



To help improve the natural areas around Tuggerah Lake, works are underway on the foreshore at Killarney Vale as part of the Estuary Management Plan. Pictured is one of three sites under construction.

# Business Paper

ORDINARY COUNCIL MEETING

**28 March 2012**



*This page is intentionally blank*

# MEETING NOTICE

The **ORDINARY COUNCIL MEETING**  
of **Wyong Shire Council**  
will be held in the **Council Chamber**,  
**Wyong Civic Centre, Hely Street, Wyong** on  
**WEDNESDAY 28 MARCH 2012** at **5.00 pm**,  
for the transaction of the business listed below:

## OPENING PRAYER

## ACKNOWLEDGEMENT OF COUNTRY

## RECEIPT OF APOLOGIES

### 1 PROCEDURAL ITEMS

1.1	Disclosures of Interest .....	5
1.2	Proposed Inspections and Briefings .....	6
1.3	Confirmation of Minutes of Previous Meeting.....	9
1.4	Address by Invited Speakers.....	31
1.5	Notice of Intention to Deal with Matters in Confidential Session.....	32

### 2 PLANNING REPORTS

2.1	DA 200/2011 - Residential Flat Building Comprising Three (3) Townhouses and Separate Dwelling-House at The Entrance North .....	34
2.2	DA 987/2011 - Proposed Boundary Adjustment at Little Jilliby .....	52
2.3	DA/80/2012 - 2 Lot Subdivision .....	72
2.4	Wyong Shire-wide Heritage Review - Consideration of Deferred Items .....	94
2.5	Precinct 7A Rezoning - Warnervale and Hamlyn Terrace .....	100

### 3 PROPERTY REPORTS

3.1	Proposed Easement to AusGrid for Substation Kiosk over Lot 14 DP 726244 at Chittaway Road, Ourimbah .....	138
-----	--	-----

### 4 CONTRACT REPORTS

4.1	CPA/181554 - Detailed Design and Documentation for Remediation of Mardi Landfill - Approval of Variation and Increase to Contract Budget .....	142
-----	---	-----

### 5 GENERAL REPORTS

5.1	Proposed Amendments to Capital Works Projects to be Completed in 2011/12.....	145
5.2	Memorandum of Understanding with Pacific Link Community Housing Association .....	149
5.3	Amendment to the Code of Meeting Practice.....	156

**6 INFORMATION REPORTS**

6.1	Information Reports .....	160
6.2	Results of Water Quality Testing for Beaches and Lake Swimming Locations .....	161
6.3	Works in Progress - Water Supply and Sewerage .....	165
6.4	Waste Levy Charges - Waste Levy Review .....	170
6.5	General Works in Progress .....	186
6.6	Investment Report for February 2012 .....	193
6.7	Activities of the Development Assessment and Building Certification and Health Units.....	201
6.8	Mardi to Mangrove Link Project Status .....	206
6.9	Outstanding Questions on Notice and Notices of Motion.....	210

**7 ANSWERS TO QUESTIONS ON NOTICE**

7.1	Q23/11 - Projected Additional Revenue Raised by Charging Schools to Utilise Sports Grounds.....	211
7.2	Q26/11 - Pioneer Dairy.....	213
7.3	Q33/11 - Powerful Owl .....	214
7.4	Q1/12 - Culvert Erosion of Creek at Bruce Crescent, Wallarah .....	215
7.5	Q9/12 Contributions Raised from Section 94A Fees.....	216

**8 NOTICES OF MOTION**

8.1	Notice of Motion - Toukley Taj Mahal Saga .....	217
-----	---	-----

**9 RESCISSION MOTIONS**

9.1	Notice of Rescission - CPA/205510 Wyong River Catchments Flood Study .....	218
-----	--	-----

**10 CONFIDENTIAL ITEMS**

10.1	External Audit Tender Report	
10.2	Loan Facility Agreement	
10.3	Federal Governments "Caring for our Country" Grant accelerated works program – Current Status	

**11 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: F2012/00026 - D02944647

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Monica Redmond; Councillor Services Officer

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

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

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

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

### **RECOMMENDATION**

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

## 1.2 Proposed Inspections and Briefings

TRIM REFERENCE: F2012/00026 - D02944651

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Monica Redmond; Councillor Services Officer

### SUMMARY

No Inspections have been scheduled for 4 April 2012.

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
28 March 2012	Affordable Housing Study	To advise Council on the Affordable Housing Project and to seek input into the study	12.30pm - 1.00pm	Manager Land Use Planning & Policy Development and consultants
28 March 2012	Heritage Review	To provide Councillors with an update on the 2 deferred conservation areas at South Tacoma and Wyong	1.00pm – 1.30pm	Manager Place Management and Strategic Planner
28 March 2012	Marketing & Branding Strategy	As a result of the recent Councillor Workshop, it was determined that “Council develop a framework for a marketing and branding strategy within 6 weeks	1.30pm – 2.00pm	Director Community & Recreation Services and Manager Community Engagement
28 March 2012	Annual/strategic plan	To provide Councillors with: 1. Final Draft Capital Expenditure and Operating Expenditure 2. Borrowing & Investment Management Plan Address any final Councillor Outcomes	2.00pm – 3.00pm	General Manager

### RECOMMENDATION

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

1 OM-28-12 Attachment - Schedule of Briefings 2012 D02955531

Proposed Quarter	PROPOSED DATE	Briefing Title	Director	STAFF PRESENTING
1st qtr	28 March 2012	Annual/Strategic Plan	corporate services	
1st qtr	28th March	Marketing and branding strategy	Community & Recreation Services	Sue Ledingham
1st qtr	28th March	Heritage Review	Environment and Planning Services	Paul Bowditch/Riannan Rush
1st qtr	28th March	Affordable Housing Study	Environment and Planning Services	Martin Johnson and consultants
2nd qtr	21.3.12	Enterprise Risk Management Workshop	Corporate Services/L&R/jeff Simpson	External Gov members to be invited jeff to arrange
2nd qtr	April	Community facilities strategy	Community & Recreation Services	Julie Vaughan
2nd qtr	April	Community Learning Strategy	Community & Recreation Services	Julie Vaughan/Adam Holland
2nd qtr	April	Norah Head Boat ramp Part 1	Community & Recreation Services	Tara Mills/ Tim Burch
2nd qtr	April	S94 plan model	corporate services	
2nd qtr	April	Strategic/annual plan	Corporate Services	David Jack/Kerryn Austen-Gray
2nd qtr	April	Iconic Site No 5 – Lakeside Plaza	Environment and Planning Services	Paul Bowditch/Steve Ashton
2nd qtr	April	Tuggerah Town Centre Masterplan	Environment and Planning Services	Paul Bowditch / Lynda Howson
2nd qtr	April	Volunteer Framework	Community & Recreation Services	Julie Vaughan
2nd qtr	April	San Remo Xtreme Skate Park	Community & Recreation Services	
2nd qtr	April	Strategic Plan	corporate services	
2nd qtr	April	Industrial Land and employment Lands study	Environment and Planning Services	Martin Johnson
2nd qtr	2nd May	Strategic/annual plan	Corporate Services	David Jack/Kerryn Austen-Gray
2nd qtr	9th May	Strategic/annual plan	Corporate Services	David Jack/Kerryn Austen-Gray
2nd qtr	9 May 2012	The Entrance Sea Wall	Community & Recreation Services	Tara Mills
2nd qtr	May	Greening Wyong Strategy	Community & Recreation Services	Tara Mills/Katherine Simmons
2nd qtr	May	Strategic plan fees - Final Draft	corporate services	
2nd qtr	may	Precinct 7A Masterplan - Feedback following exhibition	Environment and Planning Services	Scott Duncan / Chris Ferry
2nd qtr	May	Porters Creek Floodplain Risk Management Plan	Infrastructure Management	Robert Fulcher
2nd qtr	May	Greenhouse Mitigation Plan/Green Energy Funds Projects - May 2011	Infrastructure Management	David Irving
2nd qtr	23rd May	GM's performance Review	Corporate Services	Marie Hanson-Kentwell
2nd qtr	23rd May	Central Coast Research Foundation	Corporate Services	Dr WEJ Paradise from the Hunter Valley /

Proposed Quarter	PROPOSED DATE	Briefing Title	Director	STAFF PRESENTING
2nd qtr	23rd May	Strategic/annual plan	Corporate Services	David Jack/Kerryn Austen-Gray
2nd qtr	May/June	Precincts	Community & Recreation Services	Julie Vaughan
2nd qtr	June	Customer Service Charter	Community & Recreation Services	Sue Ledingham
2nd qtr	June	Tuggerah Lakes Floodplain Risk management Study and Plan	Infrastructure Management	Robert Fulcher
2nd qtr	13 June 2012	13 June, 2012 -- 1 hour briefing on submissions to the draft to the WSCSP	Corporate Services	Kerryn Austen Grey
2nd qtr		Comprehensive LEP after exhibition	Environment and Planning Services	Martin Johnson
2nd qtr		Draft Shire-Wide Contributions Plan	Environment and Planning Services	martin Johnson/David Kitson
2nd Qtr		Carbon Management	Environment and Planning Services	
2nd Qtr		Natural Resources Strategy	Environment and Planning Services	Greg White
2nd Qtr		Iconic Development Site No 11 - Council Carpark, Coles, Senior Citizens & Toukley Town Centre	Environment and Planning Services	Paul Bowditch / Jonathan Luke
2nd Qtr		Iconic Development Site No 16 - 216-222 Main Road & Rowland Terrace, Toukley	Environment and Planning Services	Paul Bowditch / Jonathan Luke
2nd qtr		Playground Management program	Community & Recreation Services	Tara Mills/Katherine Simmons
2nd qtr		Provide update of plans and financial viability of The Art House and Cultural Development	Community & Recreation Services	Julie Vaughan
2nd Qtr		Iconic Development Site No 13 - Former Shell Service Station, Council carpark & adjoining sites, Main Road, Yaralla Street and Beachcomber Parade, Toukley	Environment and Planning Services	Paul Bowditch / Jonathan Luke
2nd Qtr		Bushfire Works Plan	Environment and Planning Services	Greg White
3rd qtr		Biodiversity Management Plan	Environment and Planning Services	Greg White
3rd qtr		Iconic development site No 14 - beach parade Canton Beach	Environment and Planning Services	Paul Bowditch / Jonathan Luke
3rd qtr		Toukley Town centre masterplan	Environment and Planning Services	Paul Bowditch/Jonathan Luke
3rd qtr	8th aug	Plan of management central coast caravan parks	Community & Recreation Services	Tara Mills
3rd qtr	oct	RZ/7/2009 Chittaway Point Rezoning	Environment and Planning Services	Martin Johnson/Kathryn Heintz
4th qtr	October	Norah Head Boat ramp Part 2	Community & Recreation Services	Tara Mills/Tim Burch
4th qtr	October	Full introduction CCWC for the new Council	Corporate Services/	Lesley Crawley
4th qtr		Committee structure	Corporate Services	Lesley Crawley
4th qtr	New Councillors	Urban Design Principles & Concepts	Environment and Planning Services	Paul Bowditch / Ana Lage
4th qtr		Wyong Employment Zone - results of DCP and S94 Contributions Plan/Biocertification update, DCP amendment update	Environment and Planning Services	Martin Johnson
		Sea Level Rise Notification & 149 Certificate	General Counsel/Environment and Planning Services	Brian Glendenning/Martin Johnson/Rod Mergan
		Central Coast Taxis	Infrastructure Management	Bob Burch



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

---

TRIM REFERENCE: F2012/00026 - D02944655

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Monica Redmond; Councillor Services Officer

#### **SUMMARY**

Confirmation of minutes of the previous Ordinary Meeting of Council held on 14 March 2012.

#### **RECOMMENDATION**

***That Council confirm the minutes of the previous Ordinary Meeting and Confidential Session of Council held on 14 March 2012.***

#### **ATTACHMENTS**

- |   |  |           |
|---|--|-----------|
| 1 | MINUTES - Ordinary Meeting - 14 March 2012   | D02949676 |
| 2 | MINUTES – Confidential Meeting - 14 March 2012<br>(Distributed under separate cover) | Enclosure |

**WYONG SHIRE COUNCIL**

**MINUTES OF THE  
ORDINARY COUNCIL MEETING OF COUNCIL**

**HELD IN THE COUNCIL CHAMBER  
WYONG CIVIC CENTRE, HELY STREET, WYONG  
ON 14 MARCH 2012  
COMMENCING AT 5:00 PM**

---

---

**PRESENT**

Councillors R L Graham (Chairperson), G P Best, D J Eaton, L A Matthews, E M McBride (arrived at 5.06 pm), J J McNamara, W R Symington, D P Vincent, L D Webster and S A Wynn.

**IN ATTENDANCE**

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

Senior Planning Engineer - Hydrology and two administration staff.

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

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

**APOLOGIES**

There were no apologies.

At the commencement of the ordinary meeting report no's 1.1, 1.2, 2.1, 2.2, 2.3, 2.4, 4.9, 3.4, 4.4, 4.5, 4.6, 4.7, 5.3, 7.1, 7.2, 7.3, 7.4 and 8.1 were dealt with first then the remaining reports in order. However for the sake of clarity the reports are recorded in their correct agenda sequence.

**1.1 Disclosures of Interest**

---

**2.1 – DA 673/2011 – Proposed Additions to an Existing Aged Care Facility at Canton Beach**

Councillor Eaton declared a non-pecuniary significant conflict of interest in the matter for the reason that he is a member of the JRPP determinant of the applicant left the chamber at 5.08 pm, took no part in discussion, did not vote and returned to the chamber at 5.09 pm.

**2.3 – DA 848/2011 – Proposed Vehicle Repair Station at Tuggerah**

Councillor Best declared a non-pecuniary significant conflict of interest in the matter for the

reason that as the owner of the site is a close family friend, left the chamber at 5.44 pm, took no part in discussion, did not vote and returned to the chamber at 6.06 pm.

#### **4.3 – Proposed Councillors Community Improvement Grants**

Councillor Vincent declared a non-pecuniary insignificant conflict of interest in the matter for the reason that he is a member of Scouts NSW Budgewoi Scout Group and participated in consideration of this matter.

Councillor Vincent 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 not a member of Ourimbah Scout Group.”*

#### **4.4 – Reimbursement Request Legal Expense**

Councillor Symington declared a pecuniary conflict of interest in the matter for the reason that if the item is adopted, he will be a recipient of the funding left the chamber at 7.07 pm, took no part in discussion, did not vote and returned to the chamber at 7.26 pm.

#### **4.9 – Wyong Skills Centre**

Councillor Eaton declared a non-pecuniary significant conflict of interest in the matter for the reason that he is Chair of CCGT joint applicant with Council, no actual conflict, possible perceived conflict, left the chamber at 6.22 pm, took no part in discussion, did not vote and returned to the chamber at 6.35 pm.

Councillor Best declared a pecuniary conflict of interest in the matter for the reason that he is Chairman of CCGT, perceived conflict, left the chamber at 6.22 pm, took no part in discussion, did not vote and returned to the chamber at 6.35 pm.

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

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

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

AGAINST: NIL

#### **1.2 Proposed Inspections and Briefings**

---

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

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

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

AGAINST: NIL

**PROCEDURAL MOTION**

Councillor McBride entered the meeting at 5.06 pm, during consideration of this item.

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

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

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

AGAINST: NIL

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

**That with the exception of report numbers 2.1, 2.2, 2.3, 2.4, 4.9, 3.4, 4.5, 4.6, 4.7, 5.3, 7.1, 7.2, 7.3, 7.4 and 8.1 Council adopt the recommendations contained in the remaining reports.**

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

AGAINST: NIL

**PROCEDURAL MOTION**

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

- 1 That Council recommit the previous procedural motion to use the exception method.**
- 2 That Council consider item 4.4, Reimbursement Request - Legal Expenses.**

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

AGAINST: NIL

**1.3 Confirmation of Minutes of Previous Meeting**

---

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

**That Council confirm the minutes of the previous Ordinary Meeting of Council held on 22 February 2012.**

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

AGAINST: NIL

**Business Arising**

There was no business arising.

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

---

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

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

**9.1 – Tender Evaluation Report – Construction of the Mannering Park Oval Amenities building – CPA/204382**

**2 That Council note its reason for considering Report No 9.1 as it may confer a commercial advantage (Section 10A(2)(c)) 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.**

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

AGAINST: NIL

**1.5 Address by Invited Speakers**

---

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

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

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

AGAINST: NIL

**2.1 DA 673/2011 - Proposed Additions to an Existing Aged Care Facility at Canton Beach**

---

Councillor Eaton declared a non-pecuniary significant conflict of interest in the matter for the reason that he is a member of the JRPP determinant of the applicant left the chamber at 5.08 pm, took no part in discussion, did not vote and returned to the chamber at 5.09 pm.

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

- 1 That Council receive the report on DA 673/2011 - Proposed Additions to an Existing Aged Care Facility at Canton Beach.**
- 2 That Council make a submission to the Joint Regional Planning Panel regarding the Application.**

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

AGAINST: NIL

**2.2 DA 733/2011 - Demolition of Existing Structures, Remediation of Land and Erection of a Large Scale Retail Establishment (BWS Liquor Store)**

Mr Doug Darlington, representing The Entrance Peninsula Community Precinct and speaking in favor of the item, addressed the meeting at 5.15pm, answered questions and retired at 5.23pm.

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

- 1 That Council refuse development application DA/733/2011, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act 1979 and other relevant issues, for the following reasons:**
  - a Pursuant to Section 79C (1)(c) of the Environmental Planning and Assessment Act 1979 the Statement of Impact submitted with the application has not adequately demonstrated that any of the "at risk" groups in the Local and Broader Community would not be impacted adversely by the establishment of the proposed liquor outlet.**
  - b Pursuant to Section 79C (1)(b) of the Environmental Planning and Assessment Act 1979 the proposal will result in an increase in the density of liquor outlets in the locality. The Statement of Impact submitted with the application has not demonstrated that the increase in liquor outlet density will not contribute to an increased risk of social harm to the Local Community across a range of variables.**
  - c Pursuant to the provisions of Section 79C (1)(b) and (c) of the Environmental Planning and Assessment Act 1979 there is an indication that there may be an increased risk of social harm as a consequence of the proposal and accordingly, the 'precautionary principle' should be applied consistent with the objects of the Act.**
  - d Pursuant to the provisions of Section 79C (1)(d) of the Environmental Planning and Assessment Act 1979 the submissions made in objection to the proposal and the information provided in the applicant's Statement of Impact has not provided sufficient evidence to demonstrate that approval of the application will provide a net public benefit to the Local Community.**
  - e Pursuant to the provisions of 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 is located adjacent to a sensitive landuse namely a childcare centre.**
- 2 That Council advise those who made written submissions of its decision.**

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

AGAINST: COUNCILLOR EATON

**2.3 DA 848/2011 - Proposed Vehicle Repair Station at Tuggerah**

---

Councillor Best declared a non-pecuniary significant conflict of interest in the matter for the reason that as the owner of the site is a close family friend, left the chamber at 5.44.pm, took no part in discussion, did not vote and returned to the chamber at 6.06 pm.

Councillor Matthews left the meeting at 5.57 pm and returned to the meeting at 5.58 pm during consideration of this item.

Mr Peter Campbell, resident and speaking against the item, addressed the meeting at 5.44pm, answered questions and retired at 5.51 pm.

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

- 1 That Council grant consent subject to the conditions detailed in the schedule attached to the report having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues.**
- 2 That Council advise those who made written submissions of its decision.**
- 3 That Council vary the Development Control Plan 2005 Chapter 61 - Carparking to permit the development.**

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

AGAINST: COUNCILLORS SYMINGTON AND WYNN

**2.4 DA 924/2011 - Change of Use from Restaurant to Shop (Pharmacy) at Mingara Drive, Tumbi Umbi**

---

Councillor Vincent left the meeting at 6.06 pm and returned to the meeting at 6.08 pm during consideration of this item.

Mr Rawad Nicola, local business owner and speaking against the item, addressed the meeting at 6.06pm, answered questions and retired at 6.13pm.

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

- 1 That Council approve the application subject to appropriate conditions, having regard to the matters for consideration detailed in Section 82A of the Environmental Planning and Assessment Act 1979 and other relevant issues.**
- 2 That Council advise those who made written submissions of its decision.**

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

AGAINST: COUNCILLORS MATTHEWS, MCBRIDE AND VINCENT



**2.5 Works on Private Land as part of the Tuggerah Lakes Estuary Management Plan**

---

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

**That Council approve the works detailed in Table A to be carried out on the following property under the Tuggerah Lakes Estuary Management Plan. All works are to be at no cost to the property owner, being funded by the Federal Government's "Caring for our Country" grant :**

**Lot 945 DP 626561, 912 Ourimbah Creek Road Palm Grove**

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

AGAINST: NIL

**3.1 CPA/182007 - Upgrade of SPS T22 and Associated Works at Budgewoi**

---

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

- 1 That Council accept the tender from Eire Contractor Pty Ltd in the estimated total amount of \$2,323,000.00 (excl GST) for Contract CPA/182007 - Upgrade of SPS T22 and Associated Work.**
- 2 That approve a contract budget for Contract CPA/182007 of \$2,553,000.00 (excl GST) that provides for a contingency amount of \$230,000.00 (excl GST), representing approximately 10% of the contract value, to provide for any unforeseen additional works that may become necessary during the course of the project.**

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

AGAINST: NIL

**3.2 CPA/200744 - Asphaltic Heavy Patching Works - T145 Tender Evaluation Report**

---

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

- 1 That Council accept the tender from The Asphalt Man as the 1<sup>st</sup> ranked supplier for an initial period of 2 years for Contract CPA/200744 – Asphaltic Heavy Patching. The estimated annual expenditure against this contract is \$828,890.98 (excl GST), however actual expenditure may vary significantly with fluctuations in demand.**
- 2 That Council accept the tender from Fulton Hogan Industries Ltd as the 2<sup>nd</sup> ranked supplier for an initial period of 2 years for Contract CPA/200744 – Asphaltic Heavy Patching.**

- 3 That Council authorise the General Manager to offer The Asphalt Man and or Fulton Hogan Industries Ltd a 1 year extension to the contract period in the approximate schedule of rates amount of \$828,890.98 (excl GST) subject to ongoing satisfactory performance.

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

AGAINST: NIL

### **3.3 CPA/205366 - Supply and Delivery of Tools and Hardware**

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

- 1 That Council accept the tender from J Blackwood and Son Limited for the items identified in attachment 1 for a period of up to 3 years for Contract CPA/205366 – Supply and Delivery Tools and Hardware. The estimated annual expenditure against this contract is \$137,205.33 (excl GST), however actual expenditure may vary significantly with fluctuations in demand.
- 2 That Council accept the tender from J Blackwood and Son Limited under the State Government contract C500 for the items identified in attachment 1 for Contract CPA/205366 – Supply and Delivery Tools and Hardware. The estimated annual expenditure against this contract is \$35,212.80 (excl GST), however actual expenditure may vary significantly with fluctuations in demand.
- 3 That Council accept the tender from Express Industrial Supplies Pty Ltd for the items identified in attachment 1 for a period of up to 3 years for Contract CPA/205366 – Supply and Delivery Tools and Hardware. The estimated annual expenditure against this contract is \$117,098.26 (excl GST), however actual expenditure may vary significantly with fluctuations in demand.
- 4 That Council accept the tender from CDA Eastland Trade Supplies Pty Ltd for the items identified in attachment 1 for a period of up to 3 years for Contract CPA/205366 – Supply and Delivery Tools and Hardware. The estimated annual expenditure against this contract is \$89,112.80 (excl GST), however actual expenditure may vary significantly with fluctuations in demand.
- 5 That Council approve a \$56,000.00 per annum contingency representing 15% of the contract value to cater for the addition of superior quality hardware items in the event upgrading is required.

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

AGAINST: NIL

**3.4 CPA/205510 - Wyong River Catchments Flood Study**

Councillor McBride left the meeting at 6.35 pm and returned to the meeting at 6.37 pm during consideration of this item.

*It was MOVED by Councillor WYNN and SECONDED by Councillor GRAHAM:*

- 1 *That Council accept tender no. 3 from BMT WBM Pty Ltd in the lump sum amount of \$156,260.00 excluding GST.*
- 2 *That Council approve a contingency amount of \$15,600 excluding GST representing approximately 10% of the contract value, to provide for any unforeseen additional works that may become necessary during the course of the project.*

*An AMENDMENT was MOVED by Councillor EATON and SECONDED by Councillor BEST:*

*That Council defer this matter pending further advice from the tender assessment panel on the factors that influence their recommendation and of the tender brief containing a requirement to consider climate change.*

***The AMENDMENT was put to the vote and declared LOST***

FOR: COUNCILLORS BEST, EATON AND MCNAMARA

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

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

- 1 ***That Council accept tender no. 3 from BMT WBM Pty Ltd in the lump sum amount of \$156,260.00 excluding GST.***
- 2 ***That Council approve a contingency amount of \$15,600 excluding GST representing approximately 10% of the contract value, to provide for any unforeseen additional works that may become necessary during the course of the project.***

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

AGAINST: COUNCILLORS BEST, EATON AND MCNAMARA

**4.1 Charter - Wyong Shire Council Sports Committee**

---

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

**That Council adopt the proposed Charter of the Sports Committee.**

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

AGAINST: NIL

**4.2 2012 National General Assembly of Local Government**

---

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

- 1 That Council authorise motions to be submitted to the National General Assembly of Local Government prior to 27 April 2012.**
- 2 That Council authorise interested Councillors and the General Manager or his delegate to attend the 2012 National General Assembly of Local Government between 17 and 20 June 2012.**
- 3 That Council reimburse expenses incurred by Councillors attending the Assembly in accordance with Council's Facilities and Expenses Policy for Councillors.**
- 4 That Council determine the voting delegate should the Mayor not attend.**

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

AGAINST: NIL

### 4.3 Proposed Councillors' Community Improvement Grants

Councillor Vincent declared a non-pecuniary insignificant conflict of interest in the matter for the reason that he is a member of Scouts NSW Budgewoi Scout Group and participated in consideration of this matter.

Councillor Vincent 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 not a member of Ourimbah Scout Group."*

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

**That Council allocate an amount of \$11,300.00 from the 2011-12 Councillors' Community Improvement Grants as follows:**

Proposed Allocations for 14 March 2012		
1st Ourimbah Scout Group (\$1200)	To purchase PFD life jackets for youth members	600
Central Coast CC Australian Italian Friendship Society Inc. (\$2000)	Provide assistance of Italian origin who may need it due to unfortunate health and/or financial issues to facilitate recreational and social activities for the lonely and infirm to help them integrate into the general community.	1,350
Horizons Central Coast Family Services Inc. - Grandparents support group. (\$1021.20)	To assist with room hire costs.	900
Indian Educational and Cultural Org. of Australia (\$2000)	Celebration of Australia-India Day.	2,000
Michael Leard (\$2000) (\$450 already allocated)	To help participate at the Under 14's National Championships in Perth	1,550
Razorbacks Rugby Club (Ourimbah) (\$2000) (\$500 already allocated)	To purchase a shipping container to prevent vandals stealing stock and equipment.	1,500
Shelly Beach Surf Life Saving Club (\$2500) (\$850 already allocated)	Surf Life Saving Equipment	250
Success Women's Network (\$2000) (Emergency approved by GM)	International Women's Day 8 March 2012	2,000
Take 3 (\$1000)	Development of educational resources and visits to Wyong Shire schools for educational activities.	250
Toukley & District Art Society Inc.	Purchase of a laptop.	900

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

AGAINST: NIL

#### **4.4 Reimbursement Request - Legal Expenses**

---

Councillor Symington declared a pecuniary conflict of interest in the matter for the reason that if the item is adopted, he will be a recipient of the funding left the chamber at 7.07 pm, took no part in discussion, did not vote and returned to the chamber at 7.26 pm.

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

*That Council approve the reimbursement of \$825 (inc GST) for legal advice sought by Councillor Symington, dated 22 July 2011.*

***The MOTION was put to the vote and declared LOST***

FOR: COUNCILLORS MATTHEWS, MCBRIDE, VINCENT AND WYNN

AGAINST: COUNCILLORS BEST, EATON, GRAHAM, MCNAMARA AND WEBSTER

#### **4.5 Referendum Popularly Elected Mayor**

---

Councillor Webster left the meeting at 7.26 pm and returned to the meeting at 7.27 pm during consideration of this item.

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

- 1 That Council receive the report on Referendum Popularly Elected Mayor.***
- 2 That Council approve the following question for the Referendum to be conducted in conjunction with the 2012 Local Government Election:***

***“The Mayor of Wyong Shire Council is currently elected annually by the councillors.***

***Do you favour the election of the Mayor by electors for a four year term and an increase of the number of Councillors from ten to eleven (including the Mayor) to enable the election of 5 Councillors from the two wards?”***

***Yes/No”***

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

AGAINST: NIL

**4.6 Proposed Road Renaming - Woodland Parkway Buff Point**

Councillor Best left the meeting at 7.43 pm and returned to the meeting at 7.48 pm and as a result took no part in voting.

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

- 1 That Council give public notice in accordance with the requirements of the Roads Regulation 2008 of its intention to rename the segmented sections of Woodland Parkway, Budgewoi including written notification to affected property owners and relevant public authorities.**
- 2 That, subject to no significant objections being received, Council rename:**
  - a That section of Woodland Parkway between Sonoma Road and Scenic Drive, "Sonoma Road" being a continuation of the existing street, and**
  - b That section of Woodland Parkway between Sonoma Road and the Council reserve "Raft Close"**

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

AGAINST: NIL

**4.7 Proposed Road Renaming - Kitchener Road, Long Jetty**

Councillor Best left the meeting at 7.43 pm and returned to the meeting at 7.48 pm and as a result took no part in voting.

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

- 1 That Council give public notice in accordance with the requirements of the Roads Regulation 2008 of its intention to rename the segmented sections of Kitchener Road, including written notification to affected property owners and relevant public authorities.**
- 2 That, subject to no significant objections being received, Council rename:**
  - a That section of Kitchener Road to the north of Jubilee Park "Sutton Avenue" being a continuation of the existing street, and**
  - b That section of Kitchener Road between Jubilee Park and Archbold Road, "Price Place".**

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

AGAINST: NIL

---

**4.8 Proposed Changes to Current Project and Contract Reports to Council**

---

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

**That Council approve the changes to reporting as recommended in Option 2 of this report.**

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

AGAINST: NIL

---

**4.9 Wyong Skills Centre**

---

Councillor Eaton declared a non-pecuniary significant conflict of interest in the matter for the reason that he is Chair of CCGT joint applicant with Council, no actual conflict, possible perceived conflict, left the chamber at 6.22 pm, took no part in discussion, did not vote and returned to the chamber at 6.35 pm.

Councillor Best declared a pecuniary conflict of interest in the matter for the reason that he is Chairman of CCGT, perceived conflict, left the chamber at 6.22 pm, took no part in discussion, did not vote and returned to the chamber at 6.35 pm.

*It was MOVED by Councillor MCNAMARA and seconded by Councillor WEBSTER:*

- 1 *That Council submit a joint application with Central Coast Group Training by 27 March 2012 for the Wyong Skills Centre based on the criteria provided by the Federal Government.*
- 2 *That Council develop documentation prior to the application being submitted that outlines the agreement between Central Coast Group Training and Wyong Shire Council for the Wyong Skills Centre is based on:*
  - *The funds being provided by the Federal Government*
  - *The land being transferred to Council ownership*
  - *A commercial lease being signed before funds are released from Council.*
- 3 *That Council note that the following will be the base arrangements for the development of the funding application:*
  - *Council be the auspice of the funding and identified as the lead agency*
  - *It be located at Bounty Close, Tuggerah and Central Coast Group Training gift the site to Council*
  - *Central Coast Group Training provide minimum 300m2 (warm shell) net lettable area in the building to Council*
  - *Council is responsible for the outgoings only associated with the 300m2*
  - *Central Coast Group Training is responsible for all costs associated with the building including all structural, maintenance and outgoings*
  - *Central Coast Group Training are required to 'make good' the site prior to the end of life*
  - *Central Coast Group Training receive peppercorn rent from Council for the life of the building of 40 years*
  - *Changes to the use or sub letting of the building must receive Council permission*



- *Using equity of the building requires Council permission.*

- 4 *That Council nominate two Council representatives (one Councillor and the General Manager or his delegate) to sit on the Board of Central Coast Group Training should the Wyong Skills Centre application be successful.*

***The MOTION was put to the vote and declared LOST***

FOR: COUNCILLORS MCNAMARA AND WEBSTER

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

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

- 1 ***That Council respectfully decline the offer to make application to the Federal Governments Community Infrastructure Grants – Youth Commitments Program, due to the strict criteria which Council believes does not deliver on the objectives of meeting the needs of a full service skills centre for the community.***
- 2 ***That council direct the General Manager to write to the Department of Education Employment and Workplace Relations and Central Coast Group Training advising them of Council’s decision.***

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

AGAINST: COUNCILLORS MCNAMARA AND WEBSTER

## **5.1 Information Reports**

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

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

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

AGAINST: NIL

## **5.2 Disclosure of Interest Returns - 1 October to 31 December 2011**

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

***That Council receive the report on Disclosure of Interest Returns - 1 October to 31 December 2011.***

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

AGAINST: NIL

---

**5.3 Mardi to Mangrove Link Project Status**

---

Councillor Best left the meeting at 7.43 pm and returned to the meeting at 7.48 pm and as a result took no part in voting.

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

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

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

AGAINST: NIL

---

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

---

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

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

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

AGAINST: NIL

---

**7.1 Notice of Motion - Central Coast Venues for Off Site Workshops - Weekend Workshops**

---

Councillor Best left the meeting at 7.43 pm and returned to the meeting at 7.48 pm during consideration of this item.

Councillor McNamara left the meeting at 7.48 pm and returned to the meeting at 7.50 pm during consideration of this item.

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

***That Council consider holding all future off-site Councillor workshops, including the Councillor Weekend Workshops at locations on the Central Coast.***

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

AGAINST: NIL

**7.2 Notice of Motion - Completion of Lake Cycleway**

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

- 1 That Council reiterate its support for the missing link cycleway connection through Wyrabalong National Park at North Entrance, as a priority project.**
- 2 That Council seek to convene a working group, consisting of the members for The Entrance and Wyong and representatives of the Premiers Office, the National Parks and Wildlife Service, Councillors and Council staff, to progress this key initiative.**
- 3 That Council seek additional funding resources for the project.**

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

AGAINST: NIL

**7.3 Notice of Motion - Extension of the Wyrabalong National Park**

*It was MOVED by Councillor BEST and seconded by Councillor MCNAMARA:*

- 1 That Council recognise the importance of permanent protection and preservation of the important environmental coastal corridor through Lakes beach to Birdie beach.*
- 2 That Council approach National Parks and Wildlife with a view to extending the spectacular Wyrabalong National Park to Birdie beach, thereby providing permanent intergeneration protection of this sensitive environment precinct.*
- 3 That Council request the General Manager to report at appropriate milestones, progress on this important coastal protection initiative.*
- 4 That, subject to National Parks and wildlife's response, Council conduct community consultation.*

**The MOTION was put to the vote and declared LOST on the casting vote of the Mayor.**

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

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

#### **7.4 Notice of Motion - Community Forum to Discuss Access and Disability within the Shire**

---

Councillor Best left the meeting at 8.43 pm and returned to the meeting at 8.44 pm during consideration of this item.

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

- 1 *That Council facilitate a community forum to discuss access and disability in Wyong Shire.*
- 2 *That Council note the objective of the forum is to achieve a community led approach to future engagement, consultation, service provision and infrastructure regarding access and disability in Wyong Shire."*
- 3 *That Council invite residents, community groups, service providers and relevant agencies to the forum.*

*An AMENDMENT was MOVED by Councillor EATON and SECONDED by Councillor BEST:*

*That Council defer this matter pending a staff report on existing services in the access and disability sectors.*

***The AMEDMENT was put to the vote and declared LOST***

FOR: COUNCILLORS BEST, EATON AND MCNAMARA

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

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

- 1 ***That Council facilitate a community forum to discuss access and disability in Wyong Shire.***
- 2 ***That Council note the objective of the forum is to achieve a community led approach to future engagement, consultation, service provision and infrastructure regarding access and disability in Wyong Shire."***
- 3 ***That Council invite residents, community groups, service providers and relevant agencies to the forum.***

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

AGAINST: COUNCILLOR EATON

**PROCEDURAL MOTION**

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

**That Council suspend standing orders to allow the meeting to continue until 9.15 pm.**

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

AGAINST: NIL

**QUESTIONS ON NOTICE**

**Q10/12 Pipeline and Capacity of Mangrove Creek Dam**  
**Councillor Lisa Matthews**  
F2004/07718

*“Could staff please advise on what the capacity of the Mangrove Creek Dam would be if the pipeline had been operational following completion in June 2011, and assuming Council was able to pump the maximum was as permitted by the current licence?”*

**CONFIDENTIAL SESSION**

At this stage of the meeting being 8.52 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 8.54 pm and the General Manager reported on proceedings of the confidential session of the ordinary meeting of council as follows:

**8.1 Tender Evaluation Report - Construction of the Mannering Park Oval Amenities building - CPA/204382**

---

- 1 That Council decline to accept any of the tenders for the proposed contract for Contract CPA/204382 – Construction of the Mannering Park Oval Amenities Building in accordance with Section 178(1)(b) of the Local Government (General) Regulation, 2005.**
- 2 That Council carry out the requirements of the proposed contract itself in accordance with Section 178(3)(f) of the Local Government (General) Regulation, 2005.**

- 3 That Council carry over the unspent budget for the Mannering Park Amenities building to 12/13 financial year.**
  
- 4 That Council allocate \$59,000.00 from the unspent 11/12 capital works budget to allow commencement of the project this year and completion of the project in 12/13 financial year.**

**THE MEETING** closed at 8.55 pm.

## **1.4 Address by Invited Speakers**

---

TRIM REFERENCE: F2012/00026 - D02944660

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Monica Redmond; Councillor Services Officer

### **SUMMARY**

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

### **RECOMMENDATION**

*That Council receive the report on Invited Speakers.*

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

---

TRIM REFERENCE: F2004/06616 - D02907341

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Monica Redmond; Councillor Services Officer

### **SUMMARY**

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

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

### **RECOMMENDATION**

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

***10.1 - External Audit Tender Report***

***10.2 - Loan Facility Agreement***

***10.3 - Federal Government's "Caring for our Country" Grant - Current Status***

**2 That Council note its reason for considering items 10.1 and 10.2 in confidential session is because they contain commercial information of a confidential nature that would confer a commercial advantage on a competitor of the council; and item 10.3 because it contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business with.**

**3 That Council request the General Manager to report on this matter in open session of Council.**

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

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

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

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

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

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



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

---

- (ii) confer a commercial advantage on a competitor of the Council, or*
- (iii) reveal a trade secret,*
- 2(e) information that would, if disclosed, prejudice the maintenance of law,*
- 2(f) matters affecting the security of the Council, Councillors, Council staff or Council property,*
- 2(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,*
- 2(h) information concerning the nature and location of a place or an item of Aboriginal significance on community land.”*

## 2.1 DA 200/2011 - Residential Flat Building Comprising Three (3) Townhouses and Separate Dwelling-House at The Entrance North

---

TRIM REFERENCE: DA/200/2011 - D02917096

MANAGER: Peter Fryar, Manager Development Assessment

AUTHOR: Jenny Webb; Senior Development Planner

### SUMMARY

At the Ordinary Meeting of Council held on 23 November 2011, Council considered a report on a development application for the demolition of an existing dwelling-house and the construction of a residential flat building containing three (3) x 2 storey townhouses as well as a separate 2 storey dwelling-house with boat shed at The Entrance North. Council resolved that the matter be deferred to enable further negotiations to take place between the applicant, the Mayor and the General Manager to improve the development and compliance with Council policies. A meeting of Council's Planning Mediation Panel was held with the applicant on 12 December 2011. The applicant has now responded to the issues that were raised and the matter is reported back to Council for determination.

<b>Applicant</b>	SJH Planning and Design
<b>Owner</b>	Mr A A Sammut
<b>Application No</b>	DA/200/2011
<b>Description of Land</b>	4 Brogden Road, The Entrance North
<b>Proposed Development</b>	Demolition of the existing dwelling-house and construction of a residential flat building containing three (3) x 2 storey townhouses as well as a separate 2 storey dwelling house with boat shed.
<b>Site Area</b>	1024m <sup>2</sup>
<b>Zoning</b>	2(b) Multiple Dwelling Zone
<b>Existing Use</b>	Dwelling-house
<b>Estimated Value</b>	\$875,000

### RECOMMENDATION

- 1 ***That Council, refuse development application DA/200/2011, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act 1979 and other relevant issues, for the following reasons:***
  - a ***Pursuant to Section 79C (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the development fails to comply with Clause 15 of Wyong Local Environmental Plan as no assessment of the proposed development has been undertaken in accordance with the Acid Sulphate Soils Assessment Guidelines.***
  - b ***Pursuant to Section 79C (1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with Wyong Development Control Plan 2005 Chapter 64 – Multiple Dwelling Residential Development in terms of rear setback, carparking, driveway***

**2.1 DA 200/2011 - Residential Flat Building Comprising Three (3) Townhouses and Separate Dwelling-House at The Entrance North (contd)**

---

*design, floor space ratio, private open space and fencing .*

- c Pursuant to Section 79C (1)(b) of the Environmental Planning and Assessment Act 1979 the proposed development would unreasonably increase risks to people and property as a result of flooding.*
- d Pursuant to Section 79C (1)(c) of the Environmental Planning and Assessment Act 1979 the proposed development is an overdevelopment of the site.*
- e Pursuant to Section 79C (1)(c) of the Environmental Planning and Assessment Act 1979 the site is not considered to be suitable for the proposed development having regard to Council's Flood Prone Land Development Policy and NSW Floodplain Development Manual.*
- f Pursuant to Section 79C (1)(c) of the Environmental Planning and Assessment Act 1979 the site is not considered to be suitable for the proposed development having regard to NSW Government Sea Level Rise Policy Statement and supporting Guidelines.*
- g 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 climate change, in particular sea level rise, on the development.*
- h Pursuant to Section 79C (1)(e) of the Environmental Planning and Assessment Act 1979 it would not be in the public interest to approve the proposal given its departure from Council's Flood Prone Land Policy which will set an undesirable precedent.*

**BACKGROUND**

Council at its meeting held on 23 November 2011, resolved on the motion of Councillor Eaton and seconded by Councillor Webster:

***That Council defer this matter for further negotiations between the applicant, the Mayor and the General Manager to improve the development and compliance with Council policies and report back to Council.***

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

AGAINST: COUNCILLORS SYMINGTON AND WYNN

**DISCUSSION**

A meeting of the Planning Mediation Panel was held on 12 December 2011, which was attended by the Applicant, the owner of the site, the General Manager, Council's General Counsel (attending as a qualified mediator), the Director of Environment and Planning Services and Senior Planner. Key matters that were raised at the meeting included the number of variations to Development Control Plan 2005, which combined, represent an

## **2.1 DA 200/2011 - Residential Flat Building Comprising Three (3) Townhouses and Separate Dwelling-House at The Entrance North (contd)**

---

overdevelopment of the site; and the proposed floor level of the buildings in relation to the flooding and sea level rise.

With a view to negotiating a favourable outcome, Council offered three (3) potential options to enable the applicant to move forward with the development:

1. Full compliance with Development Control Plan (DCP) 2005 Chapter 64 - Multiple Dwelling Residential Development including raising the floor level to the 2050 sea level rise planning level of 3.1 m AHD.
2. Minor amendments to improve building design and landscaping and incorporating justification for the remaining DCP variations by offering a public benefit, such as dedication of land for the proposed foreshore walkway.
3. Existing non-compliance with DCP 2005 Chapter 64 – Multiple Dwelling Residential Development, but including raising the floor level to the 2050 sea level rise planning level of 3.1 m AHD and offering a public benefit, such as dedication of land for the proposed foreshore walkway.

In summary, the applicant has responded to the matters that were raised in the meeting as follows:

### Applicant's Response:

*Full compliance with Development Control Plan 2005 including raising the floor level to the 2050 sea level rise planning level of 3.1 metres is not an option available to our client nor is it a practical requirement having regard to the practical application of flood level information published by the Council and publicly available information in relation to the sea level rise debate.*

Assessment Comment: The subject property is fully flood affected during a 1% Annual Exceedance Probability (AEP) flood event by flood water originating from Tuggerah Lakes. The Tuggerah Lakes Flood Study identifies that the 1% AEP flood level for this development is RL 2.2m Australian Height Datum (AHD). The development plans indicate that existing ground levels generally range between 1m AHD and 2m AHD, which result in flood depths between 0.2m and 1.2m across the site during the 1% AEP flood event. The floor level is proposed at 2.7 m AHD, which does not take into account sea level rise.

The NSW Sea Level Rise Policy Statement (2009) includes sea level rise planning benchmarks for use in assessing the potential impacts of sea level rise in coastal areas, including use in flood risk assessments. The benchmarks are for a projected rise in sea level, relative to the 1990 mean sea level, of 0.4 metres by 2050 and 0.9 metres by 2100.

The initial assessment of the application applied the 2100 benchmark although during the Planning Mediation Panel Meeting, it was suggested that it would be an achievable improvement to the development if the floor level was raised to the 2050 benchmark of 3.1m AHD. The applicant has not agreed to this and the proposed floor level remains at 2.7 m AHD.

## **2.1 DA 200/2011 - Residential Flat Building Comprising Three (3) Townhouses and Separate Dwelling-House at The Entrance North (contd)**

---

As such, the proposed development fails to adequately address Council's Flood Prone Land Development Policy, the NSW Floodplain Development Manual and the NSW Government Sea Level Rise Policy Statement and supporting Guidelines. On that basis, the recommendations and reasons of refusal relating to flooding and sea level rise as included in the original planning assessment report remain applicable.

### Applicant's Response:

*Adequate and appropriate protection of the asset and the residents of the building is available in the current proposal.*

### Assessment Comment:

The existing site contains a single residential dwelling approximately 50 years old with existing habitable floor level below the design flood level (approximately 2.45m AHD). The proposed development is likely to result in structurally superior dwellings, although the habitable floors are not proposed above the sea level rise flood planning level. As a result, the development is predicted to be susceptible to flood damage within the expected life of the development.

The proposed development seeks approval for a dwelling house and residential flat building, which will increase population density in an area that is considered to be hydraulically affected by high hazard flooding. Additionally, self sufficient low hazard evacuation is not available from the development, and future occupants will be reliant on emergency services for evacuation in high hazard conditions.

### Applicant's Response:

*Minor amendments to the building design have been proposed (including reducing the ceiling height by 0.2m in order to comply with the height control of the DCP, removing the cupolas from the roof of the townhouses and incorporating espalier planting (meaning training a tree or shrub to grow against a flat surface) along the boundary fencing adjacent to the proposed driveway).*

### Assessment Comment:

The development proposes a number of variations to DCP 2005 Chapter 64 – Multiple Dwelling Residential Development including variations to building height, rear setback, carparking, driveway design, floor space ratio, private open space, and fencing. Whilst in isolation, some of the variations could be considered minor, given the number of variations proposed and the site constraints, the cumulative impact indicates that the proposal is an overdevelopment of the site.

Most significantly, the proposed variations to the rear setback and areas of private open space have the potential to have a detrimental impact on the public domain and desired street character as well as the future occupants of the development.

## **2.1 DA 200/2011 - Residential Flat Building Comprising Three (3) Townhouses and Separate Dwelling-House at The Entrance North (contd)**

---

Once the foreshore land is made available for the public pathway, the area of usable area of open space for the dwelling-house would be reduced to approximately half the minimum required under DCP 2005 Chapter 64 – Multiple Dwelling Residential Development and privacy would also become an issue at the public/private domain interface.

The applicant was given the opportunity to address these issues, although only proposes to reduce the height of the ceiling to comply with DCP 2005 Chapter 64 – Multiple Dwelling Residential Development and to provide alternative espalier planting to minimise the impact of the driveway setback variation. These proposed changes to the design would have minimal impact on improving the overall development and a number of variations including setbacks; carparking; driveway design; floor space ratio; private open space and fencing remain. As such, the recommendations and reasons for refusal included in the original assessment report have not been adequately addressed.

### Applicant's Response:

*The dedication of land for the proposed foreshore walkway, does not arise as a result of this application and therefore there is no nexus between dedication of the walkway.*

### Assessment Comment:

Two (2) of the objectives of The Entrance Peninsula Planning Strategy (TEPPS) are to:

- Improve and encourage public access to waterfront areas, including The Entrance Channel, The North Entrance Beach, Karagi Reserve and Dunleith Point; and
- Improve pedestrian and cycling facilities, including improved and safer links across or under The Entrance Bridge to/from the existing pedestrian/cycleway network and access to The Entrance Channel foreshore.

To support this, TEPPS recommends that Council negotiate with property owners fronting The Entrance Channel in regard to the provision of a public continuous waterfront shared pathway that would link under The Entrance Bridge to the pathway facilities in Terilbah Reserve.

During the assessment of the development application, negotiations with the applicant resulted in the building being set back 5.5 m from the rear boundary with the proposed deck being approximately 2.5 m from the property boundary. These setbacks, together with the adjoining reclaimed Crown Land would provide for a future 5 metre wide pathway. While the proposed pathway is not specifically identified within a Section 94 Plan, it is an important strategic link for The Entrance/The Entrance North. During the Planning Mediation Meeting, the possibility of justifying DCP variations by providing a public benefit were discussed, although the applicant has not pursued this option.

The applicant's full response to the matters that were raised in the Planning Mediation Meeting is included as an attachment.

## **CONCLUSION**

In response to the options offered at the Planning Mediation Meeting, the applicant has only agreed to make minor changes to the proposed development. These changes include a reduction in the height of the building by 0.2 m in order to comply with the height control of DCP 2005 Chapter 64 – Multiple Dwelling Residential Development and the incorporation of

## **2.1 DA 200/2011 - Residential Flat Building Comprising Three (3) Townhouses and Separate Dwelling-House at The Entrance North (contd)**

---

espalier planting along the driveway to compensate for a variation to the landscaped setback. Despite these changes, the development still proposes a number of variations to DCP 2005 Chapter 64 – Multiple Dwelling Residential Development in relation to setbacks; carparking; driveway design; floor space ratio; private open space and fencing, and as a result, it is considered that the proposal still represents an overdevelopment of the site.

In terms of flooding, the applicant does not propose to raise the floor level of the buildings to address flooding and sea level rise and no further information has been provided in relation to the preliminary assessment for acid sulphate soils, which was previously identified as a reason for refusal.

As such, it is considered that all the previous reasons for refusal remain applicable (subject to the deletion of the reference to building height in reason (b)), and it is recommended that the application be refused.

### **ATTACHMENTS**

1	Applicant's Response to Negotiations		D02931478
2	Report to Council 23 November 2011	Enclosure	D02797414
3	Development Plans (A3 Plans)	Enclosure	D02808638
4	SEPP 71 Assessment Table		D02808641
5	DCP 60 Assessment Table		D02808642
6	DCP 64 Assessment Table		D02808643



10<sup>th</sup> February, 2012

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

**ATTENTION:** Jenny Webb

**VIA EMAIL/POST:** [JLWebb@wyong.nsw.gov.au](mailto:JLWebb@wyong.nsw.gov.au) and [wsc@wyong.nsw.gov.au](mailto:wsc@wyong.nsw.gov.au)

Dear Sir,

**RE: DEVELOPMENT APPLICATION No. 200 / 2011  
PROPOSED RESIDENTIAL FLAT BUILDING COMPRISING FOUR (4) UNITS  
PART LOT 21 DP 11682 HN 4 BROGDEN ROAD, NORTH ENTRANCE**

We thank you for the "hiatus" in the consideration to this Development Application following the Council's resolution of the 23<sup>rd</sup> November, 2011, where the Council determined that: -

***"Council defer this matter for further negotiations between the applicant, the Mayor and the General Manager to improve the development and compliance with Council's policies and report back to Council".***

Council's records will show that we wrote on the 20<sup>th</sup> December, 2011, confirming that we had received the Minutes of the Meeting held between: -

- Michael Whittaker – General Manager
- Brian Glen-Dennings – Wyong Shire Council Internal Resident Counsel
- Gina Vereker – Director of Planning
- Jenny Webb – Senior Planner
- Fred Sammut – Owner
- John Hancock – Town Planner

We have since then been able to meet our client in the company of his Solicitor and with the benefit of notes assembled both by the Council and the writer (copies of which I attach for completeness) considered the matters canvassed in that meeting and are now instructed to advise as follows: -

- (a) ***"Pursuant to Section 79c(1)(a)(i) of the Environmental Planning and Assessment Act, 1979 the development fails to comply with Clause 15 of the Wyong Local Environmental Plan as no assessment of the proposed development has been undertaken in accordance with the Acid Sulphate Soils Assessment Guidelines";***

Acid Sulphate Soils

Given that the proposal does not and will not disturb soils at depth likely to expose acid sulphate soils then we remain of the view that no additional information is required to be provided in terms of acid sulphate soils management. Should Council insist however, then our clients are prepared to accept a Condition of Consent to require the provision of an Acid Sulphate Management Plan with Construction Certificate documentation.

*Note: That is the extent of modification that we are instructed to make and that we agree is responsibly required.*

***Environmental Planners . Local Government Liaison . Land Development . Project Management .  
Building Designers . Liquor Licence Submissions***

1 MCCAULEY STREET, DAVISTOWN 2251

TEL: 02 4369 8111 . FAX: 02 4369 8122

GENERAL CORRESPONDENCE – [mail@longhillplanning.com.au](mailto:mail@longhillplanning.com.au) . DRAWINGS – [design@longhillplanning.com.au](mailto:design@longhillplanning.com.au)  
ABN 73 479 982 523



Landscaping to the Southern most boundary adjacent to the left hand side (when viewed from the street) of the entry driveway is to be enhanced by espalia planting for its entire length off setting we maintain to a satisfactory degree the otherwise alleged departure from policy through the absence of an offset for the driveway from the left hand boundary adjacent to the vehicle manoeuvring space.

As previously advised insistence on a kerb "blister" in that area will compromise the manoeuvring space to the visitor space adjacent.

- (b) ***"Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979 the proposed development does not comply with Wyong Development Control Plan 2005 Chapter 64 – Multiple Dwelling Residential Development in terms of building height, rear setback, carparking, driveway design, floor space ratio, private open space and fencing";***

Comment

Variations to policy where they occur in are minor and are not, either individually nor collectively, fatal to the application.

We are instructed however, to amend either by plan or by agreement to Condition of Consent) to modification of the plans, as follows: -

- (i) to remove the area of non-compliance in terms of height by lowering the ceiling of the front portion only of Unit No. 2 (area so affected is identified by colour on the plan attached;
- (ii) delete by way of Condition of Consent, (if considered necessary by Council) the cupola roof feature to Unit No's 2, 3 and 4.

*Note: The cupola to Unit No. 1 adds significant internal amenity through light and ventilation being strategically located above the vestibule space at Level 1.*

*Cupola's on Unit No's 2, 3 and 4 contribute only to articulation of the roof.*

While we are instructed to agree to a Condition of Consent requiring the deletion, we urge their retention for purpose.

We remain firmly of the view that no other modification in terms of rear setback, car parking, floor space ratio, private open space or fencing is required to achieve satisfactory compliance with the Council's Development Control Plan and in that manner, satisfy Section 79C(a)(iii) of the Environmental Planning and Assessment Act, 1979.

- (c) ***"Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act, 1979 the proposed development would unreasonably increase risks to people and property as a result of flooding";***

Comment

The proposal has been designed in accordance with the minimum finished floor levels requirements of Council and satisfactory access to an egress from the site in the 1% AEP has been identified to provide satisfactory egress to the public domain.

- (d) ***"Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act, 1979 the proposed development is an over development of the site";***

Comment

Given the general level of compliance in terms of Development Control Plan, height, setback, carparking, design, private open space and "density", we do not accept that the proposal is an over development of the site, but rather an optimum achievement of residential development consistent with the 2(b) Zone objectives.

- (e) ***"Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act, 1979 the site is not considered to be suitable for the proposed development having regard to Council's Flood Prone Land Development Policy and NSW Floodplain Development Manual";***

Comment

In terms of flood prone impact, we reaffirm that the development has been designed consistent with and in satisfaction of the advice provided by the Council in terms of minimum floor and egress requirements.

- (f) ***"Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act, 1979 the site is not considered to be suitable for the proposed development having regard to NSW Government Sea Level Rise Policy Statement and supporting Guidelines";***

- (g) ***"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 climate change, in particular sea level rise, on the development";***

- (h) ***"Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979 it would not be in the public interest to approve the proposal given its departure from Council's Flood Prone Land Policy which will set an undesirable precedent";***

Comment

With respect to the NSW Government Sea Level Rise Policy Statement and Supporting Guidelines, we acknowledge that the Council might have before it certain information suggesting a maximum sea level rise impact of 900 millimetres in about 100 years.

Council would also be alive to the ongoing debate with respect to climate change and sea level rise not limited to but including the highly regarded advice of local recognised experts, Ian Plimer and Bob Carter.

*Note: The author was fortunate enough to attend a public meeting at the Belmont 1 6 Foot Sailing Club on the evening of Tuesday 31<sup>st</sup> January, 2012, when those highly accredited individuals presented information in response to Lake Macquarie City Council's response to climate change and theorised and sea level rise.*

*Professor Bob Carter in response to one (1) question in relation to mapping published by Lake Macquarie Council (not dissimilar to that as published by Wyong Shire Council and based on IPCC data) identified those maps as "sheer fantasy".*

Accordingly, in terms of reasons for refusal identified under f, g and h in the recommendation to the report considered by the Council at its Meeting of the 23<sup>rd</sup> November, 2011, Council, in its proper administration is entitled to: -

- a) rely on the 1% AEP information that it publishes (as we do) and contemporaneously,  
 b) take into consideration the best information available to it which must include the matters raised in public debate since the publication of the NSW Flood Plain Development Manual including the "disclaimer" included in Government and IPCC publications.

Cycleway

We appreciate and understand the intent and ambition of Consultants for the Council, the Council and the General Managers approach to: -

***"...(support variations to facilitate) a public benefit, such as the public foreshore walkway across the rear of the site".***

As explained in response to the offer of variation to Development Control Plan requirements in exchange for dedication of land, the owner is not agreeable to providing a public benefit by way of dedicating land, but has in this proposal made provision for the ultimate acquisition of that space by the Council.

Public Benefit

While we appreciate the Council's ambitions of providing the foreshore walkway, we are mindful of the need for a Condition of Consent or a requirement of the Council in granting its approval to attach a Condition of Consent for any Condition to require dedication there needs to be a nexus between the development and the Condition.

The "need" for the cycleway across the water frontage of this land does not arise from the development proposed, but rather is an item advanced by the Council as part of its broader strategic ambitions.

In those circumstances, the proponent is entitled to pursue the optimum development of his land and in doing so make provision for such strategic infrastructure.

The plan has been crafted in a manner that does. Further investigations since the Council's resolution has resulted in the preparation of a plan which is attached to demonstrate how the adjacent land to the South might also be developed facilitating its ultimate development consistent with the 2(b) Zone provisions as well.

We attach that plan to demonstrate the proponents comprehension, of the strategic plan of the Council and the manner in which it might be implemented in accordance with due planning process not limited to but including the ultimate design and construction of that infrastructure.

In summary, we reaffirm: -

1. Full compliance with Development Control Plan 2005 including raising the floor level to the 2050 sea level rise planning level of 3.1 metres is not an option available to our client nor is it a practical requirement having regard to the practical application of flood level information published by the Council and publicly available information in relation to the sea level rise debate.
2. Adequate and appropriate protection of the asset and the residents of the building is available in the scheme as advanced.
3. Minor amendments to the building design have been proposed which we maintain it is satisfactory in terms of Development Control Plan Chapter 64 Multiple Dwelling Residential Development requirements.
4. The dedication of land for the proposed foreshore walkway, although advanced as a offset to Development Control Plan 2005 requirements by the General Manager does not arise as a result of this application and therefore there is no nexus between dedication of the walkway.

Should the Council require dedication as to a Condition of Consent, then our client would remain entitled to seek compensation.

Alternatively, the Council may, in the fullness of time, acquire that land identified for that purpose and provided it for by way of the design advanced.

We are instructed to thank the General Manager, Council's Internal Counsel, its Director of Environment and Planning and Senior Planning Officer for the time taking in further discussing the matter consistent with the Council's resolution and to thank in the Council anticipation of its approval of the Development Application subject to appropriate Conditions of Consent.

Yours faithfully,

*John Hancock*

**JOHN HANCOCK**

CC: Mr Sammut (via email);  
Mr Puleo (via email).

Encs: Three copies of the colour Plan;  
SJH Planning & Design's Meeting Notes.

### State Environmental Planning Policy 71 – Coastal Protection

Cl.8	Matters for Consideration	Proposed
a	The aims of the Policy	The proposal is consistent with the aims of the Policy in terms of protection of the coastal zone and environment; and the provision of new pedestrian access to foreshore areas.
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.	There is no existing public access to the foreshore from the subject site.
c	Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.	The Entrance Peninsula Planning Strategy includes objectives to improve and encourage public access to waterfront areas and to improve pedestrian and cycling facilities, including improved and safer links across or under The Entrance Bridge to/from the existing pedestrian/cycleway network and access to The Entrance Channel foreshore. To achieve this objective it is likely that the pedestrian/cycleway network would need to pass across the rear of the subject site. The proposed dwelling house has been set back approximately 5.5 metres from the rear boundary to enable a public path to be constructed in the future if necessary.
d	The suitability of development given its type, location and design and its relationship with the surrounding area.	The proposed development of three townhouses and a dwelling house is in keeping with existing development. However, the site is affected by flooding and is not considered to be suitable for new housing at an increased density.
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.	The proposal is not expected to result in any significant overshadowing or view loss.
f	The scenic qualities of the New South Wales coast, and means to protect and improve these qualities.	The proposal will have no adverse impact on the scenic qualities of the coastline.
g	Measures to conserve animals (within the meaning of the <u>Threatened Species Conservation Act 1995</u> ) and plants (within the meaning of that Act), and their habitats.	The subject site does not contain any threatened species or habitat.
h	Measures to conserve fish (within the meaning of Part 7A of the <u>Fisheries Management Act 1994</u> ) and marine vegetation (within the meaning of that Part), and their habitats.	The proposal has no impact on the conservation of fish and marine vegetation.
i	Existing wildlife corridors and the impact of development on these corridors.	The proposal will not affect any identified wildlife corridor.
j	The likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards.	The subject site is not identified within the Draft Wyong Shire Coastal Hazard Management Plan as being subject to coastal hazards. However, the site is affected by flooding in terms of the both depth and velocity of flood waters.
k	Measures to reduce the potential for conflict between land-based and water-	The proposal has no impact on water-based coastal activities.

	based coastal activities.	
l	Measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals.	The subject site does not contain any aboriginal sites or relics, and there are no known sites within the immediate locality.
m	Likely impacts of development on the water quality of coastal waterbodies.	The proposal would not adversely affect water quality, subject to compliance with conditions.
n	The conservation and preservation of items of heritage, archaeological or historic significance.	The proposal has no impact on items of heritage, archaeological or historic value.
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.	Not applicable.
p(i)	The cumulative impacts of the proposed development on the environment.	The proposal is not considered to have any adverse cumulative impacts on the environment.
p(ii)	Measures to ensure that water and energy usage by the proposed development is efficient.	A BASIX Certificate has been submitted with the application to demonstrate satisfactory water and energy efficiency.
<b>Cl.13</b>	A provision of an environmental planning instrument that allows development within a zone to be consented to as if it were in a neighbouring zone, or a similar provision, has no effect.	The application does not propose to utilise such a clause.
<b>Cl.14</b>	A consent authority must not consent to an if, in the opinion of the consent authority, the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.	There is currently no public access to the site. As part of The Entrance Peninsula Planning Strategy a public foreshore promenade is identified across the subject site. While details have not been investigated as part of Council's Masterplanning exercise, provision has been made for a future 5 metre wide pathway along the foreshore, which would be partly located within the subject site. This would facilitate public access from Terilbah Reserve through to Karagi Reserve and Dunleith Point.
<b>Cl.15</b>	The consent authority must not consent to a development application in which effluent is proposed to be disposed of by means of a non-reticulated system if the consent authority is satisfied the proposal will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform.	The development can be connected to the existing reticulated sewer system located in Brogden Road.
<b>Cl.16</b>	The consent authority must not grant consent to a development application if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.	Should consent be granted, standard conditions relating to stormwater treatment and quality would need to be imposed.

**Development Control Plan Chapter 60 – The Entrance Precinct  
(Precinct 8: Development Principles)**

<b>DCP Requirement</b>	<b>Comment</b>
Development should be of a scale and character compatible with surrounding development. Development in excess of 2 storeys in prominent locations is to be avoided so as to limit the level of intrusion into the skyline when viewed from The Entrance.	Proposed development is two storeys in height and is consistent with the scale and character of the area.
Those properties within the coastal zone as identified by Development Control Plan No. 77 -'Coastal Hazards' will be restricted in location and method of construction as specified in the DCP.	The site is not affected by DCP 77 – Coastal Hazards nor identified within the Draft Wyong Shire Coastal Hazard Management Plan.
The design of any development shall have regard to:	
(i) the relationship of the proposed building(s) with adjoining and surrounding development in the locality (existing and future);	The proposed development fits within the existing character of the area and is unlikely to detrimentally impact adjoining development.
(ii) the impacts on privacy within surrounding properties;	Opportunities for overlooking from the proposed decks is proposed to be mitigated through the use of privacy screens. The decks are elevated in an attempt to comply with flood levels.
(iii) the impacts of overshadowing from buildings greater than 1 storey in height;	Shadow diagrams have been provided and the potential impact is considered reasonable.
(iv) options for the on-site disposal of stormwater and the provision of sediment and nutrient control devices in the case of off-site disposal;	On-site detention, rainwater reuse tanks and water quality control facilities are incorporated into the Stormwater Management Plan.
(v) siting, layout and construction methods that encourage long term energy efficiency in buildings;	Main living areas and open space face north. A BASIX Certificate has been submitted to address water and energy efficiency.
(vi) compliance with the requirements of the Building Code of Australia including fire risk; and,	The proposed development is capable of complying with the deemed to satisfy provisions of the BCA.
(vii) the minimisation of cut and fill within a site, particularly along adjoining boundaries, and the method of construction and stability of retaining walls in the long term.	Filling of up to 1m is proposed for the driveway and under the garage slabs.
Carparking requirements are to be provided on-site with carpark areas positioned so as not to dominate the streetscape.	On-site parking is proposed, and is located so as to not be visually dominant from the street.
Facilities for the storage of waste are to be designed so that their contents are not visually intrusive from the street.	Bin storage is provided within individual courtyards.
Due regard should be given to the potential impacts of plant species at maturity on proposed buildings, adjoining properties and utility services (above and below ground). It is recommended that native plant species are used in preference to exotic species.	The landscape plan includes a mix of native and exotic species.

## Development Control Plan Chapter 64 – Multiple Dwelling Residential Development

	REQUIREMENT	PROPOSED	COMPLIANCE
<b>2.0 APPLICATION REQUIREMENTS</b>			
<b>Required Information</b>	Required information submitted?	Sufficient information provided.	Yes
<b>Services</b>	Any impact on drainage, water or sewer?	No impact subject to conditions.	Yes
	Kerb and guttering existing?	No existing kerb and guttering. This would be a condition requirement, should consent be granted.	Subject to condition
<b>3.0 CONTEXT</b>			
<b>Site and Local Context Analysis</b>	Submit site and contextual analysis	Site analysis provided.	Yes
<b>4.0 SCALE</b>			
<b>Residential Development by Zone</b>	Compatible with objectives of the zone 2(b)	Townhouse development consistent with the zone objectives.	Yes
<b>Building Height</b>	2 storey and 7 metres	6.6-7.2m	Partial 2.9% variation.
<b>Site Coverage</b>	Minimum 25% site area as 'soft' landscaping = $1024 \times 0.25 = 256\text{m}^2$	Approx 305 m <sup>2</sup> or 29%.	Yes
<b>5.0 BUILT FORM</b>			
<b>Construction and Appearance</b>	Respond sensitively to context in terms of scale, functionality and sustainability.	Development of suitable scale and functionality. Complies with BASIX in terms of water and energy efficiency. Issues with sustainability in terms of flood impacts.	Yes  No
Building Design	High architectural quality	Suitable for type and scale of development.	Yes
	Facades to be articulated in length and height.	All facades articulated in length and height.	Yes
	Garages not to dominate street elevations.	No garages facing the street.	Yes
	Suitable architectural features to provide visual relief and to minimise bulk and scale.	Range of material including masonry and weatherboard cladding, wall projections and open pergola's.	Yes
Roof Design	Relate roof design to desired built form and the size and scale of the building.	Roof design appropriate for scale of development. Turrets/cupolas included to break up roof form.	Yes
	Minimise intrusiveness of service elements.	No services proposed on roof.	Yes
	Roof terraces to be setback from building edge.	N/A	N/A
<b>Cut and Fill</b>	Minimise cut and fill by stepping building.	Building is stepped. Although filling is still proposed under driveway and garages	Yes. However the extent of fill is unsatisfactory in a flood prone area.



		due to flooding issues.	
<b>Building Lines</b>			
<b>Setbacks</b>			
<i>Front</i>	4.5m, 6m to garage	6.2m	Yes
<i>Side (north)</i>	0.9m	1 to 4.5m	Yes
<i>Side (south)</i>	0.9m	1.5 to 6.5m	Yes
<i>Rear</i>	4.5m	2.2 to 4.8m	No (partial 51% variation to deck only)
<b>Car Parking</b>			
Resident Parking	4 x 3 beds @ 1.5/unit = 6 Spaces(based on 2 <sup>nd</sup> lounge being counted as a bedroom)	5	No
Visitor Parking	1 space per 3 units = 1.3 spaces	2	Yes
	Setback minimum 3m from category B or C roads, only where suitably screened by landscaping	3 m landscaped setback	Yes
<b>Vehicular Access Design</b>	Minimum driveway pavement width 3m for developments up to 4 dwellings.	3 m	Yes
	Driveway offset 2m from side boundary at front boundary, may taper back to 0.5m at front building line	0.5m	No (75% variation)
	Screening cars from view of street and building	Garages setback behind main building façade.	Yes
<b>Pedestrian Access Design</b>	Clear pedestrian access to development	Pedestrian Access via driveway.	Yes
	Consider public through-site access ways in larger developments.	Potential for future public foreshore pathway, subject to The Entrance Masterplan and acquisition by Council. Foreshore access to all residents is proposed.	Yes
<b>6.0 DENSITY</b>			
<b>Floor Space Ratios</b>	2(b) zone = 0.6:1 1024 x 0.6 = 614.4m <sup>2</sup>	623.1m <sup>2</sup> or 0.61:1	No (1.4% variation)
<b>7.0 SUSTAINABILITY</b>			
<b>BASIX</b>	BASIX Certificate.	Submitted.	Yes
<b>Waste Management</b>	WMP submitted.	Submitted.	Yes
	Location of bins to be accessible and not visually intrusive.	Individual bins located within private courtyards.	Yes
	Method of collection.	Collection at kerb by Council contractor.	Yes
<b>Stormwater Management</b>	SWMP submitted	Submitted.	Yes
<b>8.0 LANDSCAPE</b>			
<b>Landscape Design</b>	Category 2 Landscape design.	Submitted.	Yes
Deep Soil Zones	50% of required 'soft' landscaped area to be deep soil = 128m <sup>2</sup> .	>150 m <sup>2</sup>	Yes
Street Trees	2 semi advanced trees per 15 m frontage = 2 trees.	Can be conditioned.	Subject to condition

<b>9.0 AMENITY</b>			
<b>Private Open Space</b>	Grade not to exceed 1:14	Decks provided to create two separate level areas.	Yes
	45m with minimum dimension 4.5m directly accessible from general living areas.	Minimum area provided, although minor variations to dimension and the courtyard to Unit 4 is located within the front setback.	No
<b>Solar Access</b>	All dev to have 75% of each req o/space to have unobstructed sunlight for minimum 3 hours between 9.00 am and 3.00pm June 21.	Each open space area is north facing.	Yes
	Shadow diagrams to be submitted for 2+ storeys. Development not to unreasonably impact adjoining properties.	Shadow diagrams submitted and considered satisfactory.	Yes
<b>Privacy</b>	Building layout (windows, balconies, screening & l/scaping) to min direct o/looking of internal living areas & private o/space.	Privacy screens are proposed to the decks on northern side of building. Windows are appropriately setback and face away from adjoining property where possible.	Yes
Acoustic Privacy	Site layout should separate active rec areas, parking areas, vehicle access ways etc from bedrooms.	Appropriate for type and scale of development.	Yes
<b>Views</b>	Minimise loss of views.	The site is very flat and surrounding development is primarily single storey. The proposal would have minimal impact on views.	Yes
	Public views and vistas retained.	There are no current views or vistas.	N/A
<b>10.0 SAFETY AND SECURITY</b>			
Crime Prevention	Crime Risk Assessment (CPTED)	Design acceptable in terms of territorial re-enforcement, natural surveillance, access control and space management.	Yes
<b>11.0 SOCIAL DIMENSIONS</b>			
Housing Choice	Mix of 1, 2 and 3 bedroom units	Units can be used as 2 or 3 bedroom units	Yes
	10% of units to be suitable for adaptation for disabled/elderly persons.	Due to split levels and second storey, no units are suitable for adaptation.	No (10% of 4 is 0.4 units and therefore when rounded to nearest whole number, no adaptable units are required.
Facilities and Amenities	Each dwelling to have individual laundry.	Laundry provided within garage area.	Yes
	Car wash facility 5m x 2.7m, drain to grassed	No car wash incorporated, although	Subject to condition

	common area, may be a visitor space	can be conditioned to be within a visitor space.	
	Mailboxes	Located at street frontage adjacent o driveway.	Yes
	Storage: 1-2 beds - 3m <sup>2</sup> 3+ beds - 6m <sup>2</sup>	Storage, linen cupboards and built in robes provided.	Yes
<b>12.0 AESTHETICS</b>			
Fencing	Details to be provided. Max 1.2 m along front boundary.	1.2 m masonry and slatted front fence proposed.	Yes
	1.8 around courtyards	Courtyard fencing proposed.	Yes
	Courtyard fencing only in front setback for category A or B road for noise attenuation or to optimise solar access. Must be no closer than 1.5m from front boundary and 1.5m must be landscaped	Brogden Road is Category C and therefore no courtyards are permitted within front setback. However, the courtyard for Unit 4 is proposed to extend to the property boundary.	No
Streetscape	Development is to enhance streetscape character.	Streetscape impacted by courtyard fencing and lack of suitable driveway offset. Design of building and street façade considered acceptable.	No
	Provide separate entry from street for pedestrians and cars	No separate pedestrian access provided.	No
<b>13.0 ADDITIONAL PROVISIONS FOR SPECIFIC AREAS</b>			
Warnervale East / Wadalba Northwest	N/A	N/A	N/A
<b>14.0 CONTRIBUTIONS</b>			
Section 94 – The Entrance District	Contributions applicable based on 4 x 3 bedroom (counting 2 <sup>nd</sup> lounge as a bedroom)	To be paid prior to Construction Certificate if consent granted.	Subject to condition
Water Management Act	Contributions applicable based on 4 x 3 bedroom (counting 2 <sup>nd</sup> lounge as a bedroom)	To be paid prior to Construction Certificate if consent granted.	Subject to condition

## **2.2 DA 987/2011 - Proposed Boundary Adjustment at Little Jilliby**

---

TRIM REFERENCE: DA/987/2011 - D02905677

MANAGER: Peter Fryar, Manager Development Assessment

AUTHOR: Mark Greer; Senior Development Planner

### **SUMMARY**

An application has been received for a common boundary adjustment between two (2) existing allotments at Little Jilliby. 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.

<b>Applicant</b>	Everitt & Everitt
<b>Owner</b>	E Nomme (Lot 3) and I Ghys (Lot 1257)
<b>Application No</b>	987/2011
<b>Description of Land</b>	Lot 1257 DP 1049672 and Lot 3 DP 555826 Little Jilliby Road, Little Jilliby
<b>Proposed Development</b>	Boundary adjustment
<b>Site Area and zoning</b>	Lot 1257 (10.85 ha) 1(a) Rural and 7(a) Conservation Lot 3 (10.11 ha) 1(a) Rural and 7(a) Conservation
<b>Existing Use</b>	Dwelling houses and agricultural uses

### **RECOMMENDATION**

- 1** *That Council grant consent subject to the conditions detailed in the schedule attached to the report, having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act and other relevant issues.*
- 2** *That Council assume the concurrence of the Director-General of the Department of Planning for the use of State Environmental Planning Policy No 1 to vary the development standard of Clause 13(3)(b) of Wyong Local Environmental Plan 1991 to permit the proposed development.*

### **PRECIS**

- Application involves the adjustment of the common boundary between two properties at Little Jilliby. The proposed boundary adjustment constitutes subdivision under the provisions of WLEP 1991.
- Both allotments comprise conservation and rural agricultural zonings under WLEP 1991.

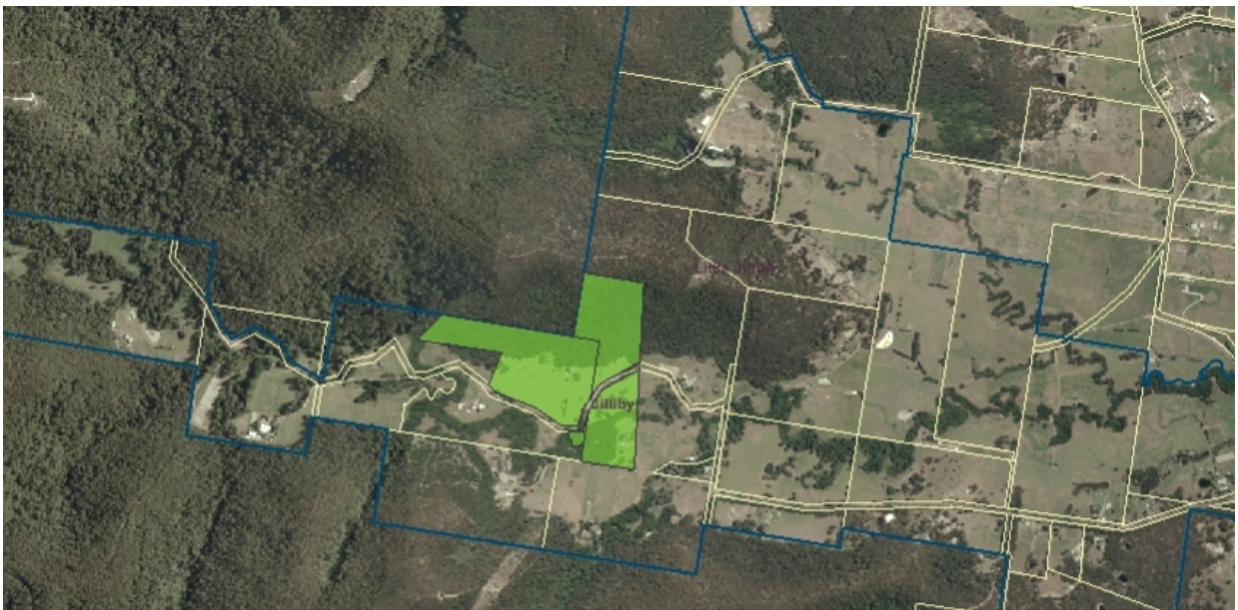
## 2.2 DA 987/2011 - Proposed Boundary Adjustment at Little Jilliby (contd)

- The application relies upon the use of State Environmental Planning Policy No 1 (SEPP 1) to vary the subdivision standards of WLEP 1991. The proposal results in a 60% variation to the areas of each existing allotment.
- Council delegation extends to assuming concurrence of the Department of Planning and Infrastructure DoPI for the use of SEPP 1 in this instance. The delegation issued under Circular B1 notes that Council can assume concurrence for two lot boundary adjustments where both lots are presently below the minimum subdivision standards subject to no additional allotments being created, that the agricultural use of the land is not jeopardised and that no additional housing entitlements are created.

### INTRODUCTION

Consent is sought for the adjustment of the common boundary between Lot 1257 in DP 1049672 and Lot 3 in DP 555826. Both parcels are located along Little Jilliby Road and comprise cleared rural land adjacent to the roadway and heavy timbered areas toward the upper slopes of the properties. Both parcels currently have an area of about 10 hectares and both are subject to rural and conservation zones.

The development application is identical to a proposal approved in 2007 under DA 2153/2006. In the absence of physical commencement the approval lapsed in 2009.



*Locality plan – subject sites shaded*

It should be noted that the boundary adjustment does not alter the current residential use of either parcel with existing dwellings to be retained on their respective allotments.

The applicant seeks to use SEPP 1 in order for Council to vary the development standards of WLEP 1991 to permit the boundary adjustment.

SEPP 1 is a planning policy established by the NSW State Government to make development standards more flexible. It allows Councils to approve a development proposal that does not comply with a set standard where it can be shown to be unreasonable or unnecessary in the circumstances of the case.

**VARIATIONS TO POLICIES**

Clause	13(3)(b)
Standard	10% variation permitted
LEP	Wyong Local Environmental Plan 1991
Extent of variation/departure	59% variation for proposed lot 31 60% variation for proposed lot 32
Departure basis	Support based on capability of each parcel to maintain an orderly approach to land use maintain the existing residential uses.

**HISTORY**

Consent was granted in March 2007 for the adjustment of the common boundary between the subject lots under DA 2153/2006. In the absence of physical commencement the consent lapsed in 2009.

Lot 1257

Lot 1257 in DP 1049672 was registered on 26 February 2003 from a subdivision and boundary adjustment of allotments comprised within DP 1022713 and DP 1031782. A residence exists on lot 1257 with Council records indicating approvals for the dwelling, additions and sheds from 1963 onwards. Dairy activities have been recorded since the early 1970's although such activity was probably ongoing for many years previous.

Lot 3

Lot 3 in DP 555826 was registered on 8 September 1972. A dwelling house was approved in 1973 on the allotment. Rural activities have been undertaken since the early 1970s.

**PERMISSIBILITY**

Subdivision including boundary adjustment is defined under Section 4B of the EP&A Act and means the division or restructure of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. The WLEP 1991 does not contain a specific definition for land "subdivision". The proposed boundary adjustment is permissible under the provisions of Clause 13 of WLEP 1991 subject to the area of each allotment being varied by no more than 10%.

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

**Environmental Planning and Assessment Act 1979**

The objects of this Act are:

- a. *to encourage:*

## **2.2 DA 987/2011 - Proposed Boundary Adjustment at Little Jilliby (contd)**

---

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land*
- (iii) the protection, provision and co-ordination of communication and utility services*
- (iv) the provision of land for public purposes,*
- (v) the provision and co-ordination of community services and facilities*
- (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats*
- (vii) ecologically sustainable development*
- (viii) the provision and maintenance of affordable housing*

The proposal is considered to be consistent with the objects of the Act. An assessment of the application is subject to the Heads of Consideration under Section 79C of the EP&A Act.

The application is defined as “Integrated Development” under the provisions of Section 91 of the EP&A Act and was referred to the NSW Rural Fire Service (RFS) and Mines Subsidence Board for relevant approvals.

### **Threatened Species Conservation Act 1995**

All proposals assessed under the EP&A Act must include an examination of the threatened biodiversity, or their habitats, that are likely to occur within the development area or that may be indirectly affected by the construction and operation of a proposal.

The subject land contains an identified Endangered Ecological Community (EEC), however the proposed boundary adjustment has no direct or indirect impact on the EEC and as such no further investigation was necessary.

### **National Parks and Wildlife Act 1974**

The objectives of the Act include the conservation of nature and the conservation of objects, places or features. In this regard, issues such as habitat, ecosystems and ecosystem processes, and biological diversity at the community, species and riparian values are important considerations.

The site does not contain any Aboriginal artefacts and has been examined for any ecological significance.

### **Water Management Act 2000**

The objects of the Water Management Act 2000 are to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations. The proposal has no direct or any indirect impact to the natural flow or conservation of water.

### **Rural Fires Act 1997**

The objects of the Rural Fires Act, 1997 is to provide:

- a. for the prevention, mitigation and suppression of bush and other fires in local government areas (or parts of areas) and other parts of the State constituted as rural fire districts*
- b. for the co-ordination of bush fire fighting and bush fire prevention throughout the State*
- c. for the protection of persons from injury or death, and property from damage, arising from fires*
- d. for the protection of the environment by requiring certain activities referred to in paragraphs (a)–(c) to be carried out having regard to the principles of ecologically sustainable development described in section 6 (2) of the Protection of the Environment Administration Act 1991.*

The application is required under the Section 100B of the Act to gain a Bush Fire Safety Authority from NSW Rural Fire Services as the boundary adjustment relates to land used for residential purposes. The RFS have issued the general terms of approval under the Act which form recommended conditions of consent.

### **State Environmental Planning Policy 4A – Koala Habitat Protection**

The site is listed under Schedule 1 of *State Environmental Planning Policy - 44 Koala Habitat Protection* (SEPP 44).

The likelihood of the site containing 'potential koala habitat' or 'core koala habitat' was assessed and the proposal was considered to have no impact on any potential koala habitat existent on the properties.

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

The WLEP 1991 does not contain a specific definition for "subdivision". The boundary adjustment is permissible under the provisions of Clause 13 of WLEP 1991 subject to the area of each allotment not being varied by greater than 10%.

The overall aims and objectives of the WLEP 1991 are contained in Clause 2 which states:

(2) *The objectives of this plan are -*

- (g) *in relation to rural and environmental areas -*
  - (i) *to protect environmentally sensitive areas from development and minimise adverse impacts of urban development on the natural environment;*
  - (ii) *to restrict development within flood prone areas in order to minimise flood damage and obstruction to flood waters; and*
  - (iii) *to encourage use of land having a high agricultural potential for that purpose and as much as possible direct non-agricultural purposes to land of lesser agricultural potential;*

The proposed development is considered to represent an appropriate scale of development consistent with the objectives of Clause 2. In particular, the proposal will protect any existing environmentally sensitive areas and will maintain the existing use of land having high agricultural values.

The subject properties are zoned 1(a) Rural and 7(a) Conservation under the WLEP 1991. For reasons detailed further in the report, the proposed boundary adjustment is considered to be consistent with the objectives of both the 1(a) and 7(a) zones.

The application is subject to several special provisions in the WLEP 1991.

#### *Clause 13 – Subdivision in General.*

This clause provides a basis for requiring consent for subdivision of land and includes criteria for boundary adjustments.

#### *Clause 29 – Services*

The clause requires Council being satisfied that services can be provided. The proposal provides for on-site waste.



## 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 storm water, 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 the 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.

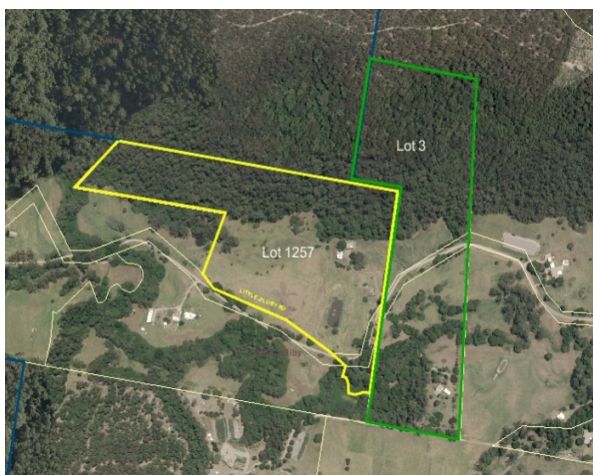
The proposal is not subject to sea level rise, however is considered as sustainable development irrespective of the risk of flooding, bush fire and changing weather conditions.

## RELEVANT ISSUES

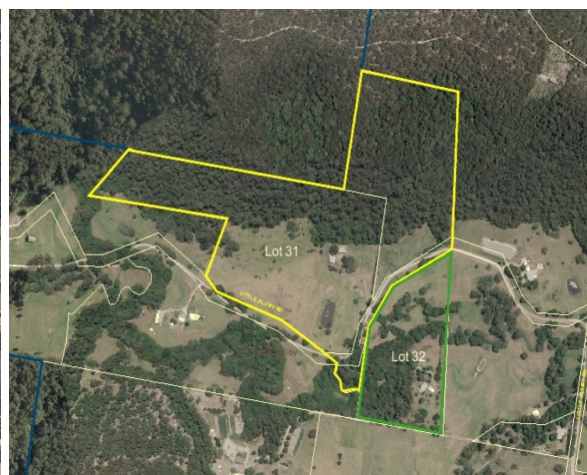
Having regard to Section 79C of the EP& A Act, it is considered that the following matters require further consideration and are addressed in the following sections:

### Wyong Local Environmental Plan (WLEP) 1991 – Boundary Adjustment Strategy

The proposed boundary adjustment aims to accommodate a more usable area of open space and 1(a) rural agricultural zoned land as part of existing Lot 1257. Existing Lot 1257 has an area of 10.85ha and Lot 3 has an area of 10.11ha. The proposal involves an increase in the area of Lot 1257 by 6.11ha (total 16.96ha) and a subsequent reduction in the size of Lot 3 to a total area of 4ha.



*Existing land configuration*



*Proposed configuration*

## **2.2 DA 987/2011 - Proposed Boundary Adjustment at Little Jilliby (contd)**

---

Boundary adjustments are permissible under Clause 13(3) of the WLEP 1991, which provides certain criteria to be satisfied.

Clause 13 states:

***“Subdivision of land - generally***

- 13 (1) *A person shall not subdivide land to which this plan applies except with development consent*
- (2) *A reference in this plan to the subdivision of land includes a reference to any severance of land by the opening of a public road.*
- (3) *Notwithstanding any other provisions of this plan, including the provisions of clause 14, the Council may consent to a subdivision of land for the purpose of a minor adjustment of the boundary between two lots provided that:*
- (a) *the configuration of the allotments remains substantially the same, and*
  - (b) *the area of each allotment proposed is varied by no more than 10 per cent, and*
  - (c) *the Council is satisfied that the boundary adjustment is necessary in the circumstances of the case.”*

The configuration of the proposed two (2) allotments is substantially the same in terms of providing two rural and/or conservation zoned parcels with no lesser opportunities that each existing parcel enjoys. The proposed allotment configuration permits a more orderly use of both land parcels which are both currently dissected by Little Jilliby Road.

Proposed lot 32 is 59% smaller than the existing parcel while proposed lot 31 is 60% larger than existing lot 1257.

The applicant lodged an objection under SEPP No 1 to vary the provisions of Clause 13(3)(b) of WLEP 1991. The SEPP 1 objection is discussed in detail further in this report.

The circumstances of the case reflect the desire to expand the rural/agricultural potential of existing Lot 1257 by including that part of existing lot 3 located north of Little Jilliby Road.

### **State Environmental Planning Policy No 1 – Development Standards**

The aims and objectives of SEPP 1 is to provide “flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act”.

Under Clause 6 of SEPP 1, the applicant must provide a written objection indicating that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case, and must also specify the grounds of that objection.

The applicant has submitted a SEPP 1 objection requesting Council’s support to vary the standard to enable consent to be granted to the proposed boundary adjustment.

The applicant’s SEPP 1 objection is as follows:

## **2.2 DA 987/2011 - Proposed Boundary Adjustment at Little Jilliby (contd)**

---

*“The purpose is to adjust the common boundary to accommodate a more usable open space and 1(a) rural agricultural land for the existing lot 1257 as proposed in the development application and accompanying statement of environmental effects.*

*The objective of the standard is to permit boundary adjustments between two lots for necessary circumstances, given that the difference in the proposed change for area for each allotment does not exceed 10 percent. In the case of the subject land it is necessary to vary the standard in order to achieve a reasonable sized parcel of land for rural agricultural use.*

*Therefore, the boundary adjustment of the subject land will not contravene the objectives of the Local Environmental Plan. The development will have no adverse effects on the locality. Rather, the proposal will result in the orderly and economic use of the land without adverse effects on the environment. Therefore, the maintenance of the standard in this case is unnecessary.*

*The existing lots current arrangement has minimum potential for both lots to achieve rural agricultural activities. By adjusting the common boundary to add more open space and 1(a) rural agricultural land to proposed lot 31, there are good opportunities for the property to function in an orderly manner. Contrary the proposed lot 32 will now be entirely zoned 1(a) Rural Agricultural zone and will continue its existing rural residential activities. Therefore, in these circumstances, the maintenance of the standard would be unreasonable.*

*The variation of the development standard in this instance should not set an undesirable precedent elsewhere in the shire as many similar lot configurations exist throughout the Yarramalong and Dooralong Valleys.*

*Therefore the application of the 10% variation of the area for the boundary adjustment as set out in Clause 13(3)(b) of the Wyong LEP in this case is both unreasonable and unnecessary.”*

To ensure that a SEPP 1 objection is well founded and that compliance with a standard is unreasonable or unnecessary in the relevant circumstances, the following questions identified within the *Winten Property Group Ltd v North Sydney Council*, [2001] NSWLEC 46 judgment need to be addressed. These questions and the appropriate answers are as follows:

### **1. Is the planning control in question a development standard?**

Clause 13 of the Wyong LEP 1991 is a provision within an environmental planning instrument which regulates the degree of numerical change in the area of existing allotments of land affected by an adjustment of a common property boundary. It is therefore a development standard pursuant to section 4 of the Act.

### **2. What is the underlying object or purpose of the standard?**

The underlying purpose of the standard is to ensure that adjustment of a common boundary between two existing allotments does not result in a significant change to the existing configuration and size of the allotments and more particularly, that the boundary adjustment does not circumvent the minimum allotment size requirements contained within the LEP. As previously stated, it is considered the proposal by virtue of the future uses of both reconfigured parcels of land will result in allotments of substantially the same configuration and will not undermine the minimum allotment requirements applicable in the two (2) zones.

## **2.2 DA 987/2011 - Proposed Boundary Adjustment at Little Jilliby (contd)**

---

### **3. *Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?***

The proposed boundary adjustment offers a more practical approach to future land use of the properties. Existing lot 3 is dissected by Little Jilliby Road with most of its rural zoned land being on the south side of the road. The small rural (and larger conservation) zoned portion of land on the north side of the road is not readily accessible by its present owners and would be better linked with existing lot 1257 thereby promoting better land management practices.

The reduction in land area of existing lot 3 is not detrimental to the anticipated use of the land. As noted, the northern section of existing lot 3 is not easily accessed because the road acts as a physical barrier.

In terms of conservation zoned land, the boundary adjustment provides the added benefit of containing all the 7(a) zoned land within a single allotment, proposed lot 31. Single ownership will assist in preventing fragmentation through boundary fencing and facilitate simpler conservation agreements/works.

### **4. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?***

Compliance with the development standard is in fact considered unreasonable or unnecessary given the potentially better rural and conservation outcomes resulting from the proposal. There will be no significant impact on the environment as a result of the variation of the standard, and the proposal is consistent with the configuration and use of other parcels in the area. Given these circumstances it is unnecessary to require compliance with the development standard.

Furthermore, adherence to the development standards would dissolve any opportunity for promoting better use of agricultural land. The applicant wishes to expand the present rural use (horse grazing) of lot 1257 with the most obvious solution to acquire the unused portion of lot 3, north of the road. As noted elsewhere in this report, the rural practicalities of unused section of land are limited in the present ownership arrangement. Therefore adjusting the boundaries appears as the common sense approach and would enable full use of the rural land.

Existing lot 3 does not presently have any substantial agricultural land use, due in part to the physical constraints of the land (i.e., land dissection by road). As already stated, the portion of land (of lot 3) north of the road is unused while the land south of the road is open grass fields surrounding the residence and used mainly for keeping of horses as a hobby. The boundary adjustment will enhance the present landuse activities.

In this regard it is considered reasonable for Council to relax the development standards.

### **5. *Is the objection is well founded?***

It is considered that the objectives of WLEP 1991 are being met by the proposed boundary adjustment. The proposal will maintain the rural amenity of the local area by sustaining the existing landuse activities.

Non-compliance with clause 13 of WLEP 1991 does not raise any matters of significance. The SEPP 1 objection is considered to be well founded and in this instance, strict compliance with clause 13 (3)(b) of WLEP 1991 is unnecessary in the circumstances.

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

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

The change in boundaries does not prejudice the rural or residential capabilities of the existing residences or immediate ancillary outbuildings and waste disposal. The size and shape of the proposed allotments are considered reasonable to provide acceptable amenity to each dwelling.

The land is not considered to have prime agricultural capabilities in so much that it does not suit citrus or vegetable crops mainly because of the irregular size and shape. Notwithstanding, the land is suited for grazing or other cattle related rural activities and as such the change in the boundaries is unlikely to prejudice the future opportunities that the land would provide.

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

There would be no change to existing vehicle access arrangements.

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

No issues to report

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

No changes or impacts to existing utilities will occur as a result of the proposal.

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

No issues to report

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

As discussed previously in the report.

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

No issues to report

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

No issues to report

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

No issues to report

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

Although there is the presence of an EEC within the subject site adjacent to the existing watercourse, the change in boundaries would have no impact in the connectivity of vegetation communities and is assessed as having no detrimental impact on the qualities of the existing EEC.

## **2.2 DA 987/2011 - Proposed Boundary Adjustment at Little Jilliby (contd)**

---

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

The change in boundaries does not have any impact on the current on-site waste management systems. Each existing residence has appropriate measures in place that can continue to serve the dwellings.

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

No issues to report

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

No issues to report

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

The properties are identified as being affected by flooding. A dwelling and outbuildings exist on each property. The designated flood level affects proposed lot 32 (as it does the existing parcel) however access/evacuation to the road remains unchanged. The flood extends to the other side of the road but in terms of evacuation, the main consideration is that the road provides a refuge if needed.

### Bush Fire

In granting general terms of approval (GTA), NSW RFS require conditions to be included should Council grant a development consent that relate to asset protection zones and building safety measures.

It is recommended that a condition be imposed requiring certification from a qualified person that the circumstances comply with the RFS GTA's or the necessary upgrading be undertaken prior to the release of the subdivision certificate.

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

No issues to report

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

No issues to report

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

No issues to report

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

The proposal will allow for the more orderly economic use of the land.

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

N/A

## **2.2 DA 987/2011 - Proposed Boundary Adjustment at Little Jilliby (contd)**

---

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

N/A

*Any cumulative impacts.*

Nil

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

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

### **CONCLUSION**

Council's delegation extends to assuming concurrence of the DoPI for the use of SEPP 1 to permit the boundary adjustment subject of this application. The delegation issued under Circular B1 notes that Council can assume concurrence for a two lot boundary adjustment where both lots are presently below the minimum subdivision standards subject to no additional allotments being created, that the agricultural use of the land is not jeopardised and that no additional housing entitlements are created.

Accordingly, as the application satisfies each of the above mentioned criteria, Council can assume the delegation of the Director-General for the use of SEPP 1 in the circumstances. The DoPI has instructed Council's in Circular No PS 08-014 that where variations in excess of 10% to a LEP provision occurs, the application must be determined at a Council meeting rather than at staff delegation level.

In respect to the merits of the application, it is considered that the proposed adjustment to the boundary does not jeopardise the intent of the agricultural or conservation zonings. The size (or shape) of the new allotments does not place any undue pressure on their ability to sustain rural land use.

Locality Plan





**ATTACHMENTS**

- |          |                                       |           |
|----------|---------------------------------------|-----------|
| <b>1</b> | Draft Conditions of Consent           | D02905528 |
| <b>2</b> | Applicants SEPP 1 Objection           | D02905769 |
| <b>3</b> | Development Plans (A3 Size) Enclosure | D02905771 |

**Date:** 6 February 2012  
**Responsible Officer:** Mark Greer  
**Location:** 245 Little Jilliby Road, LITTLE JILLIBY NSW 2259, 262 Little Jilliby Road, LITTLE JILLIBY NSW 2259  
 Lot 1257 DP 1049672, Lot 3 DP 555826  
**Owner:** Ms I M Ghys  
**Applicant:** Everitt & Everitt Consulting Surveyors  
**Date Of Application:** 31 October 2011  
**Application No:** DA/987/2011  
**Proposed Development:** Boundary Adjustment  
**Land Area:** 209800.00  
**Existing Use:** XXXX

### PROPOSED CONDITIONS

#### Approved Plans

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

Title	Drawing No.	Revision	Date	Drawn By
Boundary Adjustment	16672 Figures 2 & 3	-	10/10/2011	Everitt & Everitt

#### Prior to Release of Subdivision Certificate:

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

- 2 An application for a Subdivision Certificate must be submitted to and approved by the Council/Certifying Authority prior to endorsement of the plan of subdivision.

#### 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.*

No conditions

## During Construction Works:

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

No conditions

## Prior to Release of Occupation Certificate:

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

### Mine Subsidence

- 3 The Mine Subsidence Board has granted its approval for this subdivision, subject to:
  - (a) the number, size and boundaries of lots being substantially as shown on the approved plan, and
  - (b) notification being made to the Board of any changes to lot numbering and of the registered DP number.

### NSW Rural Fire Service

- 4 The Bush Fire Safety Authority issued by the NSW Rural Fire Service dated 18 January 2012 includes the following conditions:
  - A minimum 25 metre AZP shall be maintained around the existing dwellings. The APZ's shall be managed as an inner protection area (IPA) as outlined within Appendices 2 and 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document "Standards for Asset Protection Zones".
  - A minimum 20 metre APZ shall be maintained around the existing studio building. The APZ's shall be managed as an inner protection area (IPA) as outlined with Appendices 2 & 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document "Standards for Asset Protection Zones".
  - The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation. To achieve this, the following conditions shall apply:
    - The property access road to the existing dwelling on proposed lot 31 shall comply with the following acceptable solutions of section 4.1.3(2) of "Planning for Bush Protection 2006";
    - The load rating for the bridge be determined and clearly indicated;

- A minimum vertical clearance of four metres to any overhanging obstructions be maintained.
- The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:
  - The existing dwellings and studio are required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes openable portion of windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.
- Certification is to be provided that the proposed boundary adjustment complies with the conditions set out in the Rural Fire Service Bush Fire Safety Authority.

## **Ongoing Operation:**

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

No conditions

**STATE ENVIRONMENTAL PLANNING POLICY No 1  
OBJECTION**

---

**Objection to development standard under the provisions of  
State Environmental Planning Policy No 1**

<b>Name and address of Objector</b>	Everitt & Everitt Consulting Surveyors No 34 – 36 Pacific Highway, Wyong 2259
<b>Property Description</b>	Lot 1257 DP 1049672 and Lot 3 DP 555826 being land at Little Jilliby Road, Jilliby
<b>Proposed Development</b>	Boundary Adjustment
<b>Development Standard to which the Objection Relates</b>	Variation of each allotment by more than 10 per cent
<b>Environmental Planning Instrument which specifies the Development Standard</b>	Wyong Local Environmental Plan 1991 – Clause 13(3)(b)
<b>Proposed Variation To the Development Standard</b>	Proposed Lot 31 at 16.96 hectares is 56% greater than the current 10.85 hectares Proposed Lot 32 at 4 hectares is 60% less than the current 10.11 hectares

**Reason for Proposed Variation**      The purpose is to adjust the common boundary to accommodate more useable open space and 1(a) Rural Agriculture land for the existing Lot 1257 D.P. 1049672 as proposed in the Development Application and accompanying Statement of Environmental Effects.

The objective of the standard is to permit boundary adjustments between two lots for necessary circumstances, given that the difference in the proposed change of area for each allotment does not exceed 10 per cent. In the case of the subject land it is necessary to vary the standard in order to achieve a reasonable sized parcel of land for rural agricultural use.

Therefore, the boundary adjustment of the subject land will not contravene the objectives of the local Environmental Plan. The development will have no adverse effects on the locality. Rather, the proposal will result in the orderly and economic use of the land without adverse effects on the environment. Therefore, the maintenance of the standard in this case is unnecessary.

The existing lots current arrangement has minimum potential for both lots to achieve rural agricultural activities. By adjusting the common boundary to add more open space and 1(a) Rural Agriculture land to the proposed lot 31, there are good opportunities for the property to function in an orderly rural manner. Contrary the smaller proposed Lot 32 will now be entirely zoned 1(a) Rural Agriculture Zone and will continue its existing rural residential activities. The proposed Lot 32 is similar in size and shape to other properties in the locality. Therefore, in these circumstances, the maintenance of the standard would be unreasonable.

The variation of the development standard in this instance should not set an undesirable precedent elsewhere in the Shire as many similar lot configurations exist throughout the Yarramalong and Dooralong Valley.

Therefore, the application of the 10 per cent variation of area for the boundary adjustment as set out in Clause 13(3)(b) of the Wyong LEP 1991 in this case is both unreasonable and unnecessary.