

New kerb and guttering is installed along Cadonia Road, Tuggerawong as part of a road and drainage upgrade. Works include upgrading the drainage and kerb and guttering as well as a new road pavement.

Wyong Shire Council

Business Paper

ORDINARY COUNCIL MEETING

26 June 2013

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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 26 JUNE 2013 at 5.00 pm,
for the transaction of the business listed below:

OPENING PRAYER

ACKNOWLEDGEMENT OF COUNTRY

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7 CONFIDENTIAL ITEMS

- 7.1 Agreement between Central Coast Group Training and Wyong Shire Council -
Central Coast Youth Skills and Employment Centre

8 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 Disclosures of Interest

TRIM REFERENCE: F2013/00023 - D03409665

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: F2013/00023 - D03409668

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Sonia Witt; TL Governance and Councillor Services

SUMMARY

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

Date	Briefing	Description	Time	Presented by
26 June 2013	Northern Civic Hub	To provide an overview of concept idea for Northern Civic Hub.	12.00 pm – 12.30 pm	Director Community and Recreation Services
26 June 2013	Review of Existing Section 94 Contributions Plan No. 7A-Warnervale District	A new draft plan has been prepared to replace the existing 7A plan and is currently titled "Draft Woongarra, Wadalba and Hamlyn Terrace Development Contributions Plan. The Draft Plan is based on a comprehensive review of historic costs and future costs and significantly reduces the cost of works, Council's liability and the cost per development unit.	12.30 pm – 1.00 pm	Director Land Management
26 June 2013	Affordable Housing Study – Councillor Workshop	Councillor Workshop to brief Councillors on the recommendations for the Affordable Housing Study.	1.00 pm – 2.30 pm	Director Land Management
26 June 2013	Central Coast Water Corporation	Status update.	2.30 pm – 3.00 pm	General Manager

RECOMMENDATION

That Council receive the report on Proposed Inspections and Briefings.

ATTACHMENTS

- 1 Proposed Future Briefings - 26 June 2013 D03421429

Proposed Briefings List to date

Briefing Title:	Directorate:	Proposed Month:	Proposed Date:
Affordable Housing Study - Councillor Workshop	Land Management		26/06/2013
S94A Contributions Plan Review - Precinct 7A	Land Management		26/06/2013
Central Coast Water Corporation	GM Unit		26/06/2013
Northern Civic Hub	Community and Recreation Services		26/06/2013
Revision of Community Feedback and Complaint Management Policy & Draft Customer Service Charter	Community and Recreation Services		10/07/2013
Bateau Bay and Lake Haven Draft Masterplan	Land Management		10/07/2013
CONFIDENTIAL - Child Care Review Framework	Community and Recreation Services		10/07/2013
Alison Homestead	Community and Recreation Services		10/07/2013
Library Strategic Plan	Community and Recreation Services		24/07/2013
Outcome of Branding Strategy	Community and Recreation Services		24/07/2013
Q4 2012/13	GM Unit		28/08/2013
Engagement story - where we've come from, where we're headed	Community and Recreation Services		28/08/2013
Q1 2013/14	GM Unit		27/11/2013
Community Precinct Committees	Community and Recreation Services		
Urban Design Principles & Concepts	Land Management		
Rezoning - 223 Scenic Drive Colongra	Land Management		
Natural Resources Management Strategy	Land Management		
Biodiversity Management Plan	Land Management		
Long Jetty Masterplan	Land Management		
Tuggerah Town Centre	Land Management		
IPART Final Determination on Water Pricing	GM Unit		
Draft Enforcement Policy	Development and Building		

1.3 Address By Invited Speakers

TRIM REFERENCE: F2013/00023 - D03409669

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.*

ATTACHMENTS

Nil.

1.4 Confirmation of Minutes of Previous Meeting

TRIM REFERENCE: F2013/00023 - D03409670

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 Wednesday 12 June 2013.

RECOMMENDATION

That Council confirm the minutes of the previous Ordinary Meeting of Council held on Wednesday 12 June 2013.

ATTACHMENTS

- | | | |
|---|---|-----------|
| 1 | MINUTES - Ordinary Council Meeting - 12 June 2013 | D03409436 |
| 2 | MINUTES - Confidential Ordinary Council Meeting - 12 June 2013
(D03409552) | |

WYONG SHIRE COUNCIL

**MINUTES OF THE
ORDINARY COUNCIL MEETING OF COUNCIL
HELD IN THE COUNCIL CHAMBER
WYONG CIVIC CENTRE, HELY STREET, WYONG
ON 12 JUNE 2013
COMMENCING AT 5:00 PM**

PRESENT

Councillors D J Eaton (Chairperson), G P Best, R L Graham, K G Greenwald, L A Matthews (entered at 5.07 pm), L R Y Nayna, L S Taylor, A Troy, D P Vincent and L D Webster.

IN ATTENDANCE

General Manager, Director Development and Building, Director Infrastructure and Operations, Director Land Management, Director Community and Recreation Services, General Counsel, Manager Communications and two administration staff.

The Mayor, Councillor Eaton, declared the meeting open at 5.01 pm and advised in accordance with the Code of Meeting Practice that the meeting is being recorded.

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

Mayor Eaton advised that Council has won a prestigious Bronze Award at the annual Australasian Reporting Awards in Melbourne, in recognition of the quality of our 2011/12 Annual Report entitled Taking Shape. Ms Kathleen Morris, Manager Integrated Planning, presented Council with the Award.

APOLOGIES

There were no apologies.

1.1 Disclosures of Interest**1.6 Mayoral Minute - Wyong Skills Centre**

Councillor Best declared a pecuniary interest in the matter for the reason that he is the General Manager of Central Coast Group Training, left the chamber at 7.53 pm, took no part in discussion, did not vote and returned to the chamber at 8.23 pm.

Councillor Eaton declared a non-pecuniary insignificant interest in the matter for the reason that he is the Council delegate to Central Coast Group Training.

Councillor Eaton stated:

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

2.4 DA/942/2012 Proposed Education Establishment at 48 and 54 Carters Road, Lake Munmorah

Councillor Best declared a pecuniary interest in the matter for the reason that he is a member of the Joint Regional Planning Panel which will review this application, left the chamber at 6.16 pm, took no part in discussion, did not vote and returned to the chamber at 6.24 pm.

Councillor Eaton declared a non-pecuniary significant interest in the matter for the reason that he is a member of the Joint Regional Planning Panel, left the chamber at 6.16 pm, took no part in discussion, did not vote and returned to the chamber at 6.24 pm.

Councillor Greenwald declared a non-pecuniary insignificant interest in the matter for the reason that the NSW Police, whom he works for in an unrelated area, have made the application safer by providing the design report for this item.

Councillor Greenwald stated:

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

4.2 Proposed Councillors' Community Improvement Grants

Councillor Nayna declared a non-pecuniary insignificant interest in the matter for the reason that he is a member of the NSW Justices Association.

Councillor Nayna stated:

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

4.4 Councillors' Attendance at Police Charity Ball 6 July 2013

Councillor Greenwald declared a non-pecuniary significant interest in the matter for the reason that he works for the NSW Police who would be a beneficiary, left the chamber at 7.02 pm, took no part in discussion, did not vote and returned to the chamber at 7.03 pm.

Councillor Matthews entered the meeting at 5.07 pm.

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

711/13 That Council receive the report on Disclosure of Interest and note advice of disclosures.

PROCEDURAL MOTION

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

712/13 That Council allow meeting practice to be varied.

713/13 That Council use the exception method to deal with the balance of the Agenda.

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

714/13 That with the exception of report numbers 1.6, 2.1, 2.2, 2.3, 2.4, 2.5, 4.1, 4.5, 4.6, 5.1, 5.2, 5.3, 7.1 and 7.2, Council adopt the recommendations contained in the remaining reports.

1.2 Proposed Inspections and Briefings

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

715/13 That Council receive the report on Proposed Inspections and Briefings.

1.3 Address by Invited Speakers

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

716/13 That Council receive the amended report on Invited Speakers.

717/13 That Council agree meeting practice be varied to allow reports from Directors and/or the General Manager to be dealt with following an Invited Speaker's address.

1.4 Confirmation of Minutes of Previous Meeting

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

718/13 That Council confirm the minutes of the previous Extraordinary Meeting of Council held on Thursday 16 May 2013 and the Ordinary Meeting of Council held on Wednesday 22 May 2013.

Business Arising

There was no business arising.

1.5 Notice of Intention to Deal with Matter in Confidential Session

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

719/13 That Council consider the following matter in Confidential Session, pursuant to Section 10A 2(a) and (d) of the Local Government Act 1993:

1.6 Mayoral Minute – Wyong Skills Centre

7.1 Metro Cinemas

7.2 Future of Beach Safety Services

720/13 That Council note its reason for considering items 1.6 – Mayoral Minute – Wyong Skills Centre and item 7.1 – Metro Cinemas as they contain information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business and is commercial information of a confidential nature that would, if disclosed (i) prejudice the commercial position of the person who supplied it, or (ii) confer a commercial advantage on a competitor of the Council, or (iii) reveal a trade secret.

721/13 That Council note its reason for considering item 7.2 – Future of Beach Safety as it contains information concerning particular individuals (other than Councillors).

722/13 That Council request the General Manager to report on this matter in open session of Council.

2.1 RZ/10/2012 - Rezoning to Permit Woolworths Supermarket, Petrol Filling Station and limited Specialty Shopping at Wadalba

Councillor Vincent left the meeting at 5.13 pm and returned to the meeting at 5.17 pm during consideration of this item.

Councillor Matthews left the meeting at 5.13 pm and returned to the meeting at 5.17 pm during consideration of this item.

Mr Michael Rumble, representing Fabcot Pty Ltd and Mr Anthony Iannuzzi representing Woolworths, addressed the meeting at 5.11 pm, answered questions and retired at 5.26 pm.

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

723/13 That Council initiate the Local Environmental Plan “Gateway” process, pursuant to Section 55 of the Environmental Planning and Assessment Act, 1979 by the preparation of a Planning Proposal.

724/13 That Council forward the Planning Proposal to the Department of Planning and Infrastructure requesting a “Gateway” determination, pursuant to

Section 56(1) of the Environmental Planning and Assessment Act.

- 725/13 That Council executes a Funding Agreement with the applicant to finance the ongoing assessment of the Planning Proposal, subject to the determination of the Gateway Process.
- 726/13 That Council request the General Manager to apply to accept plan making delegations for the rezoning.
- 727/13 That Council note that additional information will need to be submitted prior to proceeding to public exhibition/consultation.
- 728/13 That Council develop and exhibit appropriate Development Control Plan provisions to ensure consistency with the Planning Proposal and provide guidelines for future development.
- 729/13 That Council direct the General Manager to provide a further report be submitted to Council to report on the results of the consultation phase and the preparation of a relevant LEP and DCP amendment.

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

AGAINST: NIL

2.2 RZ/13/2012 - Proposed Rezoning - 2-10 Cams Road, Summerland Point

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

- 730/13 That a Planning Proposal be prepared to amend Wyong Local Environmental Plan, 1991, (or pending timing, Wyong Standard Instrument Local Environmental Plan (SI LEP)) pursuant to Section 55 of the Environmental Planning and Assessment (EP & A) Act, 1979, for the residential development of Pt 200 DP 1181286, 2-10 Cams Boulevard, Summerland Point.
- 731/13 That Council, forward the Planning Proposal to the Department of Planning and Infrastructure (DoPI) accompanied by a request for a "Gateway Determination", pursuant to Section 56 of the EP & A Act, 1979.
- 732/13 That Council require, subject to the "Gateway Determination," the proponent enter into a Funding Agreement with Council in accordance with Council's Planning Proposal Procedure to recover the costs involved in further progressing the proposal.
- 733/13 That Council authorise the General Manager (or delegate) to sign the Funding Agreement.
- 734/13 That Council enter into a Voluntary Planning Agreement with the Proponent, if required, which details the mitigation and management requirements for the site's *Tetratheca juncea*, should the proposal have a 'significant impact' on the species.
- 735/13 That Council undertake community and government agency consultation, in accordance with the requirements attached to the "Gateway Determination".

- 736/13** That a further report be submitted to Council to report on results of community consultation.
- 737/13** That the Proponent be required to lodge a Section 96 application seeking the removal and/or amendment of Condition No's 6 and 48 of Development Consent DA/1453/2008 dated 14 June 2011 (as amended).
- 738/13** That Council request the General Manager to apply to accept plan making delegations for the rezoning.

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

MATTER ARISING

It was MOVED by Councillor TAYLOR and seconded by Councillor BEST:

- 1 That Council note that *Tetratheca juncea* is endemic to the Central Coast and Hunter Region, however it is listed as vulnerable based on its distribution.
- 2 That Council write to the relevant State and Federal Government agencies requesting reconsideration of this endangered status.

An AMENDMENT was moved by Councillor VINCENT and seconded by Councillor GREENWALD:

- 1 That Council note that *Tetratheca juncea* is endemic to the Central Coast and Hunter Region, however it is listed as vulnerable based on its distribution.
- 2 That Council write to the relevant State and Federal Government agencies requesting clarification of this endangered status.
- 3 That Council staff provide additional information on the vulnerability of the *Tetratheca juncea* and its significance to the Shire.

The AMENDMENT was put to the vote and declared LOST.

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

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

- 739/13** That Council note that *Tetratheca juncea* is endemic to the Central Coast and Hunter Region, however it is listed as vulnerable based on its distribution.
- 740/13** That Council write to the relevant State and Federal Government agencies requesting reconsideration of this endangered status.

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

PROCEDURAL MOTION

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

741/13 That Council allow meeting practice to be varied.

742/13 That Council consider items 2.3, DA/846/2012 - Proposed Detached Secondary Dwelling at 6 Hillcrest Avenue, Tacoma, and 2.5, DA/264/2013 - Proposed Detached Secondary Dwelling at Killarney Vale, in conjunction with each other.

2.3 DA/846/2012 - Proposed Detached Secondary Dwelling at 6 Hillcrest Avenue, Tacoma

Councillor Matthews left the meeting at 6.09 pm and returned to the meeting at 6.12 pm during consideration of this item.

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

743/13 That Council grant consent subject to the conditions detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues.

744/13 That Council levy Section 94 contributions at the secondary dwellings reduced rate of 35% Development Unit.

745/13 That Council advise those who made written submissions of its decision.

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

AGAINST: NIL

2.4 DA/942/2012 Proposed Education Establishment at 48 and 54 Carters Road, Lake Munmorah

Councillor Best declared a pecuniary interest in the matter for the reason that he is a member of the Joint Regional Planning Panel which will review this application, left the chamber at 6.16 pm, took no part in discussion, did not vote and returned to the chamber at 6.24 pm.

Councillor Eaton declared a non-pecuniary significant interest in the matter for the reason that he is a member of the Joint Regional Planning Panel, left the chamber at 6.16 pm, took no part in discussion, did not vote and returned to the chamber at 6.24 pm.

Councillor Greenwald declared a non-pecuniary insignificant interest in the matter for the reason that the NSW Police, whom he works for in an unrelated area, have made the application safer by providing the design report for this item.

Councillor Greenwald stated:

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

Councillor Vincent left the meeting at 6.20 pm and returned to the meeting at 6.21 pm during consideration of this item.

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

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

746/13 That Council receive the report on DA/942/2012 Proposed Education Establishment at 48 and 54 Carters Road, Lake Munmorah.

747/13 That Council put forward a supporting submission to the Joint Regional Planning Panel regarding the Application.

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

AGAINST: NIL

Councillor Eaton resumed the Chair.

2.5 DA/264/2013 - Proposed Detached Secondary Dwelling at Killarney Vale

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

748/13 That Council grant consent subject to the conditions detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues.

749/13 That Council levy Section 94 contributions at the secondary dwellings reduced rate of 35% Development Unit.

750/13 That Council advise those who made written submissions of its decision.

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

AGAINST: NIL

2.6 Amendments to draft Wyong Local Environmental Plan 2012

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

751/13 That Council endorse the amendments to the draft Wyong Local Environmental Plan 2012, approved by the General Manager in consultation with the Mayor, as set out within this report.

752/13 That Council request the approval of the Director-General of the Department of Planning & Infrastructure (or his delegate) to present an updated Section 68 submission under the provisions of Section 69 of the Environmental Planning and Assessment Act 1979 (as amended).

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

AGAINST: NIL

3.1 CPA/220970 - Replacement of Lift 1 and Lift 2 at WSC Civic Centre

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

753/13 That Council accept the tender from the company nominated as Tenderer No 3 in the attached Tender Evaluation Report, for the lump sum amount of \$290,400.00 (excl GST) for Contract CPA/220970 – Replacement of Lift 1 & Lift 2 to WSC Civic Centre.

754/13 That Council determines the Tender Evaluation Report in Attachment A, remains confidential in accordance with Section 10 A (2) (d) of the Local Government Act 1993 as the report contains commercial information of a confidential nature.

755/13 That Council approve the contingency sum as detailed in the Tender Evaluation Report in Attachment A.

4.1 Regional Airport Delegation

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

756/13 That Council authorise the Mayor, the General Manager and delegated staff to participate in the delegation to visit the Queensland Regional Airports detailed in this report.

757/13 That Council authorise the reimbursement of expenses for Councillors in accordance with WSC Facilities and Expenses Policy for Councillors.

A DIVISION was called by Councillors Vincent and Matthews.

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

AGAINST: COUNCILLORS MATTHEWS AND VINCENT

4.2 Proposed Councillors' Community Improvement Grants

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

758/13 That Council allocate an amount of \$26,985.00 from the 2012-13 Councillors' Community Improvement Grants as follows:

Proposed Allocations for 12 June 2013		
Adam Molch Hillier Memorial Surf Classic (\$1200) (\$100 already allocated)	To cover running costs	1,100.00
Australian Filipino Association of the Central Coast (\$800)	Raise funds for charity and proceeds to go to 2GO Give Me 5 Kids Appeal and for building fund and equipment.	800
Bateau Bay Neighbourhood Centre (\$1000)	Community Garden and Landscaping Improvements in the grounds of the centre.	300.00
Central Coast CC Australian & Italian Friendship Society Inc. (\$2000)	Social Activities and Luncheon	1,078.00
Central Coast Multiple Sclerosis & Handicapped Group (\$1841) (\$1400 already allocated)	Major repairs to bus - new clutch	441.00
Central Coast Wetlands - Pioneer Dairy (\$2000)	Purchase of four outdoor umbrellas	2,000.00
Central Coast Wetlands - Pioneer Dairy (\$1800)	Fit out of Pioneer Dairy Cottage Kitchen	1,800.00
Coastcare The Entrance North (\$2000)	Benches at the ends of Florida and Leonard Streets with dune protection fencing around to prevent people walking across dunes.	2,000.00
Halekulani Library (\$500)	Purchase of new books	500.00
Killarney Vale AFC Inc trading as Central Coast Bombers (\$1000) (\$600 already allocated)	Outdoor gas catering BBQ	400.00
Lions Club of Wyong (\$2000) (\$400 already allocated)	District 2013 Lions Convention - Camp Breakaway - November 2013	350.00
Northern Women's Health Centre (\$1000)	To assist with the provision of childcare for counselling, legal advice and groups	300.00
Northlakes High School P & C (\$2000) (\$350 already allocated)	CD produced by students	250.00
NSW Justices Association Inc (\$2000) (\$600 already allocated)	Lap top, projector and screen for training of desk volunteers in libraries	400.00
Ourimbah United Football Club (\$1557)	To make the new amenities building secure.	1,557.00
Ourimbah United Football Club (\$2000)	To purchase shower partitions and doors, so players can shower after games.	1,700.00
The Entrance Amateur Swimming Club (\$1450)	Purchase new seating and 2 x marquees	700.00
The Entrance Rugby Club (\$2000) (\$600 already allocated)	Sporting equipment	600.00
The Lakes Singers (\$300)	To assist with copyright, APRA license, insurance coverage and printing of music.	200.00

<i>Toukley & Districts Art Society (\$2000) (\$500 already allocated)</i>	<i>Engage professional tutors to teach members and general public</i>	<i>350.00</i>
<i>Tuggerah Lakes Choral Society (\$2000) (\$600 already allocated)</i>	<i>Publicity costs for the choir, insurances, accompanist fees and hall rental for proposed function to celebrate Ronald Brelsford's 100th birthday and the 40th anniversary of the choir.</i>	<i>1,400.00</i>
<i>Tuggerah Lakes Memorial Pistol Club Inc (\$2000) (\$600 already allocated)</i>	<i>Replacement of faulty target winders on air pistol range</i>	<i>600.00</i>
<i>Tuggerah Lakes Secondary College - Tumbi Umbi Campus (\$2000)</i>	<i>Student Exchange Program</i>	<i>2,000.00</i>
<i>Tuggerah Tuffs Winter Swim club (\$1700)</i>	<i>Purchase of club shirts</i>	<i>452.00</i>
<i>Tuggerah Tuffs Winter Swim club (\$407)</i>	<i>Purchase Dual U.H.F. Wireless Microphone - for use at the pool</i>	<i>407.00</i>
<i>Uniting Care Burnside Northern Lakes Family Centre (\$1000)</i>	<i>School Holiday Activities</i>	<i>600.00</i>
<i>WyCare (\$2000)</i>	<i>Purchase of pavers to upgrade access to Landcare Resource office with pavers to be laid by volunteers.</i>	<i>2,000.00</i>
<i>Wyong District U14's Rep Netball Team (\$2000)</i>	<i>Send team to represent Wyong Shire at Campbelltown in the State Age Championships</i>	<i>200.00</i>
<i>Wyong Drama Group Inc. (\$2000)</i>	<i>Contribution to 10th Annual Central Coast Theatrefest</i>	<i>1,700.00</i>
<i>Wyong Public School P & C Association (\$2000)</i>	<i>125 year celebrations at Wyong Public School to provide educational and entertainment to the community.</i>	<i>800.00</i>

4.3 Conference Attendance - 2013 LGMA Summit for Executive Women in Local Government

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

759/13 That Council authorise interested councillors to attend Local Government Women's Summit in Sydney at date to be confirmed in 2013.

760/13 That Council meet reasonable expenses incurred in councillors attending the above conference in accordance with Council's Facilities and Expenses Policy for Councillors.

4.4 Councillors' Attendance at Police Charity Ball 6 July 2013

Councillor Greenwald declared a non-pecuniary significant interest in the matter for the reason that he works for the NSW Police who would be a beneficiary, left the chamber at 7.02 pm, took no part in discussion, did not vote and returned to the chamber at 7.03 pm.

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

761/13 That Council authorise any interested Councillor/s and their partners to

attend the Central Coast Charity Ball 2013 to be held on Saturday, 6 July 2013.

- 762/13 *That Council meet any reasonable expenses incurred by Councillors and their partners attending the above function in accordance with Council's Facilities and Expenses Policy For Councillors.*

PROCEDURAL MOTION

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

- 763/13 *That Council allow meeting practice to be varied.*

- 764/13 *That Council recommit item 4.4, Councillors' Attendance at Police Charity Ball 6 July 2013.*

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

- 765/13 *That Council authorise any interested Councillor/s and their partners to attend the Central Coast Charity Ball 2013 to be held on Saturday, 6 July 2013.*

- 766/13 *That Council meet any reasonable expenses incurred by Councillors and their partners attending the above function in accordance with Council's Facilities and Expenses Policy For Councillors.*

4.5 Amendment to the Facilities and Expenses for Councillors Policy

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

- 767/13 *That Council note that one submission was received on the proposal.*

- 768/13 *That Council adopt the amended Facilities and Expenses for Councillors Policy.*

A DIVISION was called by Councillors Vincent and Matthews.

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

AGAINST: COUNCILLORS GREENWALD, MATTHEWS AND VINCENT

4.6 Organisation Structure

Councillor Troy left the meeting at 6.42 pm and returned to the meeting at 6.44 pm during consideration of this item.

A motion was MOVED by Councillor NAYNA and seconded by Councillor TAYLOR:

- 1 *That Council adopts the organisation structure as presented in Attachment 2 as the*

Wyong Shire Council Organisation Structure and resolve no permanent Award staff be impacted in the resolution.

- 2 *That Council invite staff, Consultative Committee and the Unions to make submissions on this structure for 21 days.*
- 3 *That Council gives consideration to those submissions on 10 July 2013.*
- 4 *Council designate the positions of Manager Building, Certification, Compliance and Health, Manager Property Development, Manager Property Management, Manager Commercial Enterprises as Senior Designated Officers due to the reduction in Service Unit Managers from 26 to 19.*
- 5 *That Council note budgeted FTE will reduce from 1048 to 1035 in 2013/14.*

An AMENDMENT was moved by Councillor MATTHEWS and seconded by Councillor GREENWALD:

- 1 *That Council adopts the organisation structure as presented in Attachment 2 as the Wyong Shire Council Organisation Structure and resolve no permanent Award staff be impacted in the resolution.*
- 2 *That Council invite staff, Consultative Committee and the Unions to make submissions on this structure for 21 days.*
- 3 *That Council gives consideration to those submissions on 10 July 2013.*
- 4 *Council designate the positions of Manager Building, Certification, Compliance and Health, Manager Property Development, Manager Property Management, Manager Commercial Enterprises as Senior Designated Officers due to the reduction in Service Unit Managers from 26 to 19.*
- 5 *That Council note budgeted FTE will reduce from 1048 to 1035 in 2013/14.*
- 6 *That lifeguards be removed from Community Business and Tourism service unit and into the Open Space and Recreation service unit.*

The AMENDMENT was put to the vote and declared LOST

FOR: COUNCILLORS GREENWALD, MATTHEWS AND VINCENT

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

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

- 769/13 That Council adopts the organisation structure as presented in Attachment 2 as the Wyong Shire Council Organisation Structure and resolve no permanent Award staff be impacted in the resolution.***
- 770/13 That Council invite staff, Consultative Committee and the Unions to make submissions on this structure for 21 days.***
- 771/13 That Council gives consideration to those submissions on 10 July 2013.***
- 772/13 Council designate the positions of Manager Building, Certification, Compliance and Health, Manager Property Development, Manager Property Management, Manager Commercial Enterprises as Senior Designated Officers due to the reduction in Service Unit Managers from 26 to 19.***

773/13 That Council note budgeted FTE will reduce from 1048 to 1035 in 2013/14.

A DIVISION was called by Councillors Vincent and Greenwald.

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

AGAINST: COUNCILLORS GREENWALD, MATTHEWS AND VINCENT

5.1 Road Capital Works Program

Councillor Nayna left the meeting at 7.03 pm and returned to the meeting at 7.05 pm during consideration of this item.

Councillor Greenwald left the meeting at 7.03 pm and returned to the meeting at 7.05 pm during consideration of this item.

Councillor Matthews left the meeting at 7.05 pm and returned to the meeting at 7.11 pm and as a result took no part in voting.

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

774/13 That Council receive the report on the status of the Council's Road Capital Rolling Works Program.

5.2 Contract Variations and Finalisation for the period covering January 2013 to April 2013

Councillor Matthews left the meeting at 7.05 pm and returned to the meeting at 7.11 pm during consideration of this item.

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

775/13 That Council receive the Contract Variations and Finalisation for the period covering January 2013 to April 2013.

776/13 That Council note the additional expenditure above resolved estimates for the following contracts:

Contract Title	Contract No	Adjusted Contract Value (Excl GST)	Additional Budget Approval (Excl GST)
Detailed Design and Documentation for New Waste Cell 4.3 at Buttonderry Waste Management Facility	CPA/201014	\$192,794.37	\$9,875.00
Integrated Water Cycle Management Strategy	CPA/163415	\$158,850.00	\$8,850.00

Sewer Main Rehabilitation	CPA/207013	\$1,293,480.00	\$80,250.40
Asphaltic Heavy Patching Works	CPA/200744	\$5,009,672.94	\$1,500,000.00

777/13 That Council note the additional expenditures requested are within approved program budgets.

5.3 Repeated Flooding of Tuggerah Businesses

Councillor Webster left the meeting at 7.19 pm and returned to the meeting at 7.20 pm during consideration of this item.

Councillor Taylor left the meeting at 7.20 pm and returned to the meeting at 7.21 pm during consideration of this item.

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

778/13 That Council receive the report on Repeated Flooding of Tuggerah Businesses.

5.4 Outstanding Questions on Notice and Notices of Motion

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

779/13 That Council receive the report on Outstanding Questions on Notice and Notices of Motion.

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

780/13 That Council move into confidential session.

CONFIDENTIAL SESSION

At this stage of the meeting being 7.26 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.

OPEN SESSION

Council resumed in open session at 8.23 pm and the General Manager reported on proceedings of the confidential session of the ordinary meeting of council as follows:

1.6 Mayoral Minute - Wyong Skills Centre

- 781/13 That Council note the success of the Wyong Shire Council and Central Coast Group Training's funding submission for the 'Wyong Skills Centre' through the Federal Government, Department of Education, Employment and Workplace Relations.
- 782/13 That Council delegate to the General Manager signing of the funding agreement for \$2.7m for the construction of the 'Wyong Skills Centre' at Tuggerah.
- 783/13 That Council agree to accept ownership of land at Lot 2037 Bounty Close, Tuggerah, at no cost (gifted) prior to providing any grant funds to the Central Coast Group Training.
- 784/13 That Council direct the Mayor and General Manager to authorise the affixing of the Council seal to the documents associated with the transfer of ownership of land at Lot 2037 Bounty Close, Tuggerah.

7.1 Metro Cinemas

- 785/13 That Council endorse the principles that will guide development of a heads of agreement between Council and Metro Cinemas.
- 786/13 That Council authorise the General Manager to finalise the Heads of Agreement with Metro Cinemas.

7.2 Future of Beach Safety Services

- 787/13 That Council receive and note the report on Council's Beach Safety Services.
- 788/13 That Council undertake a competitive tender process for a beach safety service at the existing service standard, while also requesting new service models to be identified by the tenderers, this option includes:
- That Council permit staff to make a bid for the Beach safety service
 - That Council commence consultation with the unions and affected staff in accordance with the Local Government Award
- 789/13 That Council directs the General Manager to comply with all provisions of the Award in the implementation of Councils resolution.

A DIVISION was called by Councillors Vincent and Matthews.

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

AGAINST: COUNCILLORS GREENWALD, MATTHEWS AND VINCENT

QUESTIONS ON NOTICE

Councillor Taylor

[REDACTED] Youth Connections

Mr Mayor, I raise an issue of [REDACTED]. It has been revealed earlier this year that almost the entire Board of Youth Connections, including I believe, the Finance Officer, have resigned [REDACTED].

Mr Mayor, this organisation has received millions of dollars of taxpayer funding and provides services to Council including usage/leasing of Council facilities, as a not-for-profit RTO. In my view, it is incumbent upon Council on behalf of the public purse to seek a thorough investigation into these alleged events and request a full set of independently audited books.

Mr Mayor, Could you please update Council as a matter of urgency regarding these issues also as to what disclosures if any Youth Connections have publicly volunteered?

THE MEETING closed at 8.25 pm.

1.5 Notice of Intention to Deal with Matter in Confidential Session

TRIM REFERENCE: F2013/00023 - D03423258

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Sonia Witt; TL Governance and Councillor Services

SUMMARY

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

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

RECOMMENDATION

- 1 That Council consider the following matter in Confidential Session, pursuant to Sections 10A(2)() of the Local Government Act 1993:**
 - 7.1 Agreement between Central Coast Group Training and Wyong Shire Council - Central Coast Youth Skills and Employment Centre**
- 2 That Council note its reason for considering Report No 7.1 - Agreement between Central Coast Group Training and Wyong Shire Council - Central Coast Youth Skills and Employment Centre as it may confer a commercial advantage should the discussions be held in a non-confidential environment.**
- 3 That Council request the General Manager to report on this matter in open session of Council.**

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

- “
- 2(d) commercial information of a confidential nature that would, if disclosed:
- (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the Council, or
 - (iii) reveal a trade secret.”

Public Notice

Item 2.1 – Mayoral Minute – General Manager's Performance Plan has been moved into confidential session, therefore pages 28 to 91 have been removed.

Sonia Witt
Team Leader, Governance and Councillor Services

3.1 Submission on the "White Paper for a New Planning System in NSW"

TRIM REFERENCE: F2004/00550 - D03363482

MANAGER: Michael Whittaker, General Manager

AUTHOR: Lin Armstrong; Director Development and Building

SUMMARY

The NSW Government has released the White Paper for a new planning system in NSW. This report outlines the key changes proposed and the ramifications for council as a result of the recommended changes. A draft submission is attached for response to the public exhibition of the Paper. Council is requested to endorse the submission.

RECOMMENDATION

- 1 That Council receive and note the report on the White Paper.**
- 2 That Council forward a copy of this report and the submission in Attachment 1 of this report to the Department of Planning and Infrastructure in response to the public exhibition of the White Paper.**

BACKGROUND

On 16 April 2013, the NSW Government released the White Paper for a new planning system in NSW, together with draft legislation comprising an *Exposure Draft Planning Bill 2013* and *Planning Administrative Bill 2013*.

The framework for the new planning system is based on "five transformative change areas" namely, changing the planning culture, providing for greater community participation at an earlier stage, increasing the focus on strategic planning, introducing a streamlined development assessment process and ensuring the provision of infrastructure. This focus is reflected in the objects of the draft Planning Act, which include the promotion of "economic growth", "opportunities for early and on-going community participation" and "efficient and timely development assessment proportionate to the likely impact of the proposed development". The promotion of "ecologically sustainable development" is not retained as an object in the new Planning Act. Rather, the main purpose of the planning system is identified as being "*to promote economic growth and development in NSW for the benefit of the entire community, while protecting the environment and enhancing people's way of life*". Sustainable development is identified as requiring the integration of economic, environmental and social considerations in decision making, having regard for present and future needs.

Public consultation on the White Paper and draft legislation is currently underway, with submissions due by 28 June 2013. A report on community and stakeholder feedback on the White Paper will then be released.

This report is presented to council to outline the proposed changes under the White Paper and to seek council's endorsement of the proposed submission to be made by council in response to the exhibition.

The proposed submission is attached as Attachment 1.

KEY CHANGES PROPOSED BY THE WHITE PAPER

The White Paper and supporting draft legislation comprises over 300 pages. Some of the key changes proposed by the White Paper include:

Community participation

An increased focus on community participation at a strategic planning level is proposed. There will be a statutory requirement for planning authorities to comply with a "Community Participation Charter" and develop their own "Community Participation Plans". Community Participation Plans will be required to include certain mandatory requirements and other forms of discretionary community participation. Council's won't be required to prepare a Community Participation Plan if their Community Participation Strategy made under the Local Government Act sets out the matters to be specified in the Community Participation Plan.

Comment

Council's Manager of Customer and Community Relations has reviewed the participation requirements and has identified the following issues/opportunities:

- High degree of community education will be needed
- Great opportunity to encompass new changes into the Customer Focus Strategy
- Opportunity to revamp forms, access to information online and offline, introduce or further simplify procedures, Information Packs – how to, etc.
- Website accessibility to do business with council
- Engagement Capacity – only one resource currently supporting the whole of the business – will require more and further training is critical
- Need to ensure the business is ready to respond

There are potential impacts and opportunities likely for our teams in relation to Communication, Engagement and Customer Contact.

- Inclusion of upfront community participation (start rather than middle) will dramatically increase the demand of Engagement, Communications and Customer Contact across the business at the same time will address some key barriers and issues raised by our customers/stakeholders.
- Critical business decisions on who will be implementing etc, as well as doing the engagement. Currently Engagement is only a strategic support role in council.

3.1 Submission on the "White Paper for a New Planning System in NSW" (contd)

- Specifically "Councils will be required to prepare Community Participation Plans based on the principles in the newly created and legal Community Participation Charter". The principles of the proposed charter are aligned to council's Engage Framework, however the processes may be different once this is adopted, we may need to change to align.
- We need to be mindful of accessibility issues for our community in relation to online.
- There will be an increased workload on Communications/Customer Contact when these come into place regarding education, clarifying confusion, and expectations of the consumer. A "one off" approach will not suffice.
- Great opportunity to review current information for customers, there will be impacts on Customer Contact regarding new training requirements and navigation of the system for team, but also opportunity to ensure information is current.
- There will need to be a restructure of council's website to allow access and 'easy click through' processes as discussed in the paper. There is a current "Customer First" strategy to address some components of this. A clear direction is needed to ensure we are encompassing the changes in this strategy.
- Great opportunity to streamline the process and improve information. Good information packs, forms and fact sheets will need to be prepared and html versions available on the web, including intuitive online forms.
- Does not give enough detail about 'how' it will make the process quicker. It does talk about the "assessment pathways" but does not detail the changes (if any) that will be made to exempt and complying development to allow more of this type of development.

The estimated cost associated with these changes is impossible to determine. It is relevant however that council's recent engagement process in relation to the draft LEP alone was in excess of \$250,000.

ePlanning portal

An online portal to be known as "ePlanning" will be introduced to replace a paper-based development application assessment and consultation processes. The ePlanning website is proposed to be a one stop shop that provides a range of services, including 3D visualisations of major development proposals, online lodgement of development applications and payment of fees, as well as the development of an electronic planning certificate and register of development consents.

Comment

The new legislation will enable the establishment of an ePlanning portal (a website that brings together planning information from diverse sources in a unified way) and allows for a range of electronic services to be performed. Whilst it is anticipated that some of council's existing mapping and information systems will be compatible with the future requirements more detail will be required regarding the potential costs to council and future applicants in meeting the requirements of the legislation. For example the White Paper talks about 3 dimensional drawings being available on the web site so that homeowners/the community can view DA Plans and development schemes. This would involve additional cost both financial and in terms of time in plan preparation, submission, loading onto council's system, altered fees and charges etc.

Councils submission on the White Paper should highlight the uncertainties above and the likely additional cost/time impost.

New strategic planning framework

A new strategic planning framework is proposed to replace the existing regime of state environment planning policies (SEPPs), local environmental plans (LEPs) and development control plans (DCPs). The new regime will include State Planning Policies, Regional Growth Plans, Subregional Delivery Plans and Local Plans. The Subregional Delivery Plans will be prepared by a new level of government, namely Subregional Planning Boards. More information on this framework is provided later in this report.

New planning assessment process

The current development assessment process will be replaced with a "track based assessment" approach to planning. It is envisaged that 80% of all developments will be either complying or code assessable within the next five years. While community consultation will be increased at the strategic planning stage, significantly less opportunity for community participation will be available at the DA stage. The ability for council to refuse to grant consent to code assessable development will also be restricted. This is discussed further later in this report.

Concurrences

The White Paper aims to minimise the application of "unnecessary" concurrences, consultation requirements and approvals under other legislation. In particular:

- requirements for approvals and authorisations under other Acts for "public priority infrastructure", state infrastructure development or state significant development either do not apply or are required to be issued consistent with the planning approval for the development, and
- development applications that require concurrence, referrals and approvals will generally be subject to a "one stop referral". For these applications, the Director-General will undertake the functions of the concurrence or referral agency or issue general terms of approval to the consent authority.

Comment

This arrangement of centralising the responsibility for co-ordinating concurrences, has the potential to increase delays as a result of introducing an additional party into the negotiations on Development proposals. Strict timeframes for the turnaround of concurrences will need to be required to be adhered to under the new legislation with the right for councils to deal with applications under the 40 day specified timeframe should a response on referrals not be received.

Whilst it is proposed to reduce the need for concurrences, the process of council forwarding referrals to a third party will lead to delays. Further, it is unclear how concurrences will be negotiated where conflicts between agencies arise.

Land & Environment Court appeals

The types of Land & Environment Court appeals streamed into mandatory conciliation are proposed to be increased. A "very fast appeal track" is also proposed to consider appeals on single residential dwellings and dual occupancies. Legislation will allow simple and straightforward appeals over minor matters to be determined by a Commissioner at the request of the parties.

Comment

Whilst this provision may be a reflection of the litigious nature of planning within certain parts of Sydney it is not particularly relevant in terms of Wyong Shire. In this regard Appeals are rare in Wyong. This change, which is aimed at both reducing the cost of appeals and speeding up the process, may in fact result in an increase in litigation in the Shire. Further, one of the main changes within the White Paper is to increase public consultation in the strategic planning stages so that there is greater certainty at the DA stage. This provision appears to be in conflict with this intention.

Joint Regional Planning Panels

While the existing classes of regional and state significant development will be retained, the number of Joint Regional Planning Panels (JRPPs) will be increased and changes made to the number and makeup of the Panels. JRPPs will have the ability to delegate their functions to a council's General Manager to ensure that non-controversial developments with few public submissions can be determined quickly by council's professional staff. The Minister will remain the consent authority for state significant development and have the power to delegate the determination of private proposals to the Planning Assessment Commission and, for less complex or non-controversial developments, to senior officers of the Department of Planning and Infrastructure.

The increase in the number of JRPPs is aimed at reflecting subregional boundaries and also the envisaged increased workload.

Comment

It should be clarified that there is no intention to reduce council's planning powers under the White Paper reforms. The various triggers for referral of applications to the JRPP should not be amended. In conducting workshops throughout the state, Department of Planning and Infrastructure representatives have verbally confirmed that there is no intention to amend the triggers for JRPP assessment.

Notwithstanding the above, Independent Hearing Panels are "encouraged" and benchmarking is to be introduced whereby if councils fail to make timely decisions, Panels will be imposed. Given that Wyong Council assesses approximately 90% of all DAs under delegated authority, the extensive use of Panels would increase delays in processing times.

Simplified planning process for priority infrastructure projects

A simplified planning process for "priority infrastructure projects" is proposed. For planning purposes, the declaration of development as "public priority infrastructure" will authorise the carrying out of a project without the need for further planning approval. A "project definition report" is required to be completed and publicly exhibited for such development before it is carried out, with the focus being on environmental management measures to minimise any adverse impacts of the project.

Comment

The objective is to ensure that there is stronger forward planning to identify significant environmental risks earlier; together with community consultation and this is endorsed.

Restrictions to third party challenges

While the open-standing provisions found in the *Environmental Planning & Assessment Act 1979* are retained, the draft legislation proposes to exclude certain matters from third party challenge. For example, the draft legislation provides that judicial review proceedings cannot be instituted in respect of the declaration of public priority infrastructure or a breach of a "project definition report". Limitations are also proposed on third party challenges to strategic plans, state significant development, state infrastructure development and the "non-mandatory" provisions of the draft legislation concerning community participation.

Comment

See comments above regarding Land and Environment Court Appeals. Whilst this will reduce the potential for litigation to some extent, it is still possible that the reduced cost of appeals will see an increase in costs and occurrence of appeals in Wyong Shire.

Compliance and enforcement provisions

Stronger compliance and enforcement provisions are proposed in the new Planning Act. There will be a clearly structured process for compliance and remedial or prosecution processes to address breaches.

Comment

This process is endorsed. The White Paper sets out a range of new Orders, however, it also retains appeal rights and allows for compensation if Orders are issued inappropriately.

New infrastructure contribution framework

The current section 94 contribution and state infrastructure contribution regime will be replaced with "local" and "regional" infrastructure contributions. The White Paper also proposes removing the existing contribution cap(s) that apply and limiting the use of voluntary planning agreements. This matter is discussed later in this report.

Limiting appeals against contribution conditions

The ability to appeal to the Land & Environment Court against conditions imposing contributions will be limited in certain circumstances. For example, the draft legislation provides that the Court may not disallow or amend a local infrastructure contribution which is imposed as an "indirect" contribution or a regional infrastructure contribution imposed in accordance with a Local Plan.

Comment

Noted. This would be a positive outcome in terms of providing budgetary certainty.

Significant changes to building regulations and certification

In response to long standing concerns with the current system, a vast range of changes are proposed to building regulation and certification in NSW. These changes are outlined later in this report.

Transitional arrangements

In terms of transitional arrangements, the White Paper provides that planning and assessment processes that began before the new legislation commences will be dealt with under existing statutory procedures and planning instruments. Given the time needed to prepare the strategic plans which make up the new planning framework, it will therefore be some time before the new planning system in NSW takes effect in practical terms.

Comment

Noted. Council should request that the existing Central Coast Regional Strategy, North Wyong Shire Structure Plan, Settlement Strategy, draft LEP and draft DCP be accepted as meeting the new statutory framework with updated documents being substituted under reviews as they proceed. This approach is justified given the extensive public consultation exercise recently undertaken in conjunction with the adoption of the Standard Instrument & land reclassifications.

NEW STRATEGIC PLANNING FRAMEWORK

Chapter 5 of the White Paper outlines the proposed shift in focus to "evidence based" strategic planning in the preparation of plans, community and stakeholder engagement and decision making.

SEPPs, LEPs and DCPs will be replaced with the following hierarchy of plans:

NSW planning policies

These policies will present the State's broad planning objectives, priorities and policy directions. It is proposed that the objectives of existing state environment planning policies (SEPPs) will be included in NSW Planning Policies, while the actual development control provisions contained in existing SEPPs will sit within the relevant Local Plan. It is anticipated that the Planning Policies will be prepared in time for the commencement of the new planning legislation.

Regional growth plans

These plans are proposed to be prepared by State Government. They will be grounded in "detailed supporting evidence" and will set out a high level vision for each region of the State, including establishing planning policies and objectives relating to housing, employment, the environment and infrastructure. Legislation will require Regional Growth Plans to be consistent with the NSW Planning Policies. While these plans will be recognised under the new Act, they will not directly zone land or contain regulations on development. They are expected to generally follow a common format and approach, which is consistent with the draft *Metropolitan Strategy for Sydney to 2031*. Regional Growth Plans will be progressively rolled out across the State following the introduction of the new planning framework.

Subregional delivery plans

These plans will provide the delivery framework for Regional Growth Plans. In particular, these plans will identify key precincts and sites of interest for direct rezoning to achieve the policies and vision set out in the Regional Growth Plans. These plans will be prepared by new Subregional Planning Boards, which is a new planning body that will be established in the Act. These boards will be supported by the Department of Planning & Infrastructure and comprise a council and state representative, as well as an independent chair. Preparation of these plans will commence following the release of Regional Growth Plans, and is required to be completed within two years of the new legislation commencing. Regional Growth and Subregional Delivery Plans are required to be reviewed every four years and amended if required.

Local plans

Local Plans will provide the principal legal document that delivers the strategic vision for a local government area. Councils will be required to prepare a Local Plan for their local government area with "early and effective community participation". Local Plans will be required to follow a standard format comprising four mandatory parts, namely Strategy (Part 1), Planning Controls (Part 2), Development Guides (Part 3) and Contributions (Part 4). The "Planning Control" component of the Local Plan will allow for fewer, broader zones, and will include mandatory provisions applying to development, including existing provisions currently in SEPPs. A planning proposal will be required to amend Part 2 of the Local Plan and will be considered through the existing gateway determination process. The Minister will have the power to amend a Local Plan.

The "Development Guide" component of the Local Plan will address the physical form of development and, where possible, be visual—presented through maps, diagrams and illustrations. Numerical height and FSR development standards will no longer be used, with site density managed through 3D building envelopes.

Local Plans will include provision for "Contributions", specifying the amount of local and regional infrastructure contribution payable for particular types of development. Local infrastructure contributions can only be imposed if a Local Infrastructure Plan is in place. Regional infrastructure contributions will be identified in a Growth Infrastructure Plan.

The new Act will contain provisions to transition existing Standard Instrument LEPs and DCPs into relevant parts of the Local Plan. Local Plans will cover a timeframe of 10 years with reviews required every four years.

There will be a legislative requirement that each plan gives effect to the agreed outcomes in other plans further up the hierarchy, while all plans will be required to follow a standard format.

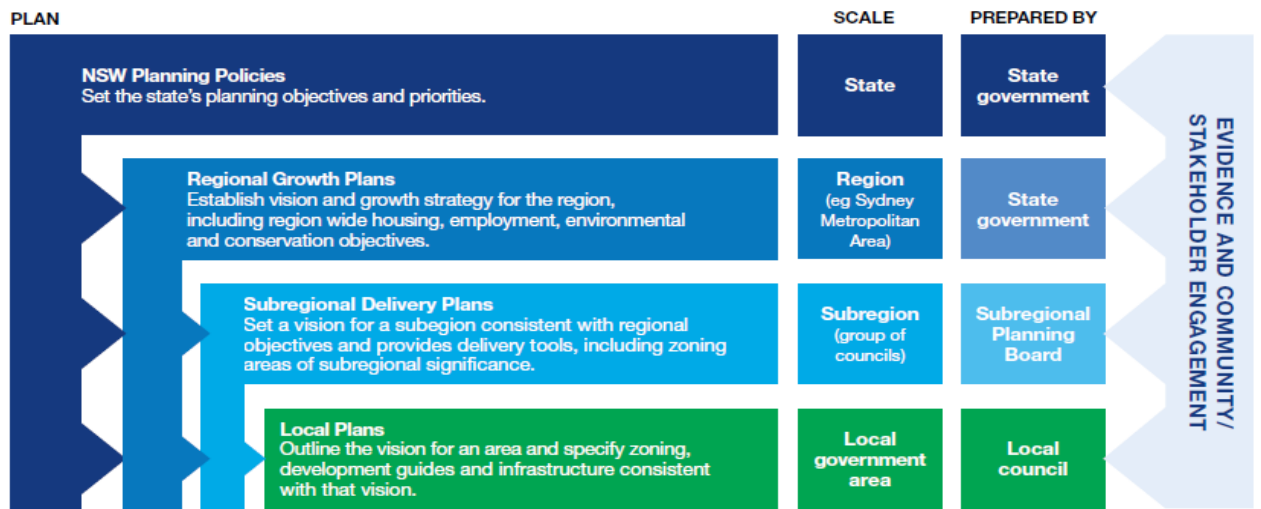
Comment

There is insufficient information available to determine how the "Subregional Planning Boards" will operate or how they will interface with State Government, council and the broader community.

At this stage, there is no indication of likely Regional Infrastructure Contributions or how Local Infrastructure Contributions will be determined, accounted for or spent within the timeframes specified in the White Paper. In this regard, Local Contributions can only be held for 3 years unless otherwise approved by the Minister. Further, the Minister can authorise unspent Local Infrastructure Contributions to be spent on subregional infrastructure.

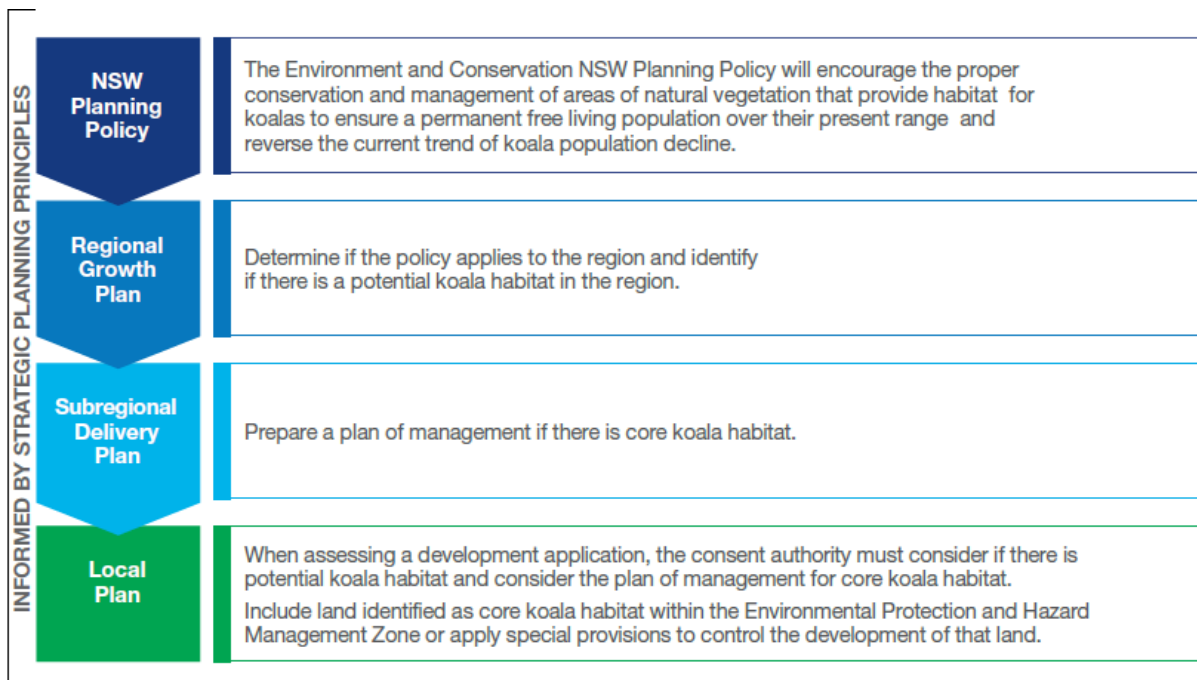
There will be additional costs to council in meeting all of the requirements of the new Act; in preparing plans, making referrals, liaising with various Panels, Boards, reporting and administering the new requirements. Accordingly, council will seek to have current planning documents endorsed as meeting the requirements of any new Act. Consideration should also be given to the State Government providing financial assistance to meet the new requirements. Low interest loans should also be considered to meet infrastructure funding requirements.

Hierarchy of plans



Integration of plans

An example of how the NSW Planning Policies, Regional Growth Plans, Subregional Delivery Plans and Local Plans would integrate using an example of koala habitat protection is provided in the following figure:



DEVELOPMENT ASSESSMENT

Chapter 6 of the White Paper outlines a proposed new system of development assessment that is described as a shift to a "performance based system" where decisions are "faster and transparent but with no less rigour". Under the new development assessment system, a development application may be streamed into one the following five tracks:

Exempt

There will be an expanded range of exempt development types introduced. These include minor structures around the home (such as BBQs and front fences), some fit outs and changes of use (for example change of retail use to another retail use), as well as some temporary structures and uses.

Complying

An expanded range of complying development types will also be introduced. These include most new dwelling houses (up to two storeys), alterations and additions to dwelling houses on land zoned residential, some additions to existing industrial and commercial buildings and some new industrial buildings on land already zoned industrial. Increased flexibility will be introduced with the application of complying development standards. For example, where development would be complying but for a minor variation with the requisite standard, councils will have the ability to approve variations (by issuing a "variation certificate") referred to them by certifiers who consider that the variations do not have adverse impacts on neighbours. Appeal rights will be available against the failure to issue a "variation certificate". A Construction Certificate will not be required for complying development.

Code

A NSW Planning Policy will require certain types of development to be identified as "code assessable" in the Local Plan. Where a development meets the applicable solutions and performance criteria identified in the code, the development cannot be refused and community consultation will not be required. If an alternative solution is proposed by an applicant, and council is satisfied that the solution still meets the performance criteria set in the code, the council also cannot refuse the application or that aspect of the development. If neighbours are consulted on those aspects of development that do not comply with acceptable solutions, council can only consider any comments received on those aspects of the development. The draft legislation also prohibits a consent authority from refusing an application for code assessable development unless it has first notified the applicant that it intends to refuse the application, as well as notifying the applicant of any changes considered necessary before the application will be reconsidered. Any submissions lodged by the applicant in response to the proposed refusal must then be considered by the consent authority.

This is part of the "amber light" approach whereby it is assumed development will proceed. For example, only the variation is at question. An applicant could bring the non complying aspects back into the Code standards and there would be no right of refusal by the Consent Authority.

Merit

Development that is not streamed into any of the other tracks will be subject to a full merit assessment. Merit assessment will also be required for any aspect of a code assessable development which does not meet the requisite performance criteria as outlined above. Examples of the types of development that will be assessed in this track include designated development, most state significant development, as well as proposals for a new pub or residential building without a lower floor commercial component in a town centre. Consent authorities will be required to adopt an "amber light" approach so as to encourage a proponent to modify a development so that its impacts are acceptable. Where an amber light approach is not adopted, the council will be required to justify that decision. Community consultation will occur as part of the merit assessment process. Where a development departs from the strategy for an area, a higher level of community participation will be required.

Prohibited

Land uses that are not consistent with the strategic vision for an area will be prohibited by the relevant Local Plan. In certain circumstances, the Director-General will have the power to issue a "strategic compatibility certificate", which will have the effect of making prohibited development permissible with consent.

Rezoning

The gateway provisions will continue. Rezoning that meet the strategic framework will have appeal rights, which is not the case at present.

Timeframes

Strict timeframes for determination are proposed in the White Paper. For instance, a right of appeal to the Land and Environment Court will be triggered where a code assessment application (that complies with all acceptable solutions) has not been determined within 25 days.

Council's ability to "stop the clock" is limited with no ability to do this where a code assessment development application complies with acceptable solutions. For all other applications, councils may only stop the clock once within the first 21 days and only for a period of 21 days. The assessment clock resumes when the applicant has provided the information sought or the 21 days elapses.

The ability to modify a development consent will be retained, however, a consent authority will not be permitted to refuse a modification application which meets the standards identified in a Local Plan's development guide. Where the development does not meet those standards, or if the original development was merit assessed, the consent may still be modified provided it is "substantially the same" development.

As noted earlier, the aim of the White Paper is that 80% of development will be Complying Development or Code Assessable.

Comment

The categorisation and operation of the approval system appears reasonable, however, the following issues need to be addressed:

- Where councils issue a variation certificate for Complying Development and there is an appeal as a result, is it up to council, the Certifier or both, to defend the appeal?
- Will councils be given any assistance in meeting the increased resources needed to respond to variation requests, or meeting the turnaround times for referrals and assessments?
- A new suite of internal management systems will be required to meet the new Act. This will take time and will involve significant costs for council.
- The vast majority of applications that will be dealt with by council will be Code Assessment that complies with acceptable solutions. Details of likely fee structures for all applications should be provided. It should be expected that the turnaround time of 25 days, reduced information requirements from applicants etc should justify / allow some increase in the DA fee to allow the new system to be funded.
- More detail is required on the types of development that will become Complying or Code Assessable to achieve the 80% target.

COMPLIANCE AND ENFORCEMENT

Chapter 6 of the White Paper proposes a range of enforcement measures, including:

- the issuing of administrative orders for restoration and prevention of harm, payments of costs, expenses or compensation, orders for the payment of monetary benefits acquired by virtue of an offence and publication orders, and
- a tiered system of offences and maximum penalties similar to those found in the Protection of the Environment Operations Act 1997, including maximum penalties for Tier 1 offences of up to \$5 million (up from \$1.1 million) for offences committed by corporations and a maximum penalty of \$1 million for offences committed by individuals (down from \$1.1 million). For example, the draft legislation provides that the carrying out of a development without a planning approval, or contrary to the requirements of a planning approval, can constitute a Tier 1 offence where the offence is committed intentionally and the requisite degree of harm or injury is present.
- Tier 1 offences are the most serious where environmental harm or death are likely to result from a breach.
- Tier 2 offences don't give rise to serious environmental harm or death and Tier 3 are of a less serious or procedural nature.

3.1 Submission on the "White Paper for a New Planning System in NSW" (contd)

The White Paper retains and enhances enforcement provisions currently found in the *Environmental Planning & Assessment Act 1979* including:

- the continuation of the open standing provisions allowing "any person" to approach the Court for orders where there has been a breach or threatened breach of the legislation (although the draft legislation does propose to exclude certain matters from third party challenge)
- the consolidation, updating and rationalisation of the different types of compliance powers that apply to different planning authorities, including the power to issue orders (described as "development control orders" in the draft legislation) powers of entry, power to require records and information, and the power to conduct audits
- special provisions relating to brothels and the power to suspend or revoke corruptly obtained development consents, and
- orders authorising the cessation of utility services will be extended to further development types (such as boarding houses or backpackers hostels) and will be available where a person has failed to comply with a stop work order and there is a demonstrated or potentially significant impact on public amenity, health or safety.

Comment

These recommendations are endorsed and do not appear to have any significant impact on council's current roles and responsibilities for compliance and enforcement. The main impact on council will be resourcing the broadened appeal rights being proposed. Should the number of appeals increase, additional staffing levels will be required and costs will increase.

INFRASTRUCTURE CONTRIBUTIONS

Chapter 7 of the White Paper deals with infrastructure provision and proceeds on the basis that the system of collecting section 94 contributions does not provide a sustainable or fair way to meet the challenge of providing infrastructure to support a growing population. The current system is described as too complicated, unpredictable lacking in transparency too expensive and unfair.

The key changes relating to contributions include:

- Growth Infrastructure Plans (prepared primarily by the NSW Government) will be introduced as the key mechanism for the integration of land use planning and infrastructure provision
- two infrastructure categories will be established: local (previously known as section 94 contributions) and regional infrastructure contributions
- regional infrastructure contributions will apply across Sydney and all other areas which experience high growth. Priorities for regional contributions will be outlined in Growth Infrastructure Plans

3.1 Submission on the "White Paper for a New Planning System in NSW" (contd)

- local infrastructure contributions will be used to fund "essential infrastructure attributable to development" (such as local roads, local open space and embellishment, basic community facilities and the capital costs of drainage) contained in Local Plans, which are prepared by councils. These contributions will be uncapped and are proposed to be applied based on a "unit charge" (for example, floor area of the development)
- land required for regional open space and drainage will be funded through a new Regional Growth Fund rather than via contributions. All forms of new development within a region will be required to make a "modest" contribution to the fund. Like regional infrastructure contributions, Regional Growth Fund charges will apply in Sydney and other high growth areas
- a three year limit will be imposed on the holding of local contributions revenue by councils
- contributions will be able to be paid nearer to the "point of sale" to support the financial feasibility of developments
- more stringent annual reporting of contributions by councils will be required
- benchmarking of infrastructure costs with the ability to seek approval to seek contributions for costs beyond the benchmark
- the use of planning agreements and power to condition a consent to require off site works will be curtailed and only used in exceptional circumstances, and
- contributions for biodiversity offsets and affordable housing will be separated from infrastructure contributions within 3 years is unreasonable and unworkable. The White Paper suggests extensions are at the Minister's discretion. Further, unspent funds can be forced into subregional infrastructure funds – this too is unreasonable. Practical information on the operation of the system, IPaRT's role, costs involved in collection and reporting on contributions needs further consideration and detail for councils to have full and proper input.

Comment

More detail is required on how the system will actually operate. What level of infrastructure will be required, at what cost and in what timeframes? The specification for council to spend Local Infrastructure Contributions within a 3 year timeframe or risk reallocation to subregional facilities is contrary to the principle of nexus.

BUILDING REGULATION AND CERTIFICATION

Chapter 8 of the White Paper describes the proposed changes to building regulation and certification. The changes are being made to rebuild confidence in the quality and safety of buildings and to provide better directions and support to the NSW Building sector.

Some of the more significant proposals include:

- building design plans for complex building types will be required to be prepared and certified by appropriately qualified persons

3.1 Submission on the "White Paper for a New Planning System in NSW" (contd)

- development consents will be refocused on "planning matters" so as to allow the consent authority to give proper consideration of a development application against matters in the strategic plan, with specific building requirements addressed at the construction certificate stage. For example, conditions regarding standard construction matters (such as hours of construction and site sedimentation controls) will not be addressed in the development consent but rather in the construction certificate
- the separation between the roles of a principal certifying authority and a certifying authority will be removed so that building work is certified by one building certifier
- the Fire Safety Schedule will be replaced by a "compliance schedule" that is issued with the complying development or construction certificate, and a "building manual" issued with the Occupation Certificate
- building certifiers will be required to call on the expertise of relevant professionals to certify that construction plans are not inconsistent with the development consent. Such certification will also be required to determine whether or not a modification to the development consent is required
- critical stage inspections will be improved by mandating inspections that relate to the risks and complexity of a building's design and construction and
- the introduction of requirements to allow the issue of an occupation certificate where a critical stage inspection has been missed. This will include requiring the building certifier to provide documentary evidence that the relevant work is satisfactorily completed.

Comment

The majority of the proposed changes in this area will assist council staff in carrying out their duties in the building certification area and are not anticipated to impact considerably on the current resourcing level of this area of the business.

The proposed expansion of the accreditation requirements to other professions within the industry (architects, building designers, water proofers, fire engineers etc) could potentially reduce council's exposure to liability in the event of defective building work as well as improve the general quality of applications submitted.

A stronger link between the development consent conditions, the approved plans and the issue of the Occupation Certificate will also clarify what is currently a 'grey area' in the present legislation.

3.1 Submission on the "White Paper for a New Planning System in NSW" (contd)

The clear control of building and construction matters through the construction certificate and inspection process will deliver better building outcomes and clarify the role of the certifier in regulating the construction of the development. Council is well placed in this regard as all of the staff currently carrying out certification work also determine development applications and are very experienced in developing and imposing appropriate conditions from a construction perspective.

The abolition of the principal certifying authority and certifying authority terminology will remove the confusion surrounding the differences between the two roles. From the customer point of view, it was often unclear as to who was filling each role and in the vast majority of cases the certifying authority was the principal certifying authority so the separation of the two is unnecessary.

More detail is required around the compliance schedules and building manuals as it is unclear where these responsibilities will lie and what the true impact of these changes will be. The concept of a building manual has merit however it would appear difficult to administer and maintain from a practical perspective.

CONCLUSION

The White Paper reforms seek to address the problems associated with the planning system in NSW and as such are endorsed. The current failures of the system that have resulted in confusion relating to the myriad of conflicting legislation, failure to produce land for housing and other developments, needs to be addressed. It is considered that subject to those matters outlined in the above report and attached submission being considered, that a workable system could be developed. The fact that there is now public recognition of the need for development to occur if NSW is to remain an economically viable state is a major step forward. In this regard, the main purpose of the legislation is *"to promote economic growth and development in NSW for the benefit of the entire community, while protecting the environment and enhancing people's way of life"*.

ATTACHMENTS

- 1 White Paper Submission D03406856

LJA:NL
F2004/00550

27 June 2013

New Planning System
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam

**Wyong Shire Council Submission –
NSW Government White Paper for a New Planning System in NSW**

Council, at its meeting held on 26 June 2013 considered a report on the proposed White Paper reforms to the NSW Planning System and resolved to forward a copy of this submission to the Department of Planning & Infrastructure in response to the public exhibition of the Paper.

In general, the recommendations contained within the White Paper are endorsed, particularly in view of the recognised planning issues in NSW, as outlined in the previous Green Paper. Notwithstanding this support, Council has significant concerns in relation to the recommendations contained within the White Paper and in particular, the following matters need to be addressed:

- Councils will incur significant costs in meeting the recommendations of the White Paper, both financial and in terms of the demands the changes will place on councils' limited resources. Consideration should be given to the State Government providing financial assistance to meet the new requirements of the Act.
- The introduction of the ePlanning Portal suggests 3D mapping and visualisations of Development Projects would involve significant additional costs and time delays for development application preparation and assessment. Whilst some inner city councils are advanced in this area due to the infill nature of development in those LGAs, this is not the case with the majority of outer urban and rural councils. Accordingly, financial assistance and timing will be critical to the implementation of this component of the reforms.
- The new strategic planning framework should be modified to allow existing plans to be adopted within the framework. Wyong Shire Council has recently expended a significant amount of time and has invested significant Council resources (both financial and human) in the preparation of its standard instrument LEP, new DCP and review of the Settlement Strategy. Accordingly, it is recommended that the Central Coast Regional Strategy, North Wyong Shire Structure Plan, Settlement Strategy, Council's recently adopted draft LEP and DCP be adopted as the required State, Regional and Local Plans until further reviews occur to more fully align with the new system. This would allow the rapid and cost effective adoption of the new system to occur.
- The requirement for local infrastructure contributions to be expended within 3 years is likely to be inconsistent with growth projections. In this regard, the cost of infrastructure and facilities would be unable to be funded from levies received during a 3 year period.

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Department of Planning & Infrastructure

- In the event that it is expected that infrastructure will be provided by councils upfront with costs recouped from local infrastructure contributions, consideration should be given to the provision of low interest loans to local government to allow infrastructure to be funded.
- The new legislation appears to rely on a *"one size fits all"* assumption. Issues faced by local government areas within the inner city of Sydney are vastly different to those faced by outer metropolitan areas and more rural LGAs. In this regard, greater detail is required in relation to the types of development and the development standards that will apply to the various development streams.
- There appears to be some inconsistency throughout the White Paper, particularly in relation to the stated desire to increase upfront community participation to ensure greater certainty at the development stage and the introduction of broader appeal rights. Appeal rights will become more readily accessible and more affordable and this is considered likely to lead to an increase in both litigation and potential time delays in relation to DAs in Wyong Shire.
- The proposed *"one stop shop"* for concurrences is likely to lead to increased delays in the determination of development applications. In this regard, it is unclear how any conflicting concurrence requirements would be negotiated between agencies, should they arise. Whilst Council will be the determining authority at DA stage, it is unclear how a third party would negotiate an outcome in relation to conflicting concurrence provisions if they are at arm's length from the application in question. Additional information is required on how this system will operate. More emphasis should be placed on reducing the need for separate concurrences from government agencies.
- Independent hearing panels would lead to delays in the determination of applications within Wyong Shire. In this regard 90% of all applications are dealt with under delegated authority by Council staff.
- Confirmation is required that there is no intention to amend the triggers that apply for the referral of applications to the Joint Regional Planning Panels. Any increase in the number or range of applications requiring referral to any independent panel is likely to increase delays given the high proportion of applications within Wyong Shire that are dealt with under delegated authority.
- There is insufficient information available to determine how the Sub Regional Planning Boards will operate or how they will interface with state government, councils and the broader community.
- It is proposed to expand the range of complying development types and to increase the flexibility of complying development standards. Where development would be complying but for a minor variation to a standard, councils will have the ability to approve variations by issuing a *"Variation Certificate"* referred to them by certifiers who consider that the variations do not have adverse impacts on neighbours. Appeal rights will be available against the failure to issue a *"Variation Certificate"*. Clarification is required as to any potential litigation that may arise as a result of the issuing of a Variation Certificate. In this regard, will the certifier be responsible for defending any appeal, or will the responsibility fall to councils or both parties? Again, the increased risk of litigation and the associated costs are of major concern to Wyong Shire Council.

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Department of Planning & Infrastructure

- Where Local Infrastructure Contributions remain unspent after 3 years and the Minister declines to grant an extension of time, the White Paper notes that the Minister may redirect these funds into Sub Regional Infrastructure funds. This is considered unreasonable and contrary to the principle of nexus.
- Practical information on the operation of the infrastructure funds, IPART's role, the costs involved in collection and reporting on contributions needs further consideration and detail for councils to have full and proper input.
- A new suite of internal management systems will be required within councils to meet the new Act. This will take time and will involve significant costs for councils.
- The vast majority of applications that will be dealt with by councils will be Code Assessment that complies with acceptable solutions. Details of likely fee structures for all applications should be provided. It should be expected that the turnaround time of 25 days, reduced information requirements from applicants etc, would justify/allow some increase in DA fees to allow the new system to be funded.
- More detail is required around compliance schedules and building manuals. It is unclear where these responsibilities lie and what the true impact of these changes will be. The concept of a building manual has merit, however, it will be difficult to administer in terms of the ongoing responsibilities relating to the manual.

Thank you for the opportunity to provide input on the White Paper. Please don't hesitate to contact me should you require any further information.

Yours faithfully

Lin Armstrong
Director
DEVELOPMENT & BUILDING

3.2 DA/160/2013 Proposed New Dwelling and Demolition of Existing Structures at Gorokan

TRIM REFERENCE: DA/160/2013 - D03396184

MANAGER: Jamie Loader, Manager, Building Certification and Health

AUTHOR: Scott Rathgen; Team Coordinator

SUMMARY

An application has been received for the erection of a two storey split level dwelling and the demolition of the existing dwelling at 147 The Corso Gorokan. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment (EP&A) Act and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

Applicant	Mr S N McIntyre and Mrs L L McIntyre
Owner	Mr S N McIntyre and Mrs L L McIntyre
Application No	DA/160/2013
Description of Land	Lot 507 DP 26286 147 The Corso, GOROKAN NSW 2263
Proposed Development	Dwelling including demolition of all existing structures
Site Area	651.30
Zoning	2A Residential

RECOMMENDATION

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

OR

2 *That, in accordance with Council's Interim Sea Level Rise Policy as set out in Council's resolution of 10 October 2012, Council grant consent subject to the conditions detailed in schedule B attached to the report and having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues*

PRECIS

- The application is reported to Council in accordance with Council's resolution of 10 October 2012, which states in part:

3.2 DA/160/2013 Proposed New Dwelling and Demolition of Existing Structures at Gorokan (contd)

“3 That Council resolve that its sea level rise interim policy consist of compliance with the 1% AEP flood level and 500mm freeboard allowance.

7 In circumstances where existing Government legislation or policy conflicts with Council’s policy in No 3 above, the General Manager ensure that the matter is brought to Council for determination.”

- The site is zoned 2(a) Residential under the provisions of *Wyong Local Environmental Plan 1991* (WLEP). A single dwelling-house is permissible with consent.
- The site is subject to flood impacts from Budgewoi Lake with the predicted level for a 1% AEP event for the site being 2.2m AHD.
- The FPL for the site, if calculated in accordance with Council’s resolution of 10 October 2012, is as follows:

1% AEP Tuggerah Lakes flood = 2.2m AHD+ 0.5m (freeboard) = 2.7m AHD.

- Application of the State Government Chief Scientist’s recommended flood planning benchmarks for Tuggerah Lakes for the year 2100 raises the 1% AEP to 3.1m AHD. The addition of a 500mm free board results in a finished floor level (FFL) and flood planning level (FPL) for habitable rooms of 3.6m AHD. (1% AEP Tuggerah Lakes flood = 2.2m AHD + 0.9m (SLR) + 0.5m (freeboard) = 3.6m AHD).
- The Mines Subsidence Board requires a floor level of 0.15m over and above that required by Council.
- The applicant has been given the opportunity to amend the proposal to comply with the sea level rise bench marks but has declined to amend the application and has requested the application be determined in its current form.

OPTIONS

Whilst one of the recommendations before Council is for refusal of the application in its current form, Council may also consider an option to defer determination of the application pending the applicant being asked to redesign the proposal to enable the lower floor level of the dwelling to comply with a FFL of 3.6m. This can be achieved by a redesign of the dwelling such that the lower floor level is raised by 0.9 metres.

Council also has the option of approving the development in its current form, however, should Council not take into account the sea level rise benchmarks referenced by the State Government Chief Scientist and the need to consider natural hazards under Section 79C and the requirements of the State Government’s Flood Plain Development Manual, Council faces the risk of voiding its protection from liability under section 733 of the Local Government Act (LGA).

3.2 DA/160/2013 Proposed New Dwelling and Demolition of Existing Structures at Gorokan (contd)

INTRODUCTION

The Site

The site is located at 147 The Corso Gorokan (Lot 507 DP 26286). The site consists of a regular shaped allotment with a total area of 651.30m², which slopes moderately to the rear boundary which adjoins Tuggerah Lake. The property currently contains an existing single storey cottage and other associated ancillary structures

The Locality

The subject site is bound on either side by single storey dwellings. Existing development in the general surrounding area comprises a mix of single and two storey dwelling-houses. The subject site and adjoining properties on the lake side of The Corso are flood affected.

The proposed site and existing timber clad dwelling that is proposed to be demolished



3.2 DA/160/2013 Proposed New Dwelling and Demolition of Existing Structures at Gorokan (contd)

The Proposed Development

The proposal consists of a two storey split level dwelling-house with the following aspects:

- Demolition of the existing one-storey dwelling-house, garage and other minor structures;
- Four (4) bedroom two storey dwelling-house,
- Lower ground floor (2.7m AHD) 3 bedrooms, rumpus and bathroom,
- Ground floor: (3.4m AHD) two car garage, theatre room, study;
- First floor (5.4 AHD); family room, meals room, kitchen and bedroom,
- Max ridge height 10.2m.

Summary

The dwelling is proposed with variations to the normal minimum street setbacks but in the circumstances of this case these variations are justified. The lower floor level of the dwelling is also proposed at a level of 2.7m AHD. This level does not have any allowance for sea level rise projection and is the reason that the application has been referred to Council for determination.

VARIATIONS TO POLICIES

The development does not comply with a number of policies both State Government and WSC in respect of flooding and sea level rise. There is also a variation proposed to the street boundary setbacks of Chapter 99 Building Lines. These issues are discussed in more detail throughout the report.

Instrument	DCP 2005 Chapter 99 Building Lines
Clause	3.1
Standard	6.0 metre setback to garage and 4.5 metres to wall of dwelling.
Departure basis	5.0 metres to the garage and 4.0 metres to the front porch.

HISTORY

There is no history relevant to this proposal.

PERMISSIBILITY

The subject site is zoned 2 (a) (Residential Zone) under the WLEP. In accordance with Clause 10, a dwelling-house is permissible with consent.

OBJECTIVES OF THE ZONE

Clause 2(3) of the WLEP requires the consent authority to have regard to the objectives for a development in a zone when determining a development application in respect of land within the zone. The following objectives of the 2(a) Residential Zone are relevant to the subject proposal:

The objectives are:

3.2 DA/160/2013 Proposed New Dwelling and Demolition of Existing Structures at Gorokan (contd)

- “(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.”*

RELEVANT STATE/COUNCIL POLICIES AND PLANS

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

- State Environmental Planning Policy 71 (Coastal Protection)
- Wyong Local Environmental Plan 1991
- Development Control Plan 2005, Chapter 100 (Quality Housing)
- Development Control Plan 2005, Chapter 99 (Building Lines)
- Development Control Plan 2005, Chapter 67 (Engineering Requirements)
- Development Control Plan 2005, Chapter 69 (Waste Management)
- Flood Prone Land Development Policy F5
- NSW Flood Plain Development Manual
- Office of Environment and Health (DECCW) Floodplain Management Guidelines
- Council’s Interim Sea Level Rise Policy.

RELEVANT TECHNICAL DOCUMENTS

- The NSW Chief Scientist and Engineer's Report, April 2012 examines the science behind the NSW Sea Level Rise Planning Benchmarks. This Report includes the following relevant statement, which highlights the difficulties Council faces when assessing planning applications where sea level rise and flooding are issues:

3.2 DA/160/2013 Proposed New Dwelling and Demolition of Existing Structures at Gorokan (contd)

“A major barrier to efficient implementation of planning changes consequent on revised sea level projections relates to the ability to communicate the complexities of the issues in a form that is accessible to a broad audience. In particular communication of the likelihood of frequent revisions and refinements as more data becomes available and models improve, is vital. The broad audience for this communication includes local councils that need to implement policies and local communities and the general public who have to live with the impact of changed policies. The issues are highly complex, the debate among scientists is confusing and, given the long term nature of various aspects of sea level rise, it is difficult for people to appreciate the logic of early action and adaptation...The way the science has been used to date to determine benchmarks for sea level rise in NSW is adequate, in light of the evolving understanding of the complex issues surrounding future sea levels”

The Report recommends that a Technical Advisory Centre be established to assist local councils in interpreting and translating new scientific findings, and assist local council's to develop strategies, infrastructure planning and appropriate risk management activities related to sea level rise and associated impacts. To date no such Centre has been established.

- The Fourth Intergovernmental Panel on Climate Change (IPCC) Report, 2007 is the main reference to Sea Level Rise (“SLR”) projections both in Australia and internationally.
- Information on SLR both historical and projections can be obtained from the CSIRO Website <http://www.cmar.csiro.au/sealevel/index.html>. The site has been designed to put in simple terms information on SLR and its causes. It also includes estimates of global and regional sea level, links to other web pages and data sets and a list of CSIRO publications.
- The NSW Sea Level Rise Policy Statement (“the 2009 Policy”) was published in October 2009 by the former NSW Government. A copy of that Policy Statement is attached. The 2009 Policy includes the following statement:

“Sea level rise is an incremental process and will have medium- to long-term impacts. The best national and international projections of sea level rise along the NSW coast are for a rise relative to 1990 mean sea levels of 40 cm by 2050 and 90 cm by 2100”
- The 2009 Policy is referenced in subsequent planning policy documents, including:
 - The NSW Coastal Planning Guideline – Adapting to Sea Level Rise” of August 2010. A copy of the Guideline is attached,
 - The “Flood Risk Management Guide” and “Coastal Risk Management Guide” published by the then NSW Department of Environment, Climate Change and Water (“DECCW”) in August 2010. A copy of each Guide is attached.
- In September 2012 the NSW Government announced that the 2009 Policy was no longer the policy of the NSW Government.

3.2 DA/160/2013 Proposed New Dwelling and Demolition of Existing Structures at Gorokan (contd)

- The NSW Government's Flood Prone Land Policy.
- The Floodplain Development Manual 2005 and associated technical and operation policy to aid councils in the management of flood risk.

ECOLOGICALLY SUSTAINABLE PRINCIPLES

The development, if approved, would not be consistent with the NSW Floodplain Development Manual, in particular:

- The Precautionary Principle – The NSW Floodplain Development Manual states that an allowance for predicted sea-level rise should be incorporated into the Flood Planning Level for development on Flood Prone Land. The Manual also states that any allowance for sea-level rise should not be incorporated into the freeboard allowance. Accurate scientific evidence detailing the full extent of predicted flood levels during extreme weather events as a result of climate change does not exist, however it is well known that significant flooding does occur in this locality.

The Precautionary Principle requires that 'where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation'.

In terms of this application, there is a lack of full scientific certainty over the impacts of climate change on predicted localised flood levels over the life of the proposed development. The information relied upon in determining the flood planning levels within this report are consistent with the benchmarks previously endorsed by the NSW Government based on modelling carried out by IPCC and CSIRO.

Recently obtained legal advice from Local Government Legal states that 'where there is no credible regional or local assessment of SLR projections, we are of the view that adopting the Benchmarks previously endorsed by the NSW Government (which are based on IPCC and CSIRO modelling) would be likely to be consistent with the application of the Precautionary Principle and be considered to be a 'reasonable' response to address the risk of coastal hazards'.

The proposal seeks the lower floor level of the dwelling at a height lower than the previously endorsed Benchmarks. Although the majority of the dwelling is above these benchmark levels, the proposal is considered to be inconsistent with the Precautionary Principle.

- Inter-generational equity – the proposal does not have regard for maintaining the quality of the environment for future generations. The lower floor level of the proposed dwelling would be highly vulnerable to risk of flooding which would potentially result in damage to the built environment.

Taking the above into consideration, although it is only the lower floor level of the dwelling that is proposed at a height lower than the previously endorsed benchmarks, the proposal is considered to be **inconsistent** with the Ecologically Sustainable Development (ESD) principles.

3.2 DA/160/2013 Proposed New Dwelling and Demolition of Existing Structures at Gorokan (contd)

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): NSW Flood Plain Development Manual

The subject site is located within an existing high hazard flood area and the NSW Flood Plain Development Manual ('The Manual') requires that a safe (i.e. low hazard flooding) escape route be available for the residents.

It is considered that ground and upper floor levels of this development which are above RL of 3.60m AHD would provide a safe harbourage and sufficient opportunity for residents to remain in the dwelling during a flood event or alternatively to enable rescue. However, this safe harbourage may potentially be for longer periods than currently experienced and residents would be without water, telephone, power or sewerage servicing during this time.

The Manual further provides that a 0.5m freeboard is adopted for general residential development to provide a factor of safety ensuring that the risk exposure selected is accommodated. This freeboard includes a component related to climate change impacts on flood levels in both coastal and non-coastal areas and for a wide variation in sensitivity of estimated design flood levels as well as other unquantified factors such as wind-wave impacts.

The freeboard provides only a relatively small allowance to accommodate some of the projected increases in rainfall intensity of flood-producing storm events associated with climate change, which has currently not been accurately quantified or included with the SLR projections. The manual's small allowance for climate change in the 0.5m freeboard figure should be considered to only address some of the uncertainty associated with estimating climate change impacts and as such should not be used to allow for SLR impacts, which should be quantified and applied separately. The State Government Floodplain Management Guideline (2010) clarifies that SLR allowance must be included on top of freeboard.

Although it is only the lower floor level that is below the projected sea level rise benchmarks, taking the above into consideration, the proposal is inconsistent with the requirements of the NSW Flood Plain Development Manual.

State Environmental Planning Policy 71 (Coastal Protection)

The provisions of State Environmental Planning Policy (SEPP) No 71 - Coastal Protection requires Council to consider the Aims and Objectives of the SEPP together with the matters for consideration listed in Clause 8 of the SEPP when determining an application within the Coastal Zone. The Coastal Zone is an area defined on maps issued by the Department of Planning and Infrastructure (DoPI) NSW with the subject property falling within this zone.

8 Matters for consideration

The matters for consideration are the following:

- “(a) the aims of this Policy set out in clause 2,*
- (b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,*
- (c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*
- (d) the suitability of development given its type, location and design and its relationship with the surrounding area,*
- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,*
- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*
- (g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,*
- (h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats*
- (i) existing wildlife corridors and the impact of development on these corridors,*
- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*
- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,*
- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*
- (m) likely impacts of development on the water quality of coastal waterbodies,*
- (n) the conservation and preservation of items of heritage, archaeological or historic significance,*
- (o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,*
- (p) only in cases in which a development application in relation to proposed development is determined:*
 - (i) the cumulative impacts of the proposed development on the environment, and*
 - (ii) measures to ensure that water and energy usage by the proposed development is efficient.”*

Note. Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires the Government Coastal Policy (as defined in that clause) to be taken into consideration by a consent authority when determining development applications in the local government areas identified in that clause or on land to which the Government Coastal Policy applies.

The aims of the policy are:

- “(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and*

3.2 DA/160/2013 Proposed New Dwelling and Demolition of Existing Structures at Gorokan (contd)

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

The development is not considered to be consistent with objective (j) due to the proposal not being ecologically sustainable and (l) due to insufficient consideration with regard to coastal management. Furthermore, the matters listed under Clause 8 have been considered with the proposal being generally compliant, with the exception of Clauses 8(a) due to its inconsistency with the abovementioned objectives and (j) due to the likely impact of the development on the coastal processes.

Taking the above into consideration, the proposal is inconsistent with the requirements of SEPP 71 (Coastal Protection).

Flood Prone Land Development Policy F5

The FPL, without SLR benchmarks, for the site under Council's Flood Prone Land Development Policy is set at 1% AEP Lake flood = 2.2m AHD + 0.5m (freeboard) = 2.7m AHD.

The application proposes the lower ground floor habitable floor levels of 2.7m AHD and therefore meets this requirement.

Chapter 99 Building Lines

As the road is a category C road, this chapter requires garages to be setback 6.0 metres from the street and walls of the dwelling to achieve a 4.5 metre setback. In this case the garage is proposed at a 5.0 metre setback and the entry porch is at a 4.0 metre setback.

The variations have been applied for so that the dwelling can comply with the 20 metre foreshore building line at the rear of the property. In this regard the proposal initially complied with the street setbacks but was encroaching into the 20 metre fsbl. As a consequence an objection was received from the adjoining landowner which resulted in the current design modification.

3.2 DA/160/2013 Proposed New Dwelling and Demolition of Existing Structures at Gorokan (contd)

The porch that encroaches into the 4.5 metre building line is an open structure and is only 2.2 metres in width. The garage is a double garage and so complies with the off street car parking requirements of Chapter 100 Quality Housing. The 5 metre setback also permits vehicles to park in front of the garage without encroaching onto the footpath which meets an objective of this chapter.

In this street there are numerous variations to the standard building lines including the adjoining property to the north. The modern two storey dwelling would enhance the appearance of streetscape and would not impact upon the amenity of the adjoining properties.

Under these circumstances it is considered that the variations to the chapter are justified.

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

The relationship to the regional and local context and setting

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

The proposal does not meet the required FPL of 2.7m plus 0.9m Sea Level Rise (3.6m AHD). If floor levels were raised to comply with this level, the lower floor level of the dwelling would sit approximately 1.5 metres above natural ground level. It is considered that appropriate design mitigation methods could be employed to eliminate any amenity concerns should a further application be lodged incorporating a finished floor level of 3.6m AHD.

The access, transport and traffic management measures

The current gutter crossing access will be utilised.

The impact on utilities supply.

No issues to report under existing conditions.

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

The site is identified as having Acid Sulphate Soils Planning Map. In accordance with Wyong LEP Clause 15, an Acid Sulphate Management Plan has been submitted to address this constraint. Under these circumstances this constraint has been adequately addressed.

Any effect on the flora and fauna.

There will be no trees or fauna removed from the site as part of this application.

Whether the development will be energy efficient.

A BASIX certificate has been submitted as part of this application.

3.2 DA/160/2013 Proposed New Dwelling and Demolition of Existing Structures at Gorokan (contd)

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

Flooding

The NSW Coastal Planning Guideline - Adapting to Sea Level Rise (DOP 2009) provides detail about the consideration of flooding and SLR information in land use planning and development assessment. It is noted that this document remains current.

The subject application is contrary to the principles within the NSW Coastal Planning Guideline including:

- Avoid intensification of land use in coastal risk areas;
- Minimising exposure to coastal risks for proposed development in coastal areas;
- Implementing appropriate management responses and adaptation strategies, with consideration for environmental, social and economic impacts.

The subject site is recognised as being flood affected by Tuggerah Lake. The current designated Tuggerah Lake 1% AEP for the site is 2.2m AHD, with a FPL of 2.7m AHD being the inclusion of a 500mm freeboard requirement.

In relation to the Tuggerah Lake 1% AEP the following is considered:

Incorporating the State Government Chief Scientist's recommended flood planning benchmark for the year 2100 of 0.9m for the proposed development, the 1% AEP increases to 3.1m AHD with a FPL of 3.6m AHD being the inclusion of a 500mm freeboard requirement.

Taking the above into consideration, the proposal is inconsistent with the principles within the NSW Coastal Planning Guideline titled 'Adapting to Sea Level Rise'.

In terms of legal risk, if Council chooses to not take into account the climate change considerations contained within the NSW Flood Plain Development Manual or the Coastline Management Manual, both which consider climate change (and remain current), it may be unable to establish "good faith" in accordance with the defences provided by Section 733 of the *Local Government Act, 1993*. Council may also lose its protection under the *Civil Liability Act*.

In times of flood, the Electricity Authority may be required to shut down the network in the flood areas where sewer pump stations are located due to inundation of flood waters.

The NSW Department of Health considers all flood waters as potentially contaminated and may contain untreated sewage. They advise that all unnecessary contact with flood waters should be avoided and children should be kept away from flood waters. This is pertinent to the safe evacuation of residents particularly children in deeper flood waters.

Any social impact in the locality.

The approval of the proposal could potentially make both people and property vulnerable to flooding events as although there would be a safe harbourage it could result in failed attempts to escape from the area during peak flood periods resulting in potential risk to lives.

3.2 DA/160/2013 Proposed New Dwelling and Demolition of Existing Structures at Gorokan (contd)

Any economic impact in the locality.

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

Any impact of site design and internal design.

The site design is not considered appropriate in terms of the finished floor levels for the lower level habitable rooms as they fail to take into account any SLR planning. This would result in a development that would be subject to inundation to above the lower floor level should sea level rise eventuate.

Any cumulative impacts.

Allowing the proposed development contrary to the State Government Chief Scientist's recommended flood planning benchmarks would contravene Council's obligation to consider certain matters as specified in Section 79C of the Act, including the likely impacts of the development and the public interest.

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

Whether the proposal fits in the locality.

As outlined earlier in this report, the proposed development is not considered suitable for the site given that the proposed lower floor level would not adequately address SLR.

Whether the site attributes are conducive to development.

As mentioned above, the low lying nature of the site creates the potential for frequent future flooding with greater impacts due to projected SLR. Under these circumstances, the proposed lower floor level is not conducive to development.

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

Any submission from the public.

The application was advertised in accordance with DCP 2005 Chapter 70 - Notification of Development Proposals with one submission being received. This submission related to the original proposal and subsequently the development has been redesigned to address the objector's concern.

The amended proposal was readvertised and no objections have been received.

Doc. No	Summary of Issues	Response
D03313022	The proposed dwelling encroaches into the 20 metre foreshore building line and consequently impacts upon the amenity of the objector's property.	The original proposal has been redesigned to comply with the 20 metre foreshore building line to address the objector's concerns.

3.2 DA/160/2013 Proposed New Dwelling and Demolition of Existing Structures at Gorokan (contd)

Any submission from public authorities.

Nil

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

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

The information currently available to Council indicates that the site will likely be inundated if a designated flood event (1%AEP) occurs during the life of the proposed development. The information relied upon to make this prediction includes Council's flood studies and the State Government Chief Scientist's recommended SLR planning benchmarks.

Having assessed the proposal in accordance with Council's Flood Prone Land Development Policy, the NSW Floodplain Development Manual and the projected flood level increase of 900mm by 2100; the development is not considered suitable for the site.

OTHER MATTERS FOR CONSIDERATION

Section 94a contributions are applicable to this development.

CONCLUSION

The proposal has been assessed having regard to the matters detailed within Section 79C of the EP&A Act 1979. The minor variations to the street boundary setback are justified in this instance due to the precedents in the vicinity and to maintain the 20m fsbl.

The approval of the development at with the lower floor level of 2.7m AHD does not have consideration to SLR projections. Although this is only a small portion of the overall floor area of the dwelling it is not justified and under these circumstances the application is recommended for refusal.

ATTACHMENTS

- | | | |
|---|------------------------------|-----------|
| 1 | Draft Reasons for Refusal | D03032777 |
| 2 | Draft Conditions of Approval | D03412170 |
| 3 | Development Plans | D03412301 |

Date: 7 June 2012
Responsible Officer: Doug Tytherleigh
Location: 14 Bondi Road, THE ENTRANCE NORTH NSW 2261
Lot 195 DP 18958
Owner: Mr S J Keegan and Mrs D E Keegan
Applicant: Keegan Builders Central Coast Pty Ltd
Date Of Application: 2 April 2012
Application No: DA/260/2012
Proposed Development: Dwelling, inground pool & demolition of existing structures
Land Area: 657.60

DRAFT REASONS FOR REFUSAL

- 1 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Clause 2 of State Environmental Planning Policy 71 (Coastal Protection) in the following manner:
 - a The proposed development fails to satisfy Aim 2(1)(j) in that it does not accord with the precautionary principle by proposing to site a dwelling in a high hazard flood area.
 - b The proposed development fails to satisfy Aim 2(1)(j) in that it does not promote inter-generational equity by proposing to site a dwelling in a high hazard flood area that may result in damage to the dwelling and injury or loss of life to future occupants.
- 2 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Clause 8 "Matters for consideration" of State Environmental Planning Policy 71 (Coastal Protection) in the following manner:
 - a The proposed development fails to satisfy Matters for consideration 8 (a) because it does not satisfy Aims 2(1)(j), 2(1)(k) and 2(1)(l) as explained 1 above.
- 3 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Wyong Local Environmental Plan 1991 Clause 2(g)(ii) because the proposed development seeks to locate a dwelling house in a flood prone area without achieving the flood planning level minimum floor height.
- 4 Pursuant to Section 79C (1)(b) of the Environmental Planning and Assessment Act, 1979 the development is at risk of flooding; would have a negative social and economic impact; does not respond to the specific site attributes and would contribute to the cumulative adverse impact on the environment by way of its unsuitable design for flood prone land.
- 5 Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 the proposal is not considered to be in the public interest given it does not adequately consider the impacts of flooding including the potential damage to the structure and the potential danger to future occupants and rescuers, and the development would set an undesirable precedent for the future.

- 6 Having regard to the above reasons of refusal, the proposal is contrary to the objectives of the Environmental Planning and Assessment Act 1979, as specified in Section 5(a) therein which requires the orderly and proper development of land and the siting of a dwelling in a high hazard flood area does not satisfy this objective.

Date: 14 June 2013
Responsible Officer: Jason Ritson
Location: 147 The Corso, GOROKAN NSW 2263
Lot 507 DP 26286

UBD Reference:
Owner: Mr S N McIntyre and Mrs L L McIntyre
Applicant: Mr S N McIntyre and Mrs L L McIntyre
Date Of Application: 7 March 2013
Application No: DA/160/2013
Proposed Development: Dwelling including demolition of all existing structures
Land Area: 651.30
Existing Use: XXXX

PROPOSED CONDITIONS

- 1 The development taking place in accordance with the approved development plans reference number 1265 Sheets 1 to 7 prepared by Montgomery Homes dated 14-05-2013 except as modified by any conditions of this consent, and any amendments in red.

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.

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

- 4 Prior to the demolition of existing structures on site, all existing site services are to be disconnected, sealed and made safe. The sewer and water service is to be disconnected by a licensed plumber and drainer with a Start Work Docket submitted to Council's Plumbing and Drainage Inspector certifying that the works have been undertaken to the satisfaction of Council as the Water and Sewer Authority. Thiess Service's Customer Service Centre are also to be contacted on telephone number 1300 126 278 to arrange for the collection of the garbage bins.
- 5 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

- 6 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.
- 7 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.
- 8 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

- 9 Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless Council, as the Principal Certifying Authority for the development to which the work relates, has been furnished with 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
- A copy of the Home Owner Warranty Insurance.

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

- A copy of the Owner Builder's Permit.

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

- 10 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

- 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, 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.
- 15 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.
- 16 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.

Erosion and Sediment Control - Construction Requirements

- 17 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.
- 18 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*.

Site Requirements

- 19 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.
- 20 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.
- 21 During the construction phase of the development, downpipes and the associated stormwater disposal system is to be 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.

Flooding - Construction Requirements

- 22 The minimum floor level of all habitable rooms is to be RL 2.85 metres AHD. Certification from a Registered Surveyor confirming that the minimum floor levels have been achieved must be submitted to the Principal Certifying Authority when the dwelling reaches floor level stage. **Note:** Framework associated with the building is not to be erected until such time as the floor level certification is received.

Prior to Release of Occupation Certificate:

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

Dilapidation Rectification Requirements

- 23 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.

Vehicle Access and Parking – Compliance Requirements

- 24 Prior to the issue of a Final 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

- 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

SCHEDULE OF CONTRIBUTIONS

Section 94A Levy

\$2,933.00

The staff responsible for the preparation of the report, recommendation or advice to any person with delegated authority to deal with the application have no pecuniary interest to disclose in respect of the application.

.....
Reporting Officer

.....
Reviewing Officer

The staff authorised to determine the application have no pecuniary interest to disclose in respect of the application. The report is endorsed and the recommendation contained therein.

Approved/Refused:

.....
__/__/__

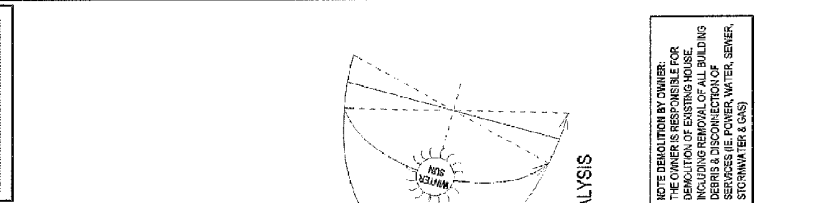
Date

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SITE PLAN LEGEND		
MARK	DESCRIPTION	
⊕	SURVEY SET OUT PEG	
⊕	METER BOX	
⊕	EXTERNAL TAP POSITION	
⊕	APPROXIMATE SEWER LOCATION	
⊕	PROPOSED FINISHED GROUND LEVELS BY OWNER PRIOR TO OCCUPATION CERTIFICATE	
SOIL CLASSIFICATION: M/P		
WIND CLASSIFICATION: N2		
WATER MANAGEMENT TABLE		
RIPERVIOUS AREA	AREA m ²	NOTE
ROOF	15.83	FALLS TO INFILTRATION TRENCH
DRIVEWAY	22.98	
TOTAL	38.82	
ROOF AREA	26.02	UP TO APPROX. 50% FLEET TO WATER TANK
OVERFLANS FROM WATER TANK TO BE DISCHARGED INTO INFILTRATION TRENCH		
NOTE: ALL TYPWARE, SHOWER ROSES AND TOILETS TO BE ADA DATED		
NOTE: HOT WATER SYSTEM TO BE COMMANUM 3 STAGES ENERGY RATING		
NOTE: PROPOSED DRIVEWAY BY OWNER		
WATER TANK - 11.53M ³ (2240 LITRES) 4.08m HIGH x 1.4m HIGH		
- SEPARATE WATER LINES/PIPPING TO ALL TOILETS, WASHING MACHINE & WINDUP		
Date: _____		
Issue: 1 Description: _____		
Issue: 2 Description: _____		
Issue: 3 Description: _____		
Issue: 4 Description: _____		
Issue: 5 Description: _____		
Issue: 6 Description: _____		
Issue: 7 Description: _____		
Issue: 8 Description: _____		
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Issue: 99 Description: _____		
Issue: 100 Description: _____		

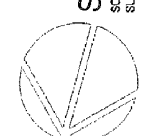
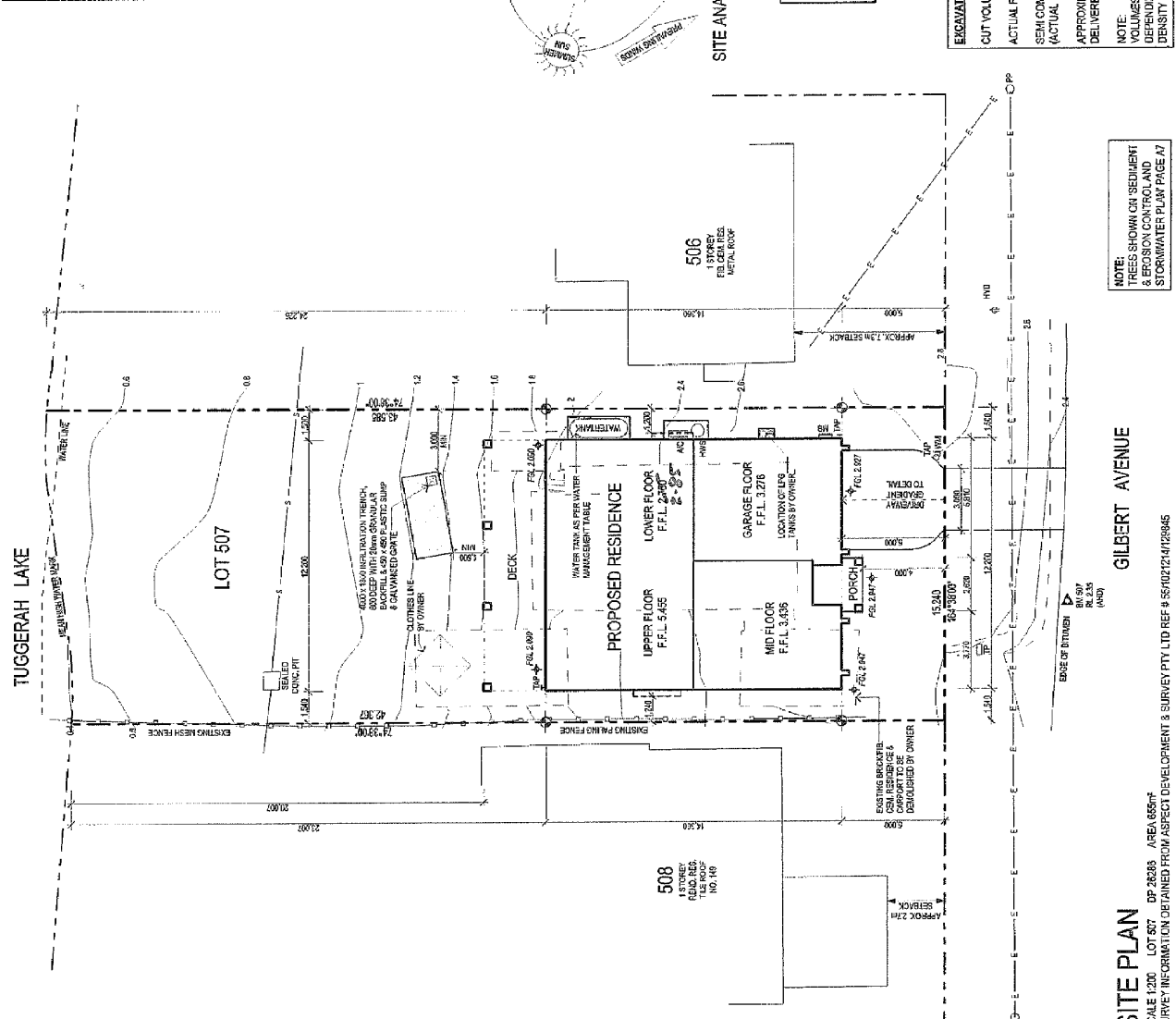
COUNCIL PLANS NOT FOR CONSTRUCTION

Date: _____

Signed by owners: _____



EXCAVATION VOLUMES: CUT VOLUME: = 0.2m ³ ACTUAL FILL VOLUME: = 79.6m ³ SEMI COMPACTED FILL VOLUME (ACTUAL FILL VOLUME x 0.754) = 63.2m ³ APPROXIMATE AMOUNT TO BE DELIVERED TO SITE: 62.5m ³ OR 139.36 TONNE	NOTE: TRENCHES MAY VARY SUBSTANTIALLY DUE TO VARIATION IN SOIL DENSITY AND MOISTURE CONTENT OF IT.
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**COUNCIL PLANS
NOT FOR CONSTRUCTION**

Date: _____
Signed by owners: _____

WATER MANAGEMENT TABLE

IMPERVIOUS AREA	AREA (M ²)	NOTE
FOOTPRINT	183.39	
DRIVEWAY	29.25	FALLS TO INFILTRATION TRENCH
TOTAL	202.64	
ROOF AREA	293.52	UP TO APPROX. 5% RATED TO WATER TANK

CHANGES FROM WATER TANK TO BE DISCHARGED INTO DETENTION TRENCH

NOTE: ALL TAPWAIR, SHOWERS, SINKS AND TOILETS TO BE A44 RATED

NOTE: HOT WATER SYSTEM TO BE MINIMUM 3 STARS ENERGY RATING

NOTE: PROPOSED DRIVEWAY BY OWNER

WATER TANK - 1.5300 LITRE CAPACITY (CONCRETE 6x4x10H)

WATER TANKER LINES TYPING TO ALL TOILETS, WASHING MACHINE & WARDrobe

SEDIMENT CONTROL NOTES:

- ATTENTION IS DRAWN TO THE EMBANKMENT PROTECTION ACT AND THE REQUIREMENTS FOR THE PROTECTION OF DISCHARGE OF ANY POLLUTANT FROM THE SITE.
- ALL SEDIMENT CONTROL STRUCTURES SHALL BE INSPECTED AND MAINTAINED.
- ALL SEDIMENT REMAINING STRUCTURES SHALL BE CLEANED UPON SPREAD WITH DISTURBED AREAS ON SITE.
- IMMEDIATELY FOLLOWING THE COMPLETION OF WORKS ALL EXPOSED AREAS SHALL BE STABILISED BY TURFING BY OWNER OR MULCHING. TURF OR MULCH SHALL BE MAINTAINED UNTIL VEGETATION COVER IS ESTABLISHED.

Rev	Description	Date
3	REVISUE TO COUNCIL	14/02/2013
2	ISSUE TO DESIGN & ENGINEER	20/01/2013
1	ISSUE TO SALES	18/12/2012

MONTGOMERY HOMES

The Stopping Site Specialists

HERSCHELLE
471 Pacific Hwy. Pty. Ltd.
Bentley NSW 1500
Ph: (02) 9345 4000
Fax: (02) 9345 4022

SYDNEY
Display Home
Marrickville NSW
Ph: (02) 9345 4441
Fax: (02) 9345 4000

McIntyre S & L
280 Adelaide
Proposed Residence
Lot 507 No. 147 The Corso
Gorokan

Mail to: 20 Dawkins Street, Gosford NSW 2258 | Website: www.montgomeryhomes.com.au

Client Name: McIntyre S & L

280 Adelaide

PROPOSED RESIDENCE

Lot 507 No. 147 The Corso

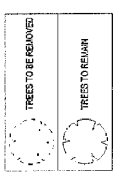
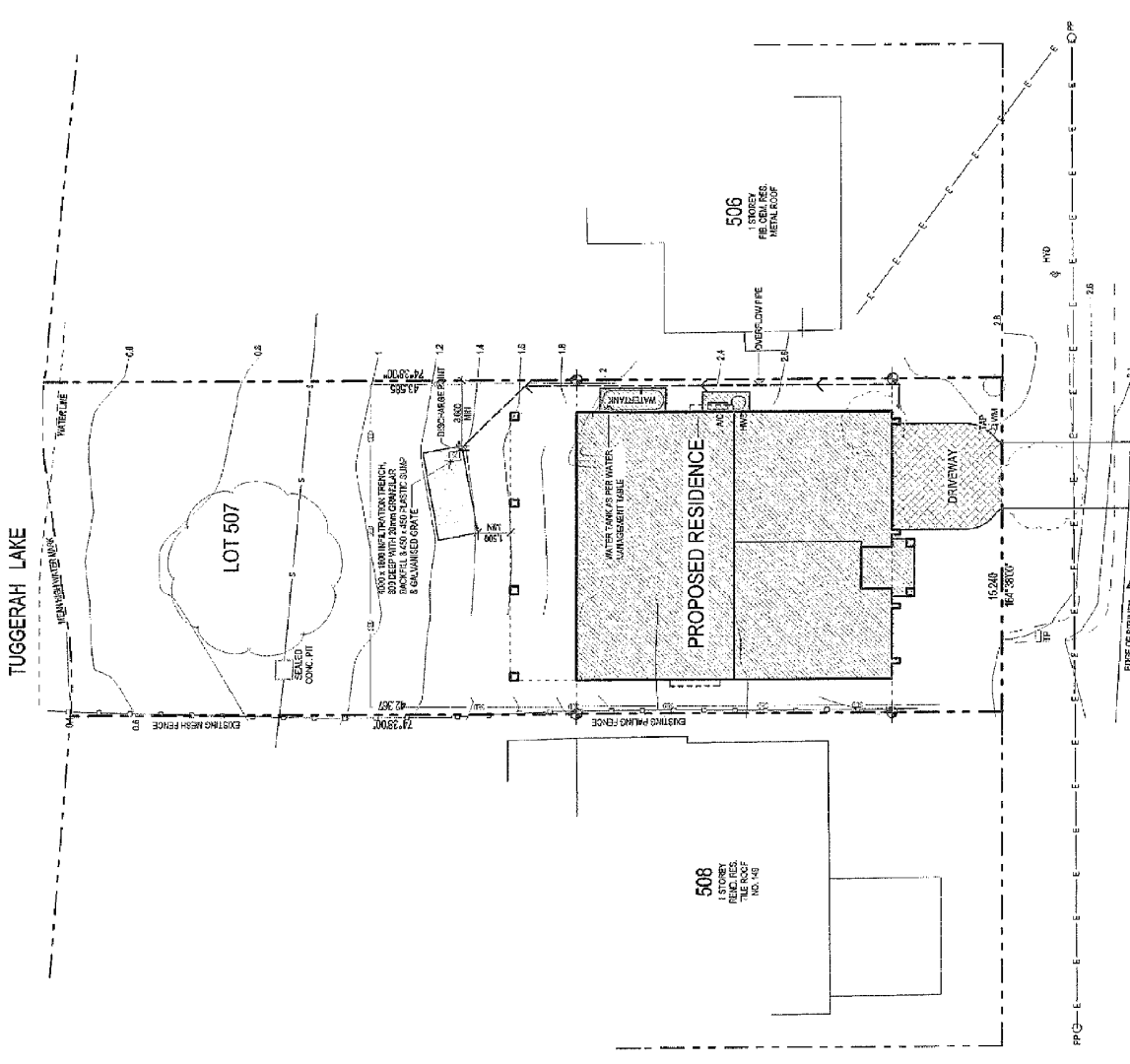
GOROKAN

Design: the CAROLINA I - 247 - Erosion - 2012

Drawn: MJD
Scale: NIS
Date: 14/05/2013

Check: MS
Title No: 1265
Draw No: 71
Rev No: A7 of 7
Revision: 3

DO NOT SCALE DRAWING

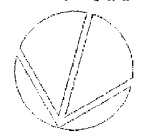


SEDIMENT & EROSION CONTROL AND STORMWATER MANAGEMENT PLAN

SCALE: 1:200 DP 28286 AREA 655m²

SURVEY INFORMATION OBTAINED FROM ASPECT DEVELOPMENT & SURVEY PTY LTD REF # S510214128345

GILBERT AVENUE



3.3 DA 212/2013 Proposed Works Depot at Ourimbah

TRIM REFERENCE: DA/212/2013 - D03408434

MANAGER: Lin Armstrong, Director Development and Building

AUTHOR: Emily Goodworth; Team Coordinator, Applications

SUMMARY

A development application has been received for a regional works depot for the electricity infrastructure provider AUSGRID. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment Act (EP & A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

Applicant:	Schreiber Hamilton Architecture & Doug Sneddon Planning
Owner:	Ausgrid
Application No:	DA/212/2013
Description of Land:	Lots 21, 22 & 24 DP 1169877, Lot 7 DP 1154907, Lot 9 DP 229682 & Lot 10 DP 1136364 – 1-17 Ourimbah Creek Road, Ourimbah
Proposed Development:	Regional Works Depot
Site Area:	3.91Ha
Zoning:	Part 4(b) – Light Industrial & Part 6(c) – Proposed and Recreation.
Existing Use:	Truck Depot and Residential Dwelling
Employment Generation:	288 EFT staff comprising 75 Office 212 Field staff
Estimated Value:	Approximately \$16.8m

DRAFT

RECOMMENDATION

- 1 That Council receive the report on DA 212/2013 – Proposed Regional Works Depot at Ourimbah Creek Road, Ourimbah.
- 2 That Council determine whether it wishes to make a submission to the Joint Regional Planning Panel regarding the Application.

BACKGROUND

Attached is the report being forwarded to the Hunter Central Coast JRPP's for determination on 27 June 2013.

ATTACHMENTS

- 1 Staff Assessment Report to the JRPP D03411311
- 2 Draft Conditions of Consent D03403095
- 3 Development Plans D03408640

Assessment Report and Recommendation

WYONG SHIRE COUNCIL

Hunter and Central Coast Joint Regional Planning Panel

Development and Building
Department

DA 212/2013 – Proposed Regional Works Depot for AUSGRID at Ourimbah

DA/212/2013 JRPP - 2013HCC007

Author: Nathan Burr

SUMMARY

A development application has been received for a regional works depot for the electricity infrastructure provider AUSGRID. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment Act (EP & A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

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Zoning:	Part 4(b) – Light Industrial & Part 6(c) – Proposed Open Space and Recreation.
Existing Use:	Truck Depot and Residential Dwelling
Employment Generation:	288 EFT staff comprising 75 Office 212 Field staff
Estimated Value:	Approximately \$16.8m

RECOMMENDATION

- 1 ***That the Joint Regional Planning Panel grant consent to DA 212/2013, subject to the conditions of consent contained in Appendix A.***
- 2 ***That the NSW Roads and Maritime Service be advised of the determination.***

INTRODUCTION

The Site

The subject site is known as 7-17 Ourimbah Creek Road and 163 Pacific Highway and is comprised of Lot 7 DP 1154907, Lot 9 DP 229682, Lots 21, 22 & 24 DP 1169877 & Lot 10 DP 1136364. The site has frontages to both the Pacific Highway and Ourimbah Creek Road and is hemmed to the west by the F3 Freeway, the road frontages to the south and east and NSW Roads and Maritime Service land to the north to form a distinct land unit with limited adjoining neighbours. The site boundaries are irregular however; the site tends to be rectangular in shape.

The site contains an existing easement for the transmission of electricity which is 30m wide.

The site is relatively flat however there is some fall across the site from south to north and west to east. There are minor undulations at various locations across the site with elevations ranging between approximately 18.5m AHD and 21.9 AHD. The majority of the site falls between the levels of 20AHD and 19AHD. The surface of the Pacific Highway along the frontage of the site is elevated by approximately 1-1.5m above the natural ground level on the site.

Landscaping to the road frontages is in an established state although has not been maintained and is populated by exotic species and including weeds. Preliminary site works including vegetation clearing, site levelling and filling has been granted development consent pursuant to Development Application DA/115/2013 which will result in the clearing of any vegetation not to be retained as landscaping within perimeter of the site.

Storm water drainage exists along the Pacific Highway frontage in the form of an open swale drain which drains to an existing 675mm pipe draining in an easterly direction underneath the Highway.

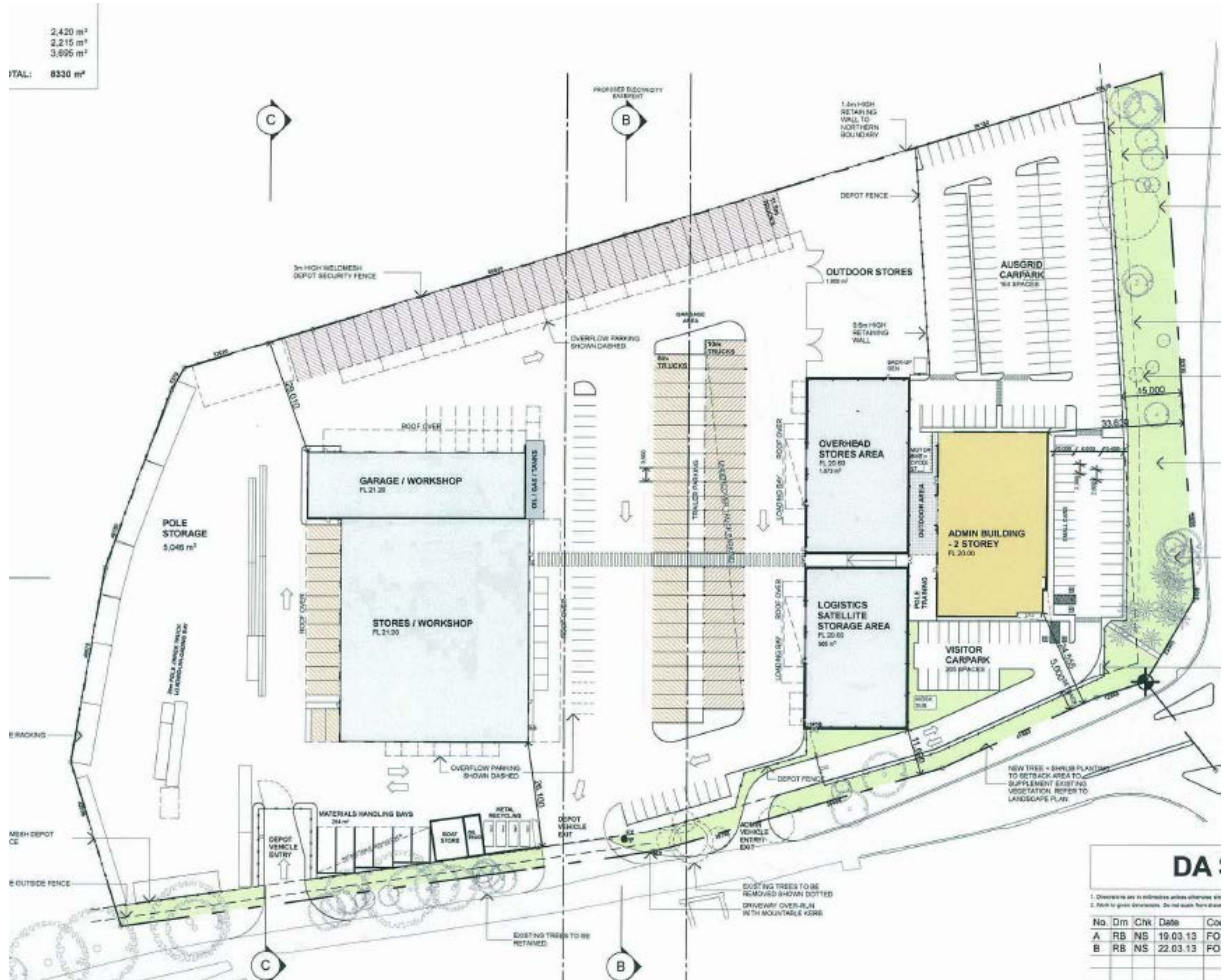
The existing use does not include any significant permanent buildings and generally concerns the storage of plant, trucks and other nondescript materials. There is an existing dwelling on the rear portion of the site that is to be demolished which is likely to contain asbestos materials.



Aerial photo of the locality depicting proximity to transport links and other utility installations.
The Proposed Development

The development application describes the proposed development as a regional works depot which comprises a building footprint of 6950m² and a total floor area of 8,330m². There are four main buildings which will incorporate the following features which are also depicted on the plan included below,

- Administrative facility including office, conference and staff facilities,
- Staff amenities (locker rooms, showers etc) for field staff,
- Vehicle servicing area, wash bay,
- Warehousing and storage of network, stores and communication components, and
- Recycling and waste collection facilities.



Extract of the site plan depicting the layout of the proposed buildings and works

Source: SHA

The proposed buildings range in height from approximately 8m for the office building to approximately 12m for the workshop/stores building. The buildings have been arranged on the site such that the office is located within the most prominent part of the site addressing the corner of Ourimbah Creek Road and the Pacific Highway. The existing and proposed landscaping will generally screen the site when viewed from the Pacific Highway with the exception of the corner where the landscaping reduces in intensity and utilises an existing clump of palm trees to create a vista to the building behind.



Photomontage of the proposed development as viewed from the corner of Ourimbah Ck Rd and the Pacific Hwy.
Source SHA

The buildings are generally simple in form with variation in roof elements and external finishes intended to provide some visual interest and continuity between the buildings. The office building has been designed with a prominent glass foyer element to provide a legible connection between the building and the public domain. Being the primary visual connection to the passing public the office has additional treatment to the external finishes beyond that offered on the workshop and storage buildings.

The site will also accommodate,

- Outdoor training facilities,
- Secured parking area for service vehicles, trucks and machinery,
- Outdoor storage areas for consumables and poles, and
- Staff and visitor parking including motorbike and bicycle areas.

The site will be secured by a combination of a 3m prison style fence enclosing the depot, service vehicle storage and outdoor storage areas and a 3m palisade style fence enclosing the front portion of the site surrounding the office and associated car parking.

The development will accommodate 288 staff (75 Office Staff & 212 Field Staff).

The proposed hours of operation are,

- 6am – 12am 7 Days per week,
- 24hr operation during times of emergency such as natural disasters.

The new depot facility at Ourimbah will be the central base from which AUSGRID services the Central Coast region. The nature of the AUSGRID work is to respond to outages of the network as is required on a 24 hours a day basis. There will ordinarily be a small network operating team (up to 2 staff) located within a stand-by room in the office building on an on-call 24/7 basis and a fleet maintenance team (up to 5 staff) located within the garage workshop on a Monday - Friday, shift ceasing at 12 midnight. The depot will be required to operate out of regular business hours when responding to emergency power outages and the like.

Referrals

The application has been referred to Council's:

- Development Ecologist,
- Arborist and Landscaping Officer,
- S94 Contributions Officer,
- Development Engineer,
- Trade Waste Officer,
- Transportation Engineer, and
- Water and Sewer Planning Engineer.

The issues raised in the referral process are discussed in the report and where relevant reflected in the conditions of consent.

Pursuant to the relevant provisions of the State Environmental Planning Policy – Infrastructure, the development application was referred to,

- NSW Roads and Maritime Service, and
- AUSGRID.

Summary

Subsequent to the preliminary assessment of the proposed development Council conveyed to the applicant a number of recommended civil engineering requirements amongst other draft requirements which Council intended to impose as conditions of consent. Following initial discussions with the applicant a conference was held in the spirit of S89 (1) (b) of the Environmental Planning and Assessment Act 1979, between Council Officers, the Applicant and members of the AUSGRID project team. The following matters were the principle subject of the conference,

- Proposed requirement for the upgrading of Ourimbah Creek Road,
- Options for on-site stormwater detention,
- Proposed water and sewer infrastructure requirements, and subsequently
- S94A Contributions.

VARIATIONS TO POLICIES

The proposed development does not pose any variations to any development standards or other relevant policies.

HISTORY

The subject site has been historically utilised for,

- Agriculture and horticulture,
- School Bus depot,
- Truck depot,
- Residential Dwellings, and
- Development consent was issued in 2007 for an industrial development comprising 9 units and various incidental uses such as a sandwich shop. This consent has since lapsed,
- Preliminary site works including vegetation clearing, site levelling and filling has been granted development consent pursuant to Development Application DA/115/2013

which will result in the clearing of any vegetation not to be retained as landscaped within perimeter of the site.

Council has recently resolved to adopt a new Comprehensive Local Environmental Plan which contains a draft IN2 – Light Industrial Zoning for the land.

PERMISSIBILITY

The provisions of the Infrastructure SEPP (SEPP Infrastructure) apply to the site. Pursuant to Division 5 Electricity transmission or distribution, certain development is either permitted without development consent or is exempt. The proposed development does not involve any of the following items and is not exempt development or permitted without consent under this division of the SEPP Infrastructure;

- (a) *above or below ground electricity transmission or distribution lines (and related bridges, cables, conductors, conduits, poles, towers, trenches, tunnels, ventilation and access structures),*
- (b) *above or below ground electricity kiosks or electricity substations, feeder pillars or transformer housing, substation yards or substation buildings.*

Division 14 - Public administration buildings and buildings of the Crown

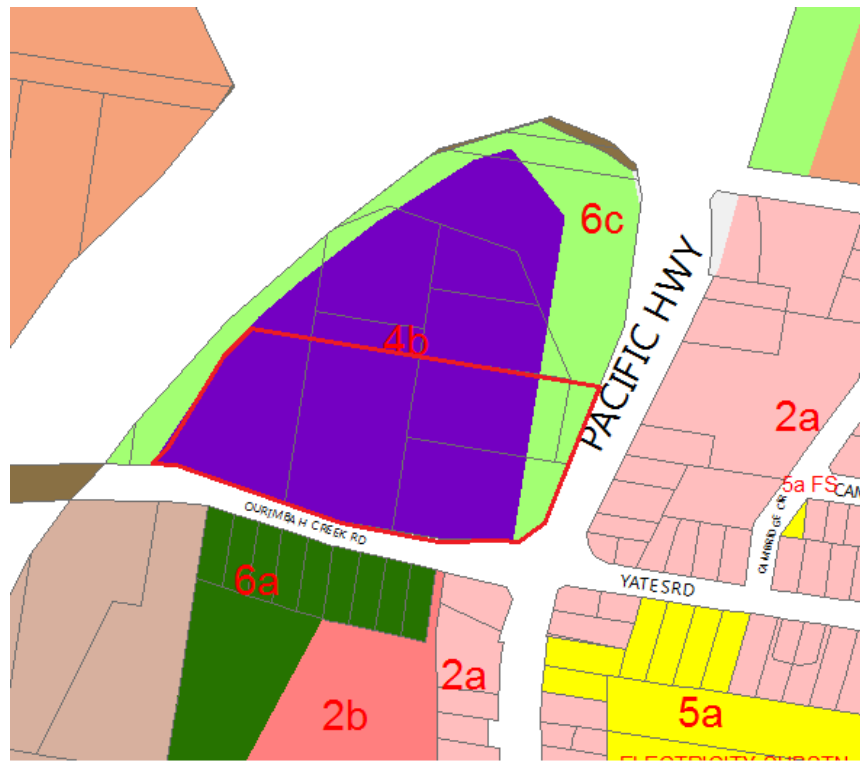
Division 14 - Public administration buildings and buildings of the Crown, SEPP Infrastructure permits development for the purpose of a public administration building with consent within prescribed zones or where the public administration building is to be carried out in association with an infrastructure facility.

The subject site is not within a zone prescribed for the purposes of Division 14 and the proposed development is not ancillary to or located on the same land as an infrastructure facility as defined by the SEPP and therefore is not permitted with consent under the SEPP.

Wyong Local Environmental Plan 1991

Given that the proposal is not permitted without consent or classified as exempt development under the SEPP Infrastructure the consideration of permissibility turns to the Wyong Local Environmental Plan 1991 (WLEP 1991).

The subject site is zoned part 4(b) – Light Industrial and part 6(c) – Proposed Open Space and Recreation under the Wyong Local Environmental Plan 1991 (the WLEP 1991) as depicted on the map extract provided below.



Zone map extract from the WLEP 1991 – The site is depicted in red. Source: Eview

The proposed development is described by the applicant as a regional works depot which is considered to be a reasonable plain English summation of the development however, regional works depot is not a land use definition contained within clause 7 – Definitions, of WLEP 1991. The following definition is relevant to the characterisation of the proposal.

depot means a building or place used only for the storage (but not sale) of any plant, machinery, materials or goods used or intended to be used by the owner or occupier of the building or place, but does not include a building or place elsewhere specifically defined in this clause.

In this instance the definition of depot is considered to be the appropriate land use definition. The office use proposed as part of the overall development is considered to be ancillary to the dominant use of the site as a depot.

Clause 10 - Zone objectives and development control table

Pursuant to Clause 10(2) of the WLEP 1991 the proposed development is considered to be development permitted with consent in both the 4(b) – Light Industrial and 6(c) – Proposed Open Space zones.

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 (Infrastructure) 2007
- State Environmental Planning Policy 55 – Remediation of Land
- State Environmental Planning Policy 33 – Hazardous and Offensive Development
- State Environmental Planning Policy 64 – Advertising and Signage
- Wyong Local Environmental Plan 1991
- Development Control Plan 2005 - Development Controls for Wyong Shire

- Chapter 50 - Advertising signs
- Chapter 61 - Parking and Access
- Chapter 67 - Engineering Requirements for Developments
- Chapter 69 - Controls for Site Waste Management
- Chapter 70 - Notification of Development Proposals
- Chapter 75 – Industrial Development
- Landscape Policy and Guidelines
- Waste Management Guidelines

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.

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.

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):

State Environmental Planning Policy – (Infrastructure) 2007

SEPP Infrastructure was formulated to, amongst other things; create regulatory efficiency in the delivery of infrastructure by providing consent and consultation requirements where appropriate. The consent provisions of the SEPP Infrastructure have been considered in a previous section of this report. The following is a summary of the consultation and assessment criteria provisions that relate to the proposal.

45 Determination of development applications—other development

The proposal involves works adjacent to an easement for electricity purposes therefore before determining the development application, the consent authority must: