

Policy for Use of Council private use motor vehicle and other equipment while on leave



Wyong Shire Council

POLICY FOR

USE OF COUNCIL PRIVATE USE MOTOR VEHICLES

AND OTHER EQUIPMENT WHILE ON LEAVE

Policy No:

**Policy Author: HR Operations Manager and
Remuneration, WHS & Risk Manager**



**History of Revisions:**

Version	Date	Authority	TRIM Doc. #
1	12/8/2009	General Manager	D01999193
2			
3			

© Wyong Shire Council
Wyong Shire Council
2 Hely Street Wyong
PO Box 20 Wyong NSW 2259
P 02 4350 5555 **F** 02 4351 2098
E wsc@wyong.nsw.gov.au
W www.wyong.nsw.gov.au

A POLICY SUMMARY

- A.1 This policy establishes standards for the consistent management and use of Wyong Shire Council property, including 'private-use' fleet motor vehicles, by employees during periods of leave.

B POLICY BACKGROUND

- B.1 The Local Government State Award provides provision for motor vehicle leaseback.
B.2 This policy is informed by Wyong Shire Council's Motor Vehicle Policy and Council Property Policy.

C DEFINITIONS

- C.1 **General Manager (GM)** means the General Manager of Wyong Shire Council who is responsible for the administration of Council affairs and operations and the implementation of Council policy and strategies.
- C.2 **Award** means the Local Government (State) Award 2010 and the Local Government (Electricians) State Award and subsequent Awards that supersede that Award.
- C.3 **Permanent** means an employee engaged on a permanent basis in either a full-time, part-time or job-share capacity.
- C.4 **Temporary** means an employee appointed as defined in the Local Government Act 1993.
- C.5 **Casual** means an employee engaged on a day-to-day basis and not engaged to work regular and systematic hours.
- C.6 **Term Contract** means an employee engaged for a nominated period of time as defined in the Local Government (State) Award 2010.
- C.7 **Private use motor vehicle** means the use of a Wyong Shire Council fleet motor vehicle for non-business related activities.
- C.8 **Contribution** refers to the monetary amount payable which is applicable to the nature of the vehicle arrangement and the type of vehicle allocated.
- C.9 **Pro-rata** means a proportionate percentage of a given rate.
- C.10 **Part-time** refers to a contract of employment of not less than three days and 21 hours per week and includes job-share arrangements and reductions of hours associated with flexible work practices.
- C.11 **Unpaid Leave** means any period of leave during which the employee is not remunerated including parental leave and leave without pay.
- C.12 **Non-working days** means days which are not included within the scope of the contract of employment and for which the employee is not remunerated, including variations under flexible work practices.
- C.13 **Ad-hoc** means days worked in addition to ordinary scheduled hours of employment.
- C.14 **Authorised driver** is defined within Wyong Shire Council's Motor Vehicle Policy and Procedures.
- C.15 **Wyong Shire Council property and equipment** means all forms of property of Wyong Shire Council, including tangible property (such as tools and equipment) and intangible property (such as intellectual property).

D POLICY STATEMENTS**Jurisdiction**

- D.1 This Policy covers permanent, temporary, term contract and casual employees.
- D.2 This policy does not confer any delegated authority upon any person. All delegations to staff are issued by the General Manager.

General

- D.3 This policy should be read in conjunction with Council's Code of Conduct and with the Motor Vehicle Policy and Procedure.
- D.4 Amendment to this policy can occur at any time by the authority of the General Manager.
- D.5 It is the personal responsibility of all Wyong Shire Council employees and authorised drivers as outlined in Wyong Shire Council's Motor Vehicle Policy to have knowledge of, and to ensure compliance with this policy.
- D.6 Wyong Shire Council private use motor vehicles can be used during periods of leave with the maximum continuous leave period being 13 weeks.
- D.7 Any paid leave request in excess of 13 continuous weeks will only be considered following formal application to and approval by the General Manager. Council reserves the right to charge an additional fee for use on leave beyond 13 weeks. Unless an extension is granted, the employee is required to return the vehicle to Plant & Fleet. Council reserves the right to charge an additional fee for any approved period beyond 13 weeks.
- D.8 The employee's contribution towards the motor vehicle will apply for periods of paid leave.
- D.9 During periods of unpaid leave of greater than one week, the employee will be required to pay 100% of the cost of the motor vehicle (including the Council contribution).
- D.10 Wyong Shire Council's contribution towards the motor vehicle shall be at a pro-rata rate during periods of leave taken at half pay up to a maximum of 13 weeks.
- D.11 Where a contract of employment is for less than the equivalent of 3 standard working days per week, a private use vehicle will not be offered and no other payment will be made in lieu.
- D.12 Motor vehicles provided to an employee on a part-time arrangement of at least both three days and 21 hours per week will have the non-working days classed as unpaid leave and the employee will be required to pay 100% of the cost of the vehicle. This provision would also apply for employees who are phasing their retirement or are transitioning back to work from a period of unpaid sick leave.
- D.13 Where an employee has returned from parental leave on a temporary part-time basis and is transitioning back to full time work, Council will maintain the motor vehicle contribution for the days of which the employee works.
- D.14 Calculations to determine vehicle contribution rates will be made in accordance with the Wyong Shire Council Motor Vehicle policy and procedures.
- D.15 Where the employee elects to relinquish an allocated motor vehicle during periods of leave, all rights of access to that vehicle are surrendered and the employee will bear no further obligation for its maintenance or safe keeping.
- D.16 Relinquishing a Wyong Shire Council motor vehicle during periods of leave will not constitute termination of private use motor vehicle arrangement.
- D.17 Employees are encouraged to seek independent financial advice. Such advice is not a service or obligation of Wyong Shire Council or its employees.
- D.18 Wyong Shire Council property and equipment must be returned prior to commencing any leave period unless otherwise approved by the Service Unit Manager.

E POLICY IMPLEMENTATION - PROCEDURES

E.1 This policy shall be reviewed every five years.

Employee obligations

E.2 An employee will:

- a) where taking 13 weeks or less continuous paid leave, advise their supervisor/manager of their decision to retain the vehicle during the period of leave or whether they have elected to return the vehicle
- b) where requesting suspension of motor vehicle contributions whilst on leave, give at least three months formal notice to their Service Unit Manager
- c) continue to pay employee motor vehicle contributions where they have elected to maintain the vehicle during periods of up to 13 weeks continuous paid leave
- d) seek approval from the General Manager in writing if seeking to retain use of their vehicle beyond 13 weeks continuous paid leave
- e) where approved by the General Manager to take a vehicle for in excess of 13 continuous weeks, pay the required employee contributions plus pay Council's full cost (the Nominal Contribution) of the vehicle for the period in excess of 13 weeks
- f) where taking any leave in excess of 13 continuous weeks where the General Manager has not granted permission to retain the vehicle after the end of the 13th continuous week, return the vehicle to Wyong Shire Council's Plant, Fleet and Depot Unit at or before the end of the 13th week
- g) be eligible to claim a refund where ad-hoc days are worked (minimum 7 hours in any given week)
- h) ensure approval is sought from their Service Unit Manager to maintain Wyong Shire Council property and equipment during a leave period
- i) obtain independent financial advice regarding their personal financial circumstances

Supervisor/Manager/Director obligations

E.3 The Supervisor/Manager/Director will:

- a) in the first instance refer to all relevant HR policies for direction
- b) where less than 13 weeks continuous leave is to be taken liaise with the employee prior to commencement of leave to confirm the employees decision of whether the employee will retain or return the vehicle
- c) ensure that the employee's home Unit will incur the full contribution charge where an employee has returned a private use motor vehicle and the motor vehicle has not been re-allocated by the Plant, Fleet Depots Unit
- d) discuss with the employee prior to commencing leave, the return of Wyong Shire Council property and equipment
- e) will determine approval for an employee to maintain Wyong Shire Council property and equipment (other than the vehicle) during a leave period.

Human Resources Obligations

E.4 Human Resources will:

- a) provide strategic advice and policy direction
- b) manage motor vehicle payments during periods of leave in accordance with the Motor Vehicle Policy

- c) ensure that employee motor vehicle contributions cease where the vehicle has been returned during periods of leave

ENDS

Motor Vehicle Policy and procedure revision, 2012 - Key changes

Item number	Usage Scheme	Item description	Reason for change	Benefit to Council?	Benefit to majority of Staff?	Staff comments	# staff impacted (concerned)
1	All	Policy and procedure revised to apply to all Council mobile assets and all staff and other authorised users of those assets	Previous policy & procedure covered passenger cars and light commercials only and did not clearly detail the responsibilities of casual users	Yes	Neutral	Nil concerns raised/remaining	
2	All	All staff and other authorised users to sign Motor Vehicle procedure to ensure they understand their obligations	Previously only private users signed procedure	Yes	Neutral	Nil concerns raised/remaining	
3	All	Clear definition re excessive damage and other acts indicating lack of responsibility	Reduce level of "reasonably avoidable" cost to Council	Yes	Neutral	Nil concerns raised/remaining	
4	Commuter Use	Travel to/from home in a Council vehicle - permission will no longer be granted if the staff member elects to claim Travel Allowance as permitted under the Award. The General Manager will implement a phasing out period for affected staff which is both fair and pragmatic (reduced risk of grievance)	Council must pay Travel Allowances if claimed, however Council should not also be incurring the cost for the staff member to drive the Council vehicle home as well.	Yes	No	Potential grievance	est. 60
5	Commuter Use	Travel to/from home in a Council vehicle - a formal business case for future approvals will be required to ensure best value to Council. Travel in excess of 30km beyond the Shire boundary will require the staff member to reimburse Council the full Whole of Life cost per additional km.	Best Value to Council and meet reasonable expectations of the Community	Yes	Neutral	Nil concerns raised/remaining	
6	Private Use	Reduction in number of passenger car categories offered for Private Use in line with the actual selections made by the majority of private use staff who have had their vehicle replaced since 2009	To limit the number of vehicle categories in order to increase Council's purchasing power and limit costs of holding consumables and parts for a broad range of vehicles	Yes	Neutral	Minimal concerns	
7	Private Use & SDO	Enable those staff to select a dual cab utility (2WD only) if it best suits their personal needs	Provides staff with a choice they have never had in the past which will better meet the needs for some (benefit to Council - attract and retain better calibre staff)	Yes	Yes	Positive move	
8	Private Use & SDO	Method of determining the annual cost of each vehicle category - move from in-house calculator to NEMA Business Wise subscription calculator	Transparency. Total cost determined by both calculators is very similar, no advantage/disadvantage to staff as a result of the change	Yes	Neutral	Nil concerns raised/remaining	
9	Private Use & SDO	Permission to re-fuel car interstate at Council's cost (max \$100pw average over duration interstate)	Closer alignment with Gooford City Council, increased Attract and Retain benefit to Council	Yes	Yes	Positive move	
10	Private Use & SDO	Maximum vehicle usage "without question" set at 50,000km pa. The amount of work-related travel will be a major consideration when assessing this to ensure fairness for staff who travel significantly for their role or their vehicle has extensive pool car use. Only some 5 staff exceeding 50,000km pa at present	Best Value to Council and meet reasonable expectations of the Community	Yes	No	Concerns from a minority	5
11	Private Use & SDO	Suspension of staff contributions when on leave (eg overseas) - better defined, minimum 3 months notice and minimum 4.5 week duration	Staff contributions are determined based upon annual averages. Council permits staff to pay that amount weekly for household budgeting purposes. When vehicles returned, they are rarely able to be redeployed effectively at short notice and/or for short durations.	Yes	No	Minimal concerns	
12	Private Use & SDO	Access to vehicle whilst on paid leave - max 13 weeks continuous with General manager approval beyond. In excess of 13 weeks, staff to additionally pay Council's contribution towards the vehicle (the "Nominal Contributor")	The vehicle is primarily provided for work-related purposes. 13 weeks is a reasonable period beyond which Council would otherwise be likely to have to purchase additional vehicles to backfill.	Yes	No	Potential grievance	Potentially 10-20
13	Private Use & SDO	Private Use after hours - authorised drivers clearly defined and aligned with Care's Leave definition.	Previous lack of clarity re family members leading to frustration for staff	Yes	Yes	Positive move	
14	Private Use & SDO	Private use after hours - permission for learner permit holders to drive vehicle under supervision of allocated driver or spouse. 21-25yo family members who are holders of full licence now permitted to drive vehicle unsupervised	Not previously permitted	No	Yes	Positive move	
15	Private Use & SDO	Accessories - pre June 2009 agreement regarding tow bars and roof racks ceasing (3 years notice in theory, nearer 6 years in practice)	This scheme is inequitable in the eyes of other staff and offers poor value to Council. In reality, it is unlikely to have an impact on these staff members until beyond end 2018 and likely to be up to 8 still below "traditional retirement age" assuming still at WSC	Yes	No	Potential grievance	est. <5 potentially impacted, 25 on scheme presently
16	Private Use & SDO	Re-introduction of minimum 258 OCR points before any consideration will be given to establishing a business case for private use of a vehicle.	OCR points restriction inadvertently removed from 2009 policy update	Yes	Neutral	Nil concerns raised/remaining	
17	Private Use & SDO	WSC promotional sticker to be applied to rear window of all Private Use Council vehicles (all other vehicles are already clearly marked, typically on door sills)	Promotion of WSC	Yes	No	Concern raised by a minority	est. 15
18	RPU scheme (closed)	Restricted Private Use (RPU) not available to any further staff. Existing staff to transition to Private Usage (now being provided >3 years notice).	Staff currently on this private usage scheme can move to Private Use earlier. The change provides greater flexibility for staff & no net difference in contribution rates for ~ 10 years. Staff can request passenger car at next changeover if all aspects of role and vehicle usage can be reasonably met via the category of car requested.	Neutral	Yes (short term), No (long term)	Positive move short term, possibly adverse >10 years from now	est. <5 potentially impacted (beyond <2022) all 38 can gain immediately

Note that the documents have been changed extensively and there are numerous detailed changes that are not listed above

5.4 NSW Local Infrastructure Renewal Scheme Approved Loan Interest Subsidy - options concerning the use of resulting savings

TRIM REFERENCE: F2004/06305 - D03151309

MANAGER: Greg McDonald, Director Infrastructure Management

AUTHOR: Robert Fulcher; Manager Asset Management

SUMMARY

Council has been successful in its application to the NSW Government for a 4% loan interest rate for two projects. The successful application will result in amendments to the currently approved budget for 2012/13. This report describes options for Council to consider concerning the use of the resulting savings to the 2012/13 budget. It also asks council to approve the execution of the associated loan documents with a lending body and to affix the seal to the State Government's Funding Agreement.

RECOMMENDATION

- 1 That Council approve the following proposals in this report relating to the allocation of associated savings as a result of the success of Council's two applications under the NSW Local Infrastructure Renewal Scheme and that the Finance team process those changes in the December quarter review.**
 - a That Council meet the cost of the loan principal repayments for the Warnervale Road Project from the Section 94 reserve fund (with the Finance team managing the accounting details).**
 - b That Council meet the cost of the loan principal repayments for the Local Roads Pavement Renewal Programme from the current CAPEX budget.**
 - c That Council meet the cost of the interest repayments for both of the loan funded projects from the current debt portfolio budget.**
 - d That Council utilise some of the associated capital savings to the current budget, as a result of the loan funding, to allocate \$2M towards an accelerated CAPEX programme of backlog works of road pavement renewal in 2012/13.**
- 2 That Council authorise the General Manager to negotiate and execute the associated loan contract with a selected lending authority.**
- 3 That Council authorise the affixing of the seal to and executing the two funding agreement documents associated with successful applications under the NSW Local Infrastructure Renewal Scheme.**

BACKGROUND

At its meeting held on 22 August, Council was advised of the success of its application for a 4% loan interest rate for two projects, as described below.

1. The Warnervale Road Culvert Project that involves the reconstruction of approximately 500 metres of Warnervale Road, between Monarch Drive and Ebony Drive. The estimated cost of the project is \$3,200,000. The project is due to commence in April 2013 and be completed by November 2013. It will be completed over two financial years. The project will provide a safe, fit for purpose road, complete with a shared pathway and provision for cyclists. It will provide flood free access in the one in one hundred year event.

2. The Local Roads Pavement Renewal Program that aims to overcome the past deterioration in council's sealed road network condition. The loan is for an amount of \$3,900,000. The locations of specific road renewal projects have been identified using council's modelling software and are listed below. The work is scheduled to be carried out between November 2012 and April 2013.

- Shelly Beach Road, SHELLY BEACH
- Hillcrest Avenue, TACOMA
- Arizona Road, CHARMHAVEN
- McPherson Road, MARDI
- Bateau Bay Road, BATEAU BAY
- Cresthaven Road, BATEAU BAY
- Kullaroo Road, SUMERLAND POINT
- Gavenlock Road, TUGGERAH
- Cadonia Road, TUGGERAWONG
- Wall Road, GOROKAN
- Boronia Road, LAKE MUNMORAH
- Bass Avenue, KILLARNEY VALE
- Ourimbah Creek Road, OURIMBAH

The scheme provides a 4% loan interest rate to reduce the effective rate of interest from a commercial rate of 7.5%, with resulting cost savings.

The Government's local infrastructure renewal scheme is a key part of its Infrastructure Backlog Policy.

Council at its meeting of 22 August 2012;

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

155/12 *That Council delegate authority to the Mayor and General Manager to accept the loan offer and execute the associated contracts under the NSW Local Infrastructure Renewal Scheme for;*

a the interest rate subsidy for the Warnervale Road Culverts Project, with a total project value of \$3,200,000

b the interest rate subsidy for the Local Roads Pavement Renewal Program, with a total project value of \$5,180,000.

5.4 NSW Local Infrastructure Renewal Scheme Approved Loan Interest Subsidy - options concerning the use of resulting savings (contd)

156/12 *That Council thank the NSW Government for the NSW Local Infrastructure Renewal Scheme through the local Members of Parliament and the Minister for the Central Coast."*

Council requested a further report on options to use the resulting savings to its 2012/13 budget.

CURRENT STATUS

The total estimated cost of the Warnervale Road project is \$3.2M, which is the full amount of the subsidised loan. It will be completed over two financial years. The currently approved funds in the 2012/13 budget, of \$1,989,000 have been provided from the Section 94 reserve (\$1,769,000M) and from revenue (\$220,000). Funds of \$1,211,000 will be required in the 2013/14 financial year to complete the work. This work is actually an identified developer funded project.

The total estimated cost of the Local Roads Pavement Renewal Programme in the 2012/13 budget is \$5.18M and the loan involves a contribution of \$3.9M towards that work. The funds of \$5.18M come from revenue (\$3.9M) and Roads to Recovery grant funds (\$1.25M) in the current budget.

The success of the application means that works will now be funded from loans. The loan funding will result in savings to the current budget, which will now need to find only the associated principal and interest payments, rather than the full costs of the work in one or two years.

Based on a ten year loan period, the principal and interest payments for the first year will be:

- (a) For the \$3.2M loan for the Warnervale Road Project:
 - Annual Principal - \$267,000
 - Annual Interest - \$128,000

- (b) For the \$3.9M loan for the Pavement Renewal Project:
 - Annual Principal - \$325,000
 - Annual Interest - \$156,000

The total interest payments will involve an increase in currently planned operating annual costs. The total principal payments will replace and therefore reduce currently planned capital expenditure.

The previous report to Council identified the following two general options to form the basis of this report:

- (a) The first option is to accept the loan interest subsidy, complete the planned works and achieve savings to council's budget for 2012/13.
- (b) The second option is to use the resulting cost savings and allocate some or all of the saved funds to additional projects.

The Government's Local Infrastructure Renewal Programme is described by it as:

5.4 NSW Local Infrastructure Renewal Scheme Approved Loan Interest Subsidy - options concerning the use of resulting savings (contd)

“The Local Infrastructure Renewal Scheme (LIRS) provides the opportunity for councils to access interest subsidies for the purpose of funding legitimate infrastructure backlogs. The LIRS will provide a 4% interest subsidy to assist councils with legitimate infrastructure backlogs to cover the cost of borrowing. The subsidy aims to provide an incentive to councils to make greater use of debt funding to accelerate investment in infrastructure backlogs and augment funding options already available to councils.”

The Scheme is designed to accelerate investment in infrastructure backlogs. Council’s annual financial report for 2011/12 identifies that backlog for its roads as being \$94.3M.

The scheme identifies an opportunity for council to accelerate its backlog works without adversely affecting its current budget bottom line predictions. Any proposal to increase capital expenditure needs to be assessed against council’s liquidity position and its cap on capital expenditure.

THE PROPOSAL

It is proposed to utilise some of the resulting savings from the success of the subsidised loan application to accelerate council’s infrastructure backlog in 2012/13.

For the purpose of the costing calculations set out below, it is presumed that the associated loan will be drawn down in January 2013.

For the Warnervale Road Project, it is proposed that the cost of the loan principal repayments be met from the Section 94 reserve fund (a saving to that fund in the first year of \$1,635,000, but with a commitment to meeting the annual principal repayment costs for 10 years). The Finance team will determine the correct accounting procedure to amend the Section 94 accounts. It is proposed that the resulting capital saving of \$220,000 from revenue not be reallocated and be used in 2012/13 to improve council’s liquidity position. Finance section has advised that the additional interest payment of \$64,000 operating expense for 2012/13 can be absorbed within the current debt portfolio budget.

For the road pavement renewal work, it is proposed that the loan interest payments of \$78,000 operating expense also be met from within the current debt portfolio budget. It is proposed that \$2M of additional pavement renewal work be carried out in 2012/13 using some of the \$3,737,500 savings to the current capital budget as a result of the loan. It is proposed that the remaining capital saving of \$1,737,500 not be reallocated and be used in 2012/13 to improve council’s liquidity position.

The bottom line result of the above proposals is to manage the increase to the operating result within the current debt portfolio and to increase CAPEX in 2012/13 by \$2M, but to reduce the demand for cash from revenue in 2012/13 by \$1,957,500.

The original proposal in the currently approved budget is to complete \$7.1M worth of road works at a Net Present Value of \$7.1M. The proposal to use the loan funds and to increase the road renewal work by a further \$2M will deliver \$9.1M worth of work at a cost, in Net Present Value terms, of \$7.4M, allowing for the increased cost of depreciation (about \$100,000) of the upgraded asset and the reduced cost of maintenance of an improved road network. The investment is therefore sound.

5.4 NSW Local Infrastructure Renewal Scheme Approved Loan Interest Subsidy - options concerning the use of resulting savings (contd)

It is proposed that the \$2M of accelerated backlog work be approved for completion of the following projects in 2012/13.

Priority	Location	Cost	Justification
1	South Tacoma Road, South Tacoma	\$610,000	Accelerated deterioration
2	Bluebell Avenue, Berkeley Vale	\$150,000	Accelerated deterioration - new bus route
3	Grevillea Circuit, Berkeley Vale	\$100,000	Accelerated deterioration - new bus route
4	Thomas Mitchell Road, Killarney Vale	\$100,000	Brought forward in 4 year delivery plan
5	Playford Road, Killarney Vale	\$300,000	Brought forward in 4 year delivery plan
6	Tuggerah Parade (Blk 1), Long Jetty	\$100,000	Brought forward in 4 year delivery plan
7	Jensens Road, Wadalba	\$400,000	Accelerated deterioration
Total		\$2,000,000	

The above proposal would increase capital expenditure by \$2M above the currently approved CAPEX cap of \$89.4M. However, some other currently planned capital projects are not now currently expected to be completed in 2012/13 and it is expected that the additional \$2M expenditure will not result in the cap being exceeded. Council has the capacity to complete the additional \$2M worth of work in 2012/13.

It is estimated that the accelerated programme of \$2M of pavement renewal, when combined with the other currently approved works) will increase the average Pavement Condition Index (PCI) of council's sealed road network from 6.7 to 6.9 (Council's aim is to achieve a PCI of at least 7.0, which is equivalent to a description of "fair to good" and to keep it there).

Council has now received the Funding Agreements for the two approved projects from the Division of Local Government (a copy of one is attached). Council's authority is sought to affix the seal to the documents.

The Chief Finance Officer will manage the implementation of the Funding Agreement for the General Manager.

OPTIONS

Council could meet the loan repayment costs for the Warnervale Road Project from general revenue, rather than from Section 94 funds, but this option would adversely affect the net operating result and unjustifiably relieve the section 94 funds from their obligation to meet developer funded works. This option is not favoured.

Council could agree not to approve the proposed \$2M accelerated programme of backlog works on pavement renewal. This option would improve council's liquidity position, but would not be in the spirit of the Government's Local Infrastructure Renewal Scheme to accelerate backlog works.

5.4 NSW Local Infrastructure Renewal Scheme Approved Loan Interest Subsidy - options concerning the use of resulting savings (contd)

The recommended proposal is a sound balance between using the savings from the low interest loan scheme both to improve council's financial position and still to work to overcome the infrastructure backlog.

STRATEGIC LINKS

Wyong Shire Council Strategic/ Annual Plan

<i>Principal Activity</i>	<i>Service</i>	<i>Key Action and Objectives</i>	<i>Funding Source and Description</i>	<i>Impact on Key Performance Indicators/ Service Performance Indicators</i>
8	Roads	Managing and delivering the 2012-13 capital works program and providing quality roads infrastructure to support a growing population.	Grants, revenue and loans.	Deliver at least 80% of the capital works budget.
12	Administration – Asset Management	Ensure sustainability and fiscal responsibility. Achieve proposals within the Asset Management Strategy associated with the asset sustainability ratio, giving high priority to asset renewals and improving the pavement condition index from the 2010 average of 4.5 to a new target of 7.		Pavement condition index and asset sustainability ratio.

Contribution of Proposal to the Principal Activity

Long term Financial Strategy

The proposal is directly aligned with the Long-term Financial Strategy of achieving an average asset sustainability ratio of 100%.

Asset Management Strategy

The proposal directly aligns with council's asset management strategy of giving priority to asset renewal and upgrades and achieving a sustainable asset portfolio.

Workforce Management Strategy

Link to Community Strategic Plan (2030)

5.4 NSW Local Infrastructure Renewal Scheme Approved Loan Interest Subsidy - options concerning the use of resulting savings (contd)

The project is linked to strategic plan priority objective number 2 involving “on-going upgrading of roads”.

Budget Impact

The bottom line result of the above proposals is to make no change to the operating result and to increase CAPEX in 2012/13 by \$2M, but to reduce the demand for cash in 2012/13 by \$1,957,500.

Council's previous decision to accept the low interest loan offer has committed it to the future loan principal and interest repayments of \$876,000 annually.

CONSULTATION

This report was prepared in consultation with the Manager Roads and Stormwater and the Chief Financial Officer

GOVERNANCE AND POLICY IMPLICATIONS

MATERIAL RISKS AND ISSUES

CONCLUSION

This report presents a recommendation that is a sound balance between using the savings from the low interest loan scheme both to improve council's financial position and still to work to overcome the infrastructure backlog.

It proposes that the loan principal repayments for the Warnervale road project be met from Section 94 funds. It proposes that the loan principal repayments for the Pavement Renewal Program work form part of the CAPEX programme.

It proposes \$2M worth of additional pavement renewal work be included in an accelerated programme of work to be added to the 2012/13 CAPEX programme.

ATTACHMENTS

- 1 Local Infrastrucutre Renewal Scheme, Round 1, Funding Agreement D03165131



Premier & Cabinet
Division of Local Government

5 O'Keefe Avenue NOWRA NSW 2541
Locked Bag 3015 NOWRA NSW 2541

Our Reference A294000
Your Reference
Contact: Daniela Heubusch
Phone 02 4428 4133

Mr Michael Whittaker
General Manager
Wyong Shire Council
PO Box 20
WYONG NSW 2259

Dear Mr *Michael* Whittaker

Thank you for your application for a 4% interest subsidy under the NSW Government's Local Infrastructure Renewal Scheme (LIRS) for Warnervale Road Culverts with a total project value of \$3,200,000.

As you will be aware, your project was approved subject to a satisfactory financial assessment of the council by the NSW Treasury Corporation (TCorp). TCorp has now completed its financial assessment and has supported the provision of the interest subsidy for the above project. Attached to this letter you will find a signed LIRS funding agreement.

Should you wish to accept this offer, please sign the funding agreement, scan it and upload the electronic version to the secure LIRS website by following the LIRS link on www.dlg.nsw.gov.au. Uploads will be accepted between 1 and 30 November 2012.

The original signed agreement must be mailed to the DLG LIRS Manager, 5 O'Keefe Avenue, NOWRA NSW 2541. Funding agreements need to be returned to the DLG by 30 November 2012.

LIRS subsidy claims for reimbursements of the 4% interest subsidy payments on the loan will be paid by DLG on a 6-monthly basis in June and November each year. Payment will be made subject to the receipt of the required documentation as per the funding agreement. A reminder notice to submit claims will be sent in May and October each year.

Should you have any questions in relation to the LIRS please contact Mrs Daniela Heubusch, Coordinator Infrastructure on 4428 4133.

You may also be interested to know that applications for round two of the scheme are now open. Please check the website for further information.

Thank you again for your commitment to investing in vital local infrastructure.

Yours sincerely

Ross Woodward 16/10/12

Ross Woodward
Chief Executive, Local Government
A Division of the Department of Premier and Cabinet

T 02 4428 4100 F 02 4428 4159 TTY 02 4428 4209
E dlg@dlg.nsw.gov.au W www.dlg.nsw.gov.au ABN 95 587 883 155



PREMIER AND CABINET
Division of Local Government

**Local Infrastructure Renewal Scheme ("LIRS")
Funding Agreement for:
Warnervale Road Culverts**

Between

Wyong Shire Council

and

**The Chief Executive, Division of Local Government,
Department of Premier and Cabinet, for and on behalf
of the Crown in right of the State of NSW**

Between:

1. **Wyong Shire Council as described in Attachment A (Council); and**
2. **The Chief Executive, Division of Local Government, Department of Premier and Cabinet, for and on behalf of the Crown in right of the State of New South Wales ("LIRS Administrator") ABN 34 945 244 274, Levels 1 and 2.5 O'Keefe Avenue, Nowra NSW 2541 (LIRS Administrator)**

Background

The Local Infrastructure Renewal Scheme ("LIRS") has been established by the NSW Government to provide interest subsidies in order to encourage local councils found to have legitimate infrastructure backlogs to borrow in order to meet those backlogs.

The Council has submitted an application to the LIRS Administrator for an interest subsidy under the LIRS. The documents that comprise this application are identified in Attachment A.

The LIRS Administrator has approved the Council's application for an interest subsidy on the terms of this Agreement.

The parties agree:**1 Definitions and interpretation****1.1 Definitions**

Agreement means this LIRS funding agreement including the Attachments and any documents incorporated in this agreement by reference.

Application means Council's application to the LIRS Administrator for an interest subsidy under the LIRS, the documents composing which form part of this Agreement and are referenced in Attachment A.

Approved Purpose means the approved purpose for the LIRS Subsidy as described in Attachment A.

Authorisation includes:

- (a) any consent, registration, filing, agreement, notification, certificate, licence, approval, permit, authority or exemption from by or with a governmental agency; or
- (b) any consent or authorisation regarded as given by a governmental agency due to the expiration of the period specified by a statute within which the governmental agency should have acted if it wished to proscribe or limit anything already lodged, registered or notified under that statute;

Business Day means for all other purposes, a day on which banks are open for business in Sydney excluding a Saturday, Sunday or public holiday.

Coordinator Infrastructure means the officer of DLG described as such in Attachment A or his/her delegate.

DLG means Division of Local Government, Department of Premier and Cabinet.

Dollars, A\$ and \$ means the lawful currency of the Commonwealth of Australia.

Event of Default means any event specified as such in this Agreement.

Final Acquittal means a final acquittal of the LIRS Subsidy that meets the requirements for such listed in Attachment C.

Final Report means a final report for the Project that meets the requirements for such as listed in Attachment C.

GST means the goods and services tax levied under *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* or any successor Act.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999*, or if that Act does not exist for any reason, means any Act imposing or relating to a GST and any regulation made under such Acts.

Lender means the third party provider of the Loan to Council, the interest payments in respect of which are to be subsidised by the LIRS Subsidy under this Agreement.

LIRS means the Local Infrastructure Renewal Scheme.

LIRS Administrator means the Chief Executive of the DLG or his/her delegate for and on behalf of the Crown in right of the State of New South Wales.

LIRS Subsidy means the amount described as such in Attachment A.

LIRS Subsidy Instalment Claim means a claim by Council to the LIRS Administrator for payment of an instalment of the LIRS Subsidy, in the prescribed form of Attachment B.

LIRS Subsidy Instalment Period means the six month period immediately prior to a LIRS Subsidy Instalment Claim in respect of which Council claims an instalment of the LIRS Subsidy.

Loan means the loan to be taken out by Council to fund the Project.

Loan Agreement means the executed loan agreement between Council and its third party lender in respect of the Loan, a copy of which is to be provided by Council to the LIRS Administrator in accordance with this Agreement.

Penultimate Lender Term Sheet means the proposed term sheet last submitted by Council to the LIRS Administrator before execution of this Agreement, which forms part of this Agreement and is referenced in Attachment A.

Progress Report means a progress report that meets the requirements for such as listed in Attachment C.

Project means Council's infrastructure project as described in the Application, in relation to which it seeks the LIRS Subsidy.

Project Commencement means:

- (a) Council has completed all pre-construction engineering and design, has received all necessary licences and permits, has engaged all contractors and ordered all equipment and supplies reasonably necessary so that physical construction of the Project may begin; and

(b) physical construction of the Project has begun.

Project Completion means the Project is complete except for unknown defects and includes the issue of all regulatory certificates required for the occupation and use of the infrastructure that comprises the Project.

Special Conditions means any additional conditions applicable to this Agreement, set out in Attachment A.

Tax means:

(a) any tax, including the GST, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or

(b) any income, stamp or transaction duty, tax or charge,

which is assessed, levied, imposed or collected by any governmental agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above.

Tax Invoice means an invoice that complies with the requirements for a tax invoice under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Term means the term of this Agreement as described in Attachment A.

1.2 Interpretation

In this Agreement, headings and boldings are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

(a) words importing the singular include the plural and vice versa;

(b) words importing a gender include any gender;

(c) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;

(d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;

(e) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this clause 1.2(e) implies that performance of part of an obligation constitutes performance of the obligation;

(f) a reference to a clause, party, attachment, or schedule is a reference to a clause of, and a party, attachment and schedule to, this Agreement and a reference to this Agreement includes any attachment and schedule;

(g) a reference to a document includes all amendments or supplements to or replacements or novations of, that document;

(h) a reference to a party to any document includes that party's successors and permitted assigns;

(i) a reference to liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.

- (j) a reference to legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;

1.3 Business Day

Unless otherwise specified in this Agreement, where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day.

2 Term

Unless earlier terminated in accordance with its terms, this Agreement is for the Term.

3 General obligations of Council

3.1 Loan Agreement

- (a) Council must use best endeavours to execute a Loan Agreement for the total amount of borrowing stated in, and otherwise substantially in the terms of, the Penultimate Lender Term Sheet (or otherwise on such varied terms as are first approved by the LIRS Administrator)
- (b) The Loan must be for a maximum term of 10 years from the date of commencement of this Agreement.
- (c) The LIRS Administrator or the State of New South Wales is not liable for, and does not guarantee, any part of Council's obligations under or in relation to the Loan Agreement.

3.2 Use of Loan

- (a) Subject to this clause, Council must only use the Loan (including any interest earned on the Loan) to fund the Project.
- (b) Council must not apply the Loan towards costs of administration, travel, licensing, salaries or other activities or recurrent costs that are the responsibility of Council. However, a maximum of 10% of the Loan may be spent on specialist advice or design and permit costs (eg, engineering or planning) in relation to the Project.

3.3 Conduct of Project

- (a) Subject to this clause, unless otherwise agreed, Council must achieve Project Commencement within 12 months of execution of this Agreement.
- (b) If Council is unable to achieve Project Commencement within 12 months of execution of this Agreement, Council must, at least five (5) Business Days before the expiry of that period, notify the LIRS Administrator of that fact and provide documentation to:
 - (i) demonstrate due cause for the delay;
 - (ii) provide evidence that Council is taking specific measures to remedy the delay and details of such measures; and

- (iii) submit an amended detailed project delivery schedule to the satisfaction of the LIRS Administrator.
 - (c) Any agreed extension by the LIRS Administrator of the period to achieve Project Commencement will be for a maximum further period of 6 months.
 - (c) In no case will a Council be permitted to delay Project Commencement for longer than 18 months after execution of this Agreement.
 - (d) Unless otherwise agreed, Council must carry out the Project substantially in accordance with its Application, including the projected Project delivery schedule described therein.
 - (e) Council must promptly advise the LIRS Administrator of any significant change (including any delay that exceeds three (3) months) in the projected Project delivery schedule as supplied with its Application.
- 3.4 Compliance with law**
- (a) Council must comply with all legislative and regulatory requirements that may apply in relation to the Project, including obtaining all necessary approvals, licences and permissions.
 - (b) Council must comply with any applicable NSW Government policy requirements in relation to the Project, including DLG Circular to Councils 10/34.
- 3.5 Use of LIRS Subsidy for Approved Purpose**
- Council must use the LIRS Subsidy only for the Approved Purpose.
- 3.6 Monitoring of Agreement**
- (a) Council acknowledges that the LIRS Administrator may maintain regular contact with Council to monitor the performance of this Agreement, the Loan Agreement and the Project and agrees to co-operate with the LIRS Administrator in the performance of this role.
 - (b) The LIRS Administrator may at any time request information from Council in connection with this Agreement, the Loan Agreement or the Project and Council must supply any such information promptly upon request.
- 3.7 Reports**
- (a) Council must prepare and submit to the LIRS Administrator
 - (1) Progress Reports at the times stated and otherwise in accordance with the requirements specified in Attachment C;
 - (2) A Final Report at the time stated and otherwise in accordance with the requirements specified in Attachment C;
 - (3) A Final Acquittal at the time stated and otherwise in accordance with the requirements specified in Attachment C;
 - (4) If requested, copies of any published reports, promotional material, media publicity pamphlets or other documentation relevant to the Project; and
 - (5) Any other written reports as may be reasonably required by the LIRS Administrator from time to time by written notice to Council.

3.8 Independent verification of LIRS financial outcomes in any given application round

Council must promptly, at its own cost, provide all assistance and information reasonably required by the LIRS Administrator or its auditor for the purpose of enabling the LIRS Administrator to compile and have audited an aggregate statement of expenditure which pertains to aggregate financial outcomes for all Councils funded in any one LIRS round of applications.

3.9 Records

- (a) Council must ensure that all legally required financial and operational records and registers (including all reports generated under this Agreement) are kept and maintained while carrying out the Project.
- (b) Council must retain the records, registers and reports referred to throughout the Term and for seven (7) years after the expiry or termination, of this Agreement.

3.10 Inspection

Council agrees that the LIRS Administrator may visit the site of the Project at any reasonable time, upon giving Council reasonable notice.

3.11 Audit

- (a) An audit of any aspect of the Project or Council's compliance with this Agreement, may be conducted at any time by the LIRS Administrator.
- (b) Council must co-operate fully with an audit, including:
 - (i) Granting the person conducting the audit reasonable access to the site of the Project, Council's premises, Council's records and materials relevant to the Project and the performance of this Agreement;
 - (ii) Permitting the person conducting the audit to inspect and make copies of Council's records and all materials relevant to the Project and the performance of this Agreement;
 - (iii) Making available on request, at no additional cost to the person conducting the audit, reasonable facilities to enable a legible reproduction to be created of Council's records and materials stored on a medium other than in writing;
 - (iv) The LIRS Administrator must give Council reasonable notice of its requirements in relation to an audit and use its reasonable endeavours to minimise disruption and interference to Council's performance of its obligation under this Agreement arising from an audit;
 - (v) Except where otherwise determined by the LIRS Administrator, Council is responsible for its own costs of participating in an audit.
 - (vi) Council must promptly take any reasonable action required by the LIRS Administrator to rectify any error, non-compliance or inaccuracy identified in an audit in relation to the Project or Council's performance of this Agreement;
 - (vii) Council is not entitled to any delay costs or other costs or expenses of whatever nature relating in any way to an audit.

3.12 Promotion of LIRS and communication of outcomes

- (a) Council is encouraged to acknowledge support from the NSW Local Infrastructure Renewal Scheme in promotional materials or any public statements about the Project.
- (a) Council agrees to publicly communicate the outcomes of the Project.
- (b) Council authorises the LIRS Administrator and the State of New South Wales to use information Council supplies to the LIRS Administrator in its Application or pursuant to this Agreement for promotional purposes, including:
 - (1) Council's Name;
 - (2) the aggregate amount of the Loan, Project cost and LIRS Subsidy;
 - (3) the title and description of the Project;
 - (4) any photographs of the Project supplied by Council.
 subject to any confidentiality restriction which has been requested by Council and agreed to by the LIRS Administrator.

4 LIRS Subsidy

4.1 Amount

- (a) The LIRS Subsidy is the maximum amount of funding available under this Agreement and will not be increased for any reason.
- (b) Subject to paragraph (a), each instalment of the LIRS Subsidy the subject of a LIRS Subsidy Instalment Claim is to be calculated as an amount that represents:
 - (i) subject to subparagraph (ii), an amount equivalent to the interest that would be payable under the Loan Agreement during the applicable LIRS Subsidy Instalment Period if calculated at an assumed rate of interest of 4% (which amount, in the event of any dispute between the parties, is to be finally determined by the LIRS Administrator); or
 - (ii) if the interest paid by Council under the Loan Agreement during the applicable LIRS Subsidy Instalment Period is charged at a rate of less than 4%, the interest paid by Council during that period.

4.2 When paid

- (a) Subject to this Agreement, the LIRS Administrator Lender agrees to pay the LIRS Subsidy to Council in six monthly instalments, called for in May and October and paid in June and November each year following receipt of the required documentation and invoice, until the total LIRS Subsidy is paid or until the date that falls ten (10) years from the date of commencement of this Agreement, whichever is sooner.
- (b) Subject to this Agreement, the LIRS Administrator will pay the first instalment of the LIRS Subsidy to Council at the above-stated intervals, within 30 days of receipt of the following from Council:
 - (i) A LIRS Subsidy Instalment Claim for the first LIRS Subsidy Instalment Period.

- (ii) a Tax Invoice for the instalment of LIRS Subsidy claimed.
- (i) Evidence satisfactory to the LIRS Administrator that Council has obtained all relevant approvals in relation to the incurring of the Loan and entry into the Loan Agreement.
- (iv) A copy of the Loan Agreement, duly executed by both parties.
- (v) A copy of the final lender term sheet for the Loan, certified by the Lender and signed by a duly authorised Council officer, which includes at a minimum the following information:
 - (A) the amount of the Loan.
 - (B) the start and end dates of the Loan.
 - (C) the annual interest rate on the Loan.
 - (D) the frequency of interest and principal repayments by Council.
 - (E) type of loan and method of repayment (eg, credit foncier loan; fixed rate or variable rate; whether loan will be repaid in equal instalments of principal and interest, whether loan will entail a bullet repayment of outstanding principal at end of maturity or whether principal repayments will be spread over life of the loan).
 - (F) security provided by Council for the Loan.
 - (G) events of default and recourse of the Lender and Council (such as termination payments) should such events occur.
- (v) The latest available estimates of the cost of the Project and sources of financing.
- (v) Bank statements for the first LIRS Subsidy Instalment Period evidencing all interest paid by Council on the Loan during that period.
- (v) A Progress Report for the first LIRS Subsidy Instalment Period.
- (ix) Any other information reasonably required by the LIRS Administrator.
- (c) Subject to this Agreement, the LIRS Administrator will pay each subsequent instalment of the LIRS Subsidy to Council within 30 days of receipt of the following from Council:
 - (i) A LIRS Subsidy instalment Claim for the applicable LIRS Subsidy Instalment Period.
 - (ii) a Tax Invoice for the instalment of LIRS Subsidy claimed.
 - (iii) Bank statements for the applicable LIRS Subsidy Instalment Period evidencing all interest paid by Council on the Loan during that period.
 - (iv) A Progress Report (or Final Report, if applicable) for the applicable LIRS Subsidy Instalment Period.
 - (v) Any other information reasonably required by the LIRS Administrator.

4.3 Prepayment of interest on Loan

- (a) Unless otherwise agreed by the LIRS Administrator, prepayment of interest by Council on its Loan will not entitle it to make an early LIRS Subsidy Instalment Claim.

- (b) Any variation to the times for payment of instalments of the LIRS Subsidy as stated in this clause is at the sole discretion of the LIRS Administrator.

5 Representations and warranties

5.1 Representations and warranties

Council represents and warrants that:

- (a) **registration:** it is a local council established under *Local Government Act 1993 (NSW)*;
- (b) **authority:** it has full power and authority to enter into and perform its obligations under this Agreement;
- (c) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms;
- (d) **binding obligations:** this Agreement constitutes its legal valid and binding obligations;
- (e) **other sources of funding:**
 - (1) as at the date of this Agreement, Council has disclosed to the LIRS Administrator all other sources of funding from third parties for the Project;
 - (2) if Council secures additional sources of funding for the Project after the date of this Agreement, it will notify this in writing to the LIRS Administrator.

6 Events of Default

6.1 Notices to the LIRS Administrator

Council must give notice to the LIRS Administrator as soon as it becomes aware of any Event of Default occurring.

6.2 Events of Default

It is an Event of Default if, whether or not it is within the control of Council:

- (a) **Loan Agreement substantially differs from Penultimate Lender Term Sheet:** The Loan Agreement is for a loan amount other than that stated in, or otherwise substantially different in its terms from those advised in, the Penultimate Lender Term Sheet and that variation has not been approved by the LIRS Administrator;
- (b) **LIRS Subsidy not used for Approved Purpose:** Council does not use the LIRS Subsidy for the Approved Purpose;
- (c) **Project does not commence by due date:** Council fails to achieve Project Commencement by the due date specified in this Agreement or by any extended date otherwise agreed in accordance with this Agreement;
- (d) **Major Project delay:** The Project, or any major milestone in the Project, is delayed for a period in excess of three (3) years beyond the date for Project Completion or for achievement of the relevant Project milestone, as stated in the Project delivery schedule provided with the Application.

- (e) **Default under Loan Agreement:** Council fails to pay when due any amount due under the Loan Agreement or otherwise defaults under the Loan Agreement.
- (f) **Default under other loan agreement:** Council fails to pay when due any amount due under another loan agreement entered into by Council to fund the Project or otherwise defaults under any such loan agreement.
- (g) **Termination of other LIRS funding agreement in respect of joint Project:** another LIRS funding agreement in place in respect of the Project (if the Project is jointly conducted with another council that receives an interest subsidy under such agreement for the Project); is terminated for default by the council that is party to that agreement.
- (h) **Non-remediable breach of Agreement:** Council fails to perform or observe any other undertaking or obligation in this Agreement and that failure is not, in the opinion of the LIRS Administrator, capable of remedy;
- (i) **Failure to fix remediable breach of Agreement:** Council fails to perform or observe any other obligation in this Agreement and that failure is, in the opinion of the LIRS Administrator, capable of remedy but Council does not remedy the failure within the period specified after receipt by Council of a notice from the LIRS Administrator specifying the failure and requiring its remedy within the period specified in the notice;
- (j) **Authorisations:** Council fails to obtain any Authorisation necessary to enable Council to comply with its obligations under this Agreement or any such Authorisation ceases to be in full force and effect;
- (k) **Misrepresentation:** any warranty, representation or statement by Council is or becomes false, misleading or incorrect when made or regarded as made by Council under this Agreement;
- (l) **Insolvency:** Council becomes insolvent;
- (m) **Project no longer viable:** The LIRS Administrator is satisfied, acting reasonably, that the Project is no longer viable.

6.3 Consequences of Event of Default

- (a) Upon the occurrence of an Event of Default the LIRS Administrator may, at its sole discretion, by written notice to Council:
 - (i) suspend this Agreement, including payments of the LIRS Subsidy, until the default giving rise to the suspension is resolved to the satisfaction of the LIRS Administrator or the LIRS Administrator elects to terminate this Agreement, whichever occurs sooner; or
 - (ii) terminate this Agreement.
- (b) To avoid doubt, the exercise by the LIRS Administrator of any right to suspend this Agreement is without prejudice to the LIRS Administrator's right to terminate this Agreement in accordance with its terms.

6.4 Consequences of Termination

- (a) If this Agreement is terminated on either of the following grounds, Council must repay the amount of the LIRS Subsidy that has been paid to it prior to termination:

- (i) Termination for failure by Council to achieve Project Commencement by the due date specified in this Agreement or by any extended date otherwise agreed in accordance with this Agreement.
- (ii) Termination for failure by Council to use the LIRS Subsidy for the Approved Purpose, where that failure was not caused by a reason beyond Council's control.

7 Indemnity

- (a) Council indemnifies the Crown in right of the State of New South Wales, including the LIRS Administrator and its officers, employees and agents (those indemnified), against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which those indemnified pay, suffer, incur or are liable for, in respect of any of the following:
 - (i) the occurrence of any Event of Default,
 - (ii) the LIRS Administrator exercising its powers consequent upon or arising out of the occurrence of any Event of Default.
- (b) Any amount payable to those indemnified under this indemnity is payable on demand.
- (c) The indemnities contained in this Agreement are continuing obligations of Council separate and independent from the other obligations of Council and survive the termination of this Agreement.
- (d) It is not necessary for those indemnified to incur or make payment before enforcing a right of indemnity conferred by this Agreement.

8 Insurance

- (a) Council must (at its expense) during the continuance of this Agreement and for a period of three (3) years after its expiration or termination, take out and maintain with a reputable insurance company the following insurance policies:
 - (i) broad form public liability insurance (that includes public liability and product liability insurance) in the amount not less than \$20 million dollars in respect of each and every occurrence and unlimited in the aggregate,
 - (ii) workers' compensation insurance in accordance with applicable legislation in respect of the employees of Council; and
 - (iii) if applicable, a professional liability policy of insurance in the amount not less than \$10 million dollars.
- (b) Council must, on request, produce satisfactory evidence to the LIRS Administrator that the insurance requirements of this clause have been effected and are current.

9 GST

- (a) The LIRS Subsidy is inclusive of GST.

- (b) If GST applies to any supplies made by Council under this Agreement, Council acknowledges and agrees that the LIRS Subsidy will not be increased by the amount of Council's GST liability.
- (c) If GST applies to the LIRS Subsidy, the amount of that subsidy will be reduced by the amount of the LIRS Administrator's GST liability.
- (d) Subject to this clause, Council warrants that at the time any supply is made under this Agreement on which GST is imposed, that Council is or will be registered under the GST Law.
- (e) Subject to this clause, any invoice rendered by Council in connection with a supply under this Agreement which seeks to recover an amount of GST payable must conform to the requirements for a tax invoice (as that term is defined in the GST Law).

10 General

10.1 Coordinator Infrastructure

- (a) Subject to paragraph (b), the LIRS Administrator may authorise the Coordinator Infrastructure to perform any of the LIRS Administrator's functions under this Agreement.
- (b) The Coordinator Infrastructure is not authorised to agree variations to this Agreement that relate to the amount of the LIRS Subsidy or events of default.

10.2 Assignment by Council

Council must not transfer or assign any of its rights or obligations under this Agreement without the prior written consent of the LIRS Administrator.

10.3 Assignment by LIRS Administrator

The LIRS Administrator may at any time assign any of its rights or transfer by novation any of its rights and obligations under this Agreement to any other NSW government agency without consent of Council.

10.4 Notices

- (a) Any notice or other communication between the parties under this Agreement must be addressed to the recipient party at the address stated for that party in Attachment A, unless otherwise specified by notice in writing from the recipient party.
- (b) Any notice or other communication under this Agreement:
 - (i) where Council is the sender, must be signed by a duly authorised officer of Council;
 - (ii) is regarded as being given by the sender and received by the addressee:
 - (A) if by delivery in person, when delivered to the addressee;
 - (B) if by post, on delivery to the address; or
 - (C) if by facsimile transmission, whether or not legibly received, when received by the addressee.

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day and

- (ii) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (c) In this clause, a reference to an addressee includes a reference to an addressee's officers, agents or employees or any person reasonably believed by the sender to be an officer, agent, or employee of the addressee.

10.5 Governing law and jurisdiction

This Agreement is governed by the laws in force in the State of New South Wales and each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in the State of New South Wales, and the courts of appeal from those courts.

10.6 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this Agreement or any power which is prohibited by any law is ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable does not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

10.7 Waivers

- (a) Waiver of any right arising from a breach of this Agreement or of any power arising upon default under this Agreement or upon the occurrence of an Event of Default must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of
 - (1) a right arising from a breach of this Agreement or the occurrence of an Event of Default; or
 - (2) a power created or arising upon default under this Agreement or upon the occurrence of an Event of Default,
 does not result in a waiver of that right or power.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right or power arising from a breach of this Agreement or on a default under this Agreement or on the occurrence of an Event of Default as constituting a waiver of that right or power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or power by that other party.
- (e) This clause may not itself be waived except by writing.

10.8 Dispute Resolution

The parties agree that any dispute arising under this Agreement will be dealt with as follows:

- (a) A party claiming that a dispute has arisen must give written notice of the dispute to the other party;
- (b) The parties will seek to resolve the dispute;
- (c) If the dispute is unresolved within a fourteen (14) day period (or within such further period as the parties agree in writing) then the dispute will be referred to the Australian Commercial Dispute Centre (ACDC) for mediation;
- (d) The mediation is to be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved;
- (e) If the dispute isn't settled within 28 days (or such longer period as agreed to in writing between the parties) after appointment of the mediator, or if no mediator is appointed within 28 days of the referral of the dispute to mediation, the parties may pursue any other procedure available at law for resolution of the dispute;
- (f) The parties must continue performing their obligations under this Agreement while the dispute is being resolved, to the extent practicable to do so;
- (g) A party must attempt to settle any dispute in relation to this Agreement in accordance with this clause (Dispute Resolution) before resorting to court proceedings or other dispute resolution process;
- (h) Nothing in this clause (Dispute Resolution) prevents either party from seeking interlocutory relief or the LIRS Administrator exercising its rights to suspend or terminate this Agreement.

10.9 Relationship

- (a) Nothing in this Agreement is intended to create a partnership, joint venture or agency relationship between the parties.
- (b) All work performed by Council and all contracts made by Council to secure the Loan and to carry out the Project must be performed and made by Council as principal and not as agent for the LIRS Administrator. In all dealings in relation to the Project and the Loan Agreement Council must act solely on Council's own account.

10.10 Variation

A variation of any term of this Agreement must be in writing and signed by the parties.

10.11 Taxes, duties and charges

Other than as specified in this Agreement, taxes, duties and charges imposed or levied in connection with this Agreement will be borne by Council.

10.12 Counterparts

- (a) This Agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Agreement by signing any counterpart.

10.13 Survival

Any clause of this Agreement that by its nature should survive termination or expiry of this Agreement shall survive such termination or expiry including without limitation, the following

- (a) clause 3 (General obligations of Co.r.c.);
- (b) clause 5 (Representations and warranties);
- (c) clause 6.4 (Consequences of Termination);
- (d) clause 7 (indemnity); and
- (e) clause 8 (Insurance).

Executed as an agreement:

Signed by
Ross Woodward, Chief Executive of the
Division of Local Government, Department of
Premier and Cabinet, for and on behalf of the
Crown in right of the State of New South Wales
on (date)

in the presence of:

[Signature]
Signature of witness

[Name]
Name of witness (please print)

[Signature] 16/10/12
Signature of Ross Woodward

The Common Seal of the **Wyong Shire**
Council was affixed in our presence
on (date)
in pursuance of a resolution of the Council
authorizing the seal to be affixed passed on (date)

Mayor/Councillor

Name of signatory (please print)

General Manager/Councillor

Name of signatory (please print)

Attachment A: Agreement Details

LIRS Administrator	Ross Woodward
Postal Address:	Locked Bag 3015, NSW 2541
Attention:	Daniela Heubusch
Facsimile:	(02) 4428 4199
Coordinator Infrastructure	Daniela Heubusch
Telephone:	02 4428 4133
Email:	daniela.heubusch@dlg.nsw.gov.au
Council:	Wyong Shire Council
Postal Address:	PO Box 20, WYONG NSW 2259
Attention:	
Email:	
Term	Commencement date: _____ Date of last execution of this Agreement by both parties
Application:	Expiry date: _____ The date of expiry of the Loan Agreement. Council's application for the LIRS Subsidy, including: a) all documents submitted by Council in support of its application; b) any DLG requests for clarification of the application, and c) any responses by Council to such requests. Submitted (as a Council document) to DLG before 18 July 2012 and identified by DLG by the following Project ID number and Project Name: Project ID Number: LRS1 - 12/0227 Project Name: Warnervale Road Culverts (In the event of a dispute, the LIRS Administrator shall finally determine the documents that comprise the Application.)
Total LIRS Subsidy (upper limit over the term of the loan):	\$726,827 (GST inclusive)
Approved Purpose:	The off-setting of Council's interest costs on the Loan for the project named above.
Penultimate Lender Term Sheet:	The lender term sheet last submitted by Council before execution of this Agreement, which forms the basis for calculation of the LIRS Subsidy and which is identified by DLG under the above Project ID Number. (Again, in the event of dispute, the LIRS Administrator shall finally determine the document identified as the Penultimate Lender Term Sheet.)
Special Conditions:	Nil

Attachment B: Form of 6-monthly LIRS Subsidy Instalment Claim

To: The Coordinator Infrastructure, Division of Local Government

Dear Sir/Madam

LIRS Funding Agreement dated [insert date] ("the Agreement")

Council gives notice pursuant to clause 4 of the Agreement that Council wishes to claim an instalment of the LIRS Subsidy

The instalment of the LIRS Subsidy now claimed is: [identify if first, second, third etc instalment as well as whether it is the June or November claim for xxxx year]

The total amount of the LIRS Subsidy claimed to date (inclusive of this claim) is:	[insert amount]
Amount for this claim is:	[insert amount]

Council confirms that:

- (a) all Loan payments have been made in accordance with the Loan Agreement to the date of this claim.
- (b) this claim is accompanied by the supporting documentation required by clause 4 of the Agreement.

Terms defined in the Agreement have the same meaning when used in this LIRS Subsidy Instalment Claim.

Signed for and on behalf of
[insert name of Council] Council
By its General Manager

.....
Signature of General Manager

.....
Name of General Manager (please print)

.....
Date

Attachment C: Reports

Attachment C: Reports		
Progress report	<p>Each Progress Report to be signed by Council's General Manager and to include the following:</p> <ol style="list-style-type: none"> 1. Project identification details. Council name: Project ID Number Total Project cost: Total value of Loan: Total LIRS LIRS Subsidy 2. Project status. [One paragraph summary] 3. Tickbox: On Track;/or Delays/Major Delays (3 months plus)/Minor Change in Scope/Major Change in Scope/Completed [NB. Above categories are to be measured referable to the Project scope and timetable advised with Council's Application.] 4. If Major Delays/Major Change in Scope, give reasons and outline potential impact on timing and payments of LIRS Subsidy 5. Project expenditure to date: (\$) 6. Project construction to date (%) 7. Comments 8. Completed Website Report including photos in the form required at Attachment D for publication on the DLG website 9. Any further information requested by LIRS Administrator <p>Each Progress Report to be accompanied by:</p> <ol style="list-style-type: none"> 1. Bank statements showing relevant Loan repayments made to date (principal and/or interest) 2. Certification by General Manager that expenditure of LIRS Subsidy by Council to date is for the Approved Purpose and that expenditure of the Loan by Council to date is for the purpose of the Project 3. A LIRS Subsidy Instalment Claim Form 	<p>Each progress report to be submitted to the LIRS Administrator with each claim for an instalment of the LIRS Subsidy commencing with the claim for the 2nd instalment, for the term of the Agreement.</p>
Final report	<p>Final report to be signed by Council's General Manager and to include the following:</p>	<p>A final report to be submitted to the</p>

201201517 02012/383456

	<ol style="list-style-type: none"> 1. Satisfactory evidence of Project Completion. 2. Completed Website Report in the form required at Attachment D for publication on the D.I.G website 3. Commencement date of operation of the infrastructure/asset 4. Any further information requested by LIRS Administrator <p>Final Report to be accompanied by:</p> <ol style="list-style-type: none"> 1. Bank statements showing relevant Loan repayments made to date (principal and/or interest) 2. Certification by General Manager that expenditure of LIRS Subsidy by Council to date is for the Approved Purpose and that expenditure of the Loan by Council to date is for the purpose of the Project. 	LIRS Administrator within 10 Business Days of Project Completion.
Final acquittal	<p>Final acquittal of LIRS Subsidy being:</p> <ol style="list-style-type: none"> 1. A Final Statement of Expenditure that includes: <ol style="list-style-type: none"> a) the total amount spent on the Project; b) the total amount of borrowing incurred in respect of the Project; c) the total interest expense paid by Council, and d) the total amount of the LIRS Subsidy received by Council. 2. An acquittal certificate signed by the General Manager, the responsible accounting officer and an independent auditor that: <ol style="list-style-type: none"> a) The auditor has audited the Final Statement of Expenditure and confirms that it is in accordance with the relevant proper accounts and records. b) The LIRS Subsidy has been expended for the Approved Purpose. c) The Loan has been expended for the purpose of the Project. d) All Loan payments have been made by Council in accordance with the Loan Agreement and the Loan is fully discharged e) Project Completion has been reached. 	A final acquittal to be submitted to the LIRS Administrator within 10 Business Days of the final Loan repayment.

Attachment D: Website report: prescribed format

PROJECT SUMMARY REPORT

PROJECT NO XX - SAMPLE COUNCIL - SAMPLE PROJECT

Total Project Cost: \$ X,000,000 Loan
subsidised by LIRS: \$ X,000,000

Commencement date: DD/MM/JJJ Estimated completion date: DD/MM/JJJ

Description of Project:

XX
XX
XX
XX

Status:

XX
XX
XX
XX



Progress Photo 1 showing xxxxxx

Progress Photo 2 showing xxxxxx

Report updated: xxxxxx

Council Contact: John Sample - Director of Engineering - 02 xxxx xxxx

For further information about this NSW Government Initiative contact Daniela Heubusch.
Coordinator Infrastructure Ph 02 4428 4133

5.5 2011/12 Annual Report

TRIM REFERENCE: F2011/02801 - D03178450
MANAGER: Stephen Naven, Chief Financial Officer
AUTHOR: Kathleen Morris; Manager Integrated Planning

SUMMARY

Presentation of Council's 2011/12 Annual Report, including Audited Financial Statement and State of Environment Report. Presentation of Council's Outcomes Report 2008-12 against the Community Strategic Plan.

RECOMMENDATION

- 1 That Council adopt the 2011/12 Annual Report (including enclosures).**
- 2 That Council publish a copy of the 2011/12 Annual Report (including enclosures) on Council's website.**
- 3 That Council advise the Minister for Local Government of Council's URL link to access the report.**
- 4 That Council receive the 2008-12 Outcomes Report against the Community Strategic Plan.**

BACKGROUND

Under Section 428 of the Local Government Act 1993, Council is required to prepare an annual report within five months of the end of the financial year (that is, by 30 November). As a Group 3 Council under Integrated Planning & Reporting Guidelines, the report must be prepared against previous legislative arrangements (DLG Circular 12-06). The report must contain:

- A copy of Council's adopted and signed-off Audited Financial Statements
- Performance targets and achievements set out against its Management Plan (now Wyong Shire Council Strategic Plan) for that year
- A report as to the State of Environment
- Other information as prescribed by the Act and Regulations.

Council's 2011/12 Annual Report is attached and incorporates:

- Audited Financial Statements
- State of Environment Report

The State of Environment (SoE) Report provides the community with a comprehensive analysis of the Shire's environment and initiatives that have been implemented over the course of the year to protect, revitalise, and maintain our land, air, water, biodiversity, waste, noise, and cultural heritage.

The Annual Report has been prepared around the theme of Council *“Taking Shape”*. It is based on the quadruple bottom line and focuses on how we have transformed or “taken shape” over the last year. The report is presented in five sections:

- 1 – Introduction
- 2 – Principal Activity Performance
- 3 – Statutory Information
- 4 – Audited Financial Statements
- 5 – Shaping Our Environment Report

In accordance with the legislation, a copy of Council’s Annual Report and enclosures will be posted on Council’s website and the Local Government Minister advised of the appropriate URL link to access the report after adoption by Council.

In addition, Council is provided with a copy of an Outcomes Report for the period 2008-12. As a Group 3 Council there was no requirement to prepare an End of Term report in 2012 however, staff prepared a high level overview of achievements against the Community Strategic Plan to provide information for the plan’s review during 2012/13. It should be noted that in 2016 an End of Term report will be a legislated requirement for Council.

CURRENT STATUS

Council’s 2011/12 Annual Report has been prepared in accordance with the Local Government Act 1993, incorporating Council’s Audited Financial Statements and State of Environment Report. The Report requires Council adoption and to be posted on Council’s website, with the URL link sent to the Local Government Minister by 30 November.

THE PROPOSAL

This report seeks adoption of Council’s 2011/12 Annual Report and receipt of the Outcomes Report for 2008-12 against the Community Strategic Plan.

STRATEGIC LINKS

Wyong Shire Council Strategic/ Annual Plan

The 2011/12 Annual Report forms part of the reporting mechanism under the Integrated Planning Framework. It is a report on how Council has performed against the key actions, objectives and indicators as determined in the 2011-15 Wyong Shire Council Strategic Plan, and is reported against each of Council’s twelve Principal Activities.

Budget Impact

The production of the Annual Report has been provided for in the Integrated Planning Service Unit’s operating budget.

CONSULTATION

All departments were involved in the preparation of this report.

GOVERNANCE AND POLICY IMPLICATIONS

This document complies with legislative requirements for the Annual Report, Audited Financial Statements and the State of Environment.

CONCLUSION

The 2011/12 Annual Report has been developed to provide staff, Councillors and the community with a summary of the works completed by Council during the year. The report has been formulated to comply with Section 428 of the Local Government Act 1993 and provides an insight into Council's operations and decision making processes.

ATTACHMENTS

- | | | |
|---|--|-----------|
| 1 | 2011/12 Annual Report (including Audited Financial Statements, State of the Environment Report) (distributed under separate cover) | Enclosure |
| 2 | 2008-12 Outcome Report against the Community Strategic Plan (distributed under separate cover) | Enclosure |

5.6 Voluntary Planning Agreements - Capped Contributions

TRIM REFERENCE: F2004/00552 - D03178820

MANAGER: Martin Johnson, Manager Land Use Planning and Policy Development

AUTHOR: Sharron Colquhoun; Contributions Officer

SUMMARY

The report outlines two draft Voluntary Planning Agreements (VPA's) relating to the payment of Section 94 Contributions for two subdivision developments in Wadalba.

RECOMMENDATION

That Council delegate to the General Manager the authority to endorse the two draft VPA's lodged with Development Applications 671/2012 and 695/2012 respectively.

BACKGROUND

Two voluntary planning agreements (VPAs) have been submitted to Council accompanying separate development applications for subdivisions in Wadalba.

The purpose of the VPAs is to allow a lower level of Section 94 contributions to be paid than is currently required under Contributions Plan 7A for the Warnervale Area and the Shire Wide Contributions Plan. Development in the Warnervale area was the subject of a \$34,682 Ministerial Cap that has since been removed. This contributions cap was based on the preparation of the Draft "Woongarra, Hamlyn Terrace & Wadalba Development Contributions Plan 2009.

Notwithstanding the removal of the Ministerial Cap, Council has settled Land & Environment Court (LEC) Appeals and endorsed a previous VPA on the basis of this Cap.

While the contributions that would apply to both developments is approximately \$42,000 per lot in total under the current contributions plans, it is clear that this level of contribution can no longer be justified having regard to the decline in land values and other changes to the works schedule involved in the Contributions Plan.

A further review of the Warnervale Contributions Plan and the Draft "Woongarra, Hamlyn Terrace & Wadalba Development Contributions Plan 2009 is currently being undertaken that supports the proposed contribution levels in the VPAs.

DETAILS

The proposed voluntary planning agreements (VPA) relate to development applications as follows:

- a) DA/671/2012 for a subdivision of Lot 202 DP 1173518 Pacific Highway Wadalba into 4 residential allotments, and;

- b) DA/695/2012 for a subdivision of Lot 1409 DP 1165185 Salamander Road Wadalba into 12 residential allotments

As indicated, the proposed VPA's provide that the development contributions payable under the development applications will be paid at \$34,681.11 per lot.

The VPAs are based on a standard template that has been endorsed by Council's General Counsel.

CONSULTATION

The Draft VPA's were publicly exhibited for 28 days between 24th October 2012 and 21st November 2012. No submissions were received at the time this report was being finalised. Any submission received subsequently will be reported to Council at the meeting.

CONCLUSION

It is recommended that Council adopt the draft VPA's subject to there being no significant issues raised during the exhibition period.

ATTACHMENTS

- | | | |
|---|---|-----------|
| 1 | Draft Voluntary Planning Agreements - Shevket | D03183537 |
| 2 | Draft Voluntary Planning Agreement - Thorne | D03183538 |

VOLUNTARY PLANNING AGREEMENT

WYONG SHIRE COUNCIL

AND

YIALKIN SHEVKET AND OZEL SHEVKET

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PLANNING AGREEMENT

DATE

PARTIES

Wyong Shire Council (ABN 47 054 613 735) of Council Chambers, Hely Street Wyong in the State of New South Wales ("**Council**")

and

Yialkin Shevket and Ozel Shevket of 150 Johns Road Wyong in the State of New South Wales ("**the Developer**")

BACKGROUND

The Developer and Council have agreed that the Developer will pay Monetary Contributions, in accordance with this Agreement, in substitution of Monetary Contributions required under Section 94 Contributions Plan No. 7A - Drainage, Water Quality, Open Space, Community Facilities and Roads -Warnervale District - dated September 2005; and Section 94 Contributions Plan No. 11 – Shire Wide Infrastructure, Services and Facilities – dated July 2007.

OPERATIVE PROVISIONS

1. PLANNING AGREEMENT UNDER THE ACT

The parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2. APPLICATION OF THIS AGREEMENT

This Agreement applies to the Consent.

3. OPERATION OF THIS AGREEMENT

3.1 Subject to clause 3.2, this Agreement takes effect once executed by all parties.

3.2 This Agreement identifies the arrangements with regards to the payment of monetary contributions by the Developer to Council towards the provision of off-site infrastructure and facilities in respect to the Consent.

3.3 This Agreement does not exclude the operation of s.94 of the Act.

4. DEFINITIONS AND INTERPRETATION

4.1. In this Agreement the following definitions apply:

Additional Corridor Land means land identified for purchase under the 2005 multi-party Agreement between Wyong Shire Council and land owners in the Wadalba area that provides for the protection of high value conservation lands as environmental offsets that permits the clearing of other land with environmental values in the Wadalba area

Act means the Environmental Planning and Assessment Act 1979 (NSW).

Consent means the conditional consent to development application DA/695/2012

Council means Wyong Shire Council or its representatives or assigns.

CPI-A means, for the purposes of clause 5.4 of this Agreement, the most recent Consumer Price Index (All Groups and weighted average for all 8 cities) published by the Australian Bureau of Statistics at the time of this Agreement

CPI-B means, for the purposes of clause 5.4 of this Agreement, the most recent Consumer Price Index (All Groups and weighted average for all 8 cities) published by the Australian Bureau of Statistics at the time a developer contribution is paid to Council

Current Development Contributions Plan means Section 94 Contributions Plan No. 7A – Drainage, Water Quality, Open Space, Community Facilities and Roads - Warnervale District – dated September 2005.

Developer means Yialkin Shevket and Ozel Shevket

Future Development Contributions Plan means any Section 94 Contributions Plan subsequently adopted to replace and supercede the Current Contributions Plan referred to above

Land means Lot 1409 in Deposited Plan 1165185 Salamander Road Wadalba

Monetary Contributions means the monetary contributions specified at clause 5 of this Agreement.

Parties means the Council and the Developer, including both their successors and assigns.

Party means a party to this Agreement including its successors and assigns.

5. PAYMENT OF THE MONETARY CONTRIBUTIONS

- 5.1. The Parties agree that the maximum aggregate developer contributions that Council will seek to recover from the Developer pursuant to the development Consent (with the exception of 5.6) will be:

Amount to be paid = \$34,682.11 x 12 x (CPI-A/CPI-B)

- 5.2. The Developer agrees to pay the Monetary Contributions to Council in the amount specified in accordance with clause 5.1 (for each stage), and prior to issue of the Subdivision Certificate in respect of that stage as authorised by the development Consent.
- 5.3. The Developer agrees, that if the development Consent lapses, is surrendered, or superceded, monetary contributions applied under any new development application or consent will be calculated in accordance with the Development Contributions Plan adopted at the date development consent is granted.
- 5.4. . The Developer agrees that where Monetary Contributions have been paid under this Agreement and a Future Development Contributions Plan has been adopted after the time of payment, the Developer agrees those Monetary Contributions paid will not be revised or refunded, even if the Future Contributions Plan allows or permits a lesser contribution per lot..
- 5.5. Council agrees that, where there are any unpaid Monetary Contributions under this Agreement, and a Future Development Contributions Plan is adopted that causes the total aggregate contributions required by that plan and any other applicable adopted contributions plans to be a lesser contribution per lot than is required under this agreement, then the developer is permitted to pay the lower amount.
- 5.6. The Developer agrees to pay the Monetary Contributions of \$67,960.75 towards the purchase of additional corridor land prior to the release of the first subdivision certificate. This payment is in addition to and separate from the other monies required to be paid under this agreement and is not subject to indexation or staging.

6. DEVELOPER WARRANTIES AND INDEMNITIES

- 6.1. The Developer warrants to Council that:
- (a) It is able to fully comply with their obligations under this Agreement;
 - (b) It has full capacity to enter into this Agreement; and
 - (c) There is no legal impediment to it entering into this Agreement, or performing its obligations under this Agreement

- 6.2. The Developer guarantees to Council the due and punctual payment of all moneys due and payable or from time to time due and payable to Council by the Developer pursuant to or in connection with this agreement.
- 6.3. The Developer agrees that Council is not required to proceed against the Developer or exhaust any remedies it may have in relation to the Developer or enforce any security it may hold with respect to the Developer's obligations but is entitled to demand and receive payment when any payment is due under this Agreement.

7. REVIEW OF THIS AGREEMENT

Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of Section 93G of the Act.

8. DISPUTE RESOLUTION

- 8.1. If a dispute arises out of or relates to this Agreement (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of this Agreement or as to any claim in tort, in equity or pursuant to any statute) (**Dispute**), any court or arbitration proceedings shall not be commenced by or against Council, the Developers or their successors or assigns, relating to the Dispute unless the parties to the Dispute (**Parties**) have complied with this clause, except where a party seeks urgent interlocutory relief.
- 8.2. A party claiming that a Dispute has arisen under or in relation to this Agreement is to give written notice to the other parties to the Dispute, specifying the nature of the Dispute.
 - (i) The Parties agree to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and to take action to have the Dispute mediated within 7 working days of the receipt of written notice of the Dispute.
 - (ii) The Parties agree that the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.
 - (iii) The Parties to the mediation will be jointly responsible for the fees of the mediation and each party shall bear its own costs.
 - (iv) The Parties may, but are not required, to enter into a written agreement before mediating a Dispute.
 - (ii)

- (v) If any procedural aspects are not specified sufficiently in the rules under Clause 13.1, the Parties agree to conduct the mediation regarding those aspects in accordance with the determination of the mediator whose decision regarding those aspects is final and binding on the Parties.
- (vi) A legal representative acting for either of the Parties may participate in the mediation.
- 8.3. From the time when a notice of Dispute is served, neither party shall take action to terminate this Agreement, until after the conclusion of the mediation.
- 8.4. Should mediation fail to resolve any dispute then the dispute shall be determined by arbitration pursuant to the Commercial Arbitration Act 1984 and the General Manager of the Council shall request the President for the time being of The Law Society of New South Wales to appoint an arbitrator to carry out such arbitration in accordance with the provisions of such Act.
- 8.5. Despite clauses 8.1, 8.2, 8.3 and 8.4, either Council or one or more of the Developers may institute court proceedings to seek urgent equitable relief in relation to a dispute or difference arising out of or in connection with this Agreement.

9. COSTS

The Developer agrees to pay or reimburse the costs of Council in connection with the:

- (a) Negotiation, preparation and execution of this planning agreement, to a maximum of \$5,000
- (b) Advertising and exhibiting this planning agreement in accordance with the Act, to a maximum of \$215, and
- (c) Registration of this planning agreement

within 7 working days after receipt of a tax invoice from Council

1.

10. NOTICES

10.1. Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out in (b) below.
- (b) Faxed or emailed to that Party at the relevant details set out below.

- (i) Council: Wyong Shire Council
Attention: General Manager
Address: DX 7306 WYONG
Fax No: (02) 4350 2098

Email: wsc@wyong.nsw.gov.au

- (ii) Developer: Yialkin Shevket and Ozel Shevket
Address: 150 Johns Road
WYONG NSW 2259
Email c/- mxenergy@bigpond.net.au

10.2. If a party gives the other party 3 working days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.

10.3. Any notice, consent, information, application or request is to be treated or given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 working days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

10.4. If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if it is on a business day, after 5.00pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

11. ENTIRE AGREEMENT

This Agreement contains everything to which the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party before this Agreement was executed, except as permitted by law.

12. FURTHER ACTS

1. Each Party agrees to promptly execute all documents and do all such things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

13. GOVERNING LAW AND JURISDICTION

2. This Agreement is governed by the law of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal from them. The parties will not object to the exercise of jurisdiction by those Courts on any basis provided that the dispute resolution provisions in clause 8 of this Agreement have first been satisfied.

14. NO FETTER

3. Nothing in this Agreement is to be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

15. SEVERABILITY

4. If a clause or part of a clause in this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of the Agreement is not affected.

16. WAIVER

5. The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

EXECUTED as a Voluntary Planning Agreement

Date:

The Common Seal of WYONG SHIRE COUNCIL was hereunto affixed on the day of _____ 20 _____ pursuant to a resolution of the Council made on the day of _____ 20 _____ :

General Manager

Mayor

Executed for and on behalf of Yialkin Shevket and Ozel Shevket in accordance with section 127(1) of the Corporations Act:

Director/Secretary [if not Sole Director]

Director/Sole Director

Name [BLOCK LETTERS]

Name [BLOCK LETTERS]

VOLUNTARY PLANNING AGREEMENT

WYONG SHIRE COUNCIL

AND

STEPHEN THORNE & ASSOCIATES PTY LIMITED

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PLANNING AGREEMENT

DATE

PARTIES

Wyong Shire Council of Council Chambers, Hely Street Wyong in the State of New South Wales ("**Council**")

and

Stephen Thorne & Associates Pty Limited

("the Developer")

BACKGROUND

The Developer and Council have agreed that the Developer will pay Monetary Contributions, in accordance with this Agreement, in substitution of Monetary Contributions required under Section 94 Contributions Plan No. 7A - Drainage, Water Quality, Open Space, Community Facilities and Roads -Warnervale District - dated September 2005; and Section 94 Contributions Plan No. 11 – Shire Wide Infrastructure, Services and Facilities – dated July 2007.

OPERATIVE PROVISIONS

1. PLANNING AGREEMENT UNDER THE ACT

The parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2. APPLICATION OF THIS AGREEMENT

This Agreement applies to the Consent.

3. OPERATION OF THIS AGREEMENT

3.1 Subject to clause 3.2, this Agreement takes effect once executed by all parties.

3.2 This Agreement identifies the arrangements with regards to the payment of monetary contributions by the Developer to Council towards the provision of off-site infrastructure and facilities in respect to the Consent.

3.3 This Agreement does not exclude the operation of s.94 of the Act.

1.

4. DEFINITIONS AND INTERPRETATION

4.1. In this Agreement the following definitions apply:

Act means the Environmental Planning and Assessment Act 1979 (NSW).

Consent means the conditional consent to development application DA/671/2012

Council means Wyong Shire Council or its representatives or assigns.

CPI-A means, for the purposes of clause 5.4 of this Agreement, the most recent Consumer Price Index (All Groups and weighted average for all 8 cities) published by the Australian Bureau of Statistics at the time of this Agreement

CPI-B means, for the purposes of clause 5.4 of this Agreement, the most recent Consumer Price Index (All Groups and weighted average for all 8 cities) published by the Australian Bureau of Statistics at the time a developer contribution is paid to Council

Current Development Contributions Plan means Section 94 Contributions Plan No. 7A – Drainage, Water Quality, Open Space, Community Facilities and Roads - Warnervale District – dated September 2005.

Developer means Stephen Thorne & Associates Pty Ltd (ABN 51 057 514 860)

Future Development Contributions Plan means any Section 94 Contributions Plan subsequently adopted to replace and supercede the Current Contributions Plan referred to above

Land means Lot 202 DP 1173518 Pacific Highway, Wadalba

Monetary Contributions means the monetary contributions specified at clause 5 of this Agreement.

Parties means the Council and the Developer, including both their successors and assigns.

Party means a party to this Agreement including its successors and assigns.

5. PAYMENT OF THE MONETARY CONTRIBUTIONS

- 5.1. The Parties agree that the maximum aggregate developer contributions that Council will seek to recover from the Developer pursuant the development Consent will be:

Amount to be paid = \$34,682.11 x 4 x (CPI-A/CPI-B)

- 5.2. The Developer agrees to pay the Monetary Contributions to Council in the amount specified in accordance with clause 5.1 (for each stage), and prior to issue of the Subdivision Certificate in respect of that stage as authorised by the development Consent.
- 5.3. The Developer agrees, that if the development Consent lapses, is surrendered, or superceded, monetary contributions applied under any new development application or consent will be calculated in accordance with the Development Contributions Plan adopted at the date development consent is granted.
- 5.4. . The Developer agrees that where Monetary Contributions have been paid under this Agreement and a Future Development Contributions Plan has been adopted after the time of payment, the Developer agrees those Monetary Contributions paid will not be revised or refunded, even if the Future Contributions Plan allows or permits a lesser contribution per lot..
- 5.5. Council agrees that, where there are any unpaid Monetary Contributions under this Agreement, and a Future Development Contributions Plan is adopted that causes the total aggregate contributions required by that plan and any other applicable adopted contributions plans to be a lesser contribution per lot than is required under this agreement, then the developer is permitted to pay the lower amount.

6. DEVELOPER WARRANTIES AND INDEMNITIES

- 6.1. The Developer warrants to Council that:
- (a) It is able to fully comply with their obligations under this Agreement;
 - (b) It has full capacity to enter into this Agreement; and
 - (c) There is no legal impediment to it entering into this Agreement, or performing its obligations under this Agreement

- 6.2. The Developer guarantees to Council the due and punctual payment of all moneys due and payable or from time to time due and payable to Council by the Developer pursuant to or in connection with this agreement.
- 6.3. The Developer agrees that Council is not required to proceed against the Developer or exhaust any remedies it may have in relation to the Developer or enforce any security it may hold with respect to the Developer's obligations but is entitled to demand and receive payment when any payment is due under this Agreement.

7. REVIEW OF THIS AGREEMENT

Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of Section 93G of the Act.

8. DISPUTE RESOLUTION

- 8.1. If a dispute arises out of or relates to this Agreement (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of this Agreement or as to any claim in tort, in equity or pursuant to any statute) (**Dispute**), any court or arbitration proceedings shall not be commenced by or against Council, the Developers or their successors or assigns, relating to the Dispute unless the parties to the Dispute (**Parties**) have complied with this clause, except where a party seeks urgent interlocutory relief.
- 8.2. A party claiming that a Dispute has arisen under or in relation to this Agreement is to give written notice to the other parties to the Dispute, specifying the nature of the Dispute.
- (i) The Parties agree to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and to take action to have the Dispute mediated within 7 working days of the receipt of written notice of the Dispute.
- (ii) The Parties agree that the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.
- (iii) The Parties to the mediation will be jointly responsible for the fees of the mediation and each party shall bear its own costs.
- (iv) The Parties may, but are not required, to enter into a written agreement before mediating a Dispute.
- (v) If any procedural aspects are not specified sufficiently in the rules under Clause 13.1, the Parties agree to conduct the mediation regarding those aspects in accordance with the determination of the mediator whose decision regarding those aspects is final and binding on the Parties.
- (vi) A legal representative acting for either of the Parties may participate in the mediation.

- 8.3. From the time when a notice of Dispute is served, neither party shall take action to terminate this Agreement, until after the conclusion of the mediation.
- 8.4. Should mediation fail to resolve any dispute then the dispute shall be determined by arbitration pursuant to the Commercial Arbitration Act 1984 and the General Manager of the Council shall request the President for the time being of The Law Society of New South Wales to appoint an arbitrator to carry out such arbitration in accordance with the provisions of such Act.
- 8.5. Despite clauses 8.1, 8.2, 8.3 and 8.4, either Council or one or more of the Developers may institute court proceedings to seek urgent equitable relief in relation to a dispute or difference arising out of or in connection with this Agreement.

9. COSTS

The Developer agrees to pay or reimburse the costs of Council in connection with the:

- (a) Negotiation, preparation and execution of this planning agreement, to a maximum of \$5,000
- (b) Advertising and exhibiting this planning agreement in accordance with the Act, to a maximum of \$215, and
- (c) Registration of this planning agreement

within 7 working days after receipt of a tax invoice from Council

10. NOTICES

- 10.1. Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- (a) Delivered or posted to that Party at its address set out in (b) below.
 - (b) Faxed or emailed to that Party at the relevant details set out below.
 - (i) Council: Wyong Shire Council
Attention: General Manager
Address: DX 7306 WYONG
Fax No: (02) 4350 2098
Email: wsc@wyong.nsw.gov.au
 - (ii) Developer: Stephen Thorne & Associates Pty Limited
Attention: Stephen Thorne
Address: PO Box 1315 Gosford NSW 2250
Fax No: 02 4324 2226
Email: stsurvey@bigpond.net.au
- 10.2. If a party gives the other party 3 working days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.
- 10.3. Any notice, consent, information, application or request is to be treated or given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 working days after it is posted.
 - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 10.4. If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if it is on a business day, after 5.00pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

11. ENTIRE AGREEMENT

This Agreement contains everything to which the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or