

5.1 Proposed Acquisitions - New Requirements from the Division of Local Government

TRIM REFERENCE: F2009/02613 - D02553357

AUTHOR: Julie Tattersall; Officer

MANAGER: Bronwyn Rumbel; Manager Economic & Property Development

SUMMARY

The Division of Local Government has advised that from now on Council's applications for Compulsory Acquisition will not be processed unless Council, by resolution, authorises the making of an application specifically for the approval of the Minister for Local Government and the consent of the Governor for compulsory acquisition.

RECOMMENDATION

- 1** *That Council authorise any necessary applications for the approval of the Minister for Local Government and for the consent of the Governor to proceed with compulsory acquisition in the event that agreement cannot be reached with the owners of land affected by the following acquisition proposals previously approved by Council adjacent to Mildon and Gavenlock Roads Tuggerah;*
 - a** *a drainage easement over an existing constructed drainage line over part Lots 8 and 9 DP 1014170, Lot 3 DP 841170 and Lots 3 and 4 DP 877668;*
 - b** *part of Lot 2 DP 586364 and part of Lot 504 DP 1134328 Berkeley Road, Fountaindale as public road;*
 - c** *part of Lot 5 DP 4097 at Brush Road, Ourimbah as public road.*

BACKGROUND

At its Meeting held on 8 July 2009, Council resolved to acquire a drainage easement over an existing constructed drainage line over part of Lots 8 and 9 DP 1014170, Lot 3 DP 841170 and Lots 3 and 4 DP 877668 adjacent to Mildon and Gavenlock Roads, Tuggerah. Council authorised payment of compensation and compulsory acquisition if necessary.

At its Meeting held on 8 September 2010, Council resolved to acquire part of Lot 2 DP 586364 and part of Lot 504 DP 1134328 at Berkeley Road, Fountaindale for public road. Council authorised payment of compensation and compulsory acquisition if necessary.

At its Meeting held on 22 September 2010, Council resolved to acquire part of Lot 5 DP 4097 at Brush Road, Ourimbah for public road. Council authorised payment of compensation and compulsory acquisition if necessary.

5.1 Proposed Acquisitions - New Requirements from the Division of Local Government (contd)

Negotiations with the owners of all of the above lands are continuing however, in respect of the acquisition of part of Lot 5 DP 4097 at Brush Road, Ourimbah, it has become necessary to lodge an Application for Compulsory Acquisition for the approval of the Minister and consent of the Governor with the Division of Local Government (DLG) as settlement with the owner has not been reached.

Despite Council already having resolved to compulsorily acquire interests in these lands, in the event that agreement cannot be reached with the owners, the DLG has advised that it will not process Council's application unless Council specifically resolves to apply for the approval of the Minister for Local Government and the consent of the Governor.

Negotiations with the owners of the land adjacent to Mildon and Gavenlock Roads, Tuggerah and Berkeley Road, Fountaindale are still continuing however, it may become necessary to commence compulsory acquisition if settlement cannot be achieved in the near future.

All future reports to Council in respect of Council acquisition programs will include in the recommendation the making of any necessary applications for compulsory acquisitions for approval of the Minister and the consent of the Governor.

THE PROPOSAL

In order to comply with the DLG's new requirements, it is necessary to seek confirmation of the Council's previous resolutions and to authorise the making of any necessary applications for the approval of the Minister for Local Government and the consent of the Governor for compulsory acquisition.

OPTIONS

Option 1 – Resolve to make any necessary applications for compulsory acquisitions for approval of the Minister and the consent of the Governor.

Option 2 – Do not resolve to make applications for compulsory acquisitions for approval of the Minister and the consent of the Governor.

This would result in any Application for Compulsory Acquisition of these lands being rejected by the DLG.

CONCLUSION

It is recommended that, in this instance, Council make any necessary applications for the approval of the Minister for Local Government and the consent of the Governor for compulsory acquisitions and that, in future, include this as part of the standard recommendations for compulsory acquisitions.

ATTACHMENTS

Nil.

5.2 Proposed Acquisition of Lot 10 Section 6 DP 3136, 11 Margaret Street, Wyong

TRIM REFERENCE: F2007/00426 - D02555069
AUTHORS: Julie Tattersall; Officer
MANAGER: Bronwyn Rumbel; Manager Economic & Property Development

SUMMARY

Approval is sought to acquire Lot 10 Section 6 DP 3136 at 11 Margaret Street, Wyong.

RECOMMENDATION

- 1 That Council authorise the acquisition of Lot 10 Section 6 DP 3136 at 11 Margaret Street, Wyong for an amount to be negotiated having regard to market value as determined by an independent qualified valuer.**
- 2 That Council propose classification of Lot 10 DP 14527 as Operational Land.**
- 3 That, Council confirm the classification as Operational subject to no adverse submissions being received.**
- 4 That Council authorise the Common Seal of Wyong Shire Council to be affixed to the Transfer between the owner of Lot 10 Section 6 DP 3136 and Wyong Shire Council.**
- 5 That Council authorise the Mayor and the General Manager to execute all documents relating to the Transfer between Wyong Shire Council and the owner of Lot 10 Section 6 DP 3136.**

BACKGROUND

On 12 July 1989 Council resolved to approach the owners of Lots 9, 10 and 11 Section 6 DP 3136 advising of Council's interest in acquiring the land. Subsequently Lots 9 and 11 were acquired by Council in 1991.

Council wrote to the owner of Lot 10 on 10 August 1989 informing the owner of Council's future proposals for the land and requesting that the owner give Council the right of first refusal in the event that they wish to dispose of the property. The owner expressed deep reservations against any action by Council which would require them to move from their home due to their advanced age. Council did not pursue the matter further at that time.

A notation was included on any Section 149 Certificate which might issue in relation to Lot 10 to the effect that the land is affected by acquisition proposals by Council.

Wyong Shire Council Local Environmental Plan 1991 (LEP) was amended on 10 March 1995. Part of the amendment included provision for land to be zoned 5(a) Council and Government Purposes. The amendment related to Lots 9, 10 and 11 Section 6 DP 3136.

5.2 Proposed Acquisition of Lot 10 Section 6 DP 3136, 11 Margaret Street, Wyong (contd)

The solicitors acting for the Estate of the late owner of Lot 10 have now offered the land for sale to Council for a sale price of \$395,000.00. Council should expect to pay market value for the property in accordance with an assessment by a qualified valuer.

Lot 10 is zoned 5(a) – Special Uses – Council and Government Purposes and has an area of 1,011 square metres and is improved by an older style dwelling and a detached garage.

Land owned by Council for development may be classified as Operational Land.

Under Section 34 of the Local Government Act 1993, Council is required to give public notice of the proposal to classify land for a period of 28 days before confirming classification. If no adverse submissions are received, the classification will be adopted on the basis of Council's decision for proposed classification.

THE PROPOSAL

It is proposed to acquire Lot 10 Section 6 DP 3136, 11 Margaret Street, Wyong for a purchase price to be negotiated.

Funds for the purchase will be provided from reallocations of savings to be reported in the March Budget Review.

OPTIONS

Option 1 – Provide funds and acquire the property

This will enable the organisation to provide for future developments in the Wyong town centre.

Option 2 – Do nothing

If Council does not acquire the property it will be difficult for the owners to effect a sale otherwise having regard to the zoning of the land.

FINANCIAL IMPLICATIONS

Funds for the purchase will be provided from reallocations of savings to be reported in the March Budget Review.

CONSULTATION

Solicitors for the owner have contacted Council seeking purchase of the property and negotiations are proceeding.

GOVERNANCE

Section 31 of the Local Government Act 1993 requires Council to classify land within three months of acquisition. It is proposed to classify this land as Operational.



CONCLUSION

Council owns the land either side of the subject lot.

Acquisition will enable cohesive use of the land for future development in Wyong Town Centre.

ATTACHMENTS

Nil.

5.3 Council-owned Iconic Development Sites

TRIM REFERENCE: F2010/02196 - D02572667

AUTHOR: Bronwyn Rumbel; Manager Economic Property Development

SUMMARY

Reporting on a proposal to seek expressions of interest (EOI) from the private sector to partner Council in the development of Council properties that are identified as iconic development sites.

RECOMMENDATION

- 1 That Council seek expressions of interest to partner Council in the development of Council-owned iconic development sites.**
- 2 That a further report be presented to Council at the completion of the expressions of interest process.**

BACKGROUND

During the past 12 months Council has prepared planning strategies for the three major town centres in the Shire: The Entrance, Toukley and Wyong.

Council has also commenced the process to design and implement a new comprehensive Shire-wide Local Environment Plan.

In 2010 Council recognised an opportunity to stimulate the economy and create employment opportunities by identifying a number of iconic sites within the Shire and offering incentives to the owners to develop these sites in the short term.

Accordingly Council received a report at its Ordinary Meeting held on 24 November 2010 which identified a list of potential iconic development sites, including sites located on Council-owned land. Council subsequently resolved the following:

- 1 That Council endorse the Iconic Development Sites as outlined in the report for the purpose of further action by staff in identifying planning controls to facilitate development through the Comprehensive Local Environmental Plan process or subsequent amendment to the Comprehensive Local Environmental Plan.**
- 2 That Council move the Long Jetty town centre extension to phase 2 and conduct further studies.**
- 3 That Council acknowledge that in general iconic sites may move between phases 1 and 2 or vice versa depending on the proposals and or results of studies.**
- 4 That Council include the Warnervale airport site in phase 1.**

5.3 Council-owned Iconic Development Sites (contd)

- 5 That Council *seek* written confirmation from the Department of Planning of its support for this process.
- 6 That Council commence an engagement process with the owners of properties proposed to be delineated as Iconic Development Site.

During the engagement process required as part of item 6 of the resolution, Council has received a number of enquires from the private sector relating to possible partnership with Council in developing Council-owned iconic sites.

Of the thirty-two (32) iconic development sites: Council owns four sites in their entirety, owns parcels within seven other sites; and owns parcels adjacent to four other sites (one with development potential).

The iconic development sites that Council has a significant interest in are described in Table 1.

Table 1: Iconic Development Sites in which Council has a significant interest:

Site	Description	Council interest
4	The Entrance: Dening/Short Street Carpark Site	100% Council owned
11	Toukley: Coles Development, Council Car Park and Toukley Senior Citizens	90% Council owned
12	Toukley: Old Service Station Site and adjoining Council Car Park	45% Council owned
18	Wyong: Oasis Youth Facility Site	100% Council owned
23	Wyong: The Active River Foreshore Precinct	25% Council owned
24	Wyong: Wyong Tennis Club and Wyong Swimming Pool Site	100% Council owned
32	Warnervale: Warnervale Airport	100% Council owned

THE PROPOSAL

As Council does not have the financial or intellectual capacity to undertake market assessments of these sites, Council proposes to seek partners from the private sector (with the ability to assist Council in the planning and development of these sites) through an expressions of interest process.

Concurrently, the review of the Local Environment Plan (LEP) will finalise controls around iconic sites and it would therefore be advantageous for Council to attract partners that have the capability to undertake the master planning and design for these sites in a timeframe that would enable the final detail to be inserted into the Comprehensive LEP prior to its adoption.

OPTIONS

Council could choose to do nothing however; this would defeat the concept behind the iconic sites report. There will be sunset clauses on the development of iconic sites and, as such, Council must proceed in the short term to develop concepts for Council-owned sites and determine ways forward to bring the development to fruition.

Council does not have the financial capability by itself to undertake a review of all of the sites in which it has a significant ownership interest.

STRATEGIC LINKS**Link to Shire Strategic Vision**

Community – The development of these sites has the potential to result in significant public domain benefits.

Employment – The commencement of these iconic developments will provide a significant number of jobs during construction and, in some cases, will create a significant number of ongoing full and part-time employment opportunities.

Financial Implications

There is no additional budget allocation required in calling for expressions of interest.

Principles of Sustainability

The principles of sustainability will be required to be addressed and integrated into the design proposals for iconic development sites. Site-specific Development Control Plans will need to include controls that promote economic, environmental and social sustainability. In addition, new buildings will be required to demonstrate design excellence incorporating the applicable 5-star building rating.

CONSULTATION

Following the adoption of the iconic development sites report Council staff have undertaken subsequent discussions with site owners. Any proposals that eventuate through the proposed EOI process will be further reported to Council.

GOVERNANCE

The seeking of expressions of interest is a standard process regularly undertaken by Councils throughout the State. Strict probity procedures are in place to ensure good governance and transparency exists throughout the process. A report on the outcome of the EOI process will be presented to Council at a later date.

CORPORATE RISKS

Nil impact.

CONCLUSION

Council adopted the iconic sites report in an attempt to have large scale projects commence, in a short period of time, in order to stimulate the economy and create employment opportunities that would benefit the community.

Council has determined to lead by example in promoting the use of land for the betterment of the community and as the owner of four iconic sites and with a significant interest in a further three sites,

Council does not have the financial or intellectual capacity to undertake this planning work on these sites, and desires to form appropriate partnerships with organisations from other sectors – e.g. the private sector.

An expressions of interest process is regarded as ideal to ensure transparency of Council's engagements.

Council's support for this initiative will achieve desirable economic and social outcomes for the Shire, will enable master planning of these sites to be commenced.

ATTACHMENTS

Nil.

6.1 Contract CPA/182359 - Provision of Security Services to The Entrance Town Centre

TRIM REFERENCE: CPA/182359 - D02417678

AUTHOR: Doug Marchant; Project Director

MANAGER: Mike Long; Manager Contracts & Project Management

SUMMARY

This report recommends that no contract be awarded in relation to the tenders received for Contract No. CPA/182359 Provision of Security Services to The Entrance Town Centre, and new tenders be invited in conjunction with a new security contract to be called for all Council properties.

RECOMMENDATION

- 1 That Council decline to accept any of the tenders received for contract CPA/182359 – Provision of Security Services to The Entrance Town Centre, in accordance with sub-clause 178(1)(b), Local Government (General) Regulation 2005.**
- 2 That Council invite, in accordance with clause 167 fresh tenders based on the same or different details.**
- 3 That Council thank the tenderers for their interest and invite them to re-tender when fresh tenders are called.**

BACKGROUND

The Local Government Act was amended in 2008 by the inclusion of Clause 55A which requires that:

(1) A council must comply with the requirements of section 55 (including any regulations made under that section) even though the contract to which that section applies involves something being done to or by an entity that the council has formed or participated in forming.

(3) In this section:

entity means any partnership, trust, corporation, joint venture, syndicate or other body (whether or not incorporated), but does not include any such entity that is of a class prescribed by the regulations as not being within this definition.

The effect of this amendment is to require Councils to approve all contracts let by organisations that they have created to do certain things on their behalf.

The Entrance Town Centre Management Corporation Incorporated (TETCMC) was established in 1994 with responsibility for the day-to-day management of The Entrance Town

6.1 Contract CPA/182359 - Provision of Security Services to The Entrance Town Centre (contd)

Centre. To this end TETCMC engaged Amazon Cleaning and Security Pty Ltd (ACS) to provide security services for The Entrance Town Centre under an engagement that does not have a fixed termination date. (It is noted that this company had also previously provided cleaning services for TETCMC, and following retendering was successful in being awarded a new cleaning contract in March 2011).

To ensure compliance with Clause 55A, tenders were called for a new security contract in 2010 as discussed in this report.

The purpose of the security contract is to provide a visible security presence that supports community and tourist visitation to the Town Centre. The work involves a high degree of interaction with the general public and commercial retailers.

During daylight hours one security guard would be employed for eight hours every day of the year. The service primarily consists of foot patrols of The Entrance Town Centre to discourage and minimise anti-social behaviour. An important element of the work also requires liaising with shopkeepers and the police to reduce graffiti and vandalism to public property within The Entrance Town Centre.

Tender Process

Tenders were invited by way of public invitation. Advertisements were placed in the Sydney Morning Herald on 22 June 2010 and the Central Coast Express Advocate on 23 June 2010. Tenders were also advertised on Council's e-Tender website. The advertised closing date was 15 July 2010.

The invitation documents called for schedule of rate tenders based on a detailed specification. The contract period was amended by Addenda to be three years.

A compulsory pre-tender meeting was held at the site on 1 July 2010 to allow tenderers to become familiar with site conditions.

Tenders closed at Council Chambers and on the e-Tender website on 15 July 2010.

EVALUATION OF TENDERS

Fourteen tenders were received by the closing date and time. No late tenders were received. Details of the tenderers only (in alphabetical order) are tabled below. Tendered amounts have not been included as disclosing details of the comparative bids in a public forum may prejudice Council's interests and that of the Tenderers if fresh tenders are called for the services.

Tenderer	Status
Amazon Cleaning & Security Pty Ltd*	Submitted on time
Asset Security Pty Ltd	Did not attend pre-tender meeting
AVS Group Australia Pty Ltd	Submitted on time
Bezcorp Holdings Pty Ltd	Submitted on time
BSMS Security	Submitted on time
Citiguard Protection Services Pty Ltd	Submitted on time
EGroup Central Coast Pty Ltd	Submitted on time
EVS Group Australia Pty Ltd	Submitted on time
Pound Enterprises Pty Ltd	Submitted on time
SecurityWorx Australia	Submitted on time
Southern Cross Protection Pty Ltd	Did not attend pre-tender meeting
Sydney Night Patrol & Inquiry Co Pty Ltd (SNP Security)	Submitted on time
Synergy Protection Agency Pty Ltd (Always Synergy)	Submitted on time
Unique Security Group Pty Ltd	Submitted on time

* Incumbent security provider to the Entrance Town Centre since 2008

Asset Security Pty Ltd and Southern Cross Protection Pty Ltd did not attend the mandatory pre-tender meeting. Both the advertisement and Clause 2.2.4 of the Conditions of Tender stated that attendance at the pre-tender meeting was to be mandatory for consideration of a tender. These two tenders did not meet this prerequisite and were excluded from the assessment.

Whilst a tender assessment was commenced, it was recognised that there may be further advantages to Council in considering the incorporation of security services at The Entrance Town Centre with Council's general security contract covering facilities across the Shire. As a consequence, a decision was made to incorporate The Entrance Town Centre requirements in the general security contract as discussed in this report.

PROCESS REVIEW

Should Council resolve to decline to accept any of the tenders, as recommended, sub-clause 178(3), Local Government (General) Regulation 2005 requires that Council, by resolution, do one of the following:

- “(a) postpone or cancel the proposal for the contract,*
- (b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,*
- (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,*
- (d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*
- (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*
- (f) carry out the requirements of the proposed contract itself. “*

As security services are still required at The Entrance Town Centre, it is recommended that Council continue to pursue competitive prices for the proposed security services and hence a resolution in accordance with sub-clause 178(3)(b) is proposed. There are potential advantages to Council in amalgamating security contracts as discussed in the following section.

PROPOSED ACTION

The opportunity has now arisen to combine this contract with the next advertising of Council's general security contract, *CPA/137900 Provision of Security Services for Various Council Facilities*, that expires on 8 August 2011. The general security contract provides for:

- Alarm monitoring/maintenance and response services to Council facilities
- Opening and closure of public toilets and gates
- Nightly patrols
- Static guards
- Security staff at Council events.

It is considered that economies of scale are achievable by combining the two contracts. The tender will be structured to explore options of separate contracts or a single contract that will then identify the savings and the potential to reduce administrative overheads.

When fresh tenders are invited it is also proposed to advise the fourteen companies that submitted the unsuccessful tenders on this occasion so that they may consider whether to submit a further tender.

CONCLUSION

It is recommended that Council decline to accept any tender for Contract CPA/182359– Provision of Security Services to The Entrance Town Centre. It is also recommended that fresh tenders be invited for these services and the opportunity be taken to explore cost savings and administrative efficiencies by combining services at The Entrance Town Centre with Contract *CPA/194636 Provision of Security Services 2011* currently being prepared.

ATTACHMENTS

Nil.

7.1 Contract Variations and Finalisation - February and March 2011

TRIM REFERENCE: D02557059

AUTHOR: John McCarthy; Supply Coordinator

MANAGER: Mike Long; Manager Contracts and Project Management

SUMMARY

This paper reports on variations, proposed variations or finalisations to contracts with a value greater than \$150,000.00 (excl GST).

The report covers contract variations processed in February and March 2011.

RECOMMENDATION

- 1 That Council receive the *Contract Variations and Finalisation February and March 2011 report (Attachment 1 and 2)*.
- 2 That Council approve additional expenditure above resolved estimates for the following contracts:

Contract Title	Contract No	Adjusted Contract Value (excl GST)	Additional Budget Approval
Concept Design, Details & Tender Documentation - Sewer Pump Station T8, Norah Head	147230	\$160,506.50	\$10,506.50
Options Report, Detail Design & Tender Documentation - Sewer Pump Station T22 Upgrade - Budgewoi	144772	\$171,421.00	\$21,421.00
Sub Division 150 - 190 Sparks Rd Warnervale - Land Clearing	171824	\$160,791.99	\$10,791.99
Construction of Link Road Sparks Road to Lakes Grammar Senior School, Warnervale	160794	\$11,101,735.96	\$302,000.00

- 3 That Council note the additional expenditure requested has been funded through both previous and current years rolling work programs.

BACKGROUND

Contracts entered into by Council are awarded either by Council resolution or under delegated authority. The Local Government Act 1993 section 55 requires that contracts of an estimated value greater than \$150,000.00 (excl GST) must be publicly tendered and approved by Council resolution.

Contracts of an estimated value less than \$150,000.00 (excl GST) are awarded under delegations made by Council to the General Manager or his/her delegate.

Contracts routinely require variations during the course of the contract due to unforeseeable circumstances, changes in design or changes in service demand on the finished product.

All contracts commonly include a contingency sum to cover unforeseen changes. It is generally expressed as a percentage of the contract value, being typically 10% of the contract value, but may vary between 5% and 30% or more depending upon the nature of the contract, or may be expressed as a specific dollar value.

The need to vary contracts (explained above) arises out of differences in estimating strategies where two extremes denote a range of risk that offers Council a choice of budget/estimate methodology.

Council estimates on the basis of known costs of assessment, design and construction. This approach allows budgets to maximise the number of works undertaken in an annual program, at the optimal risk level of programs being materially curtailed as unforeseen needs arise.

Budgets for projects are established within the Annual Plan. When tenders are called, specific approvals are sought from Council in accordance with section 55 of the Act. It is not uncommon for additional approvals to be sought within the approved project budget as unforecast changes (from the tender approval) occur in the works.

THE PROPOSAL

The report for the February and March 2011 periods includes a requirement to seek Council's formal approval for additional funding on 4 contracts to ensure compliance with section 55 of the Local Government Act 1993.

The approval of expenditure for contracts CPA/47230, CPA/144772 and CPA/171824 have previously been authorised under delegated authority as the awarded contract values were initially under the \$150K tendering threshold. With multiple variations occurring over the course of the contracts they have now exceeded \$150K. Details of all variations authorised over the life of the contracts are provided in Attachment 1.

The variability inherent in the initial estimated costs through the Contract Development Plan or (CDP); the awarded contract price; and the final contract price, is illustrated for these three contracts in the following table. All figures used are exclusive of GST and rounded to the nearest dollar. It is also noted that Public Works were the project managers for the two pump station contracts and provided the initial cost estimates in the CDP. Public tenders were called for the pump station contracts, and 9 quotations were sought for the land clearing contract.

The figures in the table for T8 and T22 demonstrate the uncertainty often associated with concept design projects, with a wide range of tender prices being received. Council's tender assessment procedures use a number of criteria, apart from price, to determine the preferred tender. This process resulted in Cardno being selected for both pump station design projects.

Contract No.	CDP Estimate	Awarded Price	No. of Tenders Received	Tender Range	Mean Price	Final Contract Price
CPA/147230 T8 pump stn	\$180,000	\$65,725	8	\$45,000 to \$240,600	\$138,000	\$160,507
CPA/144772 T22 pump stn	\$150,000	\$95,650	8	\$95,650 to \$520,480	\$212,000	\$171,421
CPA/171824 Land clearing	\$80,000	\$115,500	3	\$106,504 to \$132,000	\$118,000	\$160,792

Notwithstanding that a contingency sum was allowed for each contract, the variations detailed in Attachment 1 have increased the final contract price for each contract in the table and now require Council approval before final payments can be made.

In relation to CPA/174230 – T8 pump station - the most significant impacts have resulted from the need to relocate a new pump station T8A from near the Norah Head Search and Rescue land on the foreshore, to Mazlin Reserve off Bungary Road, then to the northern end of the Norah Head Sportsfield. As the project progressed the difficulties associated with finding a suitable pump station location due to coastal hazard mapping information provided after award of the contract, and unstable foundations, created delays and further investigation, survey and design costs.

In relation to CPA/144772 – T22 pump station – the additional costs were mainly related to resolving a number of technical issues that arose from the need to refit and upgrade mechanical and electrical equipment into an operational sewage pump station. The alternative of constructing a new and larger pump station and decommission the old pump station was also considered, but a refit of the existing station was the preferred option.

For both T8 and T22 pump stations the additional work created delays that resulted in delay costs from the consultant. These claims totalled over \$80,000. Following review and extensive discussions with the consultant a total claim of \$49,580 was accepted as reasonable to settle these claims.

In relation to CPA/171824 – land clearing - the main additional costs were for removal of buried asbestos and the costs to remove extra vegetation in an area originally designated as an Asset Protection Zone. Removal of vegetation in this zone was allowed after the contract was awarded, and will maximise the development potential of the land for Council.

Details associated with variations and related funding requests for contract 160794 Construction of Link Road - Sparks Road to Lakes Grammar Senior School, Warnervale, are also detailed in Attachment 1.

Summary for February and March periods.

Variations processed in February 2011	2
Variations processed in March 2011	4
Contracts requiring increase to the contract budget estimate	4
Contract where current funds are sufficient to complete	2
Contracts finalised in February 2011	1
Contracts finalised in March 2011	0

OPTIONS

The variations reported in Attachment 1 were required to ensure the reported contracts could be progressed in a timely and effective manner to deliver best value for Council and ensure compliance with the contract conditions.

Council's approval of these variations is the recommended option to ensure sufficient approved funds are available for contract payments to be made and to ensure Council's compliance with section 55 of the Local Government Act 1993.

STRATEGIC LINKS

Strategic links for the various contracts were identified in the initial assessment and approval reports for each contract.

FINANCIAL IMPLICATIONS

Increased expenditure is identified in the recommendation with the source of funds detailed in Attachment 1.

PRINCIPLES OF SUSTAINABILITY

This proposal applies good governance improving Council processes by being consistent and demonstrating a sound basis for the variation of contract estimates to ensure better outcomes for the community via appropriate allocation of resources.

CONSULTATION

Consultation has occurred with all Contract Officers responsible for the management of contracts reported in Attachment 1.

GOVERNANCE

These contract variations are reported to Council to ensure compliance with Section 55 of the Local Government Act.

CORPORATE RISKS

This report contributes to the mitigation of the following risks identified in Council's Risk Register:

Identified Risk	Rating	Actions to Mitigate
Budget Control Inadequate budget control that creates significant funding shortfalls leading to an inability to provide priority services. (shorter-term consequence)	Moderate	Monthly reporting of variations.
Legislative Requirements Council non-compliance with legislative requirements leading to penalties, civil claims and/or contractual disputes.	Low	- Monthly reporting of variations. - Local Government Act requirements in relation to Tenders.

CONCLUSION

Variations detailed in this report are driven by “normal” contract issues.

The reported contracts are generally within planned expenditure in terms of coverage, quantity and quality albeit in this instance the originally calculated budgets were understated.

ATTACHMENTS

- | | | |
|---|---|-----------|
| 1 | Contract Variations February and March 2011 | D02585022 |
| 2 | Contracts Finalised in February 2011 | D02585062 |

Attachment 1
Contract Variations for February and March 2011

Concept Design and Tender Documentation for Water Trunk Mains at Warnervale Town Centre and Wyong Employment Zone

Contract Number	Date of Council Approval	Contractor	(a) Approved Contract Value \$	(b) = (a) + Contingency Total Approved Budget \$	(c) Value of Variations Previously Reported \$	(d) Value of Variations For Reporting Period \$	(e) = (c) + (d) Total Value Of Variations \$	(f) = (a) + (e) Actual Contract Value \$	Source Of Funds	Expenditure to Date \$
130591	26/3/2008	SMEC Pty Ltd	255,440.00	280,985.45	34,761.50	-42,095.93	-7,334.43	248,105.57	Developer Con	248,105.57

Individual Variations for Reporting Period

Description	Value \$	Description	Value \$
<p>Variation 4 Scope change</p> <p>The Consultant was requested to expose services in Nikko Road to facilitate the new water main alignment. It involved extensive excavations due to congested services. The scope of the consultancy envisaged that only minor hand excavation would be required for service locations. However, there were no tracer tapes on the existing services and larger excavations were required. The additional work provided the exact location of the existing services to permit the accurate alignment of the new water mains.</p>	5,954.47	<p>Variation 5 Scope change</p> <p>The Consultant was directed to attend a Risk Assessment Workshop conducted by gas supplier Jemena prior to undertaking any excavations for service locations.</p> <p>The Consultant was also required to divide the design drawings for the WEZ (Wyong Employment Zone) water project to allow preparation of two different construction packages. This will allow staging of construction to meet delayed development.</p> <p>These two activities were additions to the scope of works under the consultancy engagement.</p>	2,960.00

<p>Variation 6 Credit variation.</p> <p>The original contract sum included an allowance for \$50,000 for location of services and \$8,000 for post-design advice. Only a small part of this allowance was required for the completion of the contract.</p> <p>The post design advice was deleted from the consultancy scope because the timing of construction (in particular for WEZ and to a lesser extent WTC) has been delayed due to slow progress on development of these areas.</p> <p>Overall an amount of \$51,010.40 of the approved funds for the contract is no longer required.</p>	<p>-51,010.40</p>		
--	-------------------	--	--

This contract is 100% complete. Total costs have remained within the approved budget. No further payment claims are envisaged.

Toowoona Bay Holiday Park Swimming Pool and associated works

Contract Number	Date of Council Approval	Contractor	(a) Approved Contract Value \$	(b) = (a) + Contingency Total Approved Budget \$	(c) Value of Variations Previously Reported \$	(d) Value of Variations For Reporting Period \$	(e) = (c) + (d) Total Value Of Variations \$	(f) = (a) + (e) Actual Contract Value \$	Source Of Funds	Expenditure to Date \$
170570	10/3/2010	Wright Pools Pty Limited	474,220.91	521,643.00	-45,290.06	35,529.57	-9,760.49	464,460.42	General Fund Tourist Parks- Holiday Pk Upgrade	446,050.99
Individual Variations for Reporting Period										
Description					Value \$	Description				Value \$
<p>Variation 4 Provisional Sum</p> <p>This contract was a design and construct contract with a Provisional Sum included for piling if required. This variation is for piling found to be necessary due to subsurface conditions.</p> <p>Due to the inability of the existing ground to support the children's section of the Resort Pool, a total length of 52.8 metres of 450mm dia lined and bored piers were placed to ensure settlement and subsequent structural failure did not occur.</p> <p>In addition, under the main pool a total of 21.0 metres of 450 mm dia bored piers were required to prevent the weight of the pool impacting on an existing culvert.</p>					18,597.00	<p>Variations 11 & 12 Scope change</p> <p>When completed it was noted that approximately 70 metres of the pool coping (surround) would be 600-800 mm above the existing ground. (The final height of the pool was not known at the time of tender, and the pool level was raised to fit in with the existing camp kitchen if necessary).</p> <p>Additional formwork was therefore required to support construction of the pool sides over this area. The rate for this work had been included in the tender documentation.</p>				3,276.00

<p>Variation 17 Scope change</p> <p>This variation relates to the island within the pool. The tender provided for a landscaped island with plantings with landscaping to be undertaken by others. After further consideration the contractor was directed to change the surface treatment to concrete with synthetic grass, to minimise ongoing potential problems with soil and plants contaminating the pool water</p>	4,117.00	<p>Variation 20 Scope change</p> <p>This variation relates to the inability of the natural ground to support the concrete pool concourse without future settlement.</p> <p>Consulting engineers advised that the existing material adjacent to the pool had to be removed and a better quality material substituted and compacted to a depth of 350mm.</p>	4,568.37
<p>Variation 21 Scope change</p> <p>This contract was a design and construct contract with a Provisional Sum for piling if necessary. This variation is for piling found to be necessary due to subsurface conditions.</p> <p>Due to the inability of the existing ground to support the point loads associated with a required footbridge (spanning from the concourse to the island in the pool) two piers each 3 metres in depth were required.</p>	1,512.00	<p>Variation 23 Scope change</p> <p>This variation relates to a change in design to accommodate excess excavated material from construction of the pool. The excess material resulted from additional poor material encountered during work on construction of the pool.</p> <p>The contractor was directed to place and shape additional fill to effectively increase the height of the adjacent landscape mounds for the resort pool. Using the excess material from the pool excavation on site was more cost effective than to take this material to landfill.</p>	3,459.20

Physical works are complete and the pool is operational. The final claim for payment is yet to be determined.

With the information currently available, the resolved contract budget as approved by Council is considered to be sufficient for this contract.

Concept Design, Details & Tender Documentation – Sewer Pump Station T8, Norah Head

Contract Number	Date of Council Approval	Contractor	(a) Approved Contract Value \$	(b) = (a) + Contingency Total Approved Budget \$	(c) Value of Variations Previously Reported \$	(d) Value of Variations For Reporting Period \$	(e) = (c) + (d) Total Value Of Variations \$	(f) = (a) + (e) Actual Contract Value \$	Source Of Funds	Expenditure to Date \$
147230	N/A - Contract originally less than \$150,000. Approved by Manager C&SP 10/11/08 (D01282528)	Cardno (NSW) Pty Ltd	65,725.00	75,725.00	N/A	74,781.50	74,781.50	150,506.50	50% Revenue 50% Sect 64 Cont.	126,424.75

Individual Variations for Reporting Period

Description	Value \$	Description	Value \$
Variation 1 Scope change This variation was required to investigate the option of relocating proposed SPS T8A from the original preferred location near the Norah Head Search and Rescue Base (NHSRB) to a suitable site in Mazlin Park. This relocation would overcome concerns from NHSRB and find a site acceptable to the community generally. Work involved engineering investigation and amendments to the Concept Design Report.	10,600.00	Variation 2 Scope change This variation required the consultant to engage Shirley Consulting Engineers (at Council's direction) to determine if the proposed design for SPS T8A was consistent with the recommendations that Shirley Consulting Engineers were providing to Council on stability problems in the Cabbage Tree Bay area.	3,227.50

<p>Variation 3 Scope change</p> <p>Additional detail design and documentation were required for the upgrade of SPS T8 (i.e. new building design, technical specification, rising main and refurbishment of wet well and valve pit). Detail design was also required for new SPS T8A (i.e. new rising main and gravity main to divert existing reticulation to new pump station). These additional works were required due to the relocation of proposed SPST8A from NHSRB to Mazlin Reserve.</p>	14,600.00	<p>Variation 4 Scope change</p> <p>Additional survey was required for revised SPS T8A site at Norah Head Sportsground (Hockey Field). The proposed pump station site was relocated from Mazlin Reserve because that site was reclassified as a high coastal hazard zone and unsuitable for a pumping station. This variation ensures the new pumping station is located within a suitable location.</p>	2,500.00
<p>Variation 5 Scope change</p> <p>This variation required the Consultant to prepare, attend and record a Construction Hazard Assessment Implication Review (CHAIR) meeting held in November 2009 for revised works for SPS T8 and T8A. A CHAIR meeting was not included in the original scope of works for this project, however the CHAIR meeting benefits the project because it ensures a detailed and systematic examination of potential design and/or construction safety issues.</p>	2,500.00	<p>Variation 6 Scope change</p> <p>Additional geotechnical investigation (by Douglas Partners) was required for revised SPS T8A site at Norah Head Sportsground. The proposed pump station site was relocated from Mazlin Reserve because that site was reclassified as a high coastal hazard zone and would be unsuitable for a pumping station. This variation ensures the new pumping station site is located at an area with ground conditions suitable for a sewer pumping station.</p>	7,500.00
<p>Variation 7 Scope change</p> <p>Additional design and documentation was required for revised SPS T8A site at Norah Head Sportsground. The proposed pump station site was relocated from Mazlin Reserve because that site was reclassified as a high coastal hazard zone and would be unsuitable for a pumping station.</p>	20,400.00	<p>Variation 8 Scope change</p> <p>Additional check of geotechnical assessment (by Shirley Consulting Engineers) associated with revised SPS T8A site at Norah Head Sportsground. The proposed pump station site was relocated from Mazlin Reserve because that site was reclassified as a high coastal hazard zone and would be unsuitable for a pumping station.</p>	1,742.25

<p>Variation 9 Scope change</p> <p>Additional unplanned costs were incurred by Consultant for work in evaluating the new geotechnical assessment (by Shirley Consulting Engineers under Variation 8), associated with revised SPS T8A site at Norah Head Sportsground. This assessment was necessary to address and resolve different interpretations of the geotechnical conditions identified by the two geotechnical consultants</p>	4,261.75	<p>Variation 10 Scope change</p> <p>Additional costs were incurred by Consultant to attend two additional technical meetings, associated with the relocated SPS T8A site at Norah Head Sportsground. These were not included in the original project scope.</p>	2,650.00
<p>Variation 11 Scope change</p> <p>This variation is for additional design and documentation costs associated with provision for connection of a temporary standby generator at SPS T8. This additional work was not included in the original scope of works. This provision enables a generator to power the SPS in the event of an electrical power supply failure.</p>	800.00	<p>Variation 12 Scope change</p> <p>This variation is for negotiated additional project management fees incurred by the Consultant associated with approved extensions of time totalling 42.4 weeks. Additional time was required to carry out extra technical and geotechnical investigations, requiring numerous revisions and adjustments to the original scope of work. The additional fees are considered fair and reasonable for the ongoing project management work carried out by the Consultant during times of delay.</p>	14,000.00

Work on this contract is now 95% complete. The contract was originally awarded under staff financial delegations as the expected contract value was less than \$150,000. With variations the value of the contract will now exceed \$150,000, and Council's endorsement is being sought to allow additional funds to be allocated to this work.

The consultant is currently making final minor amendments to the specification and design drawings following a comprehensive review of the draft documents by Council's Water and Sewer technical staff.

With the information currently available, a further contingency amount of \$10,000 should be allowed for to provide for any additional costs associated with completion of this contract. Funds are available from Revenue 50% and Section 64 Contributions 50%.

Options Report, Detail Design & Tender Documentation – Sewer Pump Station T22 Upgrade – Budgewoi

Contract Number	Date of Council Approval	Contractor	(a) Approved Contract Value \$	(b) = (a) + Contingency Total Approved Budget \$	(c) Value of Variations Previously Reported \$	(d) Value of Variations For Reporting Period \$	(e) = (c) + (d) Total Value Of Variations \$	(f) = (a) + (e) Actual Contract Value \$	Source Of Funds	Expenditure to Date \$
144772	N/A - Contract originally less than \$150,000. Approved by Director Shire Services 14/11/08. (D01282534)	Cardno (NSW) Pty Ltd	95,650.00	110,650.00	N/A	75,771.00	75,771.00	171,421.00	Revenue. Sewage Pumping Stations 4.4.9	98,680.00
Individual Variations for Reporting Period										
Description					Value \$	Description				Value \$
Variation 1 Scope change Additional investigations and analysis by Consultant following Council request to increase the number of concept design options from three to five. The extra concepts options were requested due to concerns about the existing asbestos rising main pipes and the non-existence of two surge vessels previous believed to have existed.					9,600.00	Variation 2 Scope change Additional surveys were required to accurately locate Energy Australia substation and high voltage electrical cables that were constructed in December 2009. The additional survey ensured a complete utility services location plan was obtained for the design of the upgrade works.				1,350.00

<p>Variation 4 Scope change</p> <p>This variation was for inclusion of various technical adjustments and improvements to satisfy new requirements. This included variable speed drives for pumps; adjustments to flooring to accommodate new flood levels; and provision of spare equipment in the pump station.</p> <p>These additional works were considered necessary to ensure proper and safe function of the pumping station, but were not specifically included in the original scope of works.</p>	4,950.00	<p>Variation 5 Scope change</p> <p>This variation was for a number of directed changes including: additional design associated with access to proposed pump station wet well to improve accessibility for maintenance purposes; changes to temporary by-pass proposal; additional meetings and reports due to added complexity associated with inclusion of variable speed drives; additional surge tank analysis; additional design of lifting gear above the valve pit; provision for a standby generator connection at the pump station.</p> <p>These additional works were considered necessary to ensure proper and safe function of the pumping station, but were not specifically included in the original scope of works.</p>	22,151.00
<p>Variation 6 Scope change</p> <p>This variation is for negotiated additional project management fees incurred by Consultant associated with approved extensions of time totalling 76 weeks. The extensions of time were approved because extra time was required to carry out additional technical investigations and because numerous revisions and adjustments to the original scope of work were required. The additional fees are considered fair and reasonable for the ongoing project management work that was carried out by the Consultant during times of delay.</p>	35,580.00	<p>Variation 7 Scope change</p> <p>This variation is for additional design work associated with by-pass thrust arrangements and valving and electrical design changes. These additional works were necessary to ensure proper and safe function of the pumping station, but were not specifically included in the original scope of works.</p>	2,140.00

Work on this contract is now 95% complete. The contract was originally awarded under staff financial delegations as the expected contract value was less than \$150,000. With variations the value of the contract will now exceed \$150,000, and Council's endorsement is being sought to allow additional funds to be allocated to this work.

The consultant is currently making final minor amendments to the specification and design drawings following a comprehensive review of the draft documents by Council's Water and Sewer technical staff.

With the information currently available, the revised contract budget before Council is considered sufficient.

Subdivision 150 – 190 Sparks Rd, Warnervale – Land Clearing

Contract Number	Date of Council Approval	Contractor	(a) Approved Contract Value \$	(b) = (a) + Contingency Total Approved Budget \$	(c) Value of Variations Previously Reported \$	(d) Value of Variations For Reporting Period \$	(e) = (c) + (d) Total Value Of Variations \$	(f) = (a) + (e) Actual Contract Value \$	Source Of Funds	Expenditure to Date \$
171824	Contract originally less than \$150,000. Approved by The Director Shire Services 9/4/10. (D02207701	Newcastle Earthmoving	115,500	115,500	0	45,291.99	45,291.99	160,791.99	General Revenue – Land Sales	160,791.99
Individual Variations for Reporting Period										
Description					Value \$	Description				Value \$
Variation 1 Scope change This variation was required for additional works to clean-up and remove asbestos uncovered on the work site.					13,514.46	Variation 2 Scope change This variation was required for additional work to supply and install a pipe crossing across an excavated drain through the middle of the site, and was required to allow access to the southern end of the site for clearing.				2,665.15

<p>Variation 3 Scope change</p> <p>This variation was for additional work required to segmentally dismantle habitat trees; and to remobilise to site to remove the final 30m strip of vegetation originally identified as an Asset Protection Zone (APZ) but later reclassified.</p> <p>The successful outcome was that the trees were removed without impact to fauna living in them, and cutting/filling of the subdivision could proceed to the boundaries, thereby maximising development potential for the site.</p>	9,255.00	<p>Variation 4 Scope change</p> <p>This variation covered two items :</p> <ol style="list-style-type: none"> 1. Credit in favour of Council (\$6,700.00) for stockpiling mulch on site rather than spreading it under the original contract; and 2. Payment to contractor (\$26,557.38) for additional cost to remove a final 30m strip of vegetation originally identified as an Asset Protection Zone (APZ). <p>The successful outcome was that Council did not need to spend funds spreading mulch to offset future expenditure handling the mulch during earthworks; and cutting/filling of the subdivision could proceed to the boundaries maximising development potential for the site</p>	19,857.38
---	----------	---	-----------

Contract is 100% complete. The contract was originally awarded under staff financial delegations as the expected contract value was less than \$150,000. With variations the value of the contract will now exceed \$150,000, and Council's endorsement is being sought to allow additional funds to be allocated to this work.

With the information currently available, the revised contract budget before Council is considered sufficient.

Construction of Link Road Sparks Road to Lake Grammer Senior School, Warnervale

Contract Number	Date of Council Approval	Contractor	(a) Approved Contract Value \$	(b) = (a) + Contingency Total Approved Budget \$	(c) Value of Variations Previously Reported \$	(d) Value of Variations For Reporting Period \$	(e) = (c) + (d) Total Value Of Variations \$	(f) = (a) + (e) Actual Contract Value \$	Source Of Funds	Expenditure to Date \$	
160794	14/10/09	Robson Civil Projects Pty Ltd	7,919,245.88	8,711,245.88	2,880,759.12	301,735.96	3,182,490.08	11,101,735.96	S64 and General Fund	11,072,815.70	
Individual Variations for Reporting Period											
Description					Value \$	Description					Value \$

Funds approved by Council at the 24 November 2010 meeting totalled \$10,800,000.00 for this contract. This was based on the estimated final contract costs at the time provided by the project manager, NSW Public Works, and in consideration that some construction activities were still being undertaken. The report advised that the predicted final cost may change as these works were completed.

Delays to the opening of the road have resulted in ongoing costs for the hire of temporary fencing, barrier boards, signage and traffic control. In addition, final costs for the replacement of the leaking asbestos water main were higher than identified in the 24 November 2010 report to Council. The final contract amounts payable under Schedule of Rates items, where the actual quantities of work exceeded the estimated quantities of work, have also increased.

The final result of all of the above is an increase in funding required of \$301,735.96. All work under the contract is 100% complete. No further payment claims are envisaged from the contractor.

Attachment 2

Significant Contracts Finalised

SIGNIFICANT CONTRACTS FINALISED – FEBRUARY 2011						
Contract Number	Date of Council Award	Name of Contract	Contract Price Type	Approved Expenditure Ex. GST \$	Final Contract Value Ex. GST \$	Comments
CPA/162813	11/06/2009	Construction of Six Additional Netball Courts at Baker Park, Wyong.	Lump Sum	660,000	721,693.87	All variations were endorsed by Council and were a consequence of Latent Conditions not identified in pre geotechnical investigations. Final contract sum is within revised resolved budget estimates.