of the implementation of the JSB.**
- 2 That Council note that the Interim Strategic Alliance Legal and Governance Framework is to ensure:-**
  - a Continued Job Security in accordance with the legislative requirements of the Central Coast Water Corporation Act 2006 (NSW) and the resolutions of the two Councils.**
  - b Continued ownership of the assets by the Central Coast Community**
  - c Capture and share knowledge and innovation**
  - d Connect Councils in maximising service delivery opportunities to meet common community needs**
  - e Access economies of scale**
  - f Reduce costs through the elimination of duplication**
- 3 That Council direct the General Manager to enter into a Memorandum of Understanding with Gosford City Council and the Unions for the Interim Strategic Alliance Framework herein called the 'Central Coast Corporation Alliance'.**
- 4 That the Council endorse a study tour consisting of the General Manager and four (4) staff from each Council be undertaken to review the jointly owned corporate entities that have been successfully developed by Auckland and Bay of Plenty Councils in New Zealand.**
- 5 That Council note that a detailed report will then be presented to both Councils in mid 2013, detailing progress to date, the implementation progress of the interim Strategic Alliance model and progression towards a long term preferred legal and governance models for the JSB once fully established in July 2017.**

**This report will include the following:-**

- a Current update in respect of the Strategic Joint Alliance**
- b Clarification of Key Performance indicators.**
- c Key Dates and Responsibilities for various models**
- d Alternate legal and governance frameworks for Council's consideration and progress for a preferred long term legal and governance frameworks for Council's consideration.**

- 6 That Council authorise the Mayor and General Manager meet with the Division of Local Government together with the Mayor and General Manager of Gosford City Council to seek funding assistance of approximately \$250,000 for the development and implementation of a preferred legal & governance framework for the Joint Services Business.
- 7 That Council request the General Manager to provide reports on the actions of the Project Control Group and note that these reports will also be considered by Gosford City Council.
- 8 That Council request the CCROC to meet bi-monthly, or as required.

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

AGAINST: NIL

## 2.2 Implementation of the CCWC & JSB Under the Council's Adopted Model

**RESOLVED** unanimously on the motion of Councillor WYNN and seconded by Councillor MCNAMARA:

- 1 That Council adopt the attached Central Coast Water Corporation and Joint Services Business Implementation Workplan and refer to the Central Coast Water Corporation and to the NSW Minister for Water in accordance with the Memorandum of Understanding (MoU).
- 2 That as a consequences of one (1) above Council write to the Minister for Water to confirm that obligations under the MoU have been completed and that the MoU be terminated.
- 3 That Council note the attached working draft Strategic Project Management Plan, including specifically the change in the program management office resourcing and costs as a result of the adopted operating model and implementation timetable.
- 4 That Council note the attached working draft Project Management Plans for each of the Finance, Human Resources, Information Management, Plant/Fleet and Water and Wastewater working groups.
- 5 That Council endorse a delegation comprising the Councils' General Managers and Mayors meet with the Minister for Primary Industries and Minister for the Central Coast to discuss the Councils' resolutions in relation to the implementation of the Central Coast Water Corporation and Joint Services Business and any legislative changes required to accommodate the Councils' adopted operating model.
- 6 That Council submit an application for funding to the Division of Local Government to assist with the cost of implementing the Councils' adopted operating model.

- 7 That Council delegate the General Manager and Gosford City Council General Manager to commence, on behalf of the Councils, discussions with the unions to develop a new industrial instrument to cover staff under the new operating arrangements.**

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

AGAINST: NIL

### **2.3 Corporate Governance**

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

**That Council adopt the appointment of Mr Stephen Glen as Gosford City Council's Deputy Director and Mr Greg McDonald as Wyong Shire Council's Deputy Director to attend meetings of the Central Coast Water Corporation Board of Director's in the absence of the Councils' nominated Directors.**

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

AGAINST: NIL

### **2.4 Implementation Of The Central Coast Water Corporation**

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**RESOLVED unanimously on the motion of Councillor WYNN and seconded by Councillor MCNAMARA:**

- 1 That Council resolve, in relation to the Constitution of the Central Coast Water Corporation, as follows:**
- a To revoke the current Constitution of Central Coast Water Corporation and replace it with the tabled Constitution of Central Water Corporation which shall be the constitution of the Corporation for the purposes of section 8 of the Central Coast Water Corporation Act 2006 (NSW).**
  - b To execute the Constitution under Council seal**
  - c To authorise the Mayor and General Manager sign the tabled written resolution**
  - d To request the General Manager to provide a copy of the adopted Constitution to the Minister for Primary Industry for tabling in Parliament within 14 days of its adoption**

- 2 That Council resolve, in relation to the Voting Shareholders' Agreement, as follows:
- a To approve the tabled Voting Shareholders' Agreement as the voting shareholders agreement for the Corporation for the purposes of section 10 of the Central Coast Water Corporation Act 2006 (NSW) and executed under Council seal
- 3 That Council approve the tabled Service Level and Funding Agreement and authorise execution under Council seal
- 4 That Council approve the tabled Joint Scheme Funding Agreement and authorise execution under Council seal
- 5 That Council direct the GM to contact Minister for Primary Industry requesting amendment of the Central Coast Water Corporation Act 2006, Water Management Act 2000 and Local Government Act 1993 to
- a enable the leasing of water and wastewater infrastructure assets from the Councils to the Corporation
- b increase the number of Council representative Board members from two (2) to four (4)
- c make other changes as outlined in the tabled Schedule of Legislative Amendments.

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

AGAINST: NIL

### CONFIDENTIAL SESSION

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

**That Council move into Confidential Session.**

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

AGAINST: NIL

At this stage of the meeting being 7.07 pm council moved into Confidential Session with the members of the press and public excluded from the meeting of the closed session and access to the correspondence and reports relating to the items considered during the course of the closed session being withheld. This action is taken in accordance with Section 10a of The Local Government Act, 1993 as the items listed come within the following provisions:-

**OPEN SESSION**

Council resumed in open session at 7.08 pm and the General Manager reported on proceedings of the confidential session of the ordinary meeting of council as follows:

**3.1 Central Coast Water Corporation Board - Statement of Corporate Intent**

**RECOMMENDATION**

***That Council approve and adopt the report on the Central Coast Water Corporation - Statement of Corporate Intent for 2011/12.***

**THE MEETING** closed at 7.09 pm.

## **1.4 Address By Invited Speakers**

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TRIM REFERENCE: F2012/00026 - D03054110

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Sonia Witt; TL Governance and Councillor Services

### **SUMMARY**

There have been no requests to address the Ordinary Meeting at the time of printing the Business Paper.

### **RECOMMENDATION**

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

## **2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance**

---

TRIM REFERENCE: DA/607/2006/D - D03066307

MANAGER: Peter Fryar, Manager Development Assessment

AUTHOR: Emily Goodworth; Team Coordinator, Applications

### **SUMMARY**

An application has been received under Section 96(1A) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* for the modification of Conditions 10 and 54 of development consent DA/607/2006/D relating to the provision of unrestricted public access to the roof terrace observation deck of the Azzurro Blue Wharf development, and the requirement for the observation deck to be open to the public when the restaurants are trading. The development consent, the subject of this application, granted approval for the construction of the Fishermans Wharf Development. The proposed modification also seeks approval for the erection and use of a security door on the stairway accessing the observation deck. The application has been examined having regard to the matters for consideration detailed in Sections 96(1A) and 79C of the EP&A Act and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

<b>Applicant</b>	Sydney Civil Developments Pty Ltd
<b>Owner</b>	Wyong Shire Council
<b>Application No</b>	DA/607/2006/D
<b>Description of Land</b>	Lot 1 DP 1012476 & Lot 101 DP 1046474 (12) The Entrance Road, The Entrance
<b>Proposed Development</b>	Section 96(1A) for the modification of conditions relating to public access to the roof terrace observation deck and installation and use of a security door
<b>Site Area</b>	1,177.2m <sup>2</sup>
<b>Zoning</b>	6(a) Open Space and Recreation
<b>Existing Use</b>	Restaurants and Function Centre
<b>Estimated Value</b>	\$2,500

### **RECOMMENDATIONS**

- 1 That Council modify the consent having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act 1979 and other relevant issues.**
- 2 That Council advise those who made written submissions of its decision.**



## 2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)

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### PRECIS

- The development on the subject site is known as Azzurro Blu Wharf, comprising restaurants (ground floor), a function centre (first floor) and a roof terrace observation deck that is available for use by the public.
- The site is zoned 6(a) Open Space and Recreation under Wyong Local Environmental Plan 1991 (WLEP) with the development being a permissible use in the zone.
- Development Consent (DA/607/2006/C), the subject of this application, granted approval for the construction of a *Fisherman's Wharf Waterfront tourist and commercial development incorporating restaurants, retail tenancies, public facilities and boardwalk*.
- The proposal is for a Section 96(1A) modification to development consent 607/2006/C involving the modification of conditions 10 and 54 which required unrestricted public access to be provided to the roof terrace observation deck. The general public (non-customers) would be provided unrestricted access to the roof terrace observation deck between the hours of 8.00am - 5.00pm Australian Eastern Standard Time (AEST) seven (7) days a week, and 8.00am - 7.00pm Australian Eastern Daylight Time (AEDT) seven (7) days a week. The modification will allow for exclusive use of the area for tenant(s) and patrons of all premises within the development, between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), seven (7) days a week and will prohibit use of the roof terrace observation deck by any person between 10.00pm – 8.00am (seven (7) days a week).
- The application also seeks approval for the erection and use of a security door that will provide the appropriate impediment for access control to the area.
- By virtue of the proposed modifications, which subsequently change the nature of the use of the roof terrace observation deck to a public/private arrangement, amendments to other conditions of development consent and the addition of new conditions of development consent (conditions 10A, 10B, 10C, 64 and 65) have been recommended as part of the Section 96 (1A) assessment.
- The proposal was placed on public notification concurrently with the proposed modifications for DA/1457/2010/D (subject of a separate Section 96(1A) application), for a period of 14 days in accordance with Development Control Plan 2005 (DCP 2005) Chapter 70 - Notification of Development Proposals. Fourteen (14) submissions were received during the exhibition period. These submissions are addressed further in the report.
- The modifications proposed by the applicant, subject to the changes and inclusion of the additional conditions and amendments detailed further in the report, are recommended for approval. It is considered appropriate to limit the modified access arrangement to a trial period of twelve (12) months. This will enable Council to gauge the suitability of the limited use of the roof terrace observation deck to the general public between limited hours in the evening.

## 2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)

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### INTRODUCTION

#### The Site

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

#### The Proposed Development

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

The development consent imposed two conditions, conditions 10 and 54, which required unrestricted public access to the roof terrace observation deck during operating hours of the development/whilst the restaurants were trading. It is these conditions which the applicant is seeking to amend under this Section 96(1A) application.

Condition 10 reads as follows:

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

Condition 54 reads as follows:

- 54 *The approved advertisement/s must be maintained in a presentable and satisfactory state of repair. Once completed the observation deck must be open to the public whilst the restaurants are trading.*

The purpose of this Section 96(1A) application is to modify the conditions of consent (detailed above) to restrict public access to the roof terrace observation deck so that public access is available only between the hours of 8.00am and 5.00pm daily. The restriction for public use after 5.00pm is considered reasonable during Australian Eastern Standard Time (AEST). However, during daylight saving months it is considered that access should be extended until 7.00pm Australian Eastern Daylight Time (AEDT). The availability of the roof terrace observation deck for an additional two hours during daylight saving is considered appropriate and will ensure that the public continue to gain adequate access to the roof terrace observation deck during daylight hours.

It is recommended that the modified access arrangements be permitted for a twelve (12) month trial period to gauge the management of the revised operations.

## 2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)

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The application involves an amendment to Condition 10 to remove the requirement for “*unrestricted access*” during the “*operating hours of the development*”. Accordingly, the condition would be amended to impose hours where the roof terrace observation deck was to remain available to the public. The modification to Condition 54 would remove the wording “*open to the public whilst the restaurants are trading*”.

It should be noted that the current consent entitles the public, tenant(s) and their patrons to have unrestricted access to the roof terrace observation deck. Moreover, the roof terrace observation deck area is the subject of the current lease. It is considered reasonable to impose a restriction on public access to the roof terrace observation deck while still maintaining public access generally between daylight hours i.e. 8.00am – 5.00pm (AEST) and 8.00am - 7.00pm (AEDT) daily.

If approval is granted to the modifications under this Section 96(1A) application, and there is no requirement for public access to the roof terrace observation deck after 5.00pm (AEST) and 7.00pm (AEDT), then the tenant(s) and patrons will be able to use this area to the exclusion of the general public between the hours of 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT).

The proposed modifications to conditions 10 and 54 should include the addition of conditions 10A, 10B, 10C, 13, 64, 65, and 66 in the modified consent. These additional conditions have been proposed for inclusion in the development consent as they relate to the modifications proposed by the applicant and the change of use in the nature of the roof terrace observation deck to a more distinct public/private arrangement. The additional modifications proposed have been recommended for a planning purpose and comply with the relevant requirements of Section 80A of the EP& A Act and result in substantially the same development as that which was originally approved under DA/607/2006.

The application also seeks approval for the erection and use of a security door which will provide the appropriate impediment for access control to the roof terrace observation deck. As such, this Section 96(1A) application will also involve an amendment to Condition 1 relating to the approved plans, including the addition of the plan submitted with the Section 96(1A) application, ***plan reference A-202, Issue F, dated 21 May 2012 prepared by CKDS Architecture***. This plan details the proposed location of the security door. The current location of the door (refer figure 1) does not comply with the requirements of the Building Code of Australia (BCA), as such, an amended plan was received which now proposes the door in a location which satisfies the requirements of Section D2.15 of the BCA.

**2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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**Figure 1:** Location of the existing security door installed to the roof terrace observation deck and area that sign is to be erected advising of public availability to the roof terrace observation deck, free of charge.

**Applicant's Submission**

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

- *Consent No 607/2006/C:*

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

- *Consent No 1457/2010/A:*

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

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

## 2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)

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

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

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

*This application is therefore made pursuant to Section 96 (1A) of the Environmental Planning and Assessment Act 1979 to modify Development Consent No 607/2006/C... in the following manner:*

- *Consent No 607/2006/C: Modify condition 10 to read:*
  - "10. The public are to have unrestricted access to the observation deck between the hours of 8.00am and 5.00pm daily and building tenants and their patrons are permitted to have access to the observation deck between 5.00pm and 10.00pm daily."*

### **Modification of conditions**

The proposed modifications to the approved development are as follows:

- The modification of Condition 1.

**2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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Amend Condition 1 to read (refer to bold):

1. *The development taking place in accordance with the:*

- *Approved development plans numbered 3103-DA-01(B), 02(F), 03(E), 04(E), 05(F), 06(D), 07(F), 08(F), 09(D), 011(B), 012(C), 13(C), 14(C), 15(D), 21(A), 22(A) Statement of Environmental Effects dated 13 April 2006 prepared by Nettleton Tribe Partnership Pty Ltd (as amended by letter dated 29 November 2006).*
- *Arboriculturalist's Report dated 13 April 2006 prepared by Advanced Treescape Consulting and Addendum dated 2 June 2006.*
- *Hydraulic Services – Stormwater Drainage Report dated 13 April 2006 prepared by VOS Hydraulics Limited*
- *Approved plan number VOS ESK-01, MSK-01, MSK-02, MSK-03, MSK-04*
- *BCA Report dated 13 April 2006 prepared by BCA Logic Pty Ltd.*
- *Landscape Report dated 12 April 2006 prepared by Design Ideas Gardens*
- *Statement of Heritage Impact dated 15 July 2006 (Unsigned)*
- *Final Report Security Consulting Services dated June 2006 prepared by Harris Crime Prevention Services*
- *Waste Management Plan dated 10 July 2006 (Unsigned)*
- *Sample of proposed balustrade*
- *The Entrance – Retail Impact Study dated October 2006 by Savills Pty Ltd*

*Except as modified (under DA/607/2006/B) by amended architectural plans prepared by Nettleton Tribe numbered:*

- *3103\_101 issue E dated 17.08.07*
- *3103\_111 issue L dated 17.08.07*
- *3103\_112 issue K dated 17.08.07*
- *3103\_113 issue I dated 17.08.07*
- *3103\_114 issue F dated 17.08.07*
- *3103\_201 issue E dated 17.08.07*
- *3103\_202 issue D dated 17.08.07*
- *3103\_203 issue B dated 17.08.07*
- *3103\_301 issue G dated 17.08.07*
- *3103\_302 issue E dated 17.08.07*

*Except as modified (under DA/607/2006/D) by amended architectural plan:*

- ***plan reference A-202, Issue F, dated 21 May 2012, prepared by CKDS Architecture***

*Except as modified by any conditions of consent and amendments in red as follows:*

- ***Removal of the existing security door***

Comment

The modification of Condition 1 involves the reference to an additional plan which identifies a security door restricting access to the roof terrace observation deck as shown on plan A-202, Issue F, dated 21 May 2012 prepared by CKDS Architecture.

**2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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- The modification of Condition 10.

Amend Condition 10 to read (refer to bold):

**10 For a period of twelve (12) months from the date of this modified consent:**

- (a) The public are to have unrestricted, safe and convenient access to the roof terrace observation deck during the hours of 8.00am - 5.00pm (AEST), seven (7) days a week and 8.00am - 7.00pm (AEDT), seven (7) days a week; and**
- (b) The tenants and patrons of the development are to have exclusive access to the roof terrace observation deck between the hours of 5.00pm - 10.00pm (AEST), seven (7) days a week and 7.00pm - 10.00pm (AEDT), seven (7) days a week; and**
- (c) No person shall have access to the roof terrace observation deck between the hours of 10.00pm - 8.00am, seven (7) days a week.**

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

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

Comment

The above amendments enable the roof terrace observation deck to be used by the public during daylight hours. Restricting the availability of the roof terrace observation deck is considered reasonable as it allows for better security to the building and enables the tenants to control the use of the roof terrace observation deck at night when the applicant claims anti-social behaviour is more prevalent. It will also allow for better control of the roof terrace observation deck and ensure the area is used in an appropriate manner. The control and responsibility of the use of the roof terrace observation deck will fall upon the business operators within the development during the hours specified above, that is, 5.00pm - 10.00pm (AEST), seven (7) days a week and 7.00pm - 10.00pm (AEDT), seven (7) days a week.

The imposition of a twelve (12) month trial period will enable Council to monitor the amenity and social impacts arising from the modified use of the roof terrace observation deck.

The amended condition provides clarity to the community, tenant(s) and patrons as to when the roof terrace observation deck is available for use by the public. The inclusion of the wording "roof terrace" has been inserted into the condition to align with the description on the stamped approved development plans for DA/607/2006.

**2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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- Addition of new Condition 10A to read:

**10A For a period of twelve (12) months from the date of this modified consent, the door identified in plan reference A-202, Issue F, dated 21 May 2012 prepared by CKDS Architecture, must be kept secured in an open position between the hours of 8.00am - 5.00pm (AEST), seven (7) days a week and 8.00am - 7.00pm (AEDT), seven (7) days a week. For the sake of clarity “open” means not closed and not locked. At no time shall the door be impeded.**

Comment

The additional plan referred to in conditions 1 and 10A identifies the location of the proposed security door. The purpose of this condition is to clearly state when the door is to be open, therefore providing unrestricted, safe and convenient access to the roof terrace observation deck. It is considered that the wording should avoid any ambiguity for anyone referring to the conditions of consent.

- Addition of new Condition 10B to read:

**10B Prior to the use of the security door to the roof terrace observation deck, pursuant to condition 10A, a sign shall be erected at the ground floor level of the stairs on the eastern elevation of the building. The sign shall have the following characteristics:**

- (a) is to be a minimum A1 size and clearly legible in a typed font; and**
- (b) shall be worded as follows: “Full, unrestricted access to the roof terrace observation deck is available to the public between the hours of 8.00am - 5.00pm (Australian Eastern Standard Time), seven (7) days a week and 8.00am - 7.00pm (Australian Eastern Daylight Time), seven (7) days a week”.**

**The sign must be constructed and maintained in a presentable and satisfactory state of repair for the life of the development.**

Comment

The erection of the sign will provide clarity to the public when the roof terrace observation deck is available for use. This condition clearly states where the sign is to be erected so that it is in a prominent position and is able to be easily viewed by the community and visitors to the area.

- Addition of new Condition 10C to read:

**10C No charge is to be imposed on members of the public exercising access to the roof terrace observation deck under this Development Consent.**



2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)

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Comment

This clearly states that no person, including the tenant(s), is able to charge members of the public for access to the roof terrace observation deck which has been nominated as a form of public open space within the development.

- Amend Condition 13 to read (refer to bold):

13 A Construction Certificate is to be issued by the Certifying Authority prior to the commencement of any works. The application for this Certificate is to satisfy all the requirements of the Environmental Planning and Assessment Regulation 2000. **For the sake of clarity this condition applies to building works that are permitted by the granting of the modification application DA/607/2006/D.**

Comment

The above modification to original condition 13 will ensure that it is clear that a Construction Certificate is required for the proposed erection of the security door and associated security enclosure. It will also ensure that those building works comply with all relevant standards including, but not limited to, the fire safety standards set out in the Building Code of Australia (BCA).

- The modification of Condition 54.

Amend Condition 54 to read (refer to bold and strike through):

54 The approved advertisement/s must be maintained in a presentable and satisfactory state of repair. ~~Once completed the observation deck must be open to the public whilst the restaurants are trading.~~

Comment

The deletion of the above portion of the condition is considered necessary as these requirements are now stated in amended condition 10.

- The addition of new condition 64.

**64 Nothing in this development consent permits the roof terrace observation deck to be used for any purpose, or at any time, for anything other than a roof terrace observation deck. To this end, and for the purposes of clarity, the following conditions apply to the use of the roof terrace observation deck:**

- (i) **Amplified music is not permitted on the roof terrace observation deck.**
- (ii) **No additional lighting shall be installed or used on the roof terrace observation deck. Separate development consent is required for any additional lighting.**

2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)

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- (iii) ***Nothing in this development consent permits the roof terrace observation deck to be used for the purpose of holding events, functions, receptions, parties or the sale of food and alcohol.***

Comment

The imposition of condition 64 will enable the amenity of the surrounding area to be maintained whilst ensuring that the roof terrace observation deck is used for the purposes in which Council intended and for which development consent was granted, that is, primarily for viewing purposes.

Lighting is currently provided on the roof terrace observation deck and it is considered that there is no need for additional lighting; this includes any portable lighting such as strobe lighting. This will ensure visual amenity of the surrounding development is maintained.

- The addition of new condition 65.

- 65** ***The security door the subject of conditions 10A and 10B of this modified development consent, must be removed from the premises on or before the expiration of twelve (12) months from the date of this modified consent.***

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

Comment

The inclusion of this condition enables Council to review the impact (if any) the use of the security door and associated use of the roof terrace observation deck will have on social impact and amenity.

- The addition of new condition 66.

- 66** **The developer is to submit to Council a bond to the amount of \$10,000 to ensure the removal of the door in accordance with Condition 65.**

Comment

The proposed imposition of this condition is to ensure that the premises is returned to its original state, as approved under Development Consent 607/2006, at the expiration of the twelve (12) month trial period.

## 2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)

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### Imposition of additional conditions

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

The additional conditions recommended to be imposed are for a planning purpose and it is considered they will;

- minimise any adverse impact use of this area would have on surrounding development;
- overcome any anomalies regarding use of the roof terrace observation deck which currently arise under the development consent and;
- allow for adequate enforcement of the development consent if required.

The modification of the development consent to allow for the proposed additional conditions and the amending of existing conditions will provide greater clarity for use of the roof terrace observation deck for Council, the tenant(s) and the community, whilst providing the applicant with certainty and clear parameters within the development consent.

These modifications will also entitle the tenant to act on the development consent in a way in which they are currently unable to do and will enable them to have greater control over the use of the roof terrace observation deck than what is afforded if the area is used by the public and patrons concurrently. This control should also improve existing safety and amenity issues.

By restricting public access between the hours of 8.00am – 5.00pm (AEST) and 8.00am - 7.00pm (AEDT) and providing more clarity in relation to the development consent, via the imposition of additional conditions and the modification of existing conditions, control of the use of the roof terrace observation deck will be more clearly defined.

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

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

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

## **2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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

- 80A (a) *it relates to any matter referred to in section 79C (1) of relevance to the development the subject of the consent, or*
- (f) *it requires the carrying out of works (whether or not being works on land to which the application relates) relating to any matter referred to in section 79C (1) applicable to the development the subject of the consent, or*
- (g) *it modifies details of the development the subject of the development application,*

In reference to the above, each of the additional conditions recommended for inclusion in the development consent are for a planning purpose and relate to matters referred to in Section 79C (1) particularly "*the likely impacts of the development*"(79C (1)(b)), "*the suitability of the site for the development*" (79C(1)(c)), and "*the public interest*" (79C(1)(e)). It is considered that each of the proposed additional and modified conditions is for a planning purpose and can be imposed as part of Council's exercise of its statutory discretion.

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

### **VARIATIONS TO POLICIES**

There are no variations proposed to any relevant policies.

### **HISTORY**

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

### **PERMISSIBILITY**

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

**2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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

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

Comment

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

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

*(i) promotes worthwhile community benefits, and*

Comment

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

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

Comment

Restricting access to the roof terrace observation deck for the public between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT) will not reduce the amount or distribution of public open space area to that which currently exists within the development.

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

Comment

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

## **2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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

### Comment

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

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

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

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

### **ECOLOGICALLY SUSTAINABLE PRINCIPLES**

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

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

### **Climate Change**

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

**2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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**ASSESSMENT**

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

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

The applicant is seeking amendments to DA/607/2006/C under Section 96 (1A) of EP&A Act 1979. Having regard to the provisions of Section 96 (1A) of the EP&A Act 1979, it is considered that the amended proposal is substantially the same development approved by Council.

Section 96(1A) states:

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

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

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

**2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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

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

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

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

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

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

The proposed security door will allow public access to the roof terrace observation deck during the hours of 8.00am - 5.00pm (AEST), seven (7) days a week and 8.00am - 7.00pm (AEDT), seven (7) days a week. The original approval for the site required public access to be available during the operating hours of the development which varied considerably and it was unclear to the public as to when the roof terrace observation deck was accessible. The proposed modifications should provide clarity to all users of the area.

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

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

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

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

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

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

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

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

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

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



**2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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

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

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

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

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

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

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

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

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

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

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

It is considered that restricting use of the roof terrace observation deck to any person after 10.00pm will minimise the generation of offensive noise pollution and should assist in acceptable ambient noise levels in the locality after dark.

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

Any risks from natural hazards would have been considered in the assessment of the original application which approved the development in this location. This Section 96 (1A) application, which seeks approval for the installation and use of the security door and the restriction of public access to the roof terrace observation deck, does not require further consideration of risk from natural hazards.

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

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

**2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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

The applicant has stated that the site has been subject to a number of public safety and security risks as a result of the public access to the roof terrace observation deck. In the absence of adequate passive surveillance within and surrounding the facility after dark, the restriction of access to **any** person (from 10.00pm - 8.00am), when the area is at its most vulnerable, is considered reasonable. The use of the door for access control should reduce existing security and safety issues associated with crime and anti social behaviour.

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

The use of the security door and restriction of access to the roof terrace observation deck will ensure that there is clarity regarding use of the area and should minimise any anti social behaviour/crime after daylight hours.

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

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

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

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

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

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

***Any cumulative impacts.***

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

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

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

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

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

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

**2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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

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

The application was advertised in accordance with DCP 2005 Chapter 70-Notification of Development Proposals with fourteen (14) submissions being received. The issues raised in the submissions have been addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the EP&A Act 1979. A summary of the submissions is detailed in the table below.

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

**2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

Summary of Issues	Response
<p>The original approval required access to be available to the roof area and public toilets at all times. The removal of access would not be in the public interest.</p> <p>The current proposal is not consistent with the original approval in regards to access.</p> <p>The original approval promised access to the roof area, toilets and public boardwalk at all times.</p> <p>The proposal is an attempt by the owners to have complete control over the public land however the building is on public land and the public should have this access retained.</p>	<p>The original approval required access to the roof during the operating hours of the other businesses within the development. Access to the roof terrace observation deck was restricted once all the premises had closed for the day. Access will continue to be available to the public between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT) and to tenant(s) and their patrons between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), seven (7) days a week. Access to the public toilets is not proposed to be restricted under this Section 96(1A) application.</p> <p>The proposed modification will provide certainty for the public as to when access to the roof terrace observation deck is available and will provide clear parameters for the tenant(s) and their patrons regarding public accessibility to the area.</p> <p>The proposed modification will still fulfil the intent of the original condition by making the area available, albeit public access is only available between the hours of 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT) seven (7) days a week.</p> <p>No change is proposed to the operation of the existing public toilets or public boardwalk under the current Section 96(1A) application. The approval of the use of the security door will not impede use of either of these facilities.</p> <p>The operation of the development is governed by the Development Consent and the lease agreement. The modifications proposed under this Section 96(1A) application maintain public access to the roof terrace observation deck, even though provision is not made for public access after 5.00pm (AEST) and 7.00pm (AEDT).</p>
<p>The illegally installed security door has already caused problems in regards to access to the observation deck.</p> <p>The public toilets and pedestrian boardwalk have also raised problems along with the garbage area of the development.</p>	<p>Agreed. The Section 96(1A) for DA/607/2006/C seeks approval for the installation and use of the security door in a new location. It is anticipated that by imposing clear conditions on the development consent relating to the installation and use of the door and public access, then issues that have previously arisen regarding public access to the roof terrace observation deck should not occur.</p> <p>Agreed. Council has been dealing with these matters of non-compliance as a separate issue. The proposed modifications do not relate to the public toilets, pedestrian boardwalk or garbage area. Council has recently issued an approval for additions to the garbage area under DA/169/2012.</p>

**2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

Summary of Issues	Response
<p>Issues relating to public safety, crime prevention and after hours building security should be addressed by other means.</p> <p>The owners appear to want to roof top area for private functions.</p>	<p>The erection and use of the security door for the purposes of access control which will minimise opportunity for crime and anti social behaviour is considered reasonable and warranted in the circumstances of the case.</p> <p>The roof terrace observation deck is able to be used for private functions now under the current development consent; however any function held in this area is carried out with the understanding that the area is also shared with the public and is not available for the exclusive use of the tenant(s) and their patrons. If approval was granted to the proposed modifications, the tenants and patrons would be able to use this area to the exclusion of the public between the hours of 5.00pm - 10.00pm (AEST) and 7.00pm -10.00pm (AEDT).</p>
<p>The Entrance Masterplan suggests a link between The Entrance Bridge and the roof top area. The proposal is inconsistent with this plan.</p>	<p>The provision of a walkway between The Entrance Bridge and subject site could still be undertaken at a later date. The use of the security door would not prohibit or hinder this type of future development.</p>
<p>Strong objection to placement of security door to observation deck.</p> <p>The original approval promised access to the public boardwalk at all times.</p>	<p>The roof terrace observation deck will continue to be available to the public between 8.00am - 5.00pm (AEST) ensuring the public continue to have adequate access and use of this public open space.</p> <p>No changes are sought under the current application for any changes to the use or functioning of the existing public walkway.</p>
<p>The public will suffer as a result of the proposed changes.</p>	<p>It is unclear why the writer believes that the public will "suffer as a result of the changes". The roof terrace observation deck will still be made available to the public between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT), seven (7) days a week, ensuring the public continue to have unrestricted, safe and convenient access.</p>
<p>The owner is already advertising the use of the roof top deck for private functions.</p>	<p>The roof terrace observation deck is able to be used for private functions now under the current development consent; however any function held in this area is carried out with the understanding that the area is also shared with the public and is not available for exclusive use by the tenant(s)/patrons. When there is no requirement for public access to the roof terrace observation deck after 5.00pm (AEST) or 7.00pm (AEDT), then the tenant(s) and patrons will be able to use this area to the exclusion of the public from 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT) which is considered reasonable.</p>

**2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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

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

There are no submissions from public authorities.

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

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

**The Entrance Peninsula Strategy 2009**

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

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

## **2.1 DA/607/2006/D Section 96(1A) Application for the Modification of Conditions relating to Public Access to the Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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### **The Entrance Masterplan**

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

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

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

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

The use of the security door to restrict public access to the roof terrace observation deck after 5.00pm (AEST) and 7.00pm (AEDT) and patron/tenant use after 10.00pm would not hinder the ability for the provision of a link between the bridge and the site at a future date. If this link was to be provided, the door could be removed at a later date or an additional door could be provided for access control at the link if required.

### **CONCLUSION**

Having regard for the provisions of Sections 96(1A), 80A and 79C of the EP&A Act 1979, it is considered that the modification of conditions 1, 10, 13 and 54 and the addition of conditions 10A, 10B, 10C, 64, 65 and 66 are reasonable and warranted in the circumstances of the case. The modifications proposed to Development Consent 607/2006/C are all considered to have a planning purpose and provide clear parameters for use of the roof terrace observation deck, that is, public/private shared use between 8.00am - 5.00pm (AEST) and 8.00am - 7.00pm (AEDT) and exclusive private use from 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT).

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

The proposed modification to the approved development will result in substantially the same development to that which was originally approved by Council under Development Consent 607/2006 as such, the modifications are considered satisfactory by Council and are recommended for approval.

### **ATTACHMENTS**

- |   |  |           |
|---|--|-----------|
| 1 | Draft Modified Conditions of Consent                             | D02930982 |
| 2 | History of Development Applications Relating to Fishermans Wharf | D03066321 |
| 3 | Development Plan (A3 Colour)                                     | D03071040 |

**Date:** 24 February 2012  
**Responsible Officer:** Emily Goodworth  
**Location:** Lot 1 DP 1012476, Lot 101 DP 1046474  
 12 The Entrance Road, THE ENTRANCE NSW 2261  
**Zoning:** 6A Open Space & Recreation  
**Owner:** Crown Land  
**Applicant:** Sydney Civil Developments Pty Ltd  
**Date Of Application:** 10 November 2011  
**Application No:** DA/607/2006/D  
**Proposed Development:** Fishermans Wharf Waterfront tourist & commercial  
 development incorporating restaurants, retail tenancies, public  
 facilities & boardwalk (Amended Application)  
**Land Area:** 1177.20  
**Existing Use:** Commercial WaterGenericCommercial Sewer

## General

### General

1 The development taking place in accordance with the:

- Approved development plans numbered 3103-DA-01(B), 02(F), 03(E), 04(E), 05(F), 06(D), 07(F), 08(F), 09(D), 011(B), 012(C), 13(C), 14(C), 15(D), 21(A), 22(A) Statement of Environmental Effects dated 13 April 2006 prepared by Nettleton Tribe Partnership Pty Ltd (as amended by letter dated 29 November 2006).
- Arboriculturalist's Report dated 13 April 2006 prepared by Advanced Treescape Consulting and Addendum dated 2 June 2006.
- Hydraulic Services – Stormwater Drainage Report dated 13 April 2006 prepared by VOS Hydraulics Limited
- Approved plan number VOS ESK-01, MSK-01, MSK-02, MSK-03,MSK-04
- BCA Report dated 13 April 2006 prepared by BCA Logic Pty Ltd.
- Landscape Report dated 12 April 2006 prepared by Design Ideas Gardens
- Statement of Heritage Impact dated 15 July 2006 (Unsigned)
- Final Report Security Consulting Services dated June 2006 prepared by Harris Crime Prevention Services
- Waste Management Plan dated 10 July 2006 (Unsigned)
- Sample of proposed balustrade
- The Entrance – Retail Impact Study dated October 2006 by Savills Pty Ltd

except as modified by any conditions of consent.

Except as modified (under DA/607/2006/B) by amended architectural plans prepared by Nettleton Tribe numbered:

- 3103\_101 issue E dated 17.08.07
- 3103\_111 issue L dated 17.08.07



- 3103\_112 issue K dated 17.08.07
- 3103\_113 issue I dated 17.08.07
- 3103\_114 issue F dated 17.08.07
- 3103\_201 issue E dated 17.08.07
- 3103\_202 issue D dated 17.08.07
- 3103\_203 issue B dated 17.08.07
- 3103\_301 issue G dated 17.08.07
- 3103\_302 issue E dated 17.08.07

Except as further modified (under DA607/2006/C) by amended architectural plans prepared by Nettleton Tribe and numbered 3103 –

- 111 issue N dated 19.02.08
- 112 issue P dated 14.03.08
- 113 issue L dated 14.03.08
- 114 issue H dated 19.02.08
- 101 issue G dated 19.02.08
- 201 issue H dated 14.03.08
- 202 issue G dated 14.03.08
- 301 issue J dated 14.03.08
- 403 issue E dated 14.03.08

and plans numbered:

- SK-05 issue A dated 11.03.08, prepared by Izzat Consulting Engineers,
- DA08 Glazing Detail Section dated May 2008 prepared by Momentum Architects,

Except as further modified (under DA/607/2006/D) by amended architectural plan:

- Plan reference A-202, Issue F, dated 21 May 2012, prepared by CKDS Architecture

Except as modified by any conditions of consent and amendments in red as follows:

- Removal of the existing security door

## **Design Issues**

- 2 The structural integrity of the existing seawall must be maintained. The design of the building and associated boardwalk is not to require the seawall to be load bearing. Sufficient height above the seawall is to be provided in the design to allow for ongoing maintenance of the wall. In this regard, consultation with Council's engineer is required before commencement of detailed design drawings to ensure compliance. Detailed structural design drawings are to be approved by Council prior to issue of the Construction Certificate. An Engineer's Certificate certifying that the structural integrity of the seawall has not been compromised is to be provided to Council prior to issue of the Occupation Certificate.

- 3 The proposed boardwalk is to be constructed in conjunction with the ground floor slab of the building and is to be completed and operational, subject to O.H & S requirements, prior to commencement of any further construction work on the building. An approved traffic management plan by Council is to be operational and maintained to ensure continued and safe movement of pedestrians along the foreshore and surrounding areas during the construction of the development. The boardwalk posts are to replicate those already used along the foreshore.
- 4 The ceiling lining of the underside of upper slabs and the eaves are to have a non-domestic high quality finish. Exhaust stacks for the kitchens and toilets are to be designed to be visually unobtrusive. Details are to be submitted to Council for approval prior to the issue of the Construction Certificate.
- 5 Any wind protection structures or external screening will require the lodgement of a separate development application. This includes temporary structures.
- 6 Glazing shall not have reflective tint.
- 7 All toilet cisterns shall be a minimum of 'AAA' rated to conserve water and are to be connected to the rainwater tank. All urinals installed in the building shall be fitted with flushing devices of a manual type, the programmed solenoid type, or the demand operated type conforming to Section 9.0 of the plumbing code (AS 3500-1992) and shall be fitted with devices for out of hours shutdown. Automatic type flushing cisterns are not permitted.
- 8 The lift is to be designed to minimise the height of the lift overrun on the observation deck.
- 9 Any promotional entertainment and/or events involving amplified music that might occur from time to time shall be the subject of a separate approval from Council.
- 10 For a period of twelve (12) months from the date of this modified consent:
  - (a) The public are to have unrestricted, safe and convenient access to the roof terrace observation deck during the hours of 8.00am - 5.00pm (AEST), seven (7) days a week and 8.00am - 7.00pm (AEDT), seven (7) days a week; and
  - (b) The tenants and patrons of the development are to have exclusive access to the roof terrace observation deck between the hours of 5.00pm - 10.00pm (AEST), seven (7) days a week and 7.00pm - 10.00pm (AEDT), seven (7) days a week; and
  - (c) No person shall have access to the roof terrace observation deck between the hours of 10.00pm - 8.00am, seven (7) days a week.

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

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

10A For a period of twelve (12) months from the date of this modified consent, the door identified in plan reference A-202, Issue F, dated 21 May 2012 prepared by CKDS Architecture, must be kept secured in an open position between the hours of 8.00am - 5.00pm (AEST), seven (7) days a week and 8.00am - 7.00pm (AEDT), seven (7) days a week. For the sake of clarity "open" means not closed and not locked. At no time shall the door be impeded.

10B Prior to the use of the security door to the roof terrace observation deck, pursuant to condition 10A, a sign shall be erected at the ground floor level of the stairs on the eastern elevation of the building. The sign shall have the following characteristics:

- (a) is to be a minimum A1 size and clearly legible in a typed font; and
- (b) shall be worded as follows: "Full, unrestricted access to the roof terrace observation deck is available to the public between the hours of 8.00am - 5.00pm (Australian Eastern Standard Time), seven (7) days a week and 8.00am - 7.00pm (Australian Eastern Daylight Time), seven (7) days a week".

The sign must be constructed and maintained in a presentable and satisfactory state of repair for the life of the development.

10C No charge is to be imposed on members of the public exercising access to the roof terrace observation deck under this Development Consent.

## Prior to Issue of the Construction Certificate

### Public Art

11 Public art is to be provided to the satisfaction of Council. An expenditure of around \$29,000 for a public art feature is considered appropriate. Desirably the public art feature would be in the form of a novelty sculpture or the like that will stimulate interest and provide enjoyment to visitors to the foreshore. Alternatively it could be in the form of an accent to the built form or tiling to the thoroughfares as agreed with Council.

### Land Tenure

12 Evidence of appropriate legal land tenure agreements for occupation and use of the site are to be executed and provided to Council prior to issue of a Construction Certificate.

**Certificates / Engineering Details**

- 13 A Construction Certificate is to be issued by the Certifying Authority prior to the commencement of any works. The application for this Certificate is to satisfy all the requirements of the Environmental Planning and Assessment Regulation 2000. For the sake of clarity this condition applies to building works that are permitted by the granting of the modification application DA/607/2006/D.
- 14 The provision of satisfactory structural plans by a suitably qualified Structural Engineer for footings/slab/retaining walls prior to issue of a Construction Certificate.
- 14 The Construction Certificate application for this project is to include a list of fire safety measures proposed to be installed in the building and / or on the land and include a separate list of any fire safety measures that exist on the premises. The lists must describe the extent, capability and basis of design for each measure.
- 15 A Construction Management Plan is required to be submitted and approved by Council prior to the issue of a Construction Certificate. This Plan should demonstrate that minimal disruption would be caused during construction to the use of the adjacent park, The Entrance Road and the waterway. All demolition construction and associated work necessary for the carrying out of the development is to be restricted to between the hours of 7.00am and 6.00pm from Monday to Friday and 8.00am and 1.00pm on Saturdays. There is to be no working on Sundays and Public Holidays. Temporary signage is to be provided on site during construction identifying the location of nearby public toilet facilities. The provision of a single all-weather access way to the site is to be provided during the construction stage. The Construction Management Plan is to incorporate the Tree Management Plan so that all activities are co-ordinated.
- 16 A Tree Management Plan for the Norfolk Island Pine is to be prepared in consultation with Council's Tree Assessment Officer addressing all relevant issues including but not limited to the methods of pier location and construction, location and installation of services, compaction of the root zone, methods of protection during construction, canopy removal, air circulation, irrigation, on-going maintenance and staging certification. The Tree Management Plan is to be approved by Council's Tree Assessment Officer prior to the issue of a Construction Certificate.
- 17 Trees 2 and 3 (Date Palms) are to be relocated (at the full cost of the applicant) to an alternative location to be determined in consultation with Council's Parks and Reserves staff. The final locations and evidence of consultation and method of removal, reinstatement and maintenance are to be submitted to Council for approval prior to issue of the Construction Certificate. The applicant is required to maintain the relocated trees for a period of twelve months to ensure their ongoing health. Should the trees die during removal or within the first twelve months, they are to be replaced with trees of similar maturity to Council's satisfaction.
- 18 Prior to the issue of the Construction Certificate, the submission to Council and approval, of the source of any fill, heavy construction materials and the proposed delivery routes.

**Contributions:**

- 20 The payment to Council of contributions under the Water Management Act 2000. The contributions under the Water Management Act are adjusted in accordance with the Independent Pricing and Regulatory Authority decisions. The contributions will be adjusted to the amount applicable at the time of payment.

**Dilapidation**

- 20 A Dilapidation Report must be submitted to Council prior to issue of a Construction Certificate. The report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, street trees, street signs or any other Council assets and development (including the Hotel) in the vicinity of the construction activity.

**Erosion and Sediment Control**

- 21 The control of soil erosion on the site and the prevention of silt discharge into drainage systems and waterways in accordance with Council's Policy E1 - Erosion and Sediment Control from Building Sites and Development Control Plan 2005 Chapter 67 – Engineering Requirements for Development. The design plans must be approved by the Principal Certifying Authority prior to issue of the Construction Certificate.

**Traffic Management and Parking**

- 23 A Traffic Management Plan is to be submitted for approval prior to issue of the Construction Certificate. The Plan is to provide details of the provision and co-ordination of goods deliveries, short term parking for pick-up and drop-off and garbage pick-up from the street front. Dimensioned plans are required demonstrating compliance with parking standards and recommended restrictions on the use of the available spaces at different times of the day and night. The Traffic Management Plan is also to address the management of construction vehicles during the construction phase of the development. A Signposting Plan will need to be referred to the Local Traffic Committee for approval prior to occupation of the development.

**Stormwater Details**

- 24 A fully detailed Stormwater Management Plan including drainage design details is to be submitted to Council for approval. The Plan is to include details of the current capacities of the kerb inlet pit and the concrete culvert together with any supplementary drainage works needed to properly control runoff in accordance with Council's DCP 2005 Chapter 67– Engineering Requirements for Developments.
- 25 Stormwater generated from roofed areas is to be collected and stored for re-use within the development site for landscaping, and toilet flushing. A minimum storage of 20,000L will be required.

- 26 The provision of a stormwater system with water quality control facilities required to treat stormwater runoff from the development in accordance with Council's Development Control Plan 2005 Chapter 67 - Engineering Requirements for Development. Design plans must be approved by Council prior to issue of the Construction Certificate.
- 27 The Construction Certificate will not be issued until the consent authority is issued with documentary evidence that the Department of Natural Resources has granted a permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948* for the proposal.

### **Easements**

- 28 The existing drainage easement and culvert through the proposed development site are to remain. Details of proposed measures to protect the culvert from damage during construction are to be provided for approval. The electricity easement and cable running parallel to the kerb within the property are to be relocated to the electricity authorities requirements.

### **Seawall**

- 29 The applicant is to demonstrate to Council's satisfaction that the cathodic protection of the seawall anchors will not be interrupted by any construction activity on the site. Details of the intended methods of construction, any intended adjustments to the anchors and the intended approach to maintaining the existing cathodic protection of the anchors are to be submitted for approval prior to issue of a Construction Certificate.

### **Construction and Trade Waste**

- 30 A Construction Waste Management Plan must be submitted and approved prior to issue of a Construction Certificate. The Construction Waste Management Plan is to detail the estimated type and quantity of waste to be produced and the intended method of storage and disposal (including recycling where possible). Waste materials produced during construction are to be cleaned up daily and stored in a manner to ensure no waste is visible from any public location.
- 31 A Trade Waste Application is to be submitted and approved prior to issue of the Construction Certificate. All trade waste handling, storage and disposal is to be in accordance with the Waste Management Plan submitted with the DA.

### **Lighting and Crime Risk**

- 32 An external Lighting Plan is to be submitted for approval prior to issue of the Construction Certificate. Lighting is to be provided in accordance with Australian Standards so as to ensure the safety of pedestrians, as a deterrent to crime and in such a way as to not cause unreasonable impacts on adjoining residences and businesses.
- 33 Feature lighting is to be provided to highlight the roof planes and the Norfolk Island Pine Tree. Any lighting provided shall be designed to minimise glare into any building and should not cause damage to the tree.

- 34 A Crime Risk Assessment Report has been carried out on behalf of the applicant by Harris Crime Prevention Services. The development is to comply with the recommendations of the Report. Details of appropriate signage to assist with way-finding and to limit (restrict) access to authorised persons, perimeter lighting to Australian Standards, specific landscape treatments to avoid concealment opportunities, use of graffiti resistant materials, and a Maintenance Plan to project the image of a safe and controlled environment are to be provided to Council for approval prior to the issue of a Construction Certificate.

## Prior to Commencement & During Works

### Building Code of Australia

- 35 Compliance with the relevant provisions and requirements of the Building Code of Australia.

### Site Requirements

- 36 Construction work may only be undertaken in accordance with the provisions of the Environmental Protection Authority's 'Environmental Noise Control Manual-Guidelines for Construction Noise' as identified below:

Monday to Friday 7.00 am to 6.00 pm

Saturday 8.00 am to 1.00 pm.

Work is not to be carried out on Sundays or Public Holidays.

- 37 All building materials, plant and equipment must be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council's recreation reserves and/or road reserves is prohibited. **Note: On the spot fines may be imposed by Council for non-compliance with this condition.**
- 38 The provision of a hoarding or safety fence between the work site and the public place in accordance with Work Cover Authority requirements, for the duration of the project.
- 39 The Principal Contractor (or Owner/Builder) is to erect a sign in a prominent position on the site (not attached to any tree) identifying the name, address and telephone number of the Principal Certifying Authority (PCA) for the work; the name, address and telephone number (including a number for outside of business hours) of the Principal Contractor for the work (or Owner/Builder); and stating that unauthorized entry to the site is prohibited. The sign must be maintained while the work is being carried out and is to be removed when the work is completed. Appropriate signs can be collected from Council's Customer Service Centre, where Council is the nominated PCA.

### Tree Management

- 40 The protection of trees retained on site by fencing or other accepted protection methods in accordance with the approved Tree Management Plan (TMP). Such protection measures must be installed prior to commencement of any works and maintained in good order for the duration of the works by the nominated site arborist. No cement wastings, materials or vehicles are to be stored within the protective fence area. A letter of certification will be required to be submitted to Council prior to commencement of works and at periods during construction as nominated in the TMP.
- 41 All services, including water and electricity, must be located, designed and installed to prevent root damage to retained trees. Methods for the installation of services within the tree's canopy perimeter are contained within Development Control Plan 2005 Chapter 67 - *Engineering Requirements for Development* and include under boring and excavation by hand. Works such as these must be carried out under the supervision of the site Arborist as outlined in the TMP.

### Survey Reports

- 42 To ensure that siting, height and view loss objectives are achieved, a Compliance Certificate must be prepared by a registered surveyor and submitted to the Principal Certifying Authority prior to the pouring of a concrete floor for each level confirming that boundary setbacks and finished floor levels are in accordance with the approved plans. In the case of roof structures the level of the roof ridge must be confirmed prior to the fixing of the roof cladding.
- 43 The developer is responsible for any costs relating to any alteration and extension of existing roads, drainage, footpaths and Council services for the purposes of the development.
- 44 The developer is responsible for the making good to the satisfaction of Council, or payment of any costs incurred by Council in making good, any pavement damage or structural deterioration caused to Council's roads by the use of such roads as haulage routes for material used in the construction or operation of the approved development.

## Prior to Issue of the Occupation Certificate

### Certificates / Engineering Details

- 45 Application for an Occupation Certificate must be submitted to and approved by the Principal Certifying Authority prior to occupation of the building.



**Water and Sewer Services**

- 46 All water and sewer works for the development must be approved by Council prior to the issue of the Occupation Certificate. The connection of the proposed development to the water supply and sewerage systems must be in accordance with Council's Development Control Plan 2005 Chapter 67 - Engineering Requirements for Development.

**Litter Control**

- 47 Garbage bins are to be provided in convenient locations and arrangements made for the collection of rubbish and the clearance of litter from the area surrounding the development on a regular basis. All waste produced from the proposed businesses must be contained within the building and disposed of via the waste facilities provided.

**Landscaping and Paving**

- 48 To ensure landscaping works are properly completed, the landscape designer must provide a compliance certificate to the Principal Certifying Authority certifying that landscaping has been implemented in accordance with the approved landscape plan, prior to issue of an Occupation Certificate. Where Council is not the Principal Certifying Authority, a copy of the certificate must be provided for Council's records.
- 49 The minimum floor height of all habitable rooms in the building being RL 2.7 metres Australian Height Datum to provide for the 1% flood. A Compliance Certificate in relation to the floor height must be submitted by a registered surveyor prior to the issue of an Occupation Certificate.

**NSW Roads and Traffic Authority**

- 50 Works as executed drawings are to be provided to the RTA upon operation of construction works and prior to issuing of an Occupation Certificate.

## Prior to Use of the Premises

**Noise**

- 51 An application made under Section 68 of the Local Government Act, 1993 for the premises to lawfully conduct "Entertainment" must be submitted to Council for approval prior to the use of the premises as a Place of Public Entertainment. Should the proposed use have the potential to generate offensive noise within the meaning of the Environment Operations Act 1997, the application shall include an acoustic report from a qualified acoustic consultant.

- 52 Separate development consent is required for the use of the individual tenancies prior to any use commencing. Should the proposed uses have the potential to generate offensive noise within the meaning of the Environment Operations Act 1997, the application shall include an acoustic report from a qualified acoustic consultant.

## **Ongoing Operation**

### **Advertising Signs**

- 53 No advertisement shall be erected on or in conjunction with the development without prior development consent unless the advertisement is an 'approved sign' under Council's DCP 2005 Chapter - Advertising Signs.
- 54 The approved advertisement/s must be maintained in a presentable and satisfactory state of repair.
- 55 Once completed the public toilets are to be available to the public 24 hours a day, 7 days a week. The design of the public toilets is to ensure: adequate night time lighting, directional signage, and appropriate security measures. The toilets are to be maintained on a regular ongoing basis to ensure their safety and public presentation.
- 56 All landscaping is to be maintained through regular watering and mulching to reach full height at maturity. Any plants or trees that die within 5 years of occupation are to be replaced and maintained to maturity.
- 57 All rubbish and refuse is to be stored out of public sight except during collection.

## **Department of Primary Industry Requirements**

- 58 A permit to harm marine vegetation under Section 205 of the Fisheries Management Act 1994 is to be obtained prior to construction of the boardwalk.
- 59 The proposed pollution control and mitigation measures (as per email from Lachlan Barr dated 30 June 2006) are to be implemented during construction. The proposed mitigation measures are to include:
- Reduction of storm water discharge through storage and re-use of storm water runoff;
  - Preparation of a sediment control barrier system designed and implemented by a certified engineer;

- The design of the boardwalk and support piers to be generally the same as that previously approved by DPI for the Lusted Group development (DPI approved 9 July 2004).

## Department of Natural Resources Requirements

**Proposed Tidal Facility – Fishermans Wharf,  
12 The Entrance Road East, The Entrance (Lot 1, DP 101474)  
Rivers and Foreshores Improvement Act 1948  
General Terms of Approval.**

CR5633A

**Standard**

- The general terms of approval (GTA) relate to development works on protected land defined by the Rivers and Foreshores Improvement Act 1948 (RFIA) within the proposed development site.
- The GTA do not take effect until after the RFIA.
- If no consent authority believes to grant consent, the GTA will be taken part of the development consent.
- Any amendments to the development application may void these GTA.
- The approval holder must submit to the Department of Natural Resources (DNR) a completed application form for a permit under Part 3A of the RFIA prior to the commencement of any development works on protected land.
- The permit application is required to accord with the GTA.

**Permit Application**

- The approval holder must provide the following with the permit application:
  - A copy of the development consent including approved plans
  - Stormwater and silt control design plans prepared by a person with relevant knowledge, qualifications and experience in industry standards

**Relevant Plans and Documents**

- The approval holder must ensure that development works are completed in accordance with the following drawings and/or documents:
  - Statement of Environmental Works prepared by Nettletons Pty Ltd dated 13 April 2006
  - Development Application Drawings (reference 1102, sheets 1-14) prepared by Nettletons Pty Ltd dated April 2006

**Works**

- The approval holder must ensure that all works proposed and designed, constructed and operated to:
  - minimise erosion and scour of the banks or bed of the watercourse, foreshore, and
  - minimise impacts on aquatic and riparian environments
- The approval holder must ensure that works as required survey plans prepared to a professional standard are provided to DNR upon request.

Page 7

**Riparian Zone**

11. The approval holder must ensure that construction techniques minimise disturbance to soil and vegetation on protected land and within the riparian buffer zone.

**Site Rehabilitation**

12. The approval holder must ensure that following completion of the works, site rehabilitation protects any remnant local native riparian vegetation and restores riparian zones disturbed or otherwise affected by the development/ works.

**Stormwater**

13. The approval holder must ensure that stormwater outlets are designed, located and constructed to minimise any erosion or siltation of riparian buffer zones and the bed or banks of protected waters.

**Proposed Tourist Facility – Fishermans Wharf,  
12 The Entrance Road East, The Entrance (Lot 1, DP 101476).  
Annexure - Advice and Definitions**

ER5833A

**Advisory Notes**

1. For the purpose of the GTA, the term approval holder refers to the applicant for the integrated development application.
2. Retrospective approval cannot be granted under the RPIA.
3. A permit cannot apply to works that have already been undertaken.
4. A permit will not give the approval holder the right to use and occupy any land without the consent of the registered owners of the property.
5. A permit will not relieve the approval holder of any obligations or requirements of any other acts, regulations, planning instruments or Australian standards.
6. A permit will not apply to works on Crown land, unless set under the Crown Lands Act 1989 (CL Act). Work on Use and occupation of Crown land requires approval from the Department of Lands.
7. A permit will not apply to development works where there is a right lawfully exercisable or other right in force under any agreement relating to mining.

**Definitions under RPIA**

The meanings under the RPIA for the following are:

1. **Protected land** means
  - (a) land that is the bank, shore or bed of protected waters; or
  - (b) land that is not more than forty (40) metres from the top of the bank or shore of protected waters (measured horizontally from the top of the bank or shore); or
  - (c) material at any time deposited, naturally or otherwise and whether or not in layers, on or under land referred to in paragraph (a) or (b).
2. **Protected waters** means
  - a river, lake into or from which a river flows, coastal lake or lagoon (including any permanent or temporary channel between a coastal lake or lagoon and the sea)
3. **River** means
  - any stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel which has changed the course of the stream of water and any affluent, confluence, branch, or other stream into or from which the river flows and, in the case of a river running to the sea or into any coastal bay or inlet or into a coastal lake, lagoon, the estuary of such river and any arm or branch of same and any part of the river influenced by tidal waters.

**Other Requirements**

- 60 The proposed Automatic Teller Machine (ATM) shall be installed in a manner to maximise the safety for machine users including adoption of measures that maximise surveillance (eg. effective lighting, mirror/reflective strip). A waste receptacle for the suitable disposal of receipts shall be included with the machine.
- 61 The signage is at all times to be in association with the approved use of the site. The signage content is to be restricted to the promotion of events/activities directly related to the approved occupants of the building and their business (not for product display). The proposed signage shall be suitably maintained at all times to ensure it is safe, structurally sound, and visually inoffensive. At no time shall the sign be flashing, moving or animated.

**Waste collection – bulk bins**

- 62 A kerb cross over is to be provided adjacent to the concrete apron in order to allow for the bulk bins to be serviced.

**NSW Roads and Traffic Authority**

- 63 Compliance with the following RTA requirement:
- The development is to be modified to provide a minimum of 3.8 metre clearance to the edge of The Entrance Bridge for the purpose of dimensional clearance for maintenance. All remaining ground structures within the 3.8 metre clearance must be trafficable for the purpose of supporting the weight of a truck (for mounted equipment). The surface in this area must be reasonably level for the purpose of traversing such vehicles. It is noted that a grease arrestor will remain within the 3.8 metre width. The lid of the arrestor must be designed and certified by a suitably qualified Structural Engineer as being capable of supporting the weight of a heavy rigid vehicle with a wheel loading of up to 10.5t.
- 64 Nothing in this development consent permits the roof terrace observation deck to be used for any purpose, or at any time, for anything other than a roof terrace observation deck. To this end, and for the purposes of clarity, the following conditions apply to the use of the roof terrace observation deck:
- (i) Amplified music is not permitted on the roof terrace observation deck.
  - (ii) No additional lighting shall be installed or used on the roof terrace observation deck. Separate development consent is required for any additional lighting.
  - (iii) Nothing in this development consent permits the roof terrace observation deck to be used for the purpose of holding events, functions, receptions, parties or the sale of food and alcohol.
- 65 The security door the subject of conditions 10A and 10B of this modified development consent, must be removed from the premises on or before the expiration of twelve (12) months from the date of this modified consent.

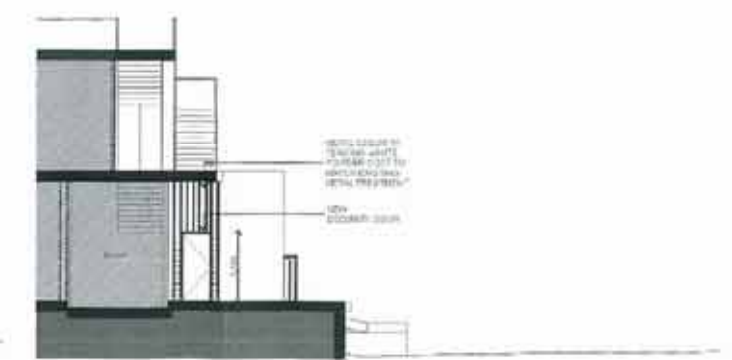
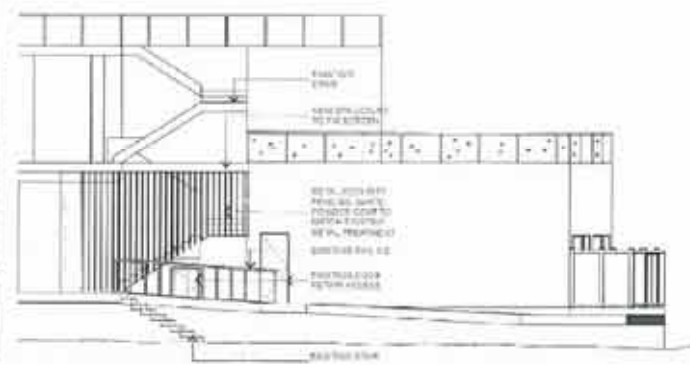
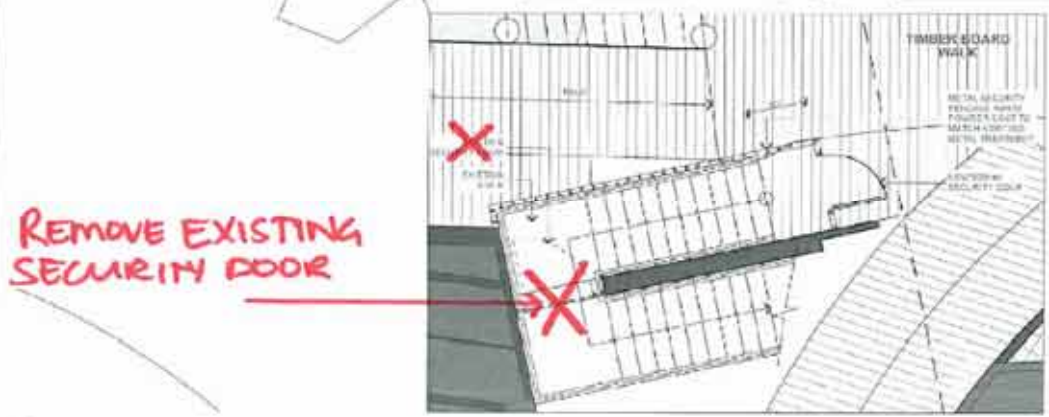
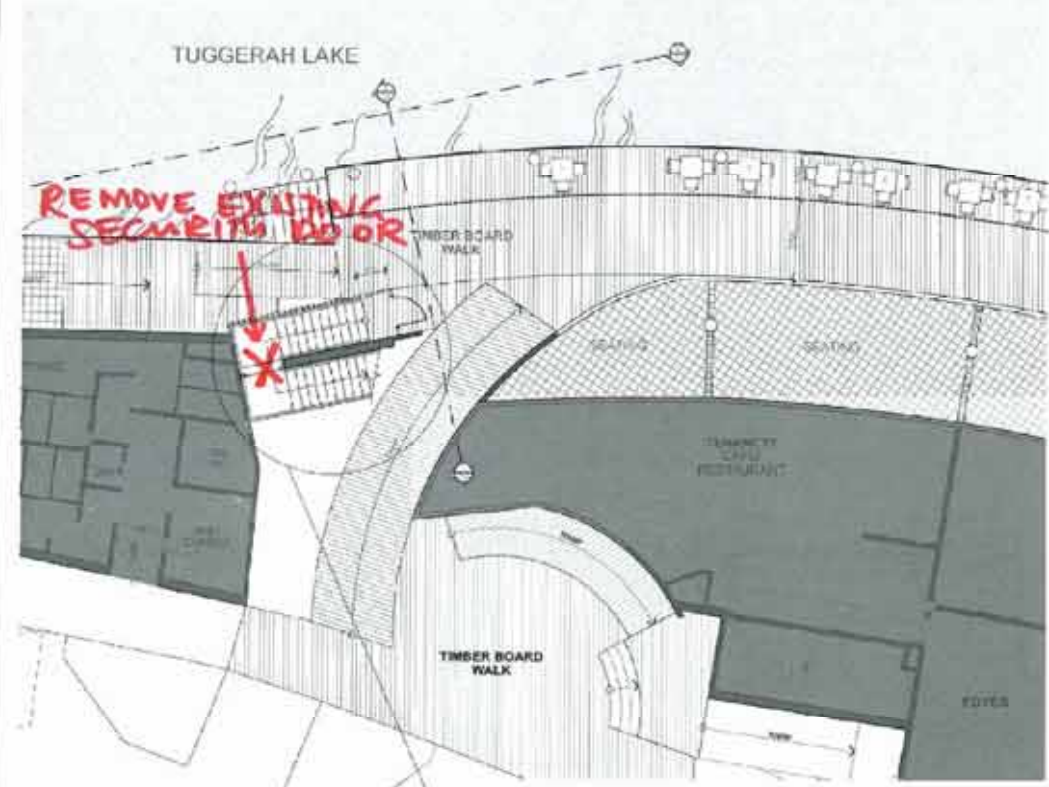
Note: Any extension of the approved use beyond twelve (12) months will require the prior submission and approval of an application under Section 96 of the Environmental Planning and Assessment Act, 1979.

- 66 The developer is to submit to Council a bond to the amount of \$10,000 to ensure the removal of the door in accordance with Condition 65.

**History of Development Applications Relating to Fisherman's Wharf****HISTORY**

- Development Consent DA/607/2006 was issued 18 December 2006 for a waterfront tourist and commercial development known as "Fisherman's Wharf", incorporating restaurants, retail tenancies, public facilities and boardwalk.
- Development Consent DA/607/2006/A was issued 30 April 2007 for modification to the wording of Condition 3 of the consent which related to the continued and safe movement of pedestrians along the foreshore during the construction period.
- Development Consent DA/607/2006/B was issued 6 November 2007 for various minor changes to the approved plans including minor internal adjustments to tenancies, the garbage room and amenities.
- Development Consent DA/607/2006/C was issued 17 June 2008 for various changes to the first floor glazing line, stairs, internal partitions and handrails.
- Development Consent DA/1090/2008 was issued 28 November 2008 for first floor fitout of function room.
- Development Consent DA/1091/2008 was issued 28 November 2008 for fitout of ground floor tenancies.
- Development Consent DA/1457/2010 was issued 7 March 2011 for the use of the first floor for a function centre and alterations and additions to the ground floor.
- Development Consent DA/1457/2010/A was issued 8 April 2011 for the fitout of the ground floor tenancies.
- EP & A Act Notice of Intent issued 8 June 2011 requiring the removal of the door restricting access to the roof top deck.
- EP & A Act Notice of Intent issued 8 June 2011 requiring the development to operate in accordance with conditions of consent relating to access to roof top deck.
- Development Application DA/1457/2010/B refused 12 July 2011 for the closing of the roof top observation deck for all but 12 days of the year.
- EP & A Act Order issued 20 July 2011 requiring the removal of the door restricting access to the roof top deck.
- EP & A Act Order issued 20 July 2011 requiring the development to operate in accordance with conditions of consent relating to access to roof top deck.
- Development Application DA/1457/2010/C was withdrawn 21 September 2011 for the use of public boardwalk for outdoor dining.





Ground Floor

Proposed Gate

Elevation D

Section 1

DEVELOPMENT APPLICATION

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	10/10/2018
2	REVISION	11/10/2018
3	REVISION	12/10/2018
4	REVISION	01/11/2018
5	REVISION	02/11/2018
6	REVISION	03/11/2018
7	REVISION	04/11/2018
8	REVISION	05/11/2018
9	REVISION	06/11/2018
10	REVISION	07/11/2018
11	REVISION	08/11/2018
12	REVISION	09/11/2018
13	REVISION	10/11/2018
14	REVISION	11/11/2018
15	REVISION	12/11/2018
16	REVISION	01/12/2018
17	REVISION	02/12/2018
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21	REVISION	06/12/2018
22	REVISION	07/12/2018
23	REVISION	08/12/2018
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25	REVISION	10/12/2018
26	REVISION	11/12/2018
27	REVISION	12/12/2018
28	REVISION	01/01/2019
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32	REVISION	05/01/2019
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97	REVISION	10/06/2024
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99	REVISION	12/06/2024
100	REVISION	01/07/2025



Author	Enzo
Checked	
Approved	
Date	



Azure Bk Wharf  
141 The Esplanade  
Sydney NSW  
2000

Floor Plans  
Security Door

1:50	0'	30'	100'
1141	A-202	F	

## 2.2 DA/1457/2010/D - Section 96(1A) Application for the Modification of Condition 27 relating to Public Access to the Existing Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance

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TRIM REFERENCE: DA/1457/2010/D - D02961168

MANAGER: Peter Fryar, Manager Development Assessment

AUTHOR: Emily Goodworth; Team Coordinator, Applications Team Coordinator, Applications

### SUMMARY

An application has been received under Section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for the modification of Condition 27 of development consent DA/1457/2010/D relating to access to the existing roof terrace observation deck above the Azzurro Blu Wharf development, The Entrance. Development Consent No DA/1457/2010/D granted approval for internal alterations to the existing four (4) ground floor food service tenancies, use of the first floor as a function room and fit-out of the premises, now known as Azzurro Blu Wharf. The application has been examined having regard to the matters for consideration detailed in Sections 79C and 96(1A) of the EP&A Act 1979 and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

<b>Applicant</b>	Sydney Civil Developments Pty Ltd
<b>Owner</b>	Wyong Shire Council
<b>Application No</b>	1457/2010/D
<b>Description of Land</b>	Lot 1 DP 1012476 & Lot 101 DP 1046474 (12) The Entrance Road, The Entrance
<b>Proposed Development</b>	Section 96(1A) for the modification of Condition 27 of development consent DA/1457/2010/D relating to access to the existing roof terrace observation deck above Azzuro Blu Wharf, The Entrance.
<b>Site Area</b>	1,177.2m <sup>2</sup>
<b>Zoning</b>	6(a) Open Space and Recreation
<b>Existing Use</b>	Restaurants and function centre
<b>Estimated Value</b>	Nil

### RECOMMENDATION

- 1 ***That Council modify the consent having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act 1979 and other relevant issues.***
- 2 ***That Council advise those who made written submissions of its decision.***

## **2.2 DA/1457/2010/D - Section 96(1A) Application for the Modification of Condition 27 relating to Public Access to the Existing Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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### **PRECIS**

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

## 2.2 DA/1457/2010/D - Section 96(1A) Application for the Modification of Condition 27 relating to Public Access to the Existing Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)

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### INTRODUCTION

#### The Site

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

#### The Proposed Development

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

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

Condition 27 reads as follows:

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

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

## **2.2 DA/1457/2010/D - Section 96(1A) Application for the Modification of Condition 27 relating to Public Access to the Existing Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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

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

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

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

### **Applicant's Submission**

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

- *Consent No 607/2006/C:*

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

## **2.2 DA/1457/2010/D - Section 96(1A) Application for the Modification of Condition 27 relating to Public Access to the Existing Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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- Consent No 1457/2010/A:

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

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

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

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

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

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

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- Consent No 1457/2010/A: Modify the consent to:
  - (i) Approve the installation of a security door on the external stairway access to the roof-top observation deck in accordance with the floor plan and elevation details provided in Drawing A-202 Revision F, prepared by CKDS Architecture Pty Ltd, dated 21 May 2012 and
  - (ii) Modify Condition 27 to read:

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

**Modification of conditions**

- The modification of Condition 27.

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

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

- (a) The public are to have unrestricted, safe and convenient access to the roof terrace observation deck during the hours of 8.00am - 5.00pm (AEST), seven (7) days a week and 8.00am - 7.00pm (AEDT), seven (7) days a week; and**
- (b) The tenant(s) and patrons of the development are to have access to the roof terrace observation deck between the hours of 5.00pm - 10.00pm (AEST), seven (7) days a week and 7.00pm - 10.00pm, seven (7) days a week; and**
- ~~(c) No person shall have access to the roof terrace observation deck between the hours of 10.00pm - 8.00am, seven (7) days a week. In this regard no alcohol is to be served on the observation deck.~~

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

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

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### Comment

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

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

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

- Addition of new Condition 27A to read:

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

### Comment

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

- Addition of new Condition 27B to read:

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

### Comment

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

- The modification of Condition 1.



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Amend Condition 1 to read (refer to bold):

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

**a. Deletion of the existing security door**

Comment

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

- Addition of new Condition 16A:

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

Comment

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

- The modification of Condition 23.

Amend Condition 23 to read (refer to bold):

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

Comment

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

- The modification of Condition 24.

## **2.2 DA/1457/2010/D - Section 96(1A) Application for the Modification of Condition 27 relating to Public Access to the Existing Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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Amend condition 24 to read (refer to bold):

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

### Comment

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

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

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

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

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

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

## 2.2 DA/1457/2010/D - Section 96(1A) Application for the Modification of Condition 27 relating to Public Access to the Existing Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)

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

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

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

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

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

*(g) it modifies details of the development the subject of the development application, or*

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

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

### VARIATIONS TO POLICIES

There are no variations proposed to any relevant policies.

## 2.2 DA/1457/2010/D - Section 96(1A) Application for the Modification of Condition 27 relating to Public Access to the Existing Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)

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### HISTORY

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

### PERMISSIBILITY

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

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

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

#### Comment

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

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

- (i) promotes worthwhile community benefits, and*

#### Comment

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

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

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### Comment

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

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

### Comment

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

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

### Comment

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

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

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

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

## **ECOLOGICALLY SUSTAINABLE PRINCIPLES**

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

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

### **Climate Change**

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

### **ASSESSMENT**

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

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

#### **Section 96 (1A) Environmental Planning and Assessment Act 1979**

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

Section 96(1A) states:

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

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

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- (c) *it has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, or*
  - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be."*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***Any cumulative impacts.***

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

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

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

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

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

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

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

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

The application was advertised in accordance with DCP 2005 Chapter 70-Notification of Development Proposals with fourteen (14) submissions being received. The issues raised in the submissions have been addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979. A summary of the submissions is detailed in the table below.

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

**2.2 DA/1457/2010/D - Section 96(1A) Application for the Modification of Condition 27 relating to Public Access to the Existing Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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

**2.2 DA/1457/2010/D - Section 96(1A) Application for the Modification of Condition 27 relating to Public Access to the Existing Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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

**2.2 DA/1457/2010/D - Section 96(1A) Application for the Modification of Condition 27 relating to Public Access to the Existing Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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

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

There are no submissions from public authorities.

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

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

**The Entrance Peninsula Strategy 2009**

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

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

## **2.2 DA/1457/2010/D - Section 96(1A) Application for the Modification of Condition 27 relating to Public Access to the Existing Roof Terrace Observation Deck, Azzurro Blu Wharf, The Entrance (contd)**

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### **The Entrance Masterplan**

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

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

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

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

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

### **CONCLUSION**

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

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

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

### **ATTACHMENTS**

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

**HISTORY of DEVELOPMENT APPICATIONS ASSOCIATED WITH FISHERMANS WHARF**

- Development Consent DA/607/2006 was issued 18 December 2006 for a waterfront tourist and commercial development known as “Fisherman’s Wharf”, incorporating restaurants, retail tenancies, public facilities and boardwalk.
- Development Consent DA/607/2006/A was issued 30 April 2007 for modification to the wording of Condition 3 of the consent which related to the continued and safe movement of pedestrians along the foreshore during the construction period.
- Development Consent DA/607/2006/B was issued 6 November 2007 for various minor changes to the approved plans including minor internal adjustments to tenancies, the garbage room and amenities.
- Development Consent DA/607/2006/C was issued 17 June 2008 for various changes to the first floor glazing line, stairs, internal partitions and handrails.
- Development Consent DA/1090/2008 was issued 28 November 2008 for first floor fitout of function room.
- Development Consent DA/1091/2008 was issued 28 November 2008 for fitout of ground floor tenancies.
- Development Consent DA/1457/2010 was issued 7 March 2011 for the use of the first floor for a function centre and alterations and additions to the ground floor.
- Development Consent DA/1457/2010/A was issued 8 April 2011 for the fitout of the ground floor tenancies.
- EPA Act Notice of Intent issued 8 June 2011 requiring the removal of the door restricting access to the roof top deck.
- EPA Act Notice of Intent issued 8 June 2011 requiring the development to operate in accordance with conditions of consent relating to access to roof top deck.
- Development Application DA/1457/2010/B refused 12 July 2011 for the closing of the roof top observation deck for all but 12 days of the year.
- EPA Act Order issued 20 July 2011 requiring the removal of the door restricting access to the roof top deck.
- EPA Act Order issued 20 July 2011 requiring the development to operate in accordance with conditions of consent relating to access to roof top deck.
- Development Application DA/1457/2010/C was withdrawn 21 September 2011 for the use of public boardwalk for outdoor dining.

**Date:** 6 July 2012  
**Responsible Officer:** Emily Goodworth  
**Location:** Azzuro Blu Wharf, 12 The Entrance Road, THE ENTRANCE  
NSW 2261  
Lot 1 DP 1012476, Lot 101 DP 1046474  
**Owner:** Wyong Shire Council  
**Applicant:** Sydney Civil Developments Pty Ltd  
**Date Of Application:** 15 December 2011  
**Application No:** DA/1457/2010/D  
**Proposed Development:** Internal fitout creating 4 ground floor tenancies  
(Cafe/Restaurants) Function Centre on 1st floor, external  
finishes, shade structure, folding doors, deck, amend hours of  
operation (Amended Application)  
**Land Area:** 1177.20

## PROPOSED CONDITIONS

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

### Certificates/Engineering Details

- 2 A Construction Certificate is to be issued by the Principal Certifying Authority prior to commencement of any works. The application for this Certificate is to satisfy all of the requirements of the Environmental Planning and Assessment Regulation 2000.

## Prior to Release of Construction Certificate:

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

### Liquid Trade Waste

- 3 The submission of a trade waste application and subsequent approval by Council to discharge liquid trade waste into the sewerage system prior to issue of the Construction Certificate.



## **Prior to Commencement of Works:**

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

### **Approved Plans**

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

### **Acoustic**

- 5 Construction or demolition may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction or demolition is to be carried out at any time on a Sunday or a public holiday.

### **Site Requirements**

- 6 The provision of a hoarding or safety fence between the work site and the public place in accordance with Work Cover Authority requirements, for the duration of the project. Details to be submitted to the Principal Certifying Authority/appropriately Accredited Certifier unless the hoarding is required within the footpath area where approval from Council under the Roads Act as the Roads Authority is required.
- 7 The Principal Contractor (or Owner/Builder) is to erect a sign in a prominent position on the site (not attached to any tree) identifying the name, address and telephone number of the Principal Certifying Authority (PCA) for the work; the name, address and telephone number (including a number for outside of business hours) of the Principal Contractor for the work (or Owner/Builder); and stating that unauthorised entry to the site is prohibited. The sign must be maintained while the work is being carried out and is to be removed when the work is completed. Appropriate signs can be collected from Council's Customer Service Centre, where Council is the nominated PCA.

### **Certificates/Engineering Details**

- 8 Prior to the occupation of the building, an application for an Occupation Certificate for the development must be submitted to and approved by the Principal Certifying Authority.

## **During Construction Works:**

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

No conditions

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

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

### **Building Code of Australia**

- 9 Compliance with the relevant provisions and requirements of the Building Code of Australia.

### **External Materials**

- 10 The completed development must be in compliance with the external colours and materials submitted with the application.

### **Food Act Requirements**

- 11 No food handling, (as defined by the NSW Food Act 2003), is permitted in the food premises prior to the issue of the Occupation Certificate.
- 12 All liquid trade waste is required to pass through a basket arrestor with fixed screens, fitted to all floor wastes and sinks, before being discharged into the sewerage system.
- 13 Compliance with the requirements of the New South Wales Food Act 2003, the Food Regulation 2004, and AS4674–2004 – Design, Construction and Fitout of Food Premises, and AS1668, Part 11 – Mechanical Ventilation, for all food preparation and food storage areas, including liquor areas.
- 14 The installation of hand wash facilities with a minimum dimension of 500mm x 400mm providing warm running water through a common mixing spout with hands-free tap operation (consisting of elbow or wrist operated tap levers, foot or hip operated tap levers, or electronic sensor tap operation).

## **Ongoing Operation:**

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

### **Approved Plans**

- 15 Once the development has started in accordance with the approved plans it must be continued and completed to the satisfaction of the Consent Authority.

### **Acoustic**

- 16 The recommendations as contained within the acoustic assessment report prepared by Acoustic Logic Consultancy Noise and Vibration Consultants dated 9<sup>th</sup> December 2008, are to be adhered to with respect to the operation of the proposed mid level function centre, in order to maintain the acoustic amenity of nearby residents. Specific requirements are as follows: -

- (a) All external doors and windows opening to the external terraces, foyer and stairwell areas are to remain closed at all times, except when being used by patrons for access purposes.
- (b) After 6:00pm, patrons and staff are to use the doors on the eastern façade of the building (those directly facing the lake), to access the eastern outdoor terrace area. In this regard, the existing access doors to the outdoor terrace area immediately adjoining the kitchen are to be provided with suitable signage on the interior and exterior face of the doorway, advising patrons that this doorway is for emergency access use only. Further, suitable signage is to be provided directing patrons to the access doorways directly facing the lake.
- (c) The outdoor terrace area immediately adjoining The Entrance Road bridge is to be utilised as a dedicated smoking area in order to minimise occupant numbers on the eastern outdoor terrace.
- (d) After 10:00pm, a maximum of 120 patrons only are permitted on both the eastern outdoor terrace area and roof terrace observation deck at any one time. Patron numbers on the eastern outdoor terrace area and the roof terrace observation deck are to be monitored by suitable head counts and the use of security personnel at both terrace access points.

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

### **Advertising Signs**

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

### **Amenity**

- 18 For the purposes of preserving the amenity of neighbouring occupants and residents, hours of operation are restricted to between:  
  
8.00am to Midnight on Thursday, Friday and Saturday  
8.00am to 11.00pm on Sunday to Wednesday
- 19 The proprietors of the venue are responsible at all times for the orderly congregation of patrons entering and dispersal of patrons from the venue.

### **Litter Control**

- 20 Garbage bins are to be provided in convenient locations and arrangements made for the collection of rubbish and the clearance of litter from the area surrounding the development on a regular basis. All waste produced from the proposed businesses must be contained within the building and disposed of via the waste facilities provided.
- 21 All rubbish and refuse is to be stored out of public sight except during collection.

## Outdoor Seating

- 22 The placement of any outdoor seating for any of the tenancies shall not obstruct or hinder pedestrian access along the waterfront boardwalk. In this respect a minimum width of 4 metres must be maintained from the outer edge of the boardwalk to the tenancies in order to provide sufficient public access along the foreshore. All such seating is to be in accordance with Council's Outdoor Eating Policy.

## Restrictions on Use

- 23 In accordance with the requirements of the Environmental Planning and Assessment Regulation 2000, a maximum of 350 persons, inclusive of staff and performers, are permitted within the mid level function centre. This number (350) shall not be exceeded when use of the roof terrace observation deck is available to the tenant(s) and their patrons between 5.00pm - 10.00pm (AEST) and 7.00pm - 10.00pm (AEDT), seven (7) days a week.
- 24 In accordance with the requirements of Clause 98D of the Environmental Planning and Assessment Regulation, 2000, a suitable sign is to be displayed in a prominent position within the premises stating the maximum number of occupants as detailed within condition 23 above, permitted to be within the proposed mid level function centre.
- 25 All lighting shall be designed so as to ensure that glare does not adversely impact upon any adjoining property.
- 26 The public toilets are to be available to the public 24 hours a day, 7 days a week. The public toilets are to maintain adequate night time lighting, directional signage, and appropriate security measures. The toilets are to be maintained on a regular basis to ensure their safety and public presentation.
- 27 The proprietors of the venue are to ensure to the satisfaction of Council that For a period of twelve (12) months, from the date of this modified consent:
- (a) The public are to have unrestricted, safe and convenient access to the roof terrace observation deck during the hours of 8.00am - 5.00pm (AEST), seven (7) days a week and 8.00am - 7.00pm (AEDT), seven (7) days a week; and
  - (b) The tenant(s) and patrons of the development are to have access to the roof terrace observation deck between the hours of 5.00pm - 10.00pm (AEST), seven (7) days a week and 7.00pm - 10.00pm, seven (7) days a week; and
  - (c) No person shall have access to the roof terrace observation deck between the hours of 10.00pm - 8.00am, seven (7) days a week. In this regard no alcohol is to be served on the observation deck.

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

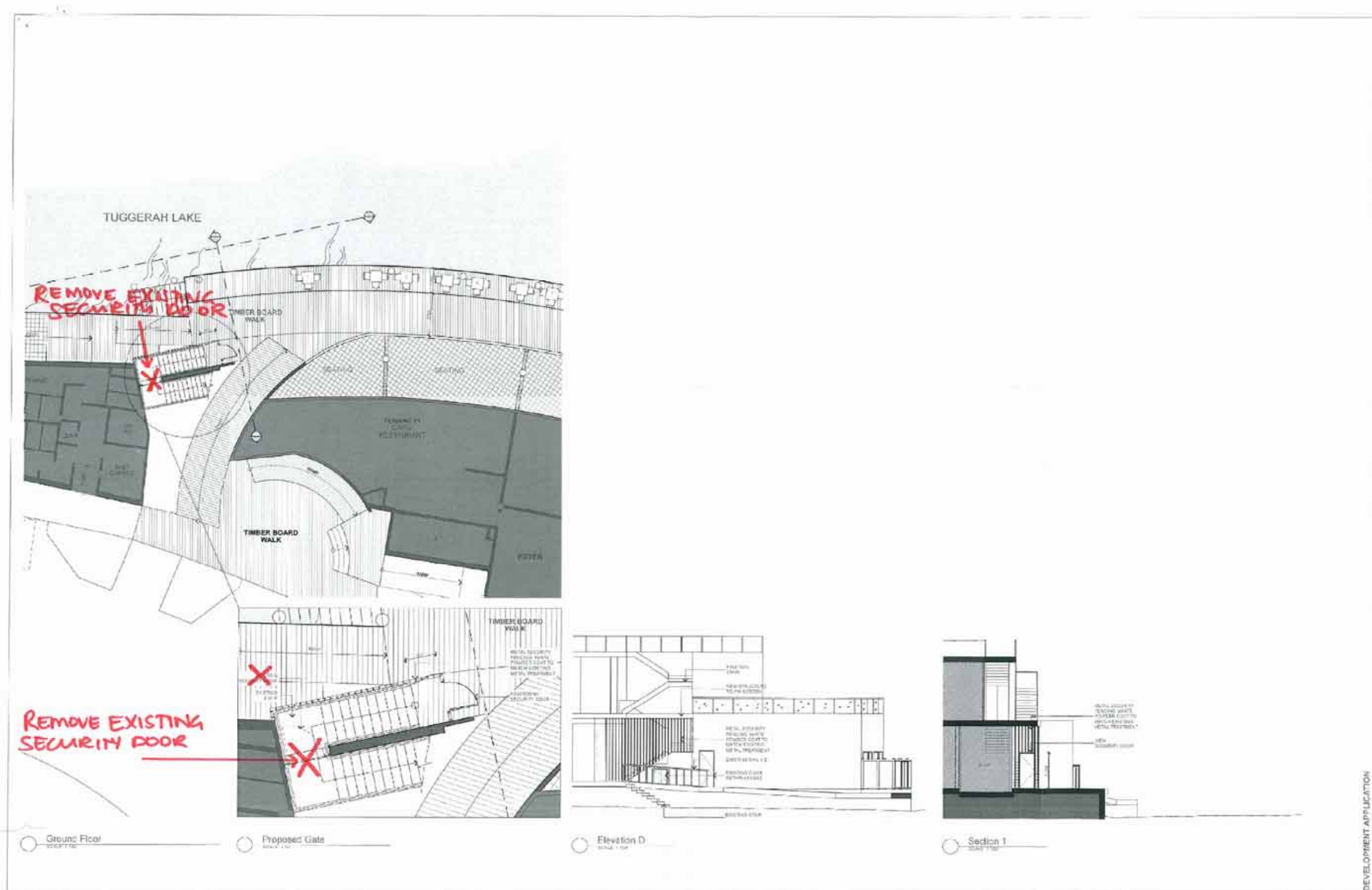
Note: Any extension of the use approved in (a), (b) and (c) above, beyond twelve (12) months, will require the prior submission and approval of an application under Section 96 of the Environmental Planning and Assessment Act 1979.

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

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

### **Safer by Design**

- 28 The development management shall adopt an ongoing policy of rapid repair for vandalism and graffiti for the development and ensuring that all lighting is in working order.
- 29 Suitable signage shall be installed reminding patrons leaving the premises late at night to be mindful to minimise any noise that may affect surrounding occupants.
- 30 Appropriate security measures are to be adopted, including the presence of security personnel, to discourage the potential for antisocial behaviour on the site.



DEVELOPMENT APPLICATION

<p><b>REVISIONS</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>No.</th> <th>Description</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	No.	Description	Date								<p>Scale: 1:50</p>	<p>Ento</p>		<p>Azure Bk Wharf 1st Floor Level The Project</p>	<p><b>Floor Plans</b> Security Door</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>1:50</td> <td>21/01/22</td> </tr> <tr> <td>1141</td> <td>A-202 F</td> </tr> </table>	1:50	21/01/22	1141	A-202 F
No.	Description	Date																		
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## 2.3 DA/341/2012 - Detached Secondary Dwelling and Garage Including Demolition of Existing Garage at Noraville

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TRIM REFERENCE: DA/341/2012 - D03034534

MANAGER: Jamie Loader, Manager Building Certification and Health

AUTHOR: Scott Rathgen; Team Coordinator

### SUMMARY

An application has been received a secondary dwelling and garage. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment Act (EP&A Act) 1979, the State Environmental Planning Policy (SEPP) (Affordable Rental Housing) 2009 and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

<b>Applicant</b>	Mr J G Karam
<b>Owner</b>	Mr and Mrs J G and C Karam
<b>Application No</b>	DA/341/2012
<b>Description of Land</b>	Lot 17 Section G DP25692 No 21 Leonora Ave Noraville
<b>Proposed Development</b>	Secondary dwelling and garage
<b>Site Area</b>	733sq metres
<b>Zoning</b>	2A Residential
<b>Existing Use</b>	Residential
<b>Estimated Value</b>	\$66,140.00

### RECOMMEDATION

***That Council grant consent, having regard to the matters for consideration detailed in Section79C of the Environmental Planning and Assessment Act and other relevant issues, subject to the conditions detailed in the schedule attached to the report.***

### PRECIS

- An application has been received for a secondary dwelling and garage at 21 Leonora Parade, Noraville.
- The site is zoned 2(a) Residential under the provisions of the Wyong Local Environmental Plan 1991 (WLEP).
- The secondary dwelling complies with the schedule of Development Standards Part 2-Division 2 and Schedule 1 – Development Standards For Secondary Dwellings contained within the SEPP (Affordable Rental Housing) 2009.

## 2.3 DA/341/2012 - Detached Secondary Dwelling and Garage Including Demolition of Existing Garage at Noraville (contd)

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### INTRODUCTION

#### The Site

The application has been referred to Council for determination solely based upon the Council resolution of 8<sup>th</sup> of February 2012, (in particular Resolution 6) which states:

*Council at its meeting held on 8<sup>th</sup> February 2012 Resolved unanimously on the motion of Councillor Best and seconded by Councillor Symington:*

- “1 That Council reaffirm its commitment to the principles of affordable housing and its importance in assisting a broad cross section of our community and recognise that Section 94 contributions may be prohibitive to many affordable housing projects.*
- 2 That Council note the decision of Gosford City Council to assist in facilitating affordable housing through the trial waiver of Section 94 contributions for granny flats.*
- 3 That Council support this initiative thereby establishing a regional approach to affordable housing.*
- 4 That Council also waive Section 94 contributions for granny flats on a trial basis till September 2012, concurrent with Gosford City Council and that the outcome of this be reported to Council.*
- 5 That Council receive the report in a timeframe for inclusion in the 2012-13 Annual Plan.*
- 6 That Council implement the trial by way of reporting those relevant development applications to Council for determination.”*

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

AGAINST: NIL

The approval of the secondary dwelling will not create any adverse impact on adjoining properties. As such, it is recommended that the application be approved subject to conditions.

### VARIATIONS TO POLICIES

There are no variations to Council's DCP 2005 or development standards for secondary dwellings contained within the SEPP (Affordable Rental Housing) 2009.

### HISTORY

A brick and weatherboard single storey dwelling currently exists on the site with an existing detached garage which is to be demolished. A secondary dwelling with an attached garage is proposed at the rear of the allotment. There are no previous applications that are relevant to this proposal.



## 2.3 DA/341/2012 - Detached Secondary Dwelling and Garage Including Demolition of Existing Garage at Noraville (contd)

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### PERMISSIBILITY

The subject site is zoned 2(a) Residential zone under the WLEP 1991. The proposed secondary dwelling is permissible with consent and complies with the objectives of the zone as follows:

- (a) *“to provide land primarily for detached housing generally not exceeding a height of 2 storeys and with private gardens in an environment free from commercial and other incompatible activities and buildings, and*
- (b) *to provide for other uses, but only where they:*
  - (i) *are compatible with the residential environment and afford services to residents at a local level, and*
  - (ii) *are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for detached housing, and*
- (c) *to provide for home-based employment where such will not:*
  - (i) *involve exposure to view from any public place of any unsightly matter, or any raw material, equipment, machinery, product or stored finished goods, or*
  - (ii) *have a material adverse impact on residents”.*

The proposal is for a secondary dwelling that integrates with the existing development. It is proposed to undertake only minimal excavation to the lot. The overall height is consistent with existing development in the area and the development would incorporate appropriate landscaping. The development is to be used for residential purposes only.

The secondary dwelling is permissible under the provisions of SEPP (Affordable Rental Housing) 2009.

### RELEVANT STATE/COUNCIL POLICIES AND PLANS

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

- State Environmental Planning Policy (SEPP) (Affordable Rental Housing) 2009
- WLEP 1991
- Wyong Council DCP 2005 Chapter 99 (Building Lines) & Chapter 100 (Quality Housing)

### ECOLOGICALLY SUSTAINABLE PRINCIPLES

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

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

## **2.3 DA/341/2012 - Detached Secondary Dwelling and Garage Including Demolition of Existing Garage at Noraville (contd)**

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### **ASSESSMENT**

Having regard for the matters for consideration detailed in Section 79C of the EP&A Act 1979 and the SEPP (Affordable Rental Housing) 2009, statutory requirements, Council's policies and Section 149 Certificate details, the assessment has identified the following key issues, which are elaborated upon for Council's information. Any tables relating to plans or policies are provided as an attachment.

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

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

The property is zoned 2(a) Residential zone under WLEP 1991.

The secondary dwelling is proposed under the provisions of SEPP (Affordable Rental Housing) 2009 which overrides any provisions contained with the WLEP.

#### **State Environmental Planning Policy (Affordable Rental Housing) 2009**

SEPP (Affordable Rental Housing) 2009 permits secondary dwellings on residential land up to a maximum floor area of 60m<sup>2</sup>. The proposed secondary dwelling has a floor area of 60 sq metres. The subject allotment also exceeds the minimum area of 450m<sup>2</sup>.

The provisions of Clause 20 and 22 of the SEPP are complied with. Under these circumstances the proposed secondary dwelling is considered justified.

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

Clause 3.1 of Chapter 99 – Building Lines requires a side and rear setback of 900mm to an adjoining allotment. The development is also compliant with the secondary street boundary.

The secondary dwelling and garage can also be further justified in terms of:

- (i) being matching and sympathetic to the desirable character and placement of adjoining development;
- (ii) does not impact in any way to the local streetscape;
- (iii) the development retains reasonable privacy for existing and future residents;
- (iv) design features of the proposed development has considered better energy efficiency, enhanced solar access, and retention of significant existing vegetation; and
- (v) has adequate off street and on street parking being available for the dwelling.

## 2.3 DA/341/2012 - Detached Secondary Dwelling and Garage Including Demolition of Existing Garage at Noraville (contd)

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

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

The proposed secondary dwelling and garage is consistent with the scale and character of the local area of Noraville. The scale, bulk, height, massing and choice of materials and finishes for the proposed secondary dwelling are considered appropriate to the local context and will enhance the streetscape.

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

Access to the site is provided by an existing driveway allowing access from Leonora Parade. The SEPP (Affordable Rental Housing) 2009 does not require additional parking or access to be provided for the secondary dwelling, the attached garage is to provide parking for the existing dwelling.

#### ***Any effect on privacy, view loss and overshadowing***

An assessment of potential overlooking, privacy and view sharing has been undertaken and it is concluded that the construction of the secondary dwelling is not detrimental to the adjoining properties.

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

Existing services have been provided to the site to cater for the proposed development.

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

A BASIX certificate has been submitted with the application and the proposal involves the use of water saving fixtures to contribute to the conservation of water.

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

The proposal does not involve any effect on the conservation of soils or acid sulphate soils.

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

The proposal does not affect flora and fauna.

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

A waste management plan has been submitted with the development application and provides details of how waste will be managed during construction. The occupants of the secondary dwelling will utilise the waste collection services associated with the primary dwelling.

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

A BASIX certificate has been issued as part of the development application.

### **2.3 DA/341/2012 - Detached Secondary Dwelling and Garage Including Demolition of Existing Garage at Noraville (contd)**

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

A minimal amount of noise and vibration would be created during the construction phase. A condition will be placed on the consent restricting the hours that construction work can take place.

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

There are no risks from natural hazards applicable to this proposal.

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

During the construction of the works sediment fencing will be installed and construction noise will be minimised via conditions of consent.

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

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

The proposal meets the objectives of the Zone and complies with the criteria contained within the SEPP (Affordable Rental Housing) 2009.

The development is within a residential area that contains a number of single and multiple dwelling developments. The secondary dwelling will not have any significant impact on the surrounding area and promotes an orderly and economic use of the land.

It is considered the effect on the environment will be minimal and the proposed dwellings will compliment the existing streetscape and social amenity of the locality.

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

The site is considered appropriate for the proposed development.

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

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

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

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

There are no submissions from public authorities.

**2.3 DA/341/2012 - Detached Secondary Dwelling and Garage Including Demolition of Existing Garage at Noraville (contd)**

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**OTHER MATTERS FOR CONSIDERATION**

The property is within The Budgewoi S94 contribution plan created under the provisions of Section 94 of The EP&A Act 1979. Section 94 contributions are applicable to secondary dwellings under this plan as defined under the Affordable Housing SEPP.

Under the contribution plan the secondary dwelling will generate Section 94 contributions totalling. \$9,554.00

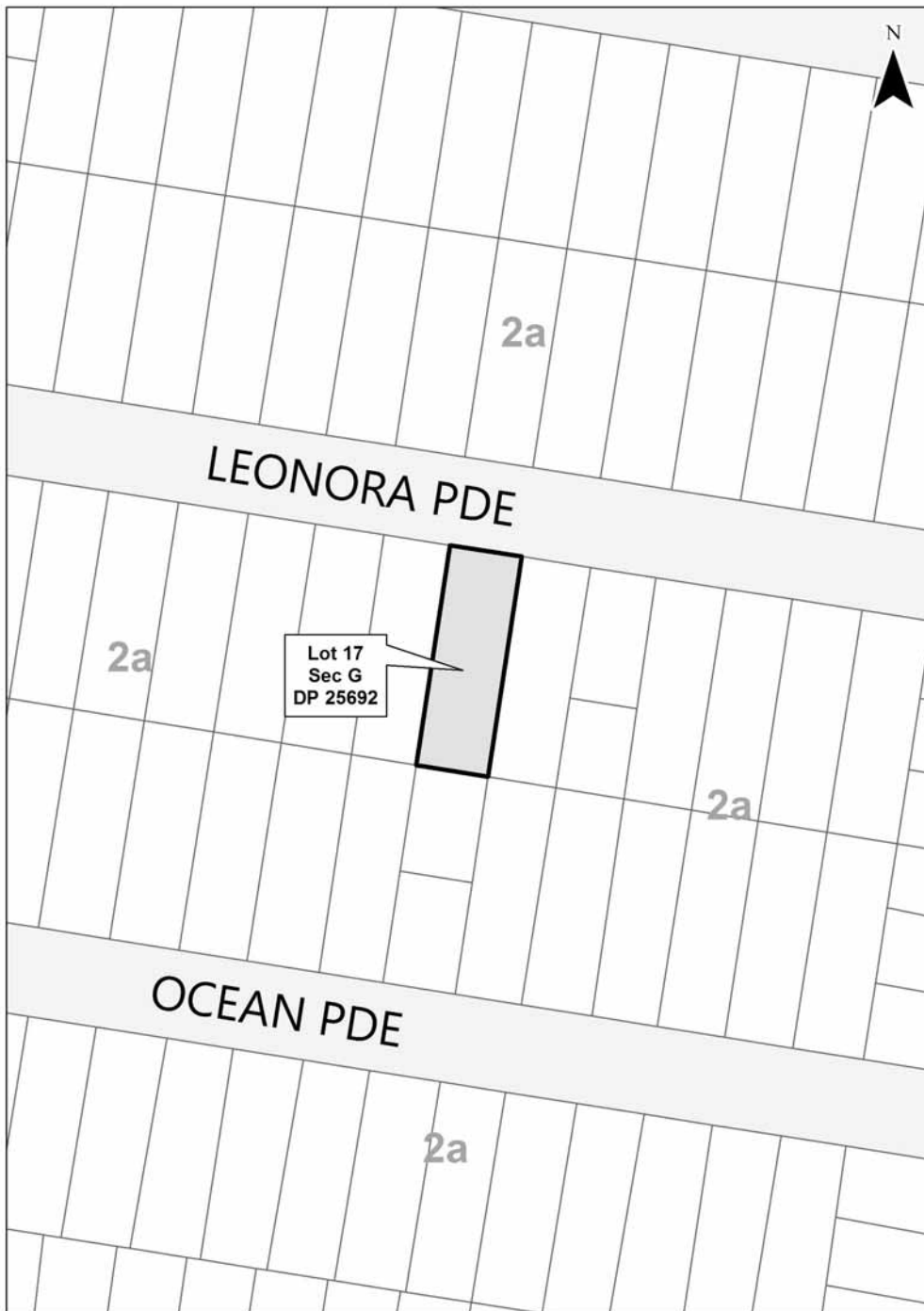
**CONCLUSION**

The development application for a secondary dwelling meets the standards of the relevant chapters of Council's DCP 2005 and the SEPP (Affordable Rental Housing) 2009. The application is recommended for approval subject to the attached conditions.

**2.3 DA/341/2012 - Detached Secondary Dwelling and Garage Including Demolition of Existing Garage at Norville (contd)**

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Locality Plan



**ATTACHMENTS**

- |   |                             |           |
|---|-----------------------------|-----------|
| 1 | Draft Conditions of Consent | D03033612 |
| 2 | Development Plans (A3)      | D03056218 |

**Date:** 8 June 2012  
**Responsible Officer:** Tony Maguire  
**Location:** 21 Leonora Parade, NORAVILLE NSW 2263  
 Lot 17 Sec G DP 25692  
**Owner:** Mr J G Karam and Mrs C Karam  
**Applicant:** Mr J G Karam  
**Date Of Application:** 30 April 2012  
**Application No:** DA/341/2012  
**Proposed Development:** Detached secondary dwelling & garage including demolition of existing garage  
  
**Land Area:** 733.50

## PROPOSED CONDITIONS

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

Title	Drawing No.	Revision	Date	Drawn By
Development Plans	11-022 Sheets DA-01 to DA-04	-	August 2011	JND Architectural Services Pty Ltd

### Certificates – Application and Approval

- 2 A Construction Certificate is to be issued by the Principal Certifying Authority prior to commencement of any construction works. The application for this Certificate is to satisfy all of the requirements of the Environmental Planning and Assessment Regulation 2000.

## Prior to Release of Construction Certificate:

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

### Contribution Payment Requirements

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

### Structural Design Requirements

- 4 Prior to the issue of a Construction Certificate, satisfactory structural plans prepared by a suitably qualified Registered Structural Engineer are to be submitted for the approval of the Accredited Certifier for the concrete slab and footings.
- 5 All water and sewer works or works impacting on water and sewer assets must be designed and constructed to the requirements of Council as the Water Supply Authority. The requirements are detailed in the Section 306 Notice of Requirements letter attached to this consent. **Note:** The Section 306 Notice contains requirements associated with the development that must be completed prior to the issue of the Construction Certificate.

### Prior to Commencement of Works:

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

#### Demolition Requirements

- 6 Work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work, must be undertaken by a person who carries on a business of such removal work in accordance with a licence issued under the provisions of Clause 318 of the *Occupational Health and Safety Regulation 2001*.
  - The person having the benefit of the consent must provide the Principal Certifying Authority with a copy of a signed contract before any development pursuant to the consent commences.
  - Any such contract must indicate whether any bonded asbestos material or friable asbestos material will be removed and if so, must specify the landfill site (that may lawfully receive asbestos) to which the material is to be delivered for disposal.

#### Erosion and Sediment Control Requirements

- 7 Prior to works associated with the development commencing, soil erosion and sediment controls measures are to be provided on the development site in accordance with Council's Policy E1 - Erosion and Sediment Control from Building Sites and Development Control Plan 2005, Chapter 67 – *Engineering Requirements for Development* and the approved development plans.
- 8 Prior to works associated with the development commencing, a single all-weather hardstand access, extending from the kerb and gutter/edge of bitumen to the building under construction, is to be installed in order to provide appropriate access to the site during periods of inclement weather.
- 9 Prior to works associated with the development commencing, an appropriate sign to promote the awareness and importance of the maintenance of on-site



sediment control techniques is to be provided on the most prominent sediment fence or erosion control device within the development site, for the duration of the project.

### Home Building Act Requirements

- 10 Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

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

- the name and licence number of the contractor; and
- the name of the insurer by whom the work is insured under Part 6 of that Act.

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

- the name and permit number of the owner-builder.

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

### Site Requirements

- 11 Prior to works associated with the development commencing, the Principal Contractor (or Owner/Builder) is to erect a suitable sign in a prominent position on the development site (not attached to any tree) identifying the name, address and telephone number of the Principal Certifying Authority (PCA) for the work, the name, address and telephone number (including a number for outside of business hours) of the Principal Contractor for the work (or Owner/Builder) and stating that unauthorised entry to the site is prohibited. The required sign is to be maintained for the duration of works associated with the development. Appropriate signs can be collected from Council's Customer Service Centre, where Council is the nominated Principal Certifying Authority with respect to the development.
- 12 Prior to works associated with the development commencing, suitable toilet facilities must be available or be provided upon the development site, with the required toilet facility(s) maintained until development works are completed at a ratio of one (1) toilet plus one (1) additional toilet for every twenty (20) persons employed at the site. Each toilet must:
- be a standard flushing toilet connected to a public sewer system; or
  - have an on-site effluent disposal system approved under the Local Government Act 1993, or be a temporary chemical closet approved under the Local Government Act 1993, supplied by a suitably licensed contractor.

- 13 Prior to works associated with the development commencing, a suitable metal waste skip (with self-closing lid or secure covering) or lined mesh steel cage(s) is to be provided upon the development site for the duration of the construction phase of the development in accordance with the requirements of Development Control Plan 2005, Chapter 100 – Quality Housing. The required waste receptacle is to be suitably emptied at appropriate times during the construction phase of the development.
- 14 Prior to works associated with the development commencing, where any excavation is proposed in proximity to existing gas and/or electricity networks, the developer is advised to notify 'Dial Before You Dig' of the time and place of work no more than thirty (30) days before the work commences. The developer must satisfy any requirements as set by the network operators in carrying out excavation works.

## **During Construction Works:**

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

### **Demolition - Compliance Requirements**

- 15 Any demolition work carried out with respect to the development is to be carried out in accordance with the requirements of AS 2601-2001 – *The Demolition of Structures*.
- 16 All sediment and erosion control devices provided with respect to the development are to be periodically cleaned and maintained in an effective state for the duration of works. On the spot fines for non-compliance with this requirement may be issued under the provisions of the *Protection of Environment Operations Act, 2000*.

### **Plumbing and Drainage - Construction Requirements**

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

### **Site Requirements**

- 18 Construction or demolition works involved with the development may only be carried out between the hours of 7.00 am and 5.00 pm Monday to Saturday with no construction or demolition works associated with the development permitted to be carried out at any time on a Sunday or a public holiday.
- 19 During the construction phase of the development, all building materials, plant and equipment must be placed on the site of the development in order to

ensure that pedestrian and vehicular access within adjoining public roads, footpaths and reserve areas, is not restricted and to prevent damage to public infrastructure.

- 20 During the construction phase of the development, downpipes and the associated stormwater disposal system is to suitably connected to the site stormwater connection point immediately after the roof materials are positioned in order to prevent erosion of the site from roof water run off. The Principal Certifying Authority for the development will not issue a compliance certificate for framing unless connection of the site stormwater (or temporary system) has occurred.

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

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

### **BASIX Requirements**

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

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

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

### **Plumbing and Drainage - Compliance Requirements**

- 23 Prior to the issue of an Occupation Certificate, the hot water installation is to be suitably tempered in order that hot water not exceeding 50 degrees Celsius is provided at the outlet of the sanitary fixtures used primarily for personal hygiene purposes. Compliance with this temperature limit is optional for kitchen sinks and laundry tubs under the provisions of AS/NZS 3500, Part 4.2 C1.1.6.2.

### **Stormwater – Compliance Requirements**

- 24 Prior to the issue of an Occupation Certificate, stormwater generated from roof areas of the building and any overflows from rain water tanks installed in conjunction with the development, is to be disposed of to the existing stormwater disposal system servicing the allotment.
- 25 The obtaining of a Section 307 Certificate of Compliance under the Water Management Act 2000 for water and sewer requirements for the development from Wyong Shire Council as the Water Supply Authority prior to issue of the Subdivision/Occupation Certificate. All works for the development must be approved by Council prior to the issue of a Certificate of Compliance.

## **Ongoing Operation:**

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

No Conditions







## 2.4 DA/346/2012 - Proposed Detached Secondary Dwelling at Woongarra

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TRIM REFERENCE: DA/346/2012 - D03055808

MANAGER: Jamie Loader, Manager Building Certification and Health

AUTHOR: Scott Rathgen; Team Coordinator

### SUMMARY

An application has been received for the erection of a detached secondary dwelling. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment Act, 1979 (EP&A Act), the State Environmental Planning Policy (SEPP) (Affordable Rental Housing) 2009 and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

<b>Applicant</b>	J D Meldrum
<b>Owner</b>	J, G and L Meldrum
<b>Application No</b>	DA/346/2012
<b>Description of Land</b>	Lot 711 DP 1157871, No 10 Hakone Road Woongarra
<b>Proposed Development</b>	Detached Secondary Dwelling
<b>Site Area</b>	576m <sup>2</sup>
<b>Zoning</b>	2E Urban Release Zone
<b>Existing Use</b>	Residential
<b>Estimated Value</b>	\$78,000

### RECOMMENDATION

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

### PRECIS

An application has been received for the erection of a detached secondary dwelling.

- The site is zoned 2E Urban Release Zone under the provisions of the Wyong Local Environmental Plan 1991 (WLEP).
- The secondary dwelling complies with the schedule of development standards of Part 2- Division 2 and Schedule 1 – Development standards for secondary dwellings contained within the SEPP (Affordable Rental Housing) 2009.
- The land is identified as being subject to a bushfire hazard.



- The land is identified as being subject to mines subsidence.

## BACKGROUND

The application has been referred to Council for determination solely based upon the below Council resolution of 8<sup>th</sup> of February 2012 that required that all Development Applications for secondary dwellings be reported to Council to consider the waiving of the section 94 contributions.

Council at it's meeting of 8<sup>th</sup> of February 2012, resolved the following;

Item No 8.5 - Notice of Motion - Granny Flat, Second Dwelling Contribution Waiver;

- “1 That Council reaffirm its commitment to the principles of affordable housing and its importance in assisting a broad cross section of our community and recognise that Section 94 contributions may be prohibitive to many affordable housing projects.
- 2 That Council note the decision of Gosford City Council to assist in facilitating affordable housing through the trial waiver of Section 94 contributions for granny flats.
- 3 That Council support this initiative thereby establishing a regional approach to affordable housing.
- 4 **That Council also waive Section 94 contributions for granny flats on a trial basis till September 2012, concurrent with Gosford City Council and that the outcome of this be reported to Council.**
- 5 That Council receive the report in a timeframe for inclusion in the 2012-13 Annual Plan.
- 6 That Council implement the trial by way of reporting those relevant development applications to Council for determination.”

## INTRODUCTION

An application has been received for the erection of a detached secondary dwelling. The secondary dwelling is permissible under the provisions of SEPP (Affordable Rental Housing) 2009.

The approval of the detached secondary dwelling will not create any adverse impact on adjoining properties. As such, it is recommended that the application be approved subject to conditions and the section 94 contribution fees applicable to the secondary dwelling be waived.

## VARIATIONS TO POLICIES

There are no variations to Councils Development Control Plans or the development standards for secondary dwellings contained within the SEPP (Affordable Rental Housing) 2009.

## HISTORY

### The Site

Existing on the site is a single storey brick veneer and tile dwelling. This dwelling was approved by Council under cover of DA/382/2012. No further improvements stand on the land.



## PERMISSIBILITY

The secondary dwelling is permissible under the provisions of SEPP (Affordable Rental Housing) 2009.

## RELEVANT STATE/COUNCIL POLICIES AND PLANS

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

## 2.4 DA/346/2012 - Proposed Detached Secondary Dwelling at Woongarra (contd)

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- Rural Fires Act 1997
- Mines Subsidence Compensation Act 1961
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- Wyong Council Development Control Plans 99 & 100
- Council's Contribution's Plan number 7a.

### **ECOLOGICALLY SUSTAINABLE PRINCIPLES**

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

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

### **ASSESSMENT**

Having regard for the matters for consideration detailed in Section 79C of the EP&A Act 1979 and the SEPP (Affordable Rental Housing) 2009, statutory requirements, Council's policies and Section 149 Certificate details, the assessment has identified the following key issues, which are elaborated upon for Council's information. Any tables relating to plans or policies are provided as an attachment.

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

#### **Rural Fires Act 1997**

The objects of this Act are to provide:

- for the prevention, mitigation and suppression of bush and other fires in local government areas (or parts of areas) and other parts of the State constituted as rural fire districts*
- for the co-ordination of bush fire fighting and bush fire prevention throughout the State*
- for the protection of persons from injury or death, and property from damage, arising from fires*
- for the protection of the environment by requiring certain activities referred to in paragraphs (a)–(c) to be carried out having regard to the principles of ecologically sustainable development described in section 6 (2) of the Protection of the Environment Administration Act 1991”*

The application is not required under the Section 100B of the “act” to gain a bush fire safety authority from NSW Rural Fire Service (RFS) however the applicant has prepared a bush fire assessment as per the objectives for the Planning for Bushfire Protection Guidelines(PBP) (NSW Rural Fire Service). Council has assessed this report and included appropriate conditions for inclusion in any consent.

#### **Mines Subsidence Compensation Act 1961**

The land is within a mine subsidence district and has been referred to the board. The board has subsequently stamped and approved the plans.

**State Environmental Planning Policy (Affordable Rental Housing) 2009**

The SEPP (Affordable Rental Housing) 2009 permits secondary dwellings up to a maximum floor area of 60m<sup>2</sup>. The secondary dwelling proposed has a floor area of 45m<sup>2</sup>. The subject allotment also exceeds the minimum area of 450m<sup>2</sup>. Under these circumstances the proposed secondary dwelling is justified.

**Council's Development Control Plan 2005**

**Chapter 99 - Building Lines.**

The Road category is "C". The required front setback where applicable is 4.5 metres to the dwelling and 6 metres to the attached garage.

Side and rear boundary setbacks are 900mm. Side and rear setbacks generally comply with the requirements of DCP Ch99.

**DCP 2005, Chapter 100 - Quality Housing.**

The proposed development has been assessed against the relevant provisions of DCP 2005, Chapter 100 – Quality Housing as follows;

Section 3.3 Site Preparation and Management.

All fill on the allotment is contained within the footprint of the dwelling by utilizing brick fender walls or is not closer than 900mm and not greater than 600mm in height. As such the extent of fill does not exceed the prescriptive requirements of Clause 3.3.3g

Section 3.4 Streetscape

The development cannot be seen from any public place.

Section 3.5 Building Materials

The materials of the proposed secondary dwelling integrate and compliment those in the locality

Section 3.6 Building Design

The proposed development does not exceed the maximum site coverage of 60%. The proposed development does not exceed the maximum height requirements of 7 metres to the ceiling of the uppermost storey and 11 metres to the peak of the roof.

The proposed development incorporates suitable architectural treatment to reduce the appearance of bulk and in particular, there unbroken length of wall that exceeds 10 metres in length when viewed from a public place.

The proposed development maintains unobstructed sunlight to a minimum of 75% of the subject property and adjoining properties external active living area.

The proposed development does not excessively compromise solar access of adjoining properties.

An assessment of potential over viewing, privacy and view sharing has been undertaken. It is concluded that the construction of the dwelling is not detrimental to the adjoining properties or those within the nexus of the development in relation to the above matters and any effect is considered de-minimus.

### 3.7 Trees

There are no trees proposed to be removed.

### 3.8 Site Design

The proposed development has a private open space area that is orientated towards the sun and achieves a minimum of 3 hours of sunlight to at least 75% of the area between 9am and 3pm at winter solstice.

### 3.9 Sustainability

The proposed development is BASIX affected and a BASIX certificate has been submitted with the application.

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

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

The erection of the detached secondary dwelling is consistent with the scale and character of the local area of Wyong. The scale, bulk, height, massing and choice of materials and finishes for the proposed secondary dwelling is considered appropriate to the local context and will enhance the streetscape.

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

Access to the site is provided by an existing driveway which traverses the road reserve in Hakone Road. The SEPP (Affordable Rental Housing) 2009 does not require additional parking or access for additional vehicles associated with the secondary dwelling.

### ***Any effect on privacy, view loss and overshadowing***

An assessment of potential over viewing, privacy and view sharing has been undertaken and it is concluded that the construction of the alterations and additions and secondary dwelling is not detrimental to the adjoining properties or those within the close proximity of the development in relation to the above matters and any effect is considered minimal.

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

Existing services have been provided to the site to cater for the proposed development.

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

A BASIX certificate has been submitted with the application and the proposal involves the use of water saving fixtures and a water tank on site to contribute to the conservation of water.

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

The proposal does not involve any effect on the conservation of soils or acid sulphate soils.

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

There are no trees proposed to be removed.

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

A waste management plan has been submitted with the development application and provides details of how waste will be managed during construction. The occupants of the secondary dwelling would utilise the waste collection services associated with the primary dwelling.

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

A BASIX certificate has been issued as part of the development application.

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

A minimum amount noise and vibration will be created during the construction phase which is a normal situation in residential areas. A condition will be placed on the consent restricting the hours that construction work can take place.

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

A site inspection revealed that the vegetation type forest exists 43 metres to the north - level aspect. An assessment has been undertaken using the RFS web based Bushfire Attacker software V2010. This has concluded that the dwelling is subject to a BAL 19 bushfire threat. A condition will be imposed on the consent reflecting this level of threat.

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

During the construction of the works sediment fencing will be installed to protect environmental damage and the control of noise will be restricted between certain hours as conditioned in the development consent.

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

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

The proposal meets the objectives of the zone and complies with the criteria contained within the SEPP (Affordable Rental Housing) 2009.

The development is within a residential area that contains a number of single and multiple dwelling developments. The secondary dwelling creates a negligible impact to the site and surrounding area and promotes an orderly and economic use of the land.

It is considered the effect on the environment will be minimal and the proposed dwellings will compliment the existing streetscape and social amenity of the locality.

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

All stormwater is to be disposed of by way of the proposed system which discharges to the rain water tank and then to existing system.

Vehicular access is via Hakone Road.

Council infrastructure such as water and sewer assets is not affected. Any asset likely to be damaged such as manholes will be conditioned to be protected.

The land is within a mine subsidence district and has been referred to the board. The Board has subsequently stamped and approved the plans.

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

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

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

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

There are no submissions from public authorities.

**OTHER MATTERS FOR CONSIDERATION**

The property is within the 7A S94 contribution plan created under the provisions of Section 94 of The EP&A Act 1979. Section 94 contributions are applicable under this plan to secondary dwellings as defined under the SEPP Affordable Housing.

Under the contribution plan the secondary dwelling would generate section 94 contributions totalling \$9,021.45. Under these circumstances the application is reported to Council for the endorsement of the waiving of the contributions.

## CONCLUSION

The development application for the erection of the secondary dwelling meets the standards of the relevant chapters of Council's DCP 2005 and the SEPP (Affordable Rental Housing) 2009 in conjunction with the Rural Fires Act 1997 and the Mines Subsidence Compensation Act 1961. The application has been reported to Council for consideration of the waiving of the section 94 contributions and is recommended for approval.

## Locality Plan



## ATTACHMENTS

- |   |                             |           |
|---|-----------------------------|-----------|
| 1 | Draft Conditions of Consent | D03055870 |
| 2 | Development Plans (A3)      | D03055883 |



**Date:** 3 July 2012  
**Responsible Officer:** John Roseland  
**Location:** 10 Hakone Road, WOONGARRAH NSW 2259  
 Lot 711 DP 1157871  
  
**Owner:** Mr J D Meldrum and Mrs G A Meldrum and Ms L M Meldrum  
**Applicant:** Mr J D Meldrum  
**Date Of Application:** 2 May 2012  
**Application No:** DA/346/2012  
**Proposed Development:** Detached secondary dwelling  
**Land Area:** 576.00

## PROPOSED CONDITIONS

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

Title	Drawing No.	Revision	Date	Drawn By
DA No 346/2012	A1 DCA Sheets 1-3	-	20 April 2012	GR & BJ Evans

## Prior to Release of Construction Certificate:

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

- 2 The proposed development has been assessed against the provisions of *Planning for Bushfire Protection 2006 (NSW)* and has been determined as having a Bushfire Attack Level (BAL) of 19. Prior to the issue of a Construction Certificate, construction details demonstrating compliance with *AS3959-2009 – Construction in Bushfire Prone Areas* and additional measures contained in *Appendix 3 of the PBP Guidelines* for the nominated BAL must be provided for the approval of the Accredited Certifier.
- 3 All water and sewer works or works impacting on water and sewer assets must be designed and constructed to the requirements of Council as the Water Supply Authority. The requirements are detailed in the Section 306 Notice of Requirements letter attached to this consent. **Note:** The Section 306 Notice contains requirements associated with the development that must be completed prior to the issue of the Construction Certificate.

## Prior to Commencement of Works:

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

### Erosion and Sediment Control Requirements

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

### Home Building Act Requirements

- 8 Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

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

- the name and licence number of the contractor; and
- the name of the insurer by whom the work is insured under Part 6 of that Act.

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

- the name and permit number of the owner-builder.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date,

further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

### Roads - Preconstruction Requirements

- 9 Prior to works associated with development commencing, a dilapidation report must be prepared and submitted to Council as the Roads Authority. The required dilapidation report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, water supply, sewer works, street trees, street signs or any other Council assets in the vicinity of the development. **Note:** The report will be used by Council to determine the extent of damage arising from site and construction works.

### Site Requirements

- 10 Prior to works associated with the development commencing, the Principal Contractor (or Owner/Builder) is to erect a suitable sign in a prominent position on the development site (not attached to any tree) identifying the name, address and telephone number of the Principal Certifying Authority (PCA) for the work, the name, address and telephone number (including a number for outside of business hours) of the Principal Contractor for the work (or Owner/Builder) and stating that unauthorised entry to the site is prohibited. The required sign is to be maintained for the duration of works associated with the development. Appropriate signs can be collected from Council's Customer Service Centre, where Council is the nominated Principal Certifying Authority with respect to the development.
- 11 Prior to works associated with the development commencing, suitable toilet facilities must be available or be provided upon the development site, with the required toilet facility(s) maintained until development works are completed at a ratio of one (1) toilet plus one (1) additional toilet for every twenty (20) persons employed at the site. Each toilet must:
  - be a standard flushing toilet connected to a public sewer system; or
  - have an on-site effluent disposal system approved under the Local Government Act 1993, or be a temporary chemical closet approved under the Local Government Act 1993, supplied by a suitably licensed contractor.
- 12 Prior to works associated with the development commencing, a suitable metal waste skip (with self-closing lid or secure covering) or lined mesh steel cage(s) is to be provided upon the development site for the duration of the construction phase of the development in accordance with the requirements of Development Control Plan 2005, Chapter 100 – Quality Housing. The required waste receptacle is to be suitably emptied at appropriate times during the construction phase of the development.

- 13 Prior to works associated with the development commencing, a suitable hoarding or safety fence between the work site and the public place is to be provided in accordance with Work Cover Authority requirements. The required hoarding/fencing is to remain in place during the construction phase of the development. Should the hoarding/fencing be required to be provided within the road reserve area, approval from Council under the Roads Act as the Roads Authority is required to be obtained prior to its erection.
- 14 Prior to works associated with the development commencing, it is the builder's responsibility to confirm the location and depth of the sewer main and connection point in relation to the floor level, to ensure that appropriate connection to the sewer can be achieved.
- 15 Prior to works associated with the development commencing, where any excavation is proposed in proximity to existing gas and/or electricity networks, the developer is advised to notify '*Dial Before You Dig*' of the time and place of work no more than thirty (30) days before the work commences. The developer must satisfy any requirements as set by the network operators in carrying out excavation works.

## **During Construction Works:**

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

### **Approved Plans**

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

### **Earthworks and Haulage - Construction Requirements**

- 17 All earthworks are to be limited to the area as indicated within the approved development plans. Any additional earthworks and the construction of associated retaining structures outside of the nominated areas, requires separate approval.

### **Erosion and Sediment Control - Construction Requirements**

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

### **Plumbing and Drainage - Construction Requirements**

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

### **Site Requirements**

- 21 Construction or demolition works involved with the development may only be carried out between the hours of 7.00 am and 5.00 pm Monday to Saturday with no construction or demolition works associated with the development permitted to be carried out at any time on a Sunday or a public holiday.
- 22 During the construction phase of the development, all building materials, plant and equipment must be placed on the site of the development in order to ensure that pedestrian and vehicular access within adjoining public roads, footpaths and reserve areas, is not restricted and to prevent damage to public infrastructure.
- 23 During the construction phase of the development, downpipes and the associated stormwater disposal system is to suitably connected to the site stormwater connection point immediately after the roof materials are positioned in order to prevent erosion of the site from roof water run off. The Principal Certifying Authority for the development will not issue a compliance certificate for framing unless connection of the site stormwater (or temporary system) has occurred.

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

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

### **BASIX Requirements**

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

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

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

### **Dilapidation Rectification Requirements**

- 26 Prior to the issue of an Occupation Certificate, any damage not shown in the Dilapidation Report submitted to and approved by the Principal Certifying Authority prior to site works commencing, will be assumed to have been caused as a result of the site works undertaken with respect to the development and must be rectified at the applicant's expense.
- 27 The obtaining of a Section 307 Certificate of Compliance under the Water Management Act 2000 for water and sewer requirements for the development from Wyong Shire Council as the Water Supply Authority prior to issue of the Subdivision/Occupation Certificate. All works for the development must be approved by Council prior to the issue of a Certificate of Compliance.

### **Landscaping Requirements**

- 28 Prior to the issue of an Occupation Certificate, the front setback area of the allotment disturbed during construction of the development, is to be suitably turfed in accordance with the provisions of Council's Development Control Plan 2005, Chapter 100 - *Quality Housing*. Sediment Control fencing erected on the site in order to control sediment leaving the development site must remain in place until such time as the required turf is established.

### **Plumbing and Drainage - Compliance Requirements**

- 29 Prior to the issue of an Occupation Certificate, the hot water installation is to be suitably tempered in order that hot water not exceeding 50 degrees Celsius is provided at the outlet of the sanitary fixtures used primarily for personal hygiene purposes. Compliance with this temperature limit is optional for kitchen sinks and laundry tubs under the provisions of AS/NZS 3500, Part 4.2 C1.1.6.2.
- 30 Prior to the issue of an Occupation Certificate, the required rainwater tank is to be provided in the location as detailed within the approved development plans with suitable plumbing connections provided to collect rainwater from the roof area as detailed within the BASIX Certificate applicable to the development. The required rainwater tank is to be installed in accordance with the requirements of the National Plumbing and Drainage Code AS/NZS 3500 and shall be provided with first flow diversion devices fixed to all inflows and a functioning pressure pump plumbed to service all fixtures as detailed within the BASIX Certificate applicable to the development. The required tank must be controlled in order that supplemental flow from domestic mains does not take place until the capacity of the tank has been reduced to 20%.
- 31 Prior to the issue of an Occupation Certificate, the surcharge gully provided with respect to the development, must be located a minimum of 150mm below floor level and 75mm above the surrounding finished ground level.

### **Vehicle Access and Parking – Compliance Requirements**

- 32 Prior to the issue of an Occupation Certificate, a suitable non-slip finish driveway access with a decorative finish, is to be constructed in the location as shown on the approved development plans.

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

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

**Ongoing Operation:**

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

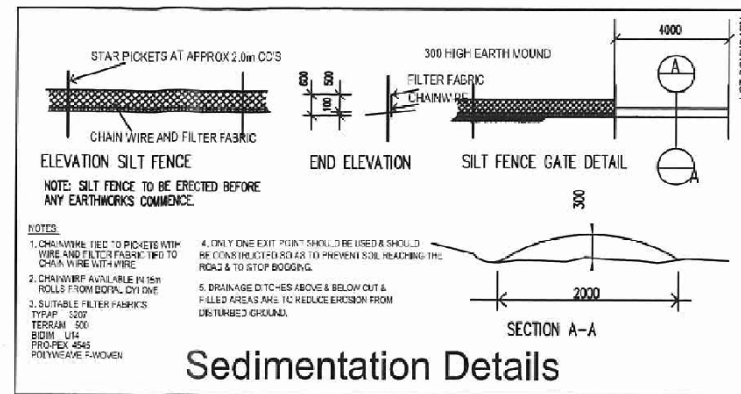
No Conditions

EASEMENTS	: NIL
RIGHT OF WAYS	: NIL
STORMWATER	TO BE PIPED TO COUNCILS DRAINAGE SYSTEM
WATERWAYS	: NIL
WATER COURSES	: NIL
CUT & FILL	: NOTE TO RL
SEDIMENTATION CONTROL	APPROVED SILT FENCE TO BE ERECTED INSIDE DOWNSTREAM BOUNDARIES.
SAFETY FENCING	1.8m HIGH WIRE FENCE TO BE ERECTED ALONG BOUNDARIES OPEN TO PUBLIC.
TERMITE PROTECTION	COMBINATION OF PHYSICAL & CHEMICAL BARRIER TO BE INSTALLED

Site Details

**LEGEND:**

	DATUM POINT
	1800mm HIGH FENCE TO DETAIL
	EXISTING FENCE
	LOG RETAINING WALLS AS SHOWN
	FEATURE RETAINING WALL AS SHOWN
	STORMWATER LINE
	EXCAVATION OF P-ATFORM LEVEL
	DEEP EDGE BEAM
	SEDIMENTATION BARRIER



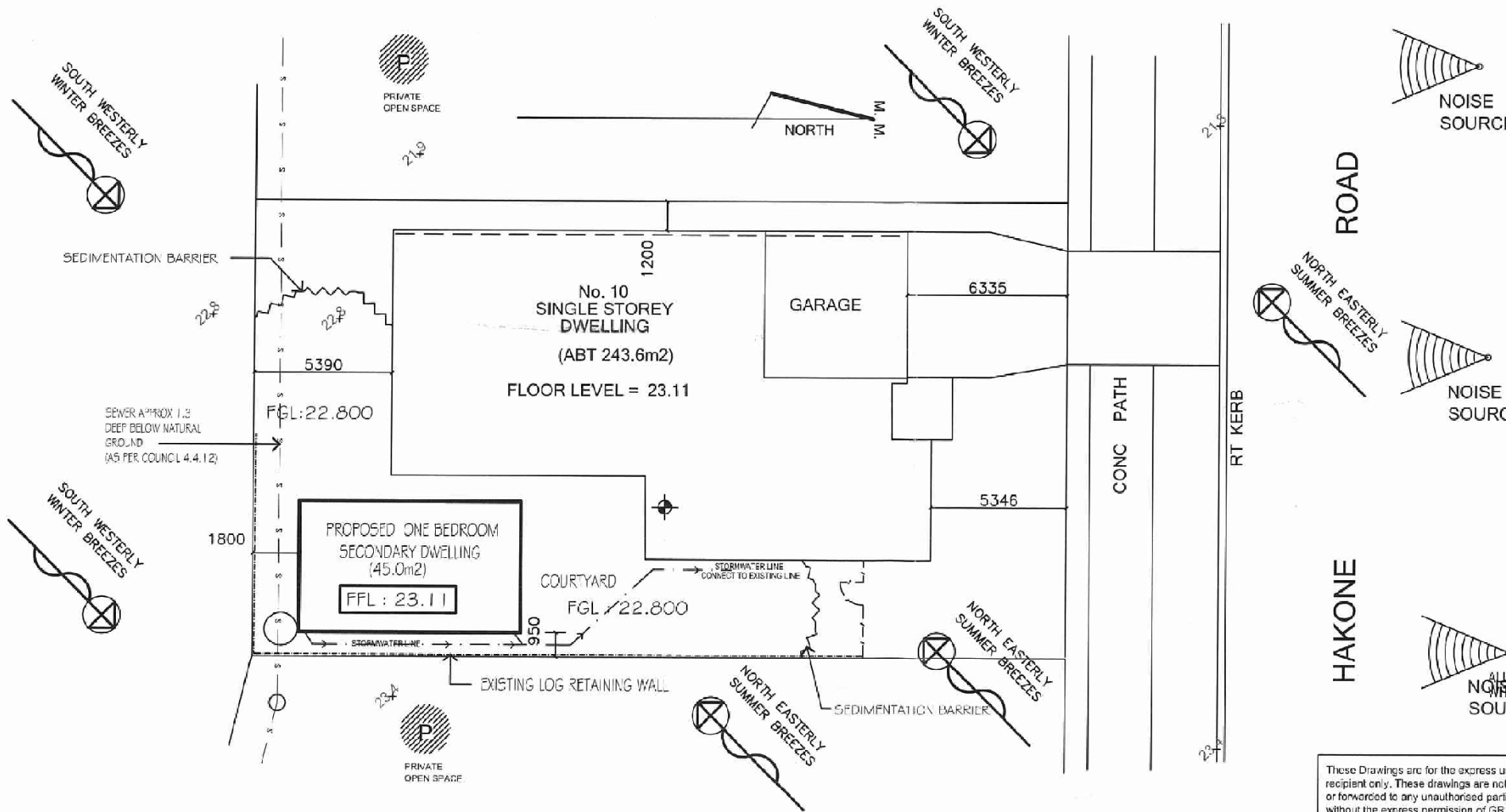
SITE ANALYSIS

SITE AREA	576.2m <sup>2</sup>
LIVING AREA - EXISTING HOUSE	243.6m <sup>2</sup>
LIVING AREA - SECONDARY DWELLING	45.0m <sup>2</sup>
SITE COVERAGE: 288.6m <sup>2</sup> = 50.0%	

**MINE SUBSIDENCE BOARD**  
Development/Building Application  
This approval is valid for two (2) years from today and includes any condition of approval attached.

1 MAY 2012

The approval is subject to levels & heights shown on plan being accurate & footings designed to comply with AS2670.1 or relevant Australian Standards. For Mine Subsidence Board.



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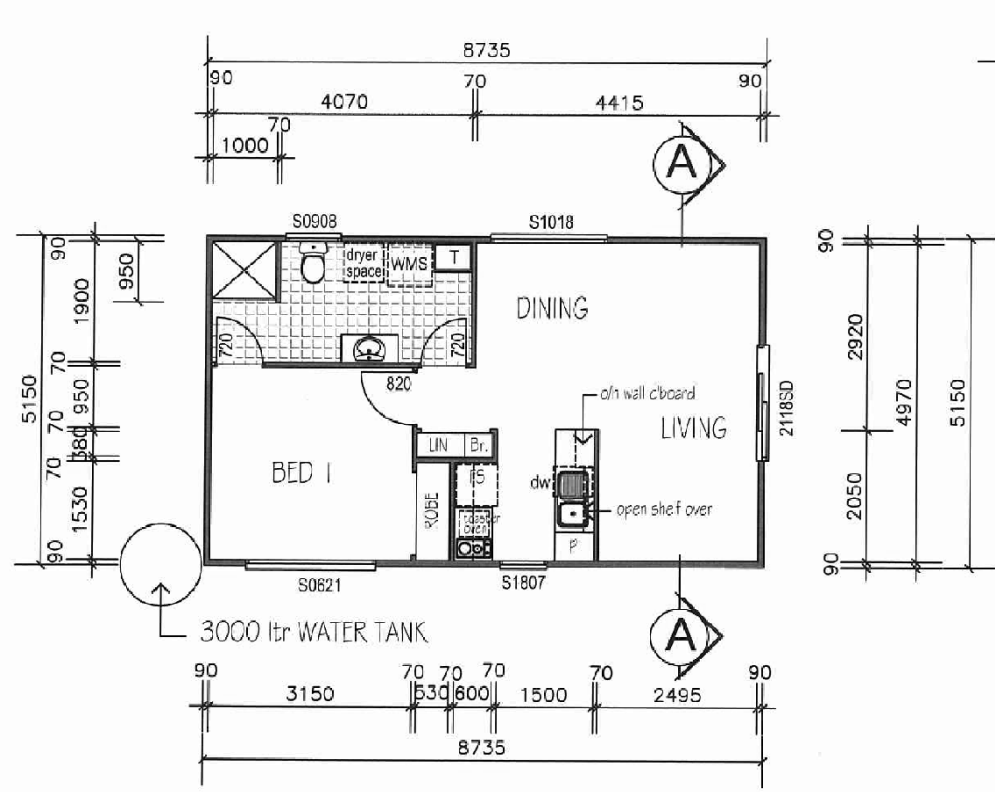
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AFIXED STAMP

ISSUE: A1DCA 20/04/12 016

GR & BJ Evans abn 87656235993 T/as GRANNY FLATS CENTRAL COAST PO BOX 4103, COPACABANA NSW 2251 email: info@grannyflatscentralcoast.com.au www.grannyflatscentralcoast.com.au ph :43812704 mb:0417 274 016	PROPOSED DEVELOPMENT: <b>SECONDARY DWELLING</b>				Client: <b>J. MELDRUM</b>
	A1(DCA)	20.04.12	COMBINED DA-CC APPLICATION		Address: <b>LOT 711 IN DP 1157871 10 HAKONE RD</b>
amendment:	date issued:	revision:	Drawn: JP	Designed: JP	Checked: GE
			Issue: A1DCA	Date Drawn: 20/04/12	Job No: 016
				Scale: 1:200	Sheet No: 1-OF-
					Suburb: <b>WOONGARRAH</b>
					Council: <b>WYONG</b>





Floor Plan



**General Notes**

ALL DIMENSIONS ARE SHOWN IN MILLIMETRES  
 ALL DIMENSIONS TO BE CHECKED ON SITE BY THE CONTRACTOR PRIOR TO CONSTRUCTION  
 FIGURED DIMENSIONS TAKE PRECEDENCE OVER SCALING OF DRAWINGS  
 ALL WORKMANSHIP AND MATERIALS TO BE IN ACCORDANCE WITH RELEVANT BUILDING CODES AND COUNCILS REQUIREMENTS  
 ALL TIMBERS ARE TO BE AUST. STANDARD 1684.2-1999  
 TERMITE CONTROL TO BE IN ACCORDANCE WITH AUST STANDARD 3660.1-3 TO BE PHYSICAL / CHEMICAL

THESE DRAWINGS TO BE READ IN CONJUNCTION WITH ALL OTHER PROFESSIONAL SPECIFICATIONS AND COUNCILS CONDITIONS OF APPROVAL  
 ANY DISCREPANCIES BETWEEN KNIGHT-MAPLETON ISSUED DRAWINGS, AND OTHER PROFESSIONAL'S DOCUMENTATION, COUNCILS CONDITIONS OF APPROVAL, SITE CONDITIONS OR ANY OTHER VARIANT MUST BE REPORTED TO KNIGHT-MAPLETON IMMEDIATELY  
 ALL REDUCED LEVELS RELATE TO ASSUMED LEVELS  
 THE BUILDER / CONTRACTOR SHALL ERECT AN EROSION CONTROL FENCE AS PER COUNCIL'S POLICY  
 THE BUILDER / CONTRACTOR SHALL ERECT A SAFETY FENCE ON SITE AS PER COUNCIL'S POLICY

**BASIX COMMITMENTS**

- All showerheads in the development to have a minimum 3 star (>6 but <=7.5 litres/minute) rating.
- All kitchen and bathroom basin taps in the development to have a minimum 4 star rating.
- All toilets in the development to have a minimum 4 star rating.
- Rainwater tanks, with the following minimum capacity, are to be installed:
  - 3,000 litres
- Rain runoff is to be collected from an average of at least 56.3 m<sup>2</sup> of roof area.
- Rainwater tanks are to be connected to:
  - all toilets in the development
  - the cold water tap of each clothes washer.
  - at least one (1) outdoor tap.
- Added insulation requirements:
  - R1.5 to framed and clad external walls (or R1.9 total including construction);
  - R1.45 (up) to ceilings;
  - 55mm thick foil backed blanket to roof.
- Roof colour to be medium SA 0.475 - 0.7.
- Hot water systems to be GAS INSTANTANEOUS with a minimum rating of 4.5 stars.
- Exhaust systems, not ducted and with manual on/off switches, to be installed in:
  - kitchen
- Fluorescent or light emitting diode (LED) lighting is to be the primary source of lighting in the following rooms of each unit:
  - Throughout
- Incorporate a well ventilated refrigerator space that allows air circulation around the rear and sides of the refrigerator in each kitchen in the development.
- A fixed outdoor clothes line is to be installed.
- Windows to meet the glazing and shading requirements of basix certificate number 425766S.

**MINE SUBSIDENCE BOARD**  
 Development/Building Application  
 This approval is valid for two (2) years from today and includes any condition of approval attached.  
 1 MAY 2012  
 The approval is subject to levels & heights shown on plan being accurate & footings designed to comply with AS2870.1 or relevant Australian Standards. For Mine Subsidence Board.

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ISSUE:  
 A1DCA 20/04/12 016

GR & BJ Evans abn 87656235993 T/as GRANNY FLATS CENTRAL COAST PO BOX 4103, COPACABANA NSW 2251 email: info@grannyflatscentralcoast.com.au www.grannyflatscentralcoast.com.au ph :43812704 mb:0417 274 016	PROPOSED DEVELOPMENT: SECONDARY DWELLING			Client: J. MELDRUM
	A1(DCA) amendment:	20.04.12 date issued:	COMBINED DA-CC APPLICATION revision:	Address: LOT 711 IN DP 1157871 10 HAKONE RD Suburb: WOONGARRAH Council: WYONG
			Drawn: JP Designed: JP Checked: GE Scale: 1:100	
			Issue: A1DCA Date Drawn: 20/04/12 Job No: 016 Sheet No: 1-OF-	



West Elevation

East Elevation

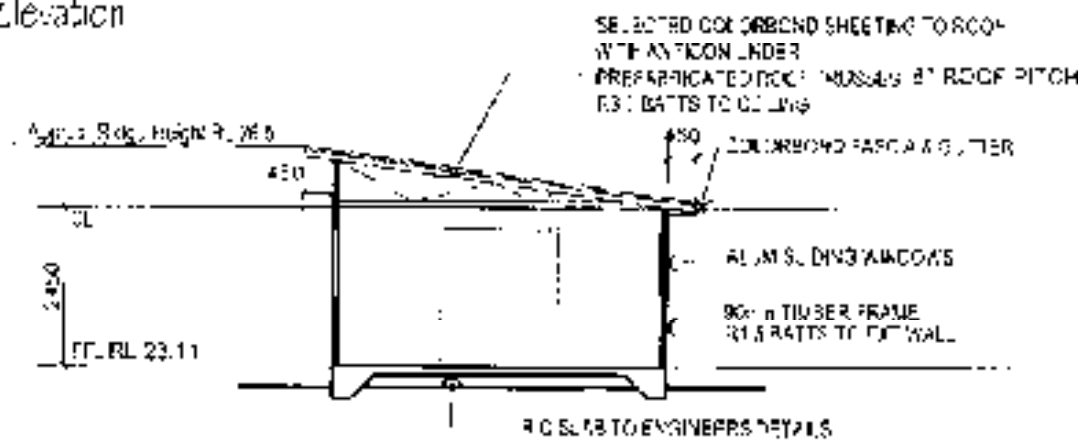


North Elevation

South Elevation

**Section Notes**

1. F3 Gas hot water unit.
2. Elect cook top.
3. Medium tones to external walls.
4. Medium Tones to roof.



Section A - A

ALL DIMENSIONS AND DOCUMENTS TO BE TAKEN IN ACCORDANCE WITH CURRENT B.A.S.A. SPECIFICATIONS

THIS PLAN IS THE PROPERTY OF GRANNY FLATS CENTRAL COAST PTY LTD. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED. IT IS NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF GRANNY FLATS CENTRAL COAST PTY LTD.

Client: J. MELDRUM  
 Address: LCT 711 IN DP 1157871  
 Suburb: WOONGARRAH  
 Council: WYONG  
 Title: A1DC/20/04/12 01G

GR & BJ Evans abr 87656235993 tras GRANNY FLATS CENTRAL COAST PO BOX 4103, COPACABANA NSW 2251 email: info@grannyflatscentralcoast.com.au www.grannyflatscentralcoast.com.au ph: 43312704 fmb: 0417 274 016	A1(DCA) 20/04/12 COMBINED DA-DC APPLICATION		PROPOSED DEVELOPMENT SECONDARY DWELLING				Date: J. MELDRUM
	41(DCA) 20/04/12	20/04/12	COMBINED DA-DC APPLICATION	Drawn: JP	Designed: JT	Checked: CJ	Scale: 1:100
Approved: 13/01/2012			Date Drawn: 20/04/12	Job No: 010	Sheet No: 1-0F-		

## 2.5 Planning Proposal - RZ/6/2012 - Key (Iconic) Development Site No 2 - Klumper Site, The Entrance

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TRIM REFERENCE: RZ/6/2012 - D03046937

MANAGER: Paul Bowditch, Manager Place Management

AUTHOR: Stephen Ashton; Senior Strategic Planner

### SUMMARY

Reporting on the submission of a Planning Proposal for the 'Klumper Site' in The Entrance. An assessment of the proposal has been undertaken, having regard for local, regional and State strategies and policies, and the applicable legislative requirements. The assessment has identified that the planning proposal has merit and should therefore be supported.

**Rezoning Application:** RZ/6/2012

**Applicant:** Ingham Planning Pty Ltd

**Owner:** Terrigal Grosvenor Lodge Pty Ltd

**Description of Land:** 9 The Entrance Road West (Lot 151 DP 1078873), 3 Oakland Avenue (Lot 4 DP 367602), 4 Bent Street (Lot D DP 382461), 2 Clifford Street (Lot 12 DP 23428), 11 The Entrance Road West (Lot 1, 2, 3 DP 571197), 5 Oakland Avenue (Lot 3 DP 367602), 1 Bent Street (Lot A DP 343380), 3 Clifford Street (Lot 11 DP 23428), 31 The Entrance Road West (Lots 1 & 2 DP 517291) (Lots A & C DP 382461), 7 Oakland Avenue (Lot 2 DP 367602), 3 Bent Street (Lot B DP 343380), 4 Clifford Street (Lot 10 DP 23428), 35 The Entrance Road West (SP 20363), 9 Oakland Avenue (Lot 1 DP 367602), 5 Bent Street (Lot 1 DP 21396), 37 The Entrance Road West (Lot 1 DP25611), 6 Oakland Avenue (Lot 1 DP 17935), 7 Bent Street (Lot 2 DP 21396), 39 The Entrance Road West (Lot 790801), 9 Bent Street (Lot 3 DP 21396), 11 Bent Street (Part Lot 7 DP 213965).

**Proposal:** To amend *Wyong Local Environmental Plan 1991* to permit redevelopment in accordance with the proposed development described in this report.

**Site Area:** 39,267m<sup>2</sup>

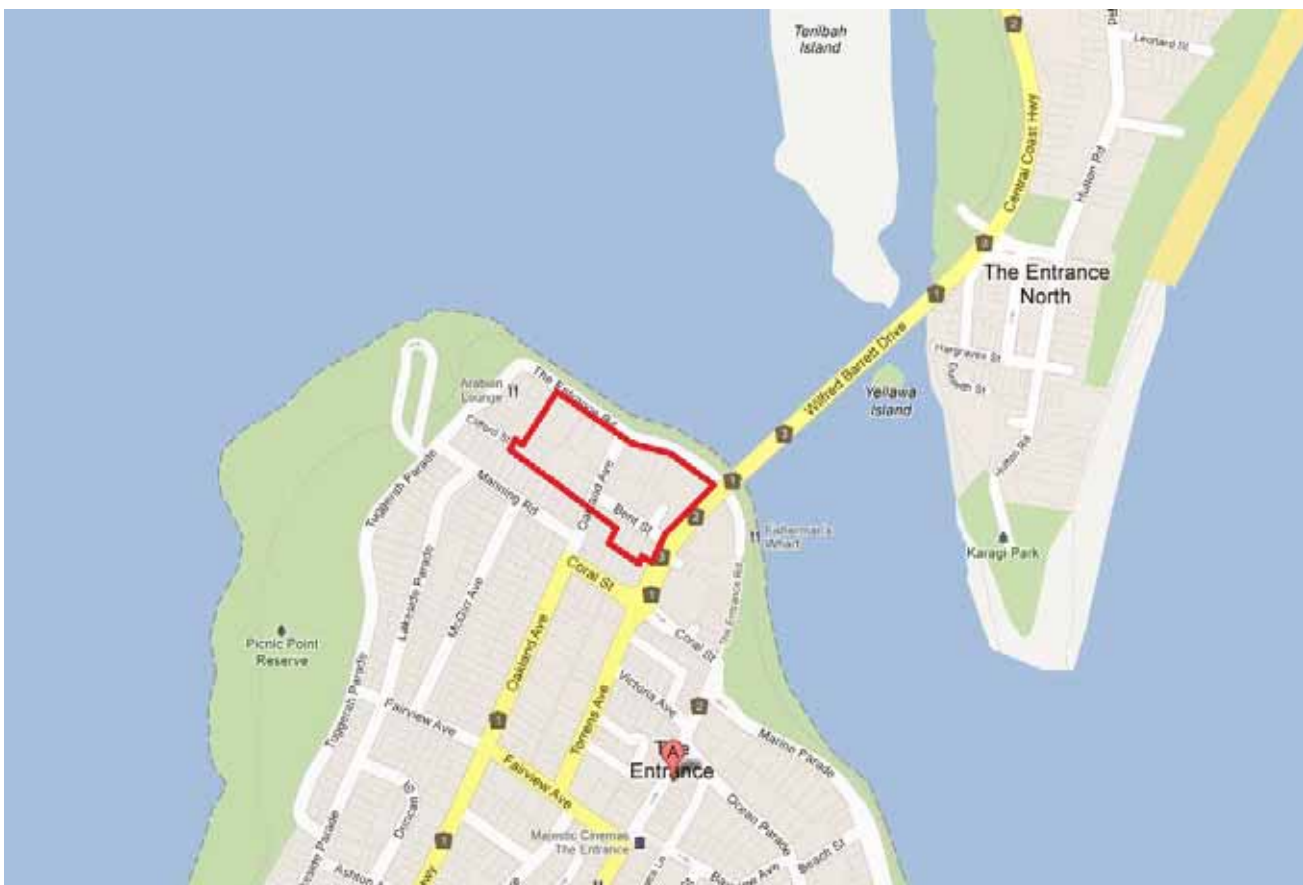
**Zoning:** 2(g) (Residential Tourist)

**Existing Use:** Various (i.e. motel, residential flats, a heritage listed two storey commercial building used as a restaurant, caravan park and single dwellings).

## RECOMMENDATION

- 1 That Council ***initiate*** the Planning Proposal to amend Wyong Local Environmental Plan (WLEP) 1991 in accordance with Section 55 of the Environmental Planning and Assessment Act 1979, by endorsing the planning proposal prepared by the applicant.
- 2 That Council ***forward*** the Planning Proposal to the Director General, Department of Planning and Infrastructure requesting a 'Gateway' determination, pursuant to Section 56(1) of the Environmental Planning and Assessment Act 1979.
- 3 Subject to the Director General's approval, that Council ***undertake*** community consultation on the Planning Proposal, in accordance with the Gateway Process and Director General's direction,.
- 4 That Council ***request*** the Department of Planning and Infrastructure to prepare the draft Local Environmental Planning Instrument and that the Minister be requested to make the plan, subject to there being no objections received that cannot be resolved by minor amendments to the Planning Proposal.

## Locality Plan



## INTRODUCTION

Council has received a Planning Proposal (RZ/1/2012) for the land 9-11 and 31-39 The Entrance Road West, 1-11 and 4 Bent Street (and Bent Street itself), 3-9 and 6 Oakland Avenue (and part of this road) and 2, 3 and 4 Clifford Street The Entrance, commonly known as the 'Klumper' Site.

Planning proposals relate to either rezonings and/or amendments to Local Environmental Plans (LEPs), they are not development applications.

The planning proposal will amend *Wyong Local Environmental Plan (WLEP) 1991* by 'switching off' Clauses 42B, 42CA and 68 and inserting enabling provisions into Part 3, Division 6 of *Wyong Local Environmental Plan (WLEP) 1991*, including a sunset clause (for the purpose of encouraging development to commence earlier rather than later). The planning proposal will facilitate an important employment generating development (described in this report) in a strategically significant location and has been lodged in response to Council's adopted Key (Iconic) Development Site draft Development Control Plan (DCP).

The Planning Proposal is considered essential in providing a catalyst to stimulate future economic growth and revitalisation of The Entrance Town Centre.

## PLANNING PROPOSAL (WYONG LOCAL ENVIRONMENTAL PLAN 1991 AMENDMENT) DESCRIPTION

The planning proposal (LEP Amendment request) seeks to 'switch off' existing LEP Clauses 42B, 42CA and 68 relating to building height, setback and use mix (which are currently considered to be constraining development of the site and arguably a significant contributor as to why the site has remained relatively under-developed) and insert enabling provisions into Part 3, Division 6 of *WLEP 1991*, (which includes a sunset clause to require development approval to be granted within 5 years of gazettal of the proposed LEP amendments, to encourage construction to occur promptly), to facilitate the proposed development. A copy of the clauses proposed to be "switched off" is attached.

The planning proposal also seeks to specifically permit the following uses on the site, as they are not currently explicitly permitted under the current 2(g) Residential Tourist zoning:

*Recreation Facility* (to enable the proposed regional water park use), which is defined in *WLEP 1991* as "a building or place designed, equipped and used for indoor recreation, such as a billiard saloon, table tennis centre, squash court, swimming pool, gymnasium, health studio, bowling alley and fun parlour, whether used for the purpose of gain or not, but (in the Table to Clause 10) does not include anything elsewhere defined in this clause."

*Shop* (to enable both tourist and non-tourist related shops), which is defined in *LEP 1991* as "a building or place used for the purpose of the selling (whether by retail or auction), hiring or displaying for the purpose of selling or hiring of items (whether goods or materials), but does not include a building or place elsewhere specifically defined in this clause, or a building or place used for a purpose elsewhere specifically defined in this clause."

Other proposed uses which include hotels (tavern), residential flat buildings (permanent residential accommodation), tourist accommodation (international hotel and serviced/tourist apartments) and restaurants (food premises) are permitted with consent in the 2(g) zone.

Figure 1: Site Plan.



The amendments aim to achieve the same outcomes proposed in relation to 'Key (Iconic) Development Sites' in the Composite LEP, presently awaiting S64 consideration.

Therefore the objectives of the Planning Proposal are generally the same as those for many of the Key (Iconic) Development Sites, and aim to:

- Create a vibrant/viable town centre
- Re-establish The Entrance as a significant tourist destination in NSW
- Promote viable/feasible development
- Facilitate iconic building forms and design excellence
- Provide a world class water based recreation facility
- Encourage development that can act as a catalyst for other development
- Encourage the development of land that has been underutilised for many years
- Provide an appreciable community benefit

The proponents have considered their options in relation to whether to wait for Council's current draft Composite LEP 2012 process to be finalised or whether to submit a Planning Proposal for amendment to the WLEP 1991. The proponents acknowledge that, whilst the overall intent is to facilitate necessary planning changes through Council's draft Composite LEP, this is a complex process that may take significant time to resolve.

As all key stakeholders in the process, including the land owner, Council, State Government and the local community want to see prompt, positive and real action to implement the established vision for The Entrance, the proponents have decided that the preferred course of action is to put forward the planning proposal to amend Council's current LEP.



The proponent's genuine commitment to the development of this relatively under-developed site is demonstrated by their intention to lodge the planning proposal initially, followed by a development application in the near future, to enable both applications to be exhibited concurrently, should the "Gateway" process determine to allow the proposal to proceed.

The proponents will also submit a voluntary planning agreement with the planning proposal, prior to public consultation, which will ensure that adequate public benefit will be provided, largely in the form of public domain improvements within and adjacent to the site, in exchange for increased development potential, which complies with all planning merit considerations (e.g. overshadowing, impact on neighbouring properties and town centre). It should be noted that such an offer of "public benefit" is in accordance with Council's Iconic Development Site Process and has been reviewed by an Internal Governance Panel established to review such offers.

### **PROPOSED DEVELOPMENT DESCRIPTION**

The Planning Proposal and proposed amendments to the DCP are intended to facilitate the construction of a mixed use building comprising a 2-3 storey podium with tourist retail, tavern and regional water park with 7 tower buildings above ranging from 16-31 storeys.

An indicative development schedule is attached which provides details of the current proposed heights of each of the towers and the principle components proposed.

Four of the towers (C, D, E and F) comprise residential uses. Towers A and B are proposed to be serviced apartments and Tower H (the tallest tower), is intended to be a 5 star/international hotel.

Approximately 192 tourism related apartments and 260 permanent residential apartments are proposed as well as the hotel comprising around 302 suites. The hotel will include a convention centre for up to 1,000 people. Carparking for around 1,464 private and 410 public spaces are provided for.

The total Gross Floor Area (GFA) is 105,644m<sup>2</sup> which equates to a Floor Space Ratio (FSR) of around 2.7:1 over the whole of the land (excluding the regional water park). Whilst this facility of around 15,000m<sup>2</sup> is designed to be a semi-outdoor space and provides a significant public benefit, it is appropriate that the draft amendment to the LEP assumes that the water park will be included in GFA calculations and, as such, the overall FSR proposed is 3:1.

The proposed design has been developed through a detailed process, outlined in the Urban Design Report enclosure to this report. The indicative design of the proposal is attached which shows an indicative schematic masterplan proposed for the ground level of the precinct.

### **ROAD CLOSURES**

This development relies on the proponents being able to incorporate the northern end of the Oakland Avenue (north of Bent Street), Bent Street and part (10 metres) of The Entrance Road West road reserves into the future development. Conditions would need to be added requiring consolidation of the road closure land into the proponent's land, timing of the sale and a valuation method and Council Resolution for sale if necessary.

Both the northern end of Oakland Avenue and the portion of The Entrance Road West have been gazetted as closed and basically now have the status of Council land used for road purposes available for sale to the proponent. Physical closure of the road to allow the proponent to commence work on the land would require suitable clauses to provide for any alternative temporary road (or otherwise) and for utilities.

Bent Street is currently a Council Road and would have to be closed (subject to Council being satisfied that adequate access and traffic movement arrangements can be achieved) to allow it to be sold to the proponents and incorporated into the future development.

In regard to any future process:

- 1 A new deed of agreement will have to be drafted to effect the closure of Bent Street and the granting of land for alternative access to The Entrance Hotel et al. This is normally done by the proponent and includes undertaking all relevant investigations and obtaining all relevant agreements/approvals (eg. from service providers with infrastructure in the road reservations). The proponent would also be responsible for all costs including an application to Crown Lands, survey and registration costs, Council's road closure costs, consolidation into the proponent's land and payment to Council and agreement with RTA for alternative access. Council can give no guarantee that Crown Lands will agree to the road closure. A future Council resolution would be required for sale of the land and to acquire any land for future road.
- 2 Council then reviews the draft agreement and endorses the agreement when satisfied with the provisions and at the appropriate time.
- 3 Road closures normally take between 6 and 12 months to complete and are carried out in accordance with the relevant provisions of the Roads Act. An application for road closure is made by Council to the relevant Minister. All survey, costs and consents from public utilities are responsibility of the proponent and Council cannot guarantee agreement by Crown Lands. It is considered that it would be prudent to commence the road closure process after a satisfactory DA is approved.



**Figure 4: Artist's Impression of the Proposed Future Development, when viewed from The Entrance Bridge.**



## **SITE CONTEXT**

### **Description**

The development site is located on the north-western edge of The Entrance town centre in a location which comprises a mix of tourist and residential development including apartments, single dwellings, restaurants, motels, a caravan park, lakeside parks and picnic areas.

For the most part, the existing development on the site represents under-development of the site and is nearing the end of its useful life.

The development site extends westward for over 250 metres along The Entrance Road, from the western side of Wilfred Barrett Drive, where this road forms the ramped access to The Entrance Bridge.

To the north, the site enjoys extensive water views across the Tuggerah Lakes channel to The Entrance North. An attractive tree lined boardwalk, including several large Norfolk Island Palms, is located within the public reserve extending east-west along the channel foreshore on the northern side of The Entrance Road.

## **2.5 Planning Proposal - RZ/6/2012 - Key (Iconic) Development Site No 2 - Klumper Site, The Entrance (contd)**

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Oakland Avenue bisects the site and is proposed to be closed and used as a central access point to the development.

The southern boundary of the eastern part of the site is formed by the single dwelling development on the southern side of Bent Street. Residential development, generally comprising a mix of single and two storey detached dwellings, extends further to the south.

A drainage reserve separates the western part of the subject property from similar single storey weatherboard, brick veneer and fibre-cement dwellings to the south. Some of these residential properties are zoned for use as a future Council carpark.

To the east, the Wilfred Barrett Drive road reserve and bridge forms the eastern boundary of the site, with land beyond this bridge occupied by parking areas associated with The Entrance Hotel. The Entrance Hotel fronts the waterfront plaza area and aligns the north-western fringe of The Entrance town centre.

Immediately to the west of the site, land uses comprise a mix of similar low density single and double storey residential dwellings and a small enclave of retail development (restaurants and cafes) fronting The Entrance Road West and Tuggerah Parade. Further west is Picnic Point, an open space reserve, comprising a boat ramp, children's playground, skate park, picnic facilities and vehicle parking.

### **Environmental, Social and Economic Impact**

#### ***Environmental/Hazard***

The site is subject to inundation from current flood levels or levels having regard to climate change scenarios. However, the planning proposal claims that the indicative scheme shows that the development can be protected from flooding now and into the future.

Acid sulfate soils are also a potential hazard that will be investigated in further detail as part of the DA process, in accordance with the requirements of Clause 15, Wyong LEP 1991.

There are no other known potential hazards on the site.

There is minimal vegetation on the site and no known critical habitats or threatened species, populations or ecological communities, or habitats.

In relation to visual impact, the site is presently developed with low scale residential and tourist development and, as such, any redevelopment will have a visual impact. However the Planning Proposal will facilitate a development of far greater visual quality than is likely to occur under the existing planning controls. The quality of existing development approved under these controls can be seen in the surrounding area (refer to images in the Urban Design Report enclosure). Whilst higher in form than existing development, the iconic quality that Council is attempting to achieve via its draft Iconic Sites DCP and Town Centre Masterplan is demonstrated in the montages of the proposal. In terms of height, the proposed building is consistent with the overall vision for The Entrance, described in recent strategic plans and with other Iconic Sites in the town centre, where buildings of similar height are being proposed. The appropriateness of the proposed height in this context is shown in Figure 5 below and is discussed in greater detail in the Urban Design Report enclosure.