



The children at one Little Coast Kids childcare centre are enjoying their new look playground. The Treelands centre in Wyong now gives the children the choice of physical activities or quiet space. Works include a new surface, a retaining wall and incorporate artwork from Little Coast Kids Vacation Care.

# Business Paper

ORDINARY COUNCIL MEETING

27 June 2012



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# MEETING NOTICE

The **ORDINARY COUNCIL MEETING**  
of **Wyong Shire Council**  
will be held in the **Council Chamber,**  
**Wyong Civic Centre, Hely Street, Wyong on**  
**WEDNESDAY 27 JUNE 2012 at 5.00 pm,**  
for the transaction of the business listed below:

## OPENING PRAYER

## ACKNOWLEDGEMENT OF COUNTRY

## RECEIPT OF APOLOGIES

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

Michael Whittaker  
**GENERAL MANAGER**

## 1.1 Disclosures of Interest

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TRIM REFERENCE: F2012/00026 - D03035250

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Sonia Witt; TL Governance and Councillor Services

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

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

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

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

### RECOMMENDATION

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

## 1.2 Proposed Inspections and Briefings

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TRIM REFERENCE: F2012/00026 - D03035261

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Sonia Witt; TL Governance and Councillor Services

### SUMMARY

There were no proposed inspections for July 2012 due to school holidays.

Briefings proposed for 27 June 2012 and future meetings to be held in the Wilfred Barrett and Tim Farrell Committee Rooms:

Date	Briefing	Description	Time	Presented by
27 June 2012	Iconic Site No 5	Lakeside Plaza	TBA	Manager Place Management and Asset Planner Place Management
27 June 2012	Tuggerah Town Centre Masterplan	Tuggerah Town Centre Masterplan	TBA	Manager Place Management and Lynda Howson
27 June 2012	GM performance review objective setting 2012/2013	GM performance review objective setting 2012/2013	TBA	Manager Human Resources and General Manager
27 June 2012	CCWC/JSB (confidential)	CCWC/JSB (confidential)	TBA	General Manager
27 June 2012	Grants	Grants	TBA	Community and Recreation Staff

### RECOMMENDATION

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

1 Proposed Briefing Schedule - 27 June 2012      D03041129

Proposed Quarter	PROPOSED DATE	Briefing Title	Director
2nd qtr	27 June 2012	Iconic Site No 5 – Lakeside Plaza	Environment and Planning Services
2nd qtr	27 June 2012	Tuggerah Town Centre Masterplan	Environment and Planning Services
2nd qtr	27 June 2012	GM performance review objective setting 2012/2013	Corporate Services/GM unit
2nd qtr	27th June	CCWC/JSB (confidential)	GM UNIT
2nd qtr	27th June	Grants	Community & Recreation Services
2nd Qtr		Bushfire Works Plan	Environment and Planning Services
2nd qtr	25 July 2012	Porters Creek Floodplain Risk Management Plan	Infrastructure Management
2nd qtr	25 July 2012	Service Standard Review Pt II-results of the Community Consultation	Community & Recreation Services
3rd qtr	after DJ returns from leave 2nd July	Section 94 model including credits	Corporate Services/Environment and Planning Services
3rd qtr	4 or 11 July	Customer Service Charter	Community & Recreation Services
3rd qtr	July	Precinct 7A Masterplan - Feedback following exhibition	Environment and Planning Services
2nd qtr	11 July 2012	Transfer of vegetation control from Roads & Stormwater to Open Space	Community & Recreation Services
3rd qtr	July 25th tbc	Chinese Cultural Village theme park Councillor	Corporate Services
3rd qtr	end of July	Norah Head Boat ramp Part 2	Community & Recreation Services
3rd qtr	8 Aug	Affordable Housing Study - Pre exhibition	Environment and Planning Services
3rd qtr	8th aug	Plan of management central coast caravan parks	Community & Recreation Services
3rd qtr	August	Progress on the Community Strategic Plan (SSV)	Corporate Services
3rd qtr	Sept	Precincts	Community & Recreation Services
4th qtr	New Councillors	Urban Design Principles & Concepts	Environment and Planning Services
4th qtr	October	Full introduction CCWC for the new Council	Corporate Services/
4th qtr	Oct/Nov	Tuggerah Lakes Floodplain Risk management Study and Plan	Infrastructure Management

Proposed Quarter	PROPOSED DATE	Briefing Title	Director
4th qtr	Oct	GM's quarterly expense report	GM unit
3rd qtr	oct	RZ/7/2009 Chittaway Point Rezoning	Environment and Planning Services
4th qtr	Nov	mid year performance review	Corporate Services
4th qtr	End of Dec	Norah Head Boat ramp Part 3	Community & Recreation Services
2nd Qtr		Iconic Development Site No 11 - Council Carpark, Coles, Senior Citizens & Toukley Town Centre	Environment and Planning Services
2nd Qtr		Iconic Development Site No 16 - 216-222 Main Road & Rowland Terrace, Toukley	Environment and Planning Services
2nd Qtr		Iconic Development Site No 13 - Former Shell Service Station, Council carpark & adjoining sites, Main Road, Yaralla Street and Beachcomber Parade, Toukley	Environment and Planning Services
3rd qtr		Central Coast Taxis	Infrastructure Management
2nd Qtr		Natural Resources Strategy	Environment and Planning Services
3rd qtr		Provide update of plans and financial viability of The Art House and Cultural Development	Community & Recreation Services
3rd qtr		Comprehensive LEP after exhibition	Environment and Planning Services
3rd qtr		Draft Shire-Wide Contributions Plan	Environment and Planning Services
3rd qtr		Iconic development site No 14 - beach parade Canton Beach	Environment and Planning Services
3rd qtr		Toukley Town Centre Masterplan	Environment and Planning Services
3rd qtr		Industrial Land and employment Lands study - Post exhibition	Environment and Planning Services
3rd qtr		Nth Wyong Industrial Precinct - Pre exhibition	Environment and Planning Services
3rd qtr		Frank Balance Park Design	Environment and Planning Services
4th qtr		Wyong Employment Zone - results of DCP and S94 Contributions Plan/Biocertification update, DCP amendment update	Environment and Planning Services
		Sea Level Rise Notification & 149 Certificate	General Counsel/Environment and Planning Services



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

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TRIM REFERENCE: F2012/00026 - D03035269

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Sonia Witt; TL Governance and Councillor Services

#### **SUMMARY**

Confirmation of minutes of the previous Ordinary Meeting of Council held on 13 June 2012.

#### **RECOMMENDATION**

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

#### **ATTACHMENTS**

- |   |  |           |
|---|--|-----------|
| 1 | MINUTES - Ordinary Meeting - 13 June 2012  | D03036604 |
| 2 | MINUTES - Confidential Session - 13 June 2012 (Distributed under separate cover) (D03037409) - |           |

WYONG SHIRE COUNCIL

MINUTES OF THE  
**ORDINARY COUNCIL MEETING OF COUNCIL**  
HELD IN THE COUNCIL CHAMBER  
WYONG CIVIC CENTRE, HELY STREET, WYONG  
ON 13 JUNE 2012  
COMMENCING AT 5:00 PM

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**PRESENT**

Councillors R L Graham (Chairperson), G P Best (arrived at 5.02 pm), D J Eaton, L A Matthews, E M McBride (arrived at 5.44 pm), J J McNamara, W R Symington, D P Vincent, L D Webster and S A Wynn.

**IN ATTENDANCE**

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

Executive Manager to the General Manager, Manager Place Management, Asset Planner, Manager Building Certification and Health, Communications and Marketing Co-ordinator and two administration staff.

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

The Director Infrastructure Management advised that Council was awarded 'The Excellence in Regional Communities Award' at the recent 2012 Newcastle Division Engineering Excellence Awards by Engineers Australia.

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

**APOLOGY**

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

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

***That Council accept the apology and grant Councillor McBride leave of absence from the meeting who, due to work commitments, will arrive late to the meeting.***

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

AGAINST: NIL

At the commencement of the ordinary meeting report nos 1.1, 1.2, 1.3, 1.4, 1.5, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 3.4, 4.4, 5.3 and 5.4, were dealt with first then the remaining reports in order. However for the sake of clarity the reports are recorded in their correct agenda sequence.

### **1.1 Disclosures of Interest**

Councillor McBride arrived at the meeting at 5.44 pm and as a result took no part in voting.

### **3.5 Proposed Councillors' Community Improvement Grants**

Councillor Matthews declared a non-pecuniary insignificant interest in the matter for the reason that she is a volunteer with '2261 Out of the Box' and participated in consideration of this matter.

Councillor Matthews stated:

*"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because I have no voting power."*

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

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

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

AGAINST: NIL

### **PROCEDURAL MOTION**

#### **SUSPENSION OF MEETING PRACTICE**

Councillor McBride arrived at 5.44 pm and as a result took no part in voting on this item.

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

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

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

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

AGAINST: NIL

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

**That with the exception of report numbers 1.3, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 3.2, 3.4, 3.5, 3.6, 4.2, 4.4, 4.5, 4.6, 5.1, 5.2, 5.3, 5.4 and 5.5 Council adopt the recommendations contained in the remaining reports.**

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

AGAINST: NIL

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

---

Councillor McBride arrived at 5.44 pm and as a result took no part in voting on this item.

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

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

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

AGAINST: NIL

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

---

Councillor McBride arrived at 5.44 pm and as a result took no part in voting on this item.

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

**1 That Council confirm the minutes of the previous Ordinary Meeting of Council held on 23 May 2012 and the Extraordinary meeting held on 31 May 2012.**

**2 That Council request the General Manager that the minutes of the Confidential extraordinary session – held on 31 May 2012 be made available to the general public and to include the various motions, decisions and record of voting.**

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

AGAINST: NIL

### **Business Arising**

There was no business arising.

#### **1.4 Address by Invited Speakers**

---

Councillor McBride arrived at 5.44 pm and as a result took no part in voting on this item.

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

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

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

AGAINST: NIL

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

---

Councillor McBride arrived at 5.44 pm and as a result took no part in voting on this item.

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

- 1 That Council consider the following matter in Confidential Session, pursuant to Sections 10A(2)(c), (d) (i) and (f) of the Local Government Act 1993:**
  - 7.1 – Council Iconic Sites – Site 23 Active River Foreshore**
  - 7.2 – Lake Haven Centrelink Service Centre – Lease**
- 2 That Council note the reason for considering items in confidential session:**
  - **7.1 – The report contains information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it and the matter also affects the security of the Council, Councillors, Council staff or Council property.**
  - **7.2 –The report contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposed to conduct) business with and the matter also affects the security of the Council, Councillors, Council staff or Council property.**
- 3 That Council request the General Manager to report on this matter in open session of Council.**

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

AGAINST: NIL

**PROCEDURAL MOTION**

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

***That Council consider items 2.1, 2.2, 2.3 and 2.4 concurrently.***

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

AGAINST: NIL

**2.1 DA/1178/2011 - Proposed Dwelling and Attached Secondary Dwelling at Woongarra**

---

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

**1 That Council grant consent to Development Applications 1178/2011, 52/2012 and 246/2012 subject to the conditions detailed in the schedules attached to the relevant Council report for :**

- **Item 2.1- DA/1178/2011 - Proposed Dwelling and Attached Secondary Dwelling at Woongarra,**

**2 That Council not impose Section 94 Contributions in respect of each development.**

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

AGAINST: NIL

**2.2 DA 52/2012 - Detached Secondary Dwelling at 4 Campbell Avenue, The Entrance**

---

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

**1 That Council grant consent to Development Applications 1178/2011, 52/2012 and 246/2012 subject to the conditions detailed in the schedules attached to the relevant Council report for :**

- **Item 2.2 - DA 52/2012 - Detached Secondary Dwelling at 4 Campbell Avenue, The Entrance**

**2 That Council not impose Section 94 Contributions in respect of each development.**

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

AGAINST: NIL

**2.3 DA/246/2012 - Demolition of Existing Garage/Workshop and Carport,  
Proposed Carport and Detached Secondary Dwelling at Bateau Bay**

---

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

- 1 That Council grant consent to Development Applications 1178/2011, 52/2012 and 246/2012 subject to the conditions detailed in the schedules attached to the relevant Council report for :**
  - Item 2.3 - DA/246/2012 - Demolition of Existing Garage/Workshop and Carport, Proposed Carport and Detached Secondary Dwelling at Bateau Bay and**
- 2 That Council not impose Section 94 Contributions in respect of each development.**

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

AGAINST: NIL

**2.4 DA/253/2012 - Alterations and Additions of an Existing Detached  
Outbuilding to Create a Secondary Dwelling and Carport at Budgewoi**

---

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

- 1 That Council grant consent to Development Applications 1178/2011, 52/2012 and 246/2012 subject to the conditions detailed in the schedules attached to the relevant Council report for :**
  - Item 2.4 - DA/253/2012 - Alterations and Additions of an Existing Detached Outbuilding to Create a Secondary Dwelling and Carport at Budgewoi**
- 2 That Council not impose Section 94 Contributions in respect of each development.**

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

AGAINST: NIL

## **2.5 DA/101/2012 - Change of use from Real Estate Office to Take Away Food Shop at 638 Pacific Highway, Lake Munmorah**

---

Councillor Matthews left the chamber at 5.27 pm and returned to the chamber at 5.28 pm during consideration of this item.

Councillor McBride arrived at 5.44 pm and as a result took no part in voting on this item.

Mr Ron Game, resident, addressed the meeting at 5.10 pm, answered questions and retired at 5.16 pm.

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

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

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

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

AGAINST: COUNCILLORS MATTHEWS, SYMINGTON, VINCENT AND WYNN

## **2.6 Planning Proposal - RZ/1/2012 - 'Key' Site, The Entrance**

---

Mr Wes Newman, President, representing The Entrance Chamber of Commerce, addressed the meeting at 5.42 pm, answered questions and retired at 5.43 pm.

Councillor McBride arrived at 5.44 pm during consideration of this item.

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

**1 That Council initiate the Planning Proposal to amend Wyong Local Environmental Plan (WLEP) 1991 in accordance with Section 55 of the Environmental Planning and Assessment Act 1979, by endorsing the planning proposal prepared by the applicant.**

**2 That Council forward the Planning Proposal to the Director General, Department of Planning and Infrastructure requesting a 'Gateway' determination, pursuant to Section 56(1) of the Environmental Planning and Assessment Act 1979.**

**3 That Council undertake community consultation on the Planning Proposal, in accordance with the Gateway Process and Director General's direction, subject to the Director General's approval.**

**4 That Council request the Department of Planning and Infrastructure to prepare the draft Local Environmental Planning Instrument and that the Minister be requested to make the plan, subject to there being no objections received that cannot be resolved by minor amendments to the Planning Proposal.**

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

AGAINST: NIL



**3.1 Review of Investment Policy**

---

Councillor McBride arrived at 5.44 pm and as a result took no part in voting on this item.

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

***That Council adopt the Investment Policy and Guidelines detailed in Attachment 1.***

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

AGAINST: NIL

**3.2 Flexible Life Guard Service Options - July 2012 School Holidays**

---

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

- 1 *That Council receive the report on Flexible Service Options.*
- 2 *That Council resolve not to operate a Lifeguard Service during the July school holidays.*

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

FOR: COUNCILLORS EATON, GRAHAM, MCNAMARA AND WEBSTER

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

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

- 1 *That Council receive and note the report on Flexible Life Guard Service Options – July 2012 school holidays.*
- 2 *That Council operate a Lifeguard Service during the July school holidays on Soldiers Beach and Shelly Beach between the hours of 9.30am and 4.30pm.*
- 3 *That Council consider allocating an amount of \$26,738 in the first quarte review of the 2012/13 to fund the additional service. This amount includes \$1,200 to fund additional signage on the two beaches.*
- 4 *That Council request a report on the usage and cost of this service be presented to Council at the completion of the trial.*

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

That Council further consult with key stake holders, including members of the professional lifeguards service, to better deliver an effective progressive and cost effective lifeguard coverage.

**MOTION BE PUT**

It was MOVED by Councillor EATON and seconded by Councillor MCNAMARA:

That the MOTION be put.

**RESOLVED that the MOTION be put.**

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

AGAINST: COUNCILLORS MATTHEWS, MCBRIDE AND VINCENT

**The AMENDMENT was CARRIED the casting vote of the Mayor.**

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

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

**The AMENDMENT became the MOTION.**

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

**That Council further consult with key stake holders, including members of the professional lifeguards service, to better deliver an effective progressive and cost effective lifeguard coverage.**

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

AGAINST: COUNCILLORS MATTHEWS, MCBRIDE, SYMINGTON AND VINCENT

**3.3 Determination by the Local Government Remuneration Tribunal on Councillor Fees for 2012-13**

---

Councillor McBride arrived at 5.44 pm and as a result took no part in voting on this item.

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

- 1 That Council implement the determination made by the Local Government Remuneration Tribunal in respect of Councillor and Mayoral fees.**
- 2 That Council set the annual Mayoral Fee at \$57,660 for the period 1 July 2012 to 30 June 2013.**
- 3 That Council set the annual Deputy Mayoral fee at \$8,072.40 for the period 1 July 2012 to 30 June 2013.**
- 4 That Council reduce the paid annual Mayoral Fee by 14% (\$8,072.40) to fund the annual Deputy Mayoral fee.**
- 5 That Council reduce the paid annual Mayoral Fee by \$1,906.64 for use of the Mayoral Motor Vehicle.**
- 6 That Council set the Annual Councillor Fee at \$21,700 for the period 1 July 2012 to 30 June 2013.**

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

AGAINST: NIL

**3.4 Works on Private Land - 370 and 380 Bruce Crescent, Wallarah**

---

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

- 1 That Council delegate to the General Manager the authority to negotiate with the landowner an agreement on an appropriate design that achieves the objectives of the Estuary Management Plan in respect of the Caring for Our Country parameters and respects the objectives of the landowner.**
- 2 That Council receive a report on the outcome of the negotiations.**

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

AGAINST: NIL

### 3.5 Proposed Councillors' Community Improvement Grants

Councillor Matthews declared a non-pecuniary insignificant interest in the matter for the reason that she is a volunteer with '2261 Out of the Box' and participated in consideration of this matter.

Councillor Matthews stated:

*"I choose to remain in the chamber and participate in discussion and voting as the conflict has not influenced me in carrying out my public duty because I have no voting power."*

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

**That Council allocate an amount of \$24,878.00 from the 2011-12 Councillors' Community Improvement Grants as follows:**

<i>Proposed Allocations for 13 June 2012</i>		
<i>Australian Air League Doyalson Girls' Squadron (\$994)</i>	<i>Two laptops for Visual digital inter-active learning program to assist in dyslexia, dyspraxia and others</i>	<i>100.00</i>
<i>Bateau Bay Men's Shed Inc (\$1700)</i>	<i>Materials for new community garden</i>	<i>500.00</i>
<i>Berkeley Vale Soccer Club Inc (\$1500)</i>	<i>Training equipment for juniors</i>	<i>600.00</i>
<i>Budgewoi Netball Club Inc (\$1500)</i>	<i>Small lockable storage container</i>	<i>500.00</i>
<i>Camp Breakaway (\$5225) (\$1800 already allocated)</i>	<i>To purchase a bed-bath trolley for people with disabilities.</i>	<i>2000.00</i>
<i>Central Coast Group Training (\$2000)</i>	<i>Awards Night</i>	<i>1402.50</i>
<i>Central Coast Hash House Harriers (\$2000)</i>	<i>Administrative costs</i>	<i>474.00</i>
<i>Central Coast Multiple Sclerosis and Handicapped Group (\$1389)</i>	<i>Bus upgrade</i>	<i>1389.00</i>
<i>Central Coast Woodturners Co op Ltd (\$1098)</i>	<i>Fine particulate dust filters</i>	<i>1098.00</i>
<i>Coastal Knockouts Inc (\$1500)</i>	<i>Initial purchase of skates for children &amp; youth in Gwandalan area for after school activity</i>	<i>1500.00</i>
<i>Conquer Cancer (\$250)</i>	<i>Lesley Poulton to compete in Ride to Conquer Cancer</i>	<i>250.00</i>
<i>Homeless No More (\$2000) (\$800 already allocated)</i>	<i>Fundraising walkathon for needy</i>	<i>250.00</i>
<i>Lions Club of Gwandalan Inc (\$2238.50)</i>	<i>Marquee &amp; banners for Gwandalan Leo Club (Junior Lions)</i>	<i>1250.00</i>

<b>Proposed Allocations for 13 June 2012</b>		
<b>Long Jetty District Senior Citizens' Club Inc (\$1500)</b>	<b>Remove blinds &amp; tint all glass areas</b>	<b>500.00</b>
<b>Norah Head Ratepayers Residents &amp; Coastcare Ass Inc (\$500)</b>	<b>Replace &amp; upgrade community signs &amp; information boards</b>	<b>250.00</b>
<b>Northern Women's Health Centre Wyong (\$500) (\$50 already allocated)</b>	<b>Upgrade library with personal development texts</b>	<b>250.00</b>
<b>ORRCA Inc (\$2000)</b>	<b>Emergency hotline for injured marine mammals</b>	<b>750.00</b>
<b>Positive Support Network Inc (\$1800) (\$100 already allocated)</b>	<b>Printing of magazine for Gay &amp; Lesbian Community &amp; people with HIV &amp; Aids</b>	<b>300.00</b>
<b>San Remo Tidy Towns (\$1000) (\$100 already allocated)</b>	<b>To purchase equipment to maintain San Remo area</b>	<b>250.00</b>
<b>Summerland Point Gwandalan Tidy Towns &amp; Landcare (\$836)</b>	<b>Purchase of equipment &amp; funding of awards registration fees</b>	<b>750.00</b>
<b>The Entrance Rugby Club Inc (\$3983)</b>	<b>Sporting equipment</b>	<b>600.00</b>
<b>The Entrance Surf Club (Tuggerah Tuffs Winter Swim Club Inc) (\$1800)</b>	<b>Drinks fridge for use in surf club</b>	<b>600.00</b>
<b>Toukley Torch Bearers for Legacy (\$1000)</b>	<b>Annual Legacy Golf Day</b>	<b>411.50</b>
<b>Tuggerah Lakes Memorial Pistol Club Inc (\$1600)</b>	<b>Stormwater plumbing &amp; roadbase to Range 3 to prevent erosion</b>	<b>1000.00</b>
<b>Tuggerah United Football Club (\$2000)</b>	<b>Gazebos &amp; additional sporting equipment</b>	<b>600.00</b>
<b>Warnervale Family &amp; Community Centre (\$500)</b>	<b>Multicultural cooking classes - food &amp; venue</b>	<b>90.00</b>
<b>Woongarra Wildcats Football Club (\$2000) (\$300 already allocated)</b>	<b>To organise an Opening Day for the new Hamlyn Terrace Complex</b>	<b>870.00</b>
<b>Wyong District Netball Association Inc (\$2000)</b>	<b>Improvements to downstairs area</b>	<b>2000.00</b>
<b>Wyong Neighbourhood Centre Inc and Iris Foundation (\$10000) (\$100 already allocated)</b>	<b>Slither and Slumber Sleep Out - early intervention projects for prevention of suicide</b>	<b>1750.00</b>
<b>Wyong Shire Garden Competition Committee Inc (\$1930) (\$569.60 already allocated)</b>	<b>Function Room hire, expenses for 4 cars &amp; printing of competition schedules</b>	<b>593.00</b>
<b>2261 Out of the Box Inc (\$2000)</b>	<b>Activities, resources, media &amp; training of volunteers</b>	<b>2000.00</b>

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

AGAINST: NIL

**3.6 Format of Future Notices of Motion - Resource Utilisation Leading up to the Local Government Election - September 2012**

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

**1 That Council receive the report on Format of Future Notices of Motion – Resource Utilisation Leading up to the Local Government Election – September 2021.**

**2 That Council amend the Wyong Shire Council Code of Meeting Practice as follows:**

**(A) Insert New Definition –**

**Unlawful means, for the purposes of cl. 3.1.1 and 5.2.2 of this Code, any of the following:**

- (a) any act or omission that infringes a statutory or common law prohibition; or**
- (b) any act or omission constituting an offence against domestic or foreign law”; or**
- c) any act or omission that :**
  - (i) is inconsistent with the Charter set out in s. 8(1) of the Local Government Act 1993; or**
  - (ii) is not in the proper exercise of a function conferred on Council under the Local Government Act 1993 or any other Act or law; or**
  - (iii) where it involves a councillor exercising his or her role as a member of the governing body of Council, is inconsistent with the scope of that role as prescribed by s. 232(1) of the Local Government Act 1993, which states:**

**The role of a councillor is, as a member of the governing body of the council:**

- to provide a civic leadership role in guiding the development of the community strategic plan for the area and to be responsible for monitoring the implementation of the council’s delivery program**
- to direct and control the affairs of the council in accordance with this Act**
- to participate in the optimum allocation of the council’s resources for the benefit of the area**
- to play a key role in the creation and review of the council’s policies and objectives and criteria relating to the exercise of the council’s regulatory functions**
- to review the performance of the council and its delivery of services, and the delivery program and revenue policies of the council.**

(B) *by inserting the statement: "That the General Manager's opinion on what is unlawful will be influenced by the context of the Notice of Motion with regards to how and why the Notice of Motion may have been put forward by a Councillor."*

(C) *by inserting the statement: "That in accordance with Clause 240(2) of the Regulation, the general manager must report and provide reasons (without giving details of the Notice of Motion) any such exclusion to the next meeting of the council."*

3 *That Council give public notice of its intention to amend its Code of Meeting Practice allowing 42 days for the making of public submissions.*

4 *That Council adopt the amended WSC Code of Meeting Practice should no significant objection be received to the proposed amendment.*

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

AGAINST: COUNCILLORS BEST AND MCNAMARA

#### **4.1 Information Reports**

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Councillor McBride arrived at 5.44 pm and as a result took no part in voting on this item.

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

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

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

AGAINST: NIL

#### **4.2 Coal Seam Gas Enquiry**

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

1 ***That Council receive the report on Coal Seam Gas Enquiry.***

2 ***That Council direct the General Manager to write to the State Minister for Resources and Energy requesting information and confirmation of any coal seam exploration licences within the Local Government Area of Wyong Shire and a copy of this request be forwarded to all Local State Members of Parliament.***

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

AGAINST: NIL

#### **4.3 Coal Mining under Wyong Valleys**

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Councillor McBride arrived at 5.44 pm and as a result took no part in voting on this item.

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

***That Council receive the report on Coal Mining under Wyong Valleys.***

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

AGAINST: NIL

#### **4.4 Aboriginal Land Claims on land adjacent to Lakes Beach Surf Club Precinct**

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Councillor Vincent left the chamber at 5.57 pm and returned to the chamber at 5.59 pm during consideration of this item.

Mr Gary Blaschke OAM, representing Lakes Beach United Dunecare Coastcare Inc, addressed the meeting at 5.57 pm, answered questions and retired at 6.01 pm.

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

- 1 That Council receive the report on aboriginal land claims on land adjacent to the Lakes Beach Surf Club Precinct.**
- 2 That Council reaffirm the continuous partnership with Hargreaves Dunecare for the last 17 years and Budgewoi Beach Dunecare Inc and landcare groups on the lands under claim to improve and repair the endemic native vegetation.**
- 3 That Council confirm previous motions to rezone the land under the claim as E2.**
- 4 That Council note that the proposed new zone classification of E2 under the DLEP will provide the highest level of protection for the land.**

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

AGAINST: NIL

#### **4.5 Mardi to Mangrove Link Project Status**

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

- 1 That Council receive the report on Mardi to Mangrove Link Project Status.**
- 2 That Council recognise the outstanding efforts of staff and management in delivering the largest public works project in the history of Wyong Shire, now at 99% completion, and providing excellent communication and updates to the community and Council.**

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

AGAINST: NIL



**4.6 Private Construction of Shared Footpath on Southern Side of Alison Road, Wyong**

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

- 1 That Council receive the report on Private Construction of Shared Footpath on Southern Side of Alison Road, Wyong.**
- 2 That Council request the General Manager to provide a briefing on the next stages of this proposal.**

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

AGAINST: NIL

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

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Councillor McBride arrived at 5.44 pm and as a result took no part in voting on this item.

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

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

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

AGAINST: NIL

**5.1 Notice of Motion - Hunter Link Opportunities**

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

- 1 That Council note that the F3 freeway extension to Branxton is due for completion in about 1 year.**
- 2 That Council note that the link will reduce travel time from Wyong Shire to the Hunter mines to around 1 hour in comparison to travel from Newcastle to the mines of around 90 minutes.**
- 3 That Council investigate the opportunities for employment and economic development that the completion of this link will provide.**

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

AGAINST: COUNCILLORS MATTHEWS, MCBRIDE, VINCENT AND WYNN

**5.2 Notice of Motion - Circuses Using Council Facilities**

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

- 1 That Council immediately cease hiring parks, reserves and other Council facilities to circuses which include trained wild animals in their performances, such as elephants, lions, tigers, monkeys and apes.
- 2 That Council require circuses using Council premises to limit their use of animals to domesticated animals.
- 3 That Council note that the relevant enforcement authority is the RSPCA.
- 4 That Council request the RSPCA to ensure that such animals are kept in appropriately sized enclosures and undertake an appropriate level of inspection for the duration of time the circus is in operation.
- 5 That Council direct the General Manger to investigate Council's ability to enforce this prohibition on private land within the Shire.

**The MOTION was LOST on the casting vote of the Mayor.**

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

**5.3 Notice of Motion - Cabbage Tree Bay, Norah Head Spearfishing Closure**

The invited speaker left the chamber prior to discussion on this item.

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

- 1 That Council recognise the potential risks associated with the confined and conflicting recreational usages within Cabbage Tree Bay, Norah Head, as a consequence of the increased popularity of family bathing, spear fishing and recreational boating.
- 2 That Council proactively commence dialogue with Fisheries and Waterways (RMS) to better manage the environs and reduce risks associated with conflicting usages and with a view to establishing a spear fishing closure within the Cabbage Tree Bay.

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

**5.4 Notice of Motion - Whale Dreamers Festival 2012**

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

- 1 That Council recognise the outstanding conservational and educational efforts of our local community and council staff in the delivery of the seventh annual Whale dreamers festival scheduled for 1 July 2012.**
- 2 That Council actively promote this important event through its various media/communications mediums.**
- 3 That Council reaffirms, as an advocate on behalf of our local community, its strong opposition to the continued commercial whaling within the Antarctic's Marine/Whale Sanctuary.**

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

AGAINST: NIL

**5.5 Notice of Motion - Shooting in National Parks and Conservation Areas**

Councillor Webster left the chamber at 8.12 pm and returned to the chamber at 8.13 pm during consideration of this item.

Councillor Vincent left the chamber at 8.13 pm and returned to the chamber at 8.15 pm during consideration of this.

Mr Troy Hogarth, Stakeholder Services Manager, representing Game Council of NSW, addressed the meeting at 8.00 pm answered questions and retired at 8.20 pm.

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

- 1 That Council note that the NSW Government is to allow shooting in National Parks and other conservation reserves.*
- 2 That Council note that the NSW Government is to allow shooting in the Watagans National Park in the Wyong Shire Local Government Area.*
- 3 That Council note that it is irresponsible for any government to be proposing an activity which will endanger members of the public and others who use conservation reserves for recreational purposes.*
- 4 That Council oppose this dangerous proposal by the NSW government.*
- 5 That Council request the General Manager to write to the Premier of NSW and the Environment Minister in opposition to the proposal to allow private shooting in conservation reserves.*

**The MOTION was LOST on the casting vote of the Mayor.**

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

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

**QUESTIONS ON NOTICE**

**Q22/12 Regional Development Australia (RDA) Funding**  
**Councillor Doug Eaton**  
F2011/01221

*“Could Council staff advise on the cost to date of its unsuccessful applications for RDA Funding Rounds 1 and 2, the reasons advanced for non-support of Council applications, and any remedial actions contemplated to ensure success in 3<sup>rd</sup> Round applications, if any?”*

**Q23/12 Wyong Skills Centre Grant**  
**Councillor Doug Eaton**  
F2010/02334

*“Could Council staff advise on progress in obtaining the \$2.8m Skills Centre Grant as promised by the Member for Dobell?”*

**Q24/12 Drainage at Killarney Vale Soccer Club Ground**  
**Councillor Lisa Matthews**  
F2010/00500

*“Could staff please advise when Killarney Vale Soccer Club home ground will have their drainage upgraded?”*

**Q25/12 Central Coast Mariners**  
**Councillor Sue Wynn**  
F2011/02504

*“Given the recent disclosure in the print media claiming the Australian Taxation Office is pursuing a former Director of the Central Coast Mariners for the Mariner’s \$1.45m taxation bill and the alleged cross claim of the other Directors of the Mariners, how is Wyong Shire Council’s governance in relation to our \$100,000 sponsorship of the Mariner’s by our ratepayers that gives confidence as to the expenditure of these monies at the running of the Mariners?”*

**Q26/12 Warnervale Town Centre Project Update**  
**Councillor Doug Vincent**  
F2010/00500

*“Could Council staff please provide an update on the status of the Warnervale Town Centre project? As part of the update could staff include a list of any recent material changes that may have made to the project?”*

**Q27/12 Warnervale Road Upgrade Works**  
**Councillor Doug Vincent**  
F2010/00500

*“Could Council staff please provide an update on the Warnervale Road upgrade works? As part of the update could staff nominate and provide details of the allocated budgets for both the drainage and road works?”*

Councillor Graham left the chamber at 8.45 pm and did not return.

The General Manager reported the resolutions on the Confidential Items to the Ordinary meeting of council as follows:

**7.1 Council Iconic Sites - Site 23 Active River Foreshore**

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- 1 That Council approve the removal of Lots 1,2,3,4 DP 421613 and Lot 4 DP 659489 from the Wyong Shire Council Expression of Interest for the Development of Council Owned Iconic Development Sites.**
- 2 That Council approve the to removal of Lots 1,2,3,4 DP 421613 and Lot 4 DP 659489 from the Stage 2 Council Iconic Sites Selective Tender Process.**

**7.2 Lake Haven Centrelink Service Centre - Lease**

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- 1 That Council resolve to enter into six consecutive five (5) year leases with Stirloch Investments Pty Ltd for the land known as Lot 11 DP 814394 and part Lot 2 DP 1084245 allowing for the design and construction of a Centrelink Customer Service Centre.**
- 2 That Council authorise the General Manager or his delegate to enter into the recommended lease with Stirloch Investments Pty Ltd**

**THE MEETING** closed at 8.47 pm.

## **1.4 Address by Invited Speakers**

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TRIM REFERENCE: F2012/00026 - D03035273

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Sonia Witt; TL Governance and Councillor Services

### **SUMMARY**

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

### **RECOMMENDATION**

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

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

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TRIM REFERENCE: DA/1148/2011 - D03008456

MANAGER: Peter Fryar, Manager Development Assessment

AUTHOR: Peter Meloy; Development Planner

### SUMMARY

An application has been received for additions and alterations to a two-storey commercial building at 268 Main Road, Toukley. The additions and alterations will create a four-storey mixed-use building comprising a three-storey boarding house above the existing ground floor commercial premises. The application has been made under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP(ARH)). The application has been examined having regard to the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act (EP&A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report. The application is recommended for approval. The reason this application is reported to Council is a result of a request of a Councillor.

<b>Applicant</b>	Branvel Developments
<b>Owner</b>	Team Five Holdings Pty Ltd
<b>Application No</b>	DA/1148/2011
<b>Description of Land</b>	268 Main Road, Toukley
<b>Proposed Development</b>	Three storey boarding house above existing ground floor commercial premises
<b>Site Area</b>	397.8m <sup>2</sup>
<b>Zoning</b>	3(a) Business Centre Zone
<b>Existing Use</b>	Two-storey commercial building
<b>Employment Generation</b>	1 (on-site manager)
<b>Estimated Value</b>	\$980,000

### RECOMMENDATION

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

## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

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### PRECIS

- The application is for additions and alterations to a two-storey commercial building to create a four-storey building comprising a three-storey boarding house above a ground floor containing existing commercial premises.
- The site is zoned 3(a) Business Centre Zone under the provisions of Wyong Local Environmental Plan 1991 (WLEP) and a “boarding house” is a prohibited use within the 3(a) zone.
- Boarding houses are made permissible within the 3(a) zone via the provisions of SEPP(ARH) under which this application is made.
- The application complies with the SEPP(ARH) development standards that apply to boarding houses.
- The application was advertised and five (5) submissions were received.
- All issues raised in the objections are addressed in the report and consent is recommended.

### INTRODUCTION

#### The Site

The site, known as Lot 2 DP 712945, is a rectangular-shaped lot located on the north side of Main Road, Toukley. The site lies within the Toukley commercial centre, midway between Main Road’s intersections with Summerside Street to the west and Lakeview Street to the east (see Figure 1 below). The site also has direct frontage to Sonters Lane which runs behind the property and links Summerside Street and Lakeview Street. A two-storey commercial building, “Hamillen House” currently stands upon the property and this building may be accessed from the front and the rear. Six (6) on-site carparking spaces are located at the rear of the building and the building’s first floor is cantilevered over these six (6) parking spaces (see Figures 2, 3 and 4).



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



FIGURE 1: Aerial photograph of site and surrounds with cadastral overlay.



FIGURE 2: View looking north from Main Road of existing commercial building.

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

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*FIGURE 3: View looking south-west from Sonters Lane of rear of existing commercial building.*



*FIGURE 4: Sonters Lane looking to the west.*

## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

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The ground floor of the building is divided into two tenancies – a pizzeria and a company that provides on-site nursing staff. The first floor is divided into several tenancies all of which are vacant except for an office at the rear of the building which is currently leased on a month-by-month basis.

The building lies in the centre of a commercial block comprised of similar one and two-storey commercial buildings containing a mix of commercial uses and vacant tenancies (see Figures 5 and 6).

### The Proposed Development

The applicant proposes the retention of the existing commercial development on the building's ground floor and seeks approval for the conversion of the building's existing first floor and proposed second and third floors to be used as a boarding house. The boarding house would contain 23 rooms with accommodation for up to 39 people including an on-site manager's room on the second floor which can accommodate two people.

Each room would have its own separate bathroom facilities plus kitchenette facilities. The boarding house will also provide communal areas including common lounge, internal courtyard and laundry facilities (see plans in Attachment 2).



**FIGURE 5:** Looking north-east at existing streetscape on Main Road Toukley between Summerside Street and Lakeview Street.

## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

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**FIGURE 6:** Looking north-west at existing streetscape on Main Road Toukley between Summerside Street and Lakeview Street.

The details of each floor are:

Ground floor:

- No significant change to existing internal floor plan. The existing commercial premises are to be retained. Façade improvements proposed.

First floor:

- Alterations to this level to create eight accommodation rooms and a common laundry which includes an area for storage and cleaner's use. Six (6) of the eight (8) accommodation rooms will be for two-person accommodation and the remaining two (2) accommodation rooms will be for single occupants. Each of these eight (8) accommodation rooms will have its own separate bathroom facilities, kitchenette facilities and access to its own balcony. The balconies range in size from 3.83m<sup>2</sup> to 7.74m<sup>2</sup>.

Second floor:

- Construction of this floor to create eight (8) accommodation rooms (including a manager's room), a common laundry and room for storage and cleaner's use. Six (6) of the eight (8) accommodation rooms will be for two-person accommodation (including the manager's room) and the remaining two (2) accommodation rooms will be for single occupants. Each of these eight (8) accommodation rooms will have its own separate bathroom facilities, kitchenette facilities and access to its own balcony. The balconies range in size from 6.10m<sup>2</sup> to 9.50m<sup>2</sup>.

## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

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Third floor:

- Construction of this floor to create seven (7) accommodation rooms, a common lounge, common courtyard, common laundry and a room for storage and cleaner's use. Four (4) of the accommodation rooms will be for two-person occupation and the remaining three (3) accommodation rooms will be for single occupants. One (1) of the single-occupant rooms is designed to be an "accessible" room. Each of these seven (7) accommodation rooms will have its own separate bathroom, kitchenette facilities and access to its own balcony. The balconies range in size from 6.10m<sup>2</sup> to 9.50m<sup>2</sup>.

Stairs are located at the front and towards the rear of the building and an elevator also provides access to the boarding house levels. A manager/caretaker will be on site to manage residents and to ensure that the site is kept in a tidy state at all times.

Car parking has been addressed by designating the six (6) existing car spaces, currently serving the existing commercial development, for use by only the boarding house occupants in the following manner:

- A manager's carparking space;
- A disabled persons carparking space;
- Five (5) motorcycle parking spaces;
- A waste and recycling enclosure; and
- An accessway to and from the building's rear stairs.

In addition, the applicant also proposes to provide a bicycle rack capable of accommodating five (5) bicycles at the rear of the site between the building's rear wall and the on-site car spaces.

The applicant proposes that the site's overall parking demand, which is calculated to be 14 (1 boarding house manager's space, 5 other boarding house room spaces and 8 commercial premises spaces) be satisfied by the existing 19 spaces that currently serve the existing two-storey commercial development. These 19 spaces include the six (6) spaces on site, line-marked car spaces behind the building on the opposite side of Sonters Lane and spaces in a nearby public carpark. These spaces are "linked" to the building by reason that the site's previous owners have dedicated land and/or made payments to Council for their construction.

The existing exhaust duct located at the rear of the building (see Figure 3) is to be relocated to run internally up through the building to exhaust above the fourth floor roof (see elevations in Attachment 2).

In regards to the likely market or clientele that the proposed boarding house is aimed at serving, the applicant has provided the following information:

*"It is envisioned that the boarding house will specifically cater to aged persons who are looking to downsize and are able to benefit from government rental assistance schemes. The location of the boarding house has been chosen given its convenient location to surrounding amenities notably "All Care Nursing", located within the ground floor of the building, which organises assistance for the needy and elderly. Public transport services are also within walking distance of the site.*

## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

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*Census Data from 2006, showed 42.7% of persons in the regions were persons aged 55 years and over demonstrating a substantial ageing population in the area. (Data from the 2011 Census was not available at the time of this letter).*

*The boarding house will aim to target long term residents, with a minimum accommodation period of 6 months. In this regard, the proposal takes into account the provisions of the Toukley Planning Strategy which was adopted by Council in October 2010."*

The application also now includes a Plan of Management which addresses the following issues:

- Complaint monitoring system;
- House rules;
- On-site and off-site parking;
- Cleaning;
- Security;
- Fire safety;
- On-site manager's responsibilities; and
- A review process for the assessment and updating of the plan of management.

### Summary

#### Carparking

The existing two-storey commercial development has access to 19 off-street car spaces comprised of six (6) on-site spaces, six (6) spaces located on the opposite side of Sonters Lane at the building's rear and a cash payment to Council in lieu of the provision of a further seven (7) spaces in public parking within the town centre. The current proposal retains the ground floor commercial premises but removes the first floor commercial offices and replaces them with a three-storey boarding house. The entire proposed four-storey development (commercial premises and boarding house) is calculated as requiring 14 car spaces plus motor cycle and bicycle parking. The applicant proposes to rely on the existing car parking arrangements to serve the proposed development and this is considered satisfactory as well as satisfying the requirements of SEPP(ARH).

#### Character of the Local Area

Several of the submissions received as a result of publicly notifying the proposed development raised concerns that the proposed four-storey building would be out of character with the surrounding development which was a mixture of one and two-storey development. While it is true that the building will be two storeys higher than surrounding development, the building is consistent with Council's adopted Toukley Planning Strategy which envisages four to five-storey development within the area that this site is located. It is concluded that while the building will be initially higher than surrounding development, it is consistent with Council's vision for the future character of the Toukley commercial centre.

## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

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### Building Appearance

Concerns were raised over a number of features of the original design of the building. These concerns included the treatment and appearance of the building's side walls which would be prominent until adjoining lots are redeveloped, the future of the large exhaust duct at the building's rear and the treatment of rear balconies in regards to privacy and lack of shading. Concerns were also raised that the submitted elevations and perspective diagrams did not give a reliable indication of how the building would eventually appear and how it would fit within the existing streetscape. The applicant has addressed all concerns raised by Council by submitting amended plans and additional written information. In addition, the applicant has submitted photomontages of the building to provide a reliable image of what the building will look like if constructed.

### VARIATIONS TO POLICIES

Nil.

### HISTORY

- 08.08.1983: Council grants consent to 83/270 for erection of ground floor medical centre and residence above on Lot 30 DP 17931.
- 30.10.1985: Consent granted to DA/85/428 for first floor to be used as offices and ground floor to remain as medical centre. Approved plans identify six car spaces on site and six to be constructed on public land when Sonters Lane constructed. Cash contribution required in lieu of a further seven carparking spaces.
- 22.11.2001: Consent granted to DA/2560/2001 for delicatessen/café and mechanical exhaust system.
- 04.06.2003: Consent granted to DA/1062/2003 to operate premises as pizza shop.

### PERMISSIBILITY

The subject site is zoned 3(a) Business Centre Zone under the WLEP. The proposed development namely a "boarding house" is separately defined under WLEP and is prohibited within the 3(a) zone. However, Division 3 of SEPP(ARH) makes specific provisions for boarding houses. Clause 26 of SEPP(ARH) states:

*"This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:*

- (a) Zone R1 General Residential,*
- (b) Zone R2 Low Density Residential,*
- (c) Zone R3 Medium Density Residential,*
- (d) Zone R4 High Density Residential,*
- (e) Zone B1 Neighbourhood Centre,*

## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

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- (f) Zone B2 Local Centre,
- (g) Zone B4 Mixed Use.”

The Department of Planning and Infrastructure (DoPI) has prepared for each local government area (LGA) a list of the new zones identified under the Standard Instrument (Local Environmental Plans) Order 2006 and the LGA’s “equivalent” existing zones. In cases where the Council has not yet made a Local Environmental Plan in accordance with the Standard Instrument, as in Wyong’s case, this list of equivalent zones is to be used.

The current list of equivalent zones for Wyong identifies the 3(a) Business Centre Zone as the equivalent zone for Zone B1 Neighbourhood Centre and for Zone B2 Local Centre. Given that SEPP(ARH) makes a “boarding house” permissible with consent within the B1 zone, B2 zone and any equivalent zone and given that the 3(a) zone is identified as an equivalent zone, a “boarding house” becomes a permissible use with consent within the 3(a) zone.

SEPP(ARH) adopts the definition of a “boarding house” provided in the DoPI’s Standard Instrument which states:

*“boarding house means a building that:*

- (a) *is wholly or partly let in lodgings, and*
- (b) *provides lodgers with a principal place of residence for 3 months or more, and*
- (c) *may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (d) *has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

*but does not include backpackers’ accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*

**Note.** *Boarding houses are a type of residential accommodation—see the definition of that term in this Dictionary.”*

It is recommended, that if consent is granted to this proposal, a condition be included that requires any rental or lease agreement entered into between the owners (or operators) of the site and any lodger to be for a minimum of period of not less than three (3) months. This condition should make it clear to any future owner or operator that the proposed boarding house may only be used to accommodate people for a minimum of three (3) months duration consistent with the definition of a “boarding house”.

### RELEVANT STATE/COUNCIL POLICIES AND PLANS

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

- State Environmental Planning Policy Number 71 – Coastal Protection
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- Wyong Local Environmental Plan 1991
- Wyong Development Control Plan 2005
  - Chapter 25 – Main Road and Lakeview Street Toukley
  - Chapter 50 – Advertising Signs
  - Chapter 61 – Carparking



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

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- Chapter 69 – Controls for Site Waste Management
- Chapter 70 – Notification of Development Proposals
- Chapter 81 – Retail Centres
- Toukley District Development Contributions Plan
- Toukley Planning Strategy

### **ECOLOGICALLY SUSTAINABLE PRINCIPLES**

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

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

### **Climate Change**

The potential impacts of climate change on the proposed boarding house have been considered as part of the assessment of the application. Climate change includes consideration of such matters as potential rise in sea level; potential for more intense and, or, frequent extreme weather conditions including storm events, bush fires, drought, flood and coastal erosion; as well as how the proposed development may cope, combat or withstand these potential impacts. In this particular case, there were no matters that warranted further consideration.

### **ASSESSMENT**

Having regard for the matters for consideration detailed in Section 79C of the Environmental Planning and Assessment Act (EP&A Act) 1979 and other statutory requirements, Council's policies and Section 149 Certificate details, the assessment has identified the following key issues, which are elaborated upon for Council's information.

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

#### **Environmental Planning Policy Number 71 – Coastal Protection (SEPP71)**

The site is within the Coastal Protection Area covered by SEPP71 and as such, requires Council to consider the proposal against the several matters listed in clause 8 of SEPP71. Given the nature of this application it is considered that when assessed against these matters for consideration, the proposed development is consistent with the relevant objectives of SEPP71. In particular, the development will not reduce public access to the foreshore and the type, bulk, scale and size of the development is assessed as being appropriate for the location.

In addition, clause 15, "Effluent Disposal" and clause 16, "Stormwater" in SEPP71 prevent Council from consenting to any development that will dispose of untreated effluent or stormwater into Tuggerah Lake. In this regard, the proposed development is essentially additional stories over an existing approved building and no additional untreated effluent or stormwater is proposed to be discharged into the lake as a result of this proposed development.

## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

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### State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP(ARH))

Division 3 of Part 2 of SEPP(ARH) specifically applies to boarding houses and provides development standards that, if met, cannot be used to refuse a development application. In addition, Division 3 provides development standards that must be satisfied before Council can grant consent to any application for a boarding house. The following compares the proposed development to the requirements of SEPP(ARH).

#### 1. Clause 29 - Standards that cannot be used to refuse consent.

- (1) *A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:*
- (c) *if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register – the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:*
- (i) *0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or*
  - (ii) *20% of the existing maximum floor space ratio, if the existing maximum floor space is greater than 2.5:1.*

#### Comment:

Residential flat buildings are permitted on the land under WLEP 1991 albeit when attached to other buildings permitted within the 3(a) zone. Clause 29 of SEPP (ARH) refers to the maximum floor space ratio for any form of residential development permitted on the land. A “vertical village” being a form of residential development permitted under SEPP (Seniors) would constitute the maximum achievable floor space for any residential development permitted on the land. Thus, with the provisions of Clause 29 of SEPP(ARH) in mind, the allowable floor space ratio under SEPP(ARH) for the boarding-house is calculated in the following manner:

1. *Chapter 25 – Main Road & Lakeview Street Wyong Development Control Plan 2005*
  - *Permissible floor space ratio (FSR): 1:1 (580.7m<sup>2</sup>). As permitted by Clause 4(b) of Chapter 25, this total area includes the area dedicated to Council to construct Sonters Lane.*
2. *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.*
  - *“Vertical villages”, as a form of residential accommodation permitted on the site, is allowed an FSR of that permitted by Chapter 25 plus an additional 0.5.*
  - *Permissible FSR is therefore: 1.5:1 (871.05m<sup>2</sup>).*
3. *State Environmental Planning Policy (Affordable Rental Housing) 2009*

## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

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- *Clause 29 permits a boarding house to have an FSR equal to that of another form of permissible residential accommodation plus 0.5 if the allowable FSR is less than 2.5:1.*
- *Permissible FSR is therefore: 2.0:1 (1,161.4m<sup>2</sup>)*

Therefore, under the provisions of Clause 29(1)(c)(ii) of SEPP(ARH), because the proposed FSR of the boarding house is 1.98:1 (1,148.87m<sup>2</sup>) which is less than the allowable FSR of 2.0:1(1,161.4m<sup>2</sup>), scale and density of development cannot be used as a reason to refuse the development.

(2) *A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:*

(a) **Building height:**

*If the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land.*

Comment:

There is no maximum building height permitted under another environmental planning instrument that applies to the land. The Toukley Planning Strategy envisages four to five storey development in the locality.

(b) **Landscaped area:**

*If the landscape treatment of the front setback area is compatible with the streetscape in which the building is located.*

Comment:

There is only very minor front landscaping existing on this site in the form of a street tree and planter boxes and this is consistent with the streetscape in which the building is located. Additional second floor planter box landscaping is now proposed on the third floor along the building's Main Road façade.

(c) **Solar access:**

*Where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of three (3) hours direct sunlight between 9am and 3pm in mid-winter.*

Comment:

The design of the boarding house includes the provision of two communal living rooms on the third or top floor these being a common lounge and a courtyard. The courtyard will receive direct sunlight via a skylight positioned over the entire courtyard between the hours of 9am and 3pm in mid-winter.

## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

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### (d) **Private open space:**

*If at least the following private open space areas are provided (other than the front setback area):*

- (i) *One (1) area of at least 20m<sup>2</sup> with a minimum dimension of three (3) metres is provided for the use of lodgers,*
- (ii) *If accommodation is provided on site for a boarding house manager – one (1) area of at least 8m<sup>2</sup> with a minimum dimension of 2.5 metres is provided adjacent to that accommodation.*

Comment:

The design of the boarding house includes a courtyard with a minimum area of 20m<sup>2</sup> with a minimum dimension of three metres. In addition, the design includes Room 9 which is identified as accommodation for a boarding house manager. Room 9 has its own balcony which has a minimum area of 8m<sup>2</sup> and a minimum dimension of 2.5 metres.

### (e) **Parking:**

*If at least:*

- (i) *One (1) parking space is provided for every five boarding rooms or part thereof, and*
- (ii) *Not more than one (1) parking space is provided for each person employed in connection with the development and who is a resident on site.*

Comment:

The design includes 23 rooms and one (1) of these rooms is designated as accommodation for an on-site manager. This means that the boarding house component of the development must provide a minimum of six (6) parking spaces. The current design proposes the designation of the six (6) existing on-site carparking spaces for use by the boarding house in the following manner:

- An on-site manager's car space;
- Five (5) motor cycle parking spaces;
- An disabled persons car space; and
- A waste and recycling enclosure.

In addition, the design provides for the provision of a bicycle rack with a capacity to accommodate five (5) bicycles.

A detailed discussion of the parking arrangements can be found under the heading "Chapter 61 – Carparking" in a later section of this report. It should be noted, however, that the proposed arrangement which will provide a managers space and disabled persons space on site and rely on the carparking on the north side of Sonters Lane to provide the remaining four boarding house parking spaces is considered to satisfy the parking requirements of SEPP(ARH).

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

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*(f) Accommodation size:*

*If each boarding room has a gross floor area (excluding any area used for the purposes of a private kitchen or bathroom facilities) of at least:*

- (i) 12m<sup>2</sup> in the case of a boarding room intended to be used by a single lodger, or*
- (ii) 16m<sup>2</sup> in any other case.*

Comment:

The floor area of each proposed room complies with its respective minimum area requirements.

- (3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.*

Comment:

Each boarding room has its own private kitchenette and bathroom facilities.

- (4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).*

Comment:

The proposed boarding house complies with the standards in subclause (1) and (2).

**2. Standards for boarding houses.**

- (1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:*

- (a) If a boarding house has five or more boarding rooms, at least one communal living room will be provided.*

Comment:

A communal living room in the form of common lounge is provided on the building's fourth floor. There is also an enclosed communal courtyard on the same floor.

- (b) No boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m<sup>2</sup>.*

Comment:

No boarding room's gross floor area (excluding private kitchenette and bathroom facilities) exceeds 25m<sup>2</sup>.

## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

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(c) *No boarding room will be occupied by more than two adult lodgers.*

Comment:

Applicant proposes no more than two adults in any room .

(d) *Adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger.*

Comment:

Each boarding room is provided with private kitchenette and bathroom facilities.

(e) *If the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on-site dwelling will be provided for a boarding house manager.*

Comment:

The boarding house will contain 23 rooms accommodating up to 39 lodgers. One of the rooms, Room 9 on the third floor, is identified as an on-site manager's room.

(f) *Repealed.*

(g) *If the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such use.*

Comment:

Applicant proposes to retain the existing ground floor commercial uses.

(h) *At least one (1) parking space will be provided for a bicycle, and one (1) will be provided for a motorcycle for every five (5) boarding rooms.*

Comment:

The proposed arrangement also provides five (5) motorcycle parking spaces and five (5) bicycle parking spaces on site as required by SEPP(ARH).

### **SUMMARY**

As can be seen from the previous discussion in the report, the proposed boarding house complies with or satisfies all SEPP(ARH) development standards. However, in addition to the above development standards, Clause 30A of SEPP(ARH) requires Council to take into consideration whether the design of the development is compatible with the character of the local area.

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

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This was an issue raised in several of the submissions received as a result of publicly notifying the proposed development: that the proposed four-storey building would be out of character with the surrounding development which was a mixture of one and two-storey development. While it is true that the building will be two storeys higher than surrounding development, the building is consistent with Council's adopted Toukley Planning Strategy which envisages four to five storey development within the area in which this site is located. The applicant has also chosen a low-pitch roof, third floor landscaping and the use of colour treatments on the side walls to improve and reduce the building's visual impact.

It is concluded that while the building will be initially higher than surrounding development, it is consistent with Council's vision for the future development and character of the Toukley commercial centre. It is also considered that the design of the development is compatible with the present character of the local area notwithstanding the building's height.

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

#### **Clause 10 – Zone objectives and development control table**

The proposed development, a "boarding house", is identified as a prohibited use within the 3(a) zone that applies to the land. However, as previously discussed under the heading "Permissibility", the proposed use is permissible with consent under the provisions of SEPP(ARH).

#### **Clause 15 – Development on land containing acid sulphate soils**

The land is identified on Council's Acid Sulphate Soils Planning Maps as within Class 5 (within 500 metres of another class) which requires the preparation of an acid sulphate soils management plan if works are proposed that are likely to lower the watertable in adjacent Class 1, 2, 3 or 4 land to any point below 1 metre AHD.

The closest other class to this site is a Class 2 which is over 650 metres from the subject site. It is concluded that the proposed above-ground additions and alterations to the existing commercial building are unlikely to have any impact on the watertable in the adjoining Class 2 land.

#### **Clause 29 – Services**

Clause 29 of WLEP prohibits Council from granting consent to development unless satisfactory water, sewer and drainage services are available to the development. The additions and alterations are such that the existing water in Main Road and the existing sewer main located at the rear of the development will be able to service the development. The proposed development does not require the lodgement of a trade waste application.

However, the proposed increase in the floor area of the building will attract a contribution for water and sewer works and this has been calculated as 4.08 existing tenements (ET). This figure includes a credit of 1.90 ET for the first floor's change of use from commercial/office space to boarding house. The contributions have been calculated as:

Water:       \$9,845.50

Sewer:       \$4,584.36

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

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The contribution will be included in a Section 306 Letter of Requirements that will accompany any consent that is granted by Council.

In regards to stormwater management, it is recommended that a detailed stormwater management plan be provided demonstrating how roof water from the development will be managed and how it will be connected to Council's existing stormwater infrastructure. The drainage design needs to provide for subsidence effects as required by conditions of the Mine Subsidence Board's approval (see details under the heading "Any submissions from public authorities" in a later section of this report). An appropriate means of stormwater management can be achieved and can be dealt with by a suitable condition should consent be granted.

### **Clause 42 – Floor space ratio**

This clause states:

- (1) *This clause applies to land within Zone No 3 (a) that is identified as a local or neighbourhood centre in any development control plan applying to the land.*
- (2) *The ratio of so much of the gross floor area of a building erected on land to which this clause applies as is not used for residential purposes to the site area must not exceed 0.5:1.*

Neither Chapter 25 – Main Road & Lakeview Street, Toukley nor Chapter 81 – Retail Centres of WDCP identifies the Toukley commercial district as a "local" or a "neighbourhood centre" (Chapter 81 identifies Toukley as a District Town Centre) so the floor space ratio of 0.5:1 cannot be applied to the commercial component of the development.

### **Wyong Development Control Plan 2005**

#### **Chapter 25 – Main Road and Lakeview Street Toukley**

Chapter 25 applies to the five commercial lots (including the subject site) fronting Main Road between the intersection with Summerside Street to the west and Lakeview Street to the east. The three objectives of this Chapter are to:

1. Provide a rear laneway and carparking;
2. Provide for a maximum floor space ratio of 1:1; and
3. Provide for the orderly and economic development of land.

To achieve these objectives the chapter contains six requirements to be implemented. These six requirements are discussed below:

- *The dedication of the rear 12 metres of the property, at no cost to Council for rear laneway and carparking purposes.*

Comment:

Council's records show that Lot 1 DP 712945 (the rear 12 metres of the subject property) was transferred into Council's ownership at no cost to Council on 23 May, 1985.

- *The construction of carparking at the rear of the land in accordance with the map supporting this plan, at no cost to Council.*



## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

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Comment:

Sonters Lane has been constructed and Council's records show that in May 1984 the then owner contributed \$7,000 towards the eventual construction of the entire laneway and paid a further \$3,500 for the construction of six public car spaces that were to be located on the north side of Sonters Lane.

- *Where appropriate, Council accept a cash contribution towards future laneway construction where the location of the proposed laneway renders construction at the time of development impracticable.*

Comment:

See previous comment above.

- *The maximum floor space ratio for development is 1:1. The floor space ratio means the ratio of the gross floor area of a building to the site area.*

Comment:

The issue of the allowable floor space ratio permitted by this DCP and by the applicable planning legislation has been discussed in an earlier section of this report with it being concluded that the proposed floor space ratio is less than that permitted by the SEPP(ARH) which relies on but also overrides this provision of the Chapter 25.

- *For the purpose of calculating the floor space ratio for development the site area is to be taken as that existing prior to dedication to Council for the purpose of the rear laneway and carparking.*

Comment:

For the purposes of calculating the allowable floor space ratio, the 182.9m<sup>2</sup> transferred from the site to Council for the future construction of Sonters Lane and for carparking has been included in the calculations of the allowable floor space ratio as specified by the DCP.

- *Carparking will be required to be provided in accordance with Council's Carparking Code. Council may require a contribution for any deficiency in carparking that is not provided on the land.*

Comment:

In 1983 Council granted consent to DA/83/270 which permitted the erection of a two-storey building on the site. The building contained a ground-floor medical centre and a second-storey residence. The development also included the provision of six (6) on-site carparking spaces. This consent also required dedication of the rear part of the site for future construction of Sonters Lane. The consent further required payments to Council for the construction of Sonters Lane and for the construction of a further six (6) public carparking spaces on the north side of Sonters Lane.

## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

In 1985 Council granted consent to DA/85/428 which permitted the conversion of the second-storey residence into commercial offices. Council required the provision of 19 carparking spaces (for the entire site) but because only 12 spaces could be provided (six on site and six on the north side of Sonters Lane), Council required a cash contribution of \$31,500 for provision of the remaining seven spaces within or adjacent to the Toukley commercial centre. This payment was finalised on 11 February 1988.

- *When development or redevelopment occurs on Lots 280 DP 786453 and 32 DP 17931 Council will require the dedication to Council at no cost to Council of a splay corner 3 metres by 3 metres for sight distance purposes to improve traffic safety.*

Comment:

Not relevant to this site.

### Chapter 50 – Advertising Signage

The proposed mixed use building does not propose any new signage as part of this application (the existing ground floor commercial premises advertising signage is proposed to be retained).

### Chapter 61 – Carparking

Section 3.0 (Requirements) of Chapter 61 specifies the on-site car parking requirements for various types of development. In regards to “boarding houses” Chapter 61 has no specific carparking requirements and if any had existed, those requirements would have been overridden by the carparking development standards required by SEPP(ARH) (see discussion of this point under the heading “State Environmental Planning Policy (Affordable Rental Housing) 2009”.

However, Chapter 61 does specify requirements for commercial premises at a rate of one space per 30m<sup>2</sup> of gross floor area. In 1985 when Council granted consent to DA/85/428 (which permitted the retention of the ground floor medical centre and the conversion of the first floor dwelling to commercial offices) it carried out the following on-site car parking assessment at the required commercial rate of one space per 30m<sup>2</sup>:

<b>Floor</b>	<b>Area</b>	<b>Spaces Required</b>	<b>Spaces Proposed</b>	<b>Complies</b>
Existing ground floor medical centre	219.8m <sup>2</sup>	7.4		
Proposed first floor commercial offices	348.4m <sup>2</sup>	11.6		
<b>Total</b>	568.2m <sup>2</sup>	19	12*	No

\* *Consisting of six on-site spaces and six spaces opposite on northern side of Sonters Lane.*

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

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As can be seen from the table above, Council required the provision of 19 carparking spaces. However, because only 12 spaces could be provided, (six on site and six on the north side of Sonters Lane for which the applicant dedicated the land at no cost to Council and paid Council for their construction), Council required a cash contribution of \$31,500 for provision by Council of the remaining seven spaces within or adjacent to the Toukley commercial centre. This payment was finalised on 11 February 1988.

Council's requirement for a cash contribution implies that Council intended to provide off-site public parking in proximity to the site. In this regard it is noted that since 1988 Council has provided two public carparks within 90 metres of the site and that Canton Beach Road to the south-west of the site has been partially closed to allow further marked parking to be provided.

The applicant now proposes to alter the building's first floor by removing the commercial offices. The first-floor office removal essentially gives the site a credit of at least 11 carparking spaces. The first floor is to be converted to the first of three floors that will form the boarding house. SEPP(ARH) requires the provision of only six (6) carparking spaces plus motorcycle and bicycle parking for the entire boarding house although SEPP(ARH) does not specify that this parking must be on the site. In essence, the proposed additions, alterations and change in use result in the site being required to provide a lesser number of carparking spaces (14) than the existing approved development (19).

With this in mind, the applicant has identified all of the six (6) on-site spaces for use by the boarding house (a manager's space, a disabled persons space, five (5) motor cycle spaces, a waste storage enclosure and accessway) and proposes that the remaining four (4) boarding house spaces be provided by the spaces on the north side of Sonters Lane. The applicant also proposes that the existing ground floor commercial uses rely on the parking available on the north side of Sonters Lane, parking available in the nearby public carparks and parking available in line-marked parking in Main Road and Canton Beach Road.

In summary, the existing approved two-storey commercial building provided 19 car spaces and this has been provided through a mixture of on-site and off-site car parking with Council's consent. The current proposal only requires 14 car spaces (plus motorcycle and bicycle parking) and relies on the same currently approved 19 spaces for the existing commercial building albeit in a modified arrangement.

In practical terms, Council must be reasonably confident that the proposed mixed-use building is not likely to cause a significant impact on available parking within the immediate locality. To this end several on-site inspections have been undertaken by Council officers at various times on different days, including night-time and weekends, to gauge the current demand for parking on and around the site. The results of these inspections can be seen in Attachment 4. In carrying out these inspections it was noted that the site's ground floor nursing services office is generally open when the pizza restaurant is closed and vice versa. It was also noted that a second floor office continues to operate on a month-by-month basis and once closed will lessen the commercial demand for both on-site and off-site parking.

The conclusion drawn from these inspections is that both on-site and off-site parking is always available even during the busiest periods and that the proposed mixed-use building will have adequate access to on-site and adjacent off-site parking.

## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

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### Chapter 69 – Controls for Site Waste Management

A site waste management plan was submitted following Council's pre-assessment of the development application. This plan is considered satisfactory and a condition of any consent will require the management of waste during demolition, construction and ongoing use to be carried out in accordance with that plan.

### Chapter 70 – Notification of Development Proposals

In accordance with Section 2.4 of Chapter 70 the application was notified to seven landowners in the locality, including two strata plan owners' corporations, as being available for inspection and comment from 20 December 2011 to 25 January 2012. Five submissions were received objecting to the proposal. The issues raised in the five submissions are discussed in this report together with details of how, where appropriate, those issues have been addressed.

### Chapter 81 – Retail Centres

Section 3.1 of Chapter 81 identifies the Toukley commercial area as existing "District Town Centre" within its retail centres hierarchy. Section 8 of Chapter 81 deals specifically with the Toukley District Town Centre, and in respect of the maximum retail floor space for the Toukley District Town Centre, Section 8.3.2 states in part:

*"The maximum gross retail floor space for the Toukley District Town Centre is 21,000m<sup>2</sup>. The existing available floor space in the Centre is estimated to be 15,902m<sup>2</sup>. Any proposal to expand Toukley is restricted until after 2021 given the current high amount of vacant floor space within the Toukley Town Centre. However, an exception to this timing could be considered for:*

- *A second supermarket which would increase competition in the food retail sector; or*
- *Redevelopment that incorporates a substantial amount of non-retail and/or residential use.*

The current proposal to convert the existing two-storey commercial building into a four-storey mixed-use building containing ground-floor retail and commercial premises and a three-storey boarding house is considered consistent with the second dot point contained in Section 8.3.2.

In addition, Section 11 of Chapter 81 provides design guidelines for developments within the retail centres and the table in Attachment 3 compares the proposed development to those guidelines. As can be seen from the comparison, the proposed mixed-use building is compliant with the guidelines. Where necessary, compliance can be ensured by the recommendation that appropriate conditions be included in any consent granted by Council.

## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

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### Toukley District Development Contributions Plan

The applicable Section 94 contribution has been calculated on the basis of the information provided in the application to the effect that 16 accommodation rooms will each be capable of accommodating two people and the remaining seven rooms will each be capable of accommodating one person.

The contribution will be levied for the provision of Shire-wide facilities, open space embellishment, community facilities land and embellishment, roads and administration. On these bases, the contribution is calculated as being \$96,044. It should be noted that the contributions plan also includes a contribution of \$12,670.95 per carparking space for any shortfall in carparking provision. In this case, given the history of the site in regards to this point, it has been assessed that no further carparking contributions are required as explained under the heading “Chapter 61 – Carparking in an earlier section of this report.

### **Toukley Planning Strategy**

On 27 October 2010 Council adopted the Toukley Planning Strategy (TPS). The stated purpose of the TPS is to:

- Establish planning principles and objectives to underpin the longer-term Strategy for the Toukley Peninsula; and
- Recommend a long-term direction to accommodate growth while protecting the unique sensitive environmental setting of the Toukley Peninsula.

There were many key objectives identified and recommendations made in the TPS with the most relevant to this proposal being:

*“Reinforce the role of the Town Centre as the primary business hub of the district within a legible urban structure allowing shop-top housing up to five storeys.”*

*“Advance housing choice through supporting the Implementation of Promoting Housing Choice: A Local Housing Strategy for Wyong Shire.”*

The TPS also identified several planning issues that the TPS was intended to address including the protection of low-cost housing and caravan parks. In part, the TPS states in relation to this issue:

## 2.1 DA/1148/2011 - Proposed Three-Storey Boarding House above existing Commercial Premises at Toukley (contd)

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*“Consultation with community housing providers in relation to the need/demand for affordable housing in Toukley and, in particular, the current role played by the existing residential/caravan parks has revealed the following:*

- *There continues to be a very high demand for affordable housing in the area. This is more pronounced given the current economic climate and community housing provider, Coastal Community Tenancy Scheme (CCTS), has waiting lists.”*

In addition, the TPS states:

*“Loss of low cost housing is a significant issue for Council on a wider scale, particularly in the context of redevelopment in other parts of Wyong. Council is embarking on an Affordable Housing Strategy and outcomes of that project should be incorporated into the Toukley Strategy as far as possible.*

*Implications for the Strategy:*

- *Protection of low income housing should be a major consideration of the Strategy.*
- *Investigate opportunities to provide additional low income housing by implementing Council’s affordable housing strategy, Promoting Housing Choice: A Local Housing Strategy for Wyong.”*

The TPS was required to consider all objectives and planning issues and reflect them in the strategy for each precinct of which there are 13. The subject site lies within Precinct 3 – Town Centre and the strategy for Precinct 13 is shown in Figure 7 on the following page. In considering the location and character of Precinct 3 the TPS notes:

*“The relatively low scale of buildings in Toukley is a significant factor that underpins character. However, successful revitalisation of the Town Centre is partly reliant on allowing increased densities, possibly in the form of mixed commercial and residential developments in buildings up to five storeys where site conditions allow (mainly determined by site dimensions and orientation.”*

And, in explaining its vision for Precinct 3, the TPS states:

*“New residential units will be engaged above active commercial and retail uses at ground level. The units will have good amenity and outlook, many with views to the lakes and therefore will be desirable places to live. The layout and planning of the units will be suited to a range of life stages.”*

It can be seen from Figure 7 that the TPS has identified the site and indeed, the whole of the block on the north side of Main Road between Summerside Street and Lakeview Street, as “commercial” and with buildings up to five storeys in height.

The applicant proposes a four-storey, mixed-use building retaining existing ground level commercial uses and providing three above-ground levels of affordable rental housing in the form of a boarding house. It is concluded that the proposed development is consistent with the strategy for Precinct 3 and consistent with the overall vision for the Precinct.

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

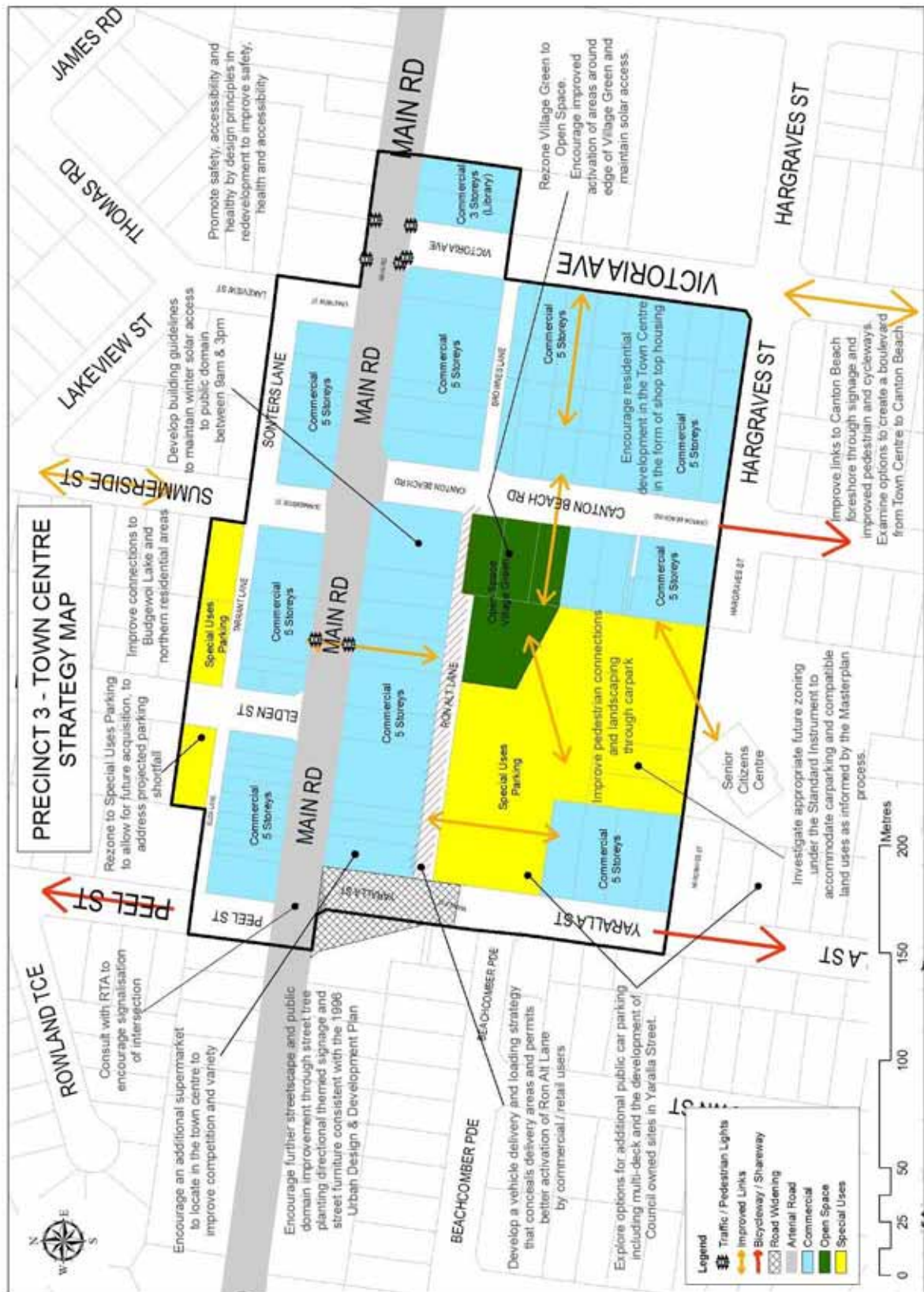


FIGURE 7: Precinct 3 – Town Centre Strategy Map.

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

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

The proposed boarding house is to be sited within the Toukley Commercial Centre among one and two-storey commercial developments. The proposed development represents an initial and significant step towards the revitalisation of the Toukley Commercial Centre by retaining existing ground floor commercial development and by providing affordable resident accommodation within the commercial centre. The existing commercial and transport services will support these new residents who, in turn, will support these services with their patronage. It is considered that the proposed development is an appropriate development for the local context and setting.

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

The issue of carparking has been considered in detail in a previous section of this report and was determined as being appropriately satisfied.

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

No significant impact on the public domain has been identified in the assessment of this application.

**The impact on utilities supply.**

No significant impact on utilities supply has been identified in the assessment of this application.

**The effect on heritage significance.**

The site is not identified as a heritage item and is not located within the vicinity of a heritage item.

**Any effect on other land resources.**

No significant effect on other land resources has been identified in the assessment of this application.

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

No significant impact on the conservation of water has been identified in the assessment of this application.

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

The issue of acid sulphate soils has been discussed under the heading "Clause 15 – Development on land containing acid sulphate soils" in a previous section of this report. In respect of conservation of soils, appropriate conditions are recommended to be included in any consent granted by Council that require appropriate site management measures be put in place prior to construction occurring to ensure that sand and other construction materials are not washed off site during rain periods.



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

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

No effect on quality of air and microclimate conditions has been identified in the assessment of this application.

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

No impact on flora and fauna has been identified as part of the assessment of this development proposal.

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

The amended design now includes a bin enclosure at the rear western end of the building, in place of an existing on-site carparking space. The size and number of bins (and the number of collections) has been proposed following consultation with Council and is detailed in the submitted waste management plan. The waste arrangements are considered to be satisfactory.

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

The development is required to comply with Section J of the Building Code of Australia (BCA) which deals with energy efficiency.

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

The proposed development is likely to be a source of noise during construction but this will be for a limited period. In addition, it is recommended that a condition specifying standard hours and days during which construction can occur be included in any consent granted by Council. Following completion of the additions and alterations the use of the building for ground floor commercial activities and for a three-storey boarding house above the commercial activities is not considered to be a likely source of significant noise. Nonetheless, appropriate post-construction building management conditions have been recommended to be included in any consent granted by Council.

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

The site is not identified as being subject to flooding or bush fire hazard but the site is located within a mine subsidence area. The plans were referred to the Mine Subsidence Board (MSB) which has approved the proposed mixed-use building subject to four conditions. These conditions relate to design certification, masonry articulation, suitability of internal finishes and the drainage and sewer design. The MSB's conditions must be included in any consent granted by Council because the proposed development is an "integrated development" which required the approval of the MSB for Council to consent to the development.

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

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

The assessment of this development proposal identified that the existing exhaust duct located at the rear of the building would vent direct into the northern (rear) third-storey balconies unless it was removed or modified. The applicant has now adequately addressed this issue by modifying the duct so that it will now be internally located and exhaust above the building's new fourth-floor roof.

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

The following measures have been included in the design and proposed operation of the development:

- On-site manager;
- Entry to the building to be via a secure key system or the like;
- CCTV installed in all common areas, exits and entrances.
- Lighting of all external on-site parking and service areas, exits and entrances; and
- A plan of operational management .

The development has been assessed against the "Safer by Design" principles including surveillance, access control and territorial reinforcement and the development is considered to be satisfactory given the design, proposed security measures and the fact that the development will create higher activity areas within the commercial centre.

Appropriate conditions requiring management responses to the control of any graffiti or anti-social behaviour on site have been recommended to be included in any consent granted by Council.

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

Given the likely clientele that the boarding house will serve and given that the development includes an on-site manager and security measures, it is likely that the proposed development will have no significant negative social impact in the locality.

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

It is reasonable to expect that the creation of a building that will house up to 39 people within the Toukley town centre is likely to have a positive economic effect on established businesses and services within the town centre.

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

The original site design raised a number of issues including privacy, waste management, security management, BCA compliance and disabled persons access. These issues have been satisfactorily addressed by the applicant submitting amended plans (which include a disabled persons carparking space, movable privacy screens, waste storage area and BCA compliance changes) and additional details such as a waste management plan and a plan of management which includes security provisions such as secure key systems, CCTV in all common areas, exits and entrances.

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

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

Appropriate conditions are recommended to be applied to any consent that is granted, requiring appropriate site management measures be put in place prior to construction occurring to ensure that sedimentation does not occur. These site management measures will be required to be maintained throughout the duration of the construction.

### **Any cumulative impacts.**

No significant negative cumulative impacts have been identified in the assessment of this application.

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

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

See previous discussion, concerning this issue, under the heading “State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP(ARH))” in an earlier section of this report.

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

The site’s attributes – location within an existing commercial centre and on a major transport route and lack of hazards – make the site conducive to the proposed development.

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

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

The application was advertised in accordance with DCP 2005 Chapter 70-Notification of Development Proposals with five (5) submissions being received. The issues raised in the submissions have been addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the EP&A Act 1979. A summary of the submissions is detailed in the table below.

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

Doc. No	Summary of Issues	Response
D02888389	<ul style="list-style-type: none"> <li>• The building is too high and out of character with the area.</li> <li>• This building will attract the wrong sort of people.</li> <li>• These types of developments should be shared across all areas.</li> </ul>	<p>The building will be higher than the existing one- and two-storey developments within the town centre but it is consistent with the desired future built character for the area.</p> <p>The development will provide affordable rental housing to a section of the community whose housing needs are not currently well met.</p> <p>The provisions of SEPP(ARH) apply to all local government areas within NSW.</p>
D02890288	<ul style="list-style-type: none"> <li>• Will there be enough parking?</li> <li>• What type of person will be living there?</li> <li>• Has fears for personal security.</li> <li>• The appearance of the building is unsatisfactory.</li> <li>• What are the views of the existing shop people?</li> </ul>	<p>The proposed parking arrangements satisfy SEPP(ARH) and are considered adequate.</p> <p>The boarding house, by definition, will provide affordable rental housing to people requiring this form of accommodation for a minimum of three months. The applicant has also advised that the boarding house will likely serve elderly people benefitting from rental assistance.</p> <p>There is no evidence provided to suggest that these fears are well founded.</p> <p>The amended design has included significant improvements to the building's appearance and is now considered satisfactory (see Attachment 5).</p> <p>The application has been publicly notified and five submissions received.</p>

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

Doc. No	Summary of Issues	Response
D02890336	<ul style="list-style-type: none"> <li>• There is insufficient parking.</li> <li>• The building is not in proportion with current buildings which will result in reduced tourism and lower land values.</li> <li>• Type of person housed in this building will not suit the values of those established here.</li> <li>• It will house people who are unable to support themselves.</li> </ul>	<p>The proposed parking arrangements satisfy SEPP(ARH) and are considered adequate.</p> <p>The building will be higher than the existing one- and two-storey developments within the town centre but it is consistent with the desired future built character for the area. No evidence that development will lead to lower tourism or property values.</p> <p>No evidence to support this.</p> <p>No evidence to support this</p>
D02898983	<ul style="list-style-type: none"> <li>• Toukley already has affordable housing in the form of two motels being used as emergency accommodation as well as caravan parks.</li> <li>• Concerns as to the type of people that will be living in this type of accommodation.</li> <li>• The boarding house is being proposed in an unsuitable area and has easy access to prescription drugs and alcohol.</li> </ul>	<p>The proposed boarding house is not emergency housing. It proposes to provide affordable rental housing to future occupants for a minimum of three months' stay.</p> <p>The boarding house will provide affordable rental housing to people requiring this form of accommodation for a minimum of three months. The applicant has also advised that the boarding house will likely serve elderly people benefitting from rental assistance.</p> <p>The boarding house is proposed to be located in a commercial area that can provide a range of personal and community services and access to public transport. In this respect the boarding house is well located.</p>

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

Doc. No	Summary of Issues	Response
D02899007	<ul style="list-style-type: none"> <li>• The proposed parking is inadequate.</li> <li>• The building's height is out of character with existing development.</li> <li>• Noise and disruption likely to adjoining neighbours with people able to come and go at all hours of day and night.</li> <li>• Privacy issues are a real concern with balconies overlooking properties on Lakeview and Summerside Streets.</li> </ul>	<p>The proposed parking arrangements satisfy SEPP(ARH) and are considered adequate.</p> <p>The building will be higher than the existing one- and two-storey developments within the town centre but it is consistent with the desired future built character for the area.</p> <p>The boarding house is not assessed as being a significant noise source. Proposal includes on-site manager and appropriate conditions addressing anti-social activities are can be included as conditions in any consent.</p> <p>Issue of privacy addressed by applicant submitting amended plans which include movable balcony screens to reduce overlooking of adjoining properties.</p>

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

The application was referred to the MSB for its concurrence. The MSB has approved the proposed mixed-use building subject to four conditions relating to the design parameters of the structure, masonry articulation, suitability of internal finishes and sewer and drainage design. These conditions must be included in any consent granted by Council.

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

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

It is in Council's interest to facilitate the establishment of developments in accordance with its planning strategies which seek to guide the development and evolution of specific areas within Wyong Shire such as the Toukley Town Centre. In addition, it is in all interests to ensure that affordable forms of housing are provided in suitable locations for all members of society regardless of their socio-economic status.

**OTHER MATTERS FOR CONSIDERATION**

**Contributions**

As previously discussed under the heading "Toukley District Development Contributions Plan" in an earlier section of this report, a contribution to the amount of \$96,044 is applicable and a condition is included in draft conditions attached to this report requiring payment prior to the release of any construction certificate for the development.

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

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### **Deeds of agreement etc.**

There are no deeds of agreement involved in this application.

### **CONCLUSION**

The application is for alterations and additions to an existing two-storey commercial building to create a four-storey mixed-use building comprising the existing ground-floor commercial uses and a three-storey boarding house above. The application is made under the provisions of SEPP(ARH) and satisfies the development standards contained in SEPP(ARH). The application was publicly advertised and five submissions were received. Issues raised in submissions and by Council included carparking, character of the area, building appearance, loss of privacy and likely clientele. The applicant has addressed all issues by submitting amended plans and additional written information. The application is assessed as being satisfactory and consent is recommended subject to recommended conditions.

### **ATTACHMENTS**

<b>1</b>	Draft Conditions of Consent	D03022786
<b>2</b>	Table of Carparking Results	D03012694
<b>3</b>	Comparison of Proposal to Requirements of DCP 2005, Chapter 81	D03032691
<b>4</b>	Photomontages of Board House (A3 Colour)	D03017456
<b>5</b>	Development Plans A3	Enclosure D03022989

**Date:** 29 May 2012  
**Responsible Officer:** Peter Meloy  
**Location:** 268 Main Road, TOUKLEY NSW 2263  
 Lot 2 DP 712945  
**Owner:** Team Five Holdings Pty Ltd  
**Applicant:** Branvel Developments  
**Date Of Application:** 16 December 2011  
**Application No:** DA/1148/2011  
**Proposed Development:** 3 Storey boarding house development above existing commercial premises  
**Land Area:** 397.80  
**Existing Use:** XXXX

## PROPOSED CONDITIONS

### Approved Plans

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

Title	Drawing No.	Revision	Date	Drawn By
Ground Floor Plan	A02	E	13/05/12	CR
Level 1 Floor Plan	A03	E	13/05/12	CR
Level 2 Floor Plan	A04	E	13/05/12	CR
Level 3 Floor Plan	A05	E	13/05/12	CR
Main Road Elevation (South)	A06	E	13/05/12	CR
Sonters Lane Elevation (North)	A07	E	13/05/12	CR
Section A:A	A08	E	13/05/12	CR
Section B:B	A09	E	13/05/12	CR
Main Road Perspective	A13	E	13/05/12	CR
Main Road Perspective 2	A14	E	13/05/12	CR
Sonters Lane Perspective	A15	E	13/05/12	CR
Side Elevation (East)	A17	E	13/05/12	CR
Side Elevation (West)	A18	E	13/05/12	CR
Photomontage (Main Road)	A19	E	13/05/12	CR
Photomontage (Sonters Lane)	A20	E	13/05/12	CR

### Certificates – Application and Approval

- A Construction Certificate is to be issued by the Principal Certifying Authority prior to commencement of any construction works. The application for this Certificate is to satisfy all of the requirements of the Environmental Planning and Assessment Regulation 2000.
- Prior to the occupation or use of the building/structure, an application for an Occupation Certificate for the development must be submitted to and approved by the Principal Certifying Authority.



### Other Authorities – Compliance Requirements

- 4 The conditions of approval issued by the Mine Subsidence Board and contained within the Board's letter dated 4 January 2012, Reference FN84 – 00681W0, are to be complied with. The letter containing the conditions is attached to this consent.

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

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

### Contribution Payment Requirements

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

### Stormwater Drainage - Design Requirements

- 6 The submission to the Accredited Certifier of a detailed stormwater management plan with stormwater disposal to Council's drainage system. The plans must be prepared in accordance with AS/NZS3500.3:2004 and the Mine Subsidence Board's requirements and approved by the Accredited Certifier prior to issue of the Construction Certificate.

### Structural Design Requirements

- 7 Prior to the issue of a Construction Certificate, a report prepared by a suitably qualified Registered Structural Engineer is to be provided for the approval of the Accredited Certifier providing certification that the existing structure is capable of accepting all anticipated live and dead loads imposed by the proposed additions. Such report is to include any recommendations on the structural upgrade of the existing structure catering for Mine Subsidence parameters and taking into account additional conditions imposed by the Mine Subsidence Board.

### Vehicle Access and Parking - Design Requirements

- 8 The submission to the Accredited Certifier of a detailed car parking design. The design shall include:
  - Pavement marking, appropriate signage and physical controls detailed for the carpark, access driveway and circulation roads.
  - Wheel stops for all parking spaces.

- The placement of clearance signage above the on-site carparking entry.

The design drawings shall be prepared in accordance with the requirements of AS/NZS 2890 – Parts 1, 2 and 6, and be approved by the Accredited Certifier prior to the issue of a Construction Certificate.

### **Water and Sewer Services - Design Requirements**

- 9 All water and sewer works or works impacting on water and sewer assets must be designed and constructed to the requirements of Council as the Water Supply Authority. The requirements are detailed in the Section 306 Notice of Requirements letter attached to this consent. **Note:** The Section 306 Notice contains requirements associated with the development that must be completed prior to the issue of the Construction Certificate.

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

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

### **Dilapidation Reports**

- 10 Prior to works associated with development commencing, a dilapidation report must be prepared and submitted to Council as the Roads Authority. The required dilapidation report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, water supply, sewer works, street trees, street signs or any other Council assets in the vicinity of the development. **Note:** The report will be used by Council to determine the extent of damage arising from site and construction works.
- 11 Prior to works associated with the development commencing, the applicant must supply the Principal Certifying Authority with a dilapidation report for the adjoining properties, which documents and photographs the condition of buildings and other improvements. The report must be submitted to and approved by the Principal Certifying Authority prior to the commencement of any works. **Note:** The report is to be made available by the Principal Certifying Authority in any private dispute between neighbours regarding damage arising from construction works upon the development site.

## Site Requirements

- 12 Prior to works associated with the development commencing, the Principal Contractor (or Owner/Builder) is to erect a suitable sign in a prominent position on the development site (not attached to any tree) identifying the name, address and telephone number of the Principal Certifying Authority (PCA) for the work, the name, address and telephone number (including a number for outside of business hours) of the Principal Contractor for the work (or Owner/Builder) and stating that unauthorised entry to the site is prohibited. The required sign is to be maintained for the duration of works associated with the development. Appropriate signs can be collected from Council's Customer Service Centre, where Council is the nominated Principal Certifying Authority with respect to the development.
- 13 Prior to works associated with the development commencing, suitable toilet facilities must be available or be provided upon the development site, with the required toilet facility(s) maintained until development works are completed at a ratio of one (1) toilet plus one (1) additional toilet for every twenty (20) persons employed at the site. Each toilet must:
  - be a standard flushing toilet connected to a public sewer system; or
  - have an on-site effluent disposal system approved under the Local Government Act 1993, or be a temporary chemical closet approved under the Local Government Act 1993, supplied by a suitably licensed contractor.
- 14 Prior to works associated with the development commencing, an application for a Hoarding Permit, including the payment of fees in accordance with Council's Management Plan must be completed prior to the erection of any hoarding/safety fencing associated with the development.
- 15 Prior to works associated with the development commencing, a suitable hoarding or safety fence between the work site and the public place is to be provided in accordance with Work Cover Authority requirements. The required hoarding/fencing is to remain in place during the construction phase of the development. Should the hoarding/fencing be required to be provided within the road reserve area, approval from Council under the Roads Act as the Roads Authority is required to be obtained prior to its erection.

## During Construction Works:

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

### Approved Plans

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

**Demolition - Compliance Requirements**

- 17 The disposal of any asbestos materials must be in accordance with the requirements of WorkCover NSW and AS 2601-2001 – *The Demolition of Structures*. The asbestos materials are to be disposed of at an approved waste management facility in accordance with the procedures the facility has for the disposal of asbestos. Upon completion of these works, the Principal Certifying Authority is to be supplied with disposal receipts within seven (7) days to verify that this requirement has been complied with.

**Erosion and Sediment Control - Construction Requirements**

- 18 Sand and other materials associated with the construction of the development that could potentially be washed off the site during rain periods, are to be stored behind a suitable sediment control barrier.
- 19 During construction, all building materials, plant and equipment must be placed on the site of the development in order to ensure that pedestrian and vehicular access within adjoining public roads and footpaths is not restricted and to prevent damage to public infrastructure.
- 20 All sediment and erosion control devices provided with respect to the development are to be periodically cleaned and maintained in an effective state for the duration of works. On the spot fines for non-compliance with this requirement may be issued under the provisions of the *Protection of Environment Operations Act, 2000*.
- 21 During the construction phase of the development, downpipes and the associated stormwater disposal system is to suitably connected to the site stormwater connection point immediately after the new roof materials are positioned in order to prevent erosion of the site from roof water run off. The Principal Certifying Authority for the development will not issue a compliance certificate for framing unless connection of the site stormwater (or temporary system) has occurred.

**Site Requirements**

- 22 Construction or demolition works involved with the development may only be carried out between the hours of 7.00 am and 5.00 pm Monday to Saturday with no construction or demolition works associated with the development permitted to be carried out at any time on a Sunday or a public holiday.
- 23 During the construction phase of the development, all building materials, plant and equipment must be placed on the site of the development in order to ensure that pedestrian and vehicular access within adjoining public roads, footpaths and reserve areas, is not restricted and to prevent damage to public infrastructure.

**Waste Management Requirements**

- 24 During construction, all building materials must be re-used, recycled or disposed of in accordance with the Waste Management Plan submitted with the subject application.

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

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

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

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

### **Dilapidation Rectification Requirements**

- 26 Prior to the issue of an Occupation Certificate, any damage not shown in the Dilapidation Report prior to site works commencing, will be assumed to have been caused as a result of the site works undertaken with respect to the development and must be rectified at the applicant's expense.

### **External Colours/Finishes Requirements**

- 27 Prior to the issue of an Occupation Certificate, the completed development must comply with the schedule of external colours and materials submitted with the application and as shown on the submitted photomontages.

### **Lighting Requirements**

- 28 Prior to the issue of an Occupation Certificate, lighting to the on-site undercover parking area adjacent to Sonters Lane shall be provided in accordance with the requirements of AS/NZS 1158 and AS/NZS 2890.1.
- 29 Prior to the issue of an Occupation Certificate, suitable lighting to all public areas shall be provided.

### **General**

- 30 Prior to the issue of an Occupation Certificate, one mailbox per commercial tenancy and one for the boarding house shall be erected within the boundaries of the property.

### **Other Authorities – Compliance Requirements**

- 31 Prior to the issue of an Occupation Certificate, the developer must comply with the requirements (including financial costs) of any relevant utility provider (for electricity, water, sewer, drainage, gas, telecommunications, roads, etc) in relation to any connections, works, repairs, relocation, replacements and/or adjustments to public infrastructure or services affected by the development.

### **Security Requirements**

- 32 Prior to issue of the Occupation Certificate, the developer must install a system of CCTV of a type and in locations on the site that will provide high-quality images of all public and common areas within the site.

**Stormwater – Compliance Requirements**

- 33 The construction of the stormwater management system in accordance with the approved Stormwater Management Plan and AS/NZS 3500.3-2004. Certification of the construction by a suitably qualified consultant shall be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.
- 34 Prior to the issue of an Occupation Certificate, stormwater flowing from roof areas of the building is to be disposed of to the existing stormwater disposal system servicing the allotment.

**Water and Sewer Services/Infrastructure – Compliance Requirements**

- 35 The obtaining of a Section 307 Certificate of Compliance under the Water Management Act 2000 for water and sewer requirements for the development from Wyong Shire Council as the Water Supply Authority prior to issue of the Subdivision/Occupation Certificate. All works for the development must be approved by Council prior to the issue of a Certificate of Compliance.

**Ongoing Operation:**

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

**Advertising Sign Requirements**

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

**Minimum Accommodation Period**

- 37 In order to ensure compliance with the definition of "boarding house" any rental or lease agreement for an accommodation room entered into between the owner or operator of the boarding house and any lodger shall be for a rental or lease period of not less than three months.

**Site Appearance, Maintenance and Security Requirements**

- 38 The owner/operator(s) of the site must maintain the external finishes of the building for the life of the development and any graffiti must be removed in a timely manner.
- 39 The owner/operator(s) of the site must maintain the required CCTV for the life of the development so that at all times the CCTV provides high-quality images of all public areas within the site.
- 40 All carpark and public place lighting must be maintained to ensure continuing security for residents is maintained.

- 41 The owner/operator(s) of the site must effectively manage any incidences of anti-social behaviour or nuisance on the site by implementing appropriate responses to such incidences if they occur. The owner/operator(s) must also take appropriate measures after any such incident to reduce the likelihood of such incidences reoccurring on the site.
- 42 The development being operated in accordance with the Plan of Management submitted with the Application.

#### **Vehicle Access and Parking – Ongoing Requirements**

- 43 All on-site vehicle parking areas, markings, driveways and manoeuvring areas are to be maintained for the life of the development.
- 44 Garbage/recycling bins must not be permitted to encroach with the carpark or vehicle manoeuvring areas.

#### **Waste Management – Compliance Requirements**

- 45 All waste generated on the premises shall stored in a manner so that it does not pollute the environment.
- 46 All waste generated on the premises shall be transported to a facility which is licensed to receive that material.

## **SCHEDULE OF CONTRIBUTIONS**

Shire Wide Regional Open Space	\$1,751.40
Shire Wide Performing Arts Centre & Public Art	\$4,054.00
Shire Wide Administration	\$778.15
Toukley Area Sewer DSP	\$4,584.36
Toukley Water DSP	\$9,845.50
Toukley District Community Facilities Works	\$36,739.80
Toukley District Community Facilities Land	\$9,080.65
Toukley Open Space Works	\$43,662.30

Wyong District Office  
FN84-00681W0  
DA/1148/2011  
Tom Hole (02) 4352 1646

Wyong Shire Council  
DX7306 Wyong

4 January 2012

Attention: M/s Wend Mitchell

BUILDING APPLICATION NO. TBA11-19967W1  
LOT 2 DP 712945 NO 268 MAIN RD TOUKLEY

The Mine Subsidence Board has approved the application, subject to the following conditions:-

**Prior to the submission of final plans the Structural Design Engineer is to provide advice and certification that the existing structure will cater for the additional loadings of the proposed development as well as catering for the mine subsidence parameters, taking into account the following conditions.**

1. The final drawings to be submitted prior to commencement of construction, contain a certification by a qualified structural engineer, to the effect that any improvement constructed to meet the specifications of such final drawings will be safe, serviceable and repairable ("Repairable" is defined as "any damage is slight or localised and can be repaired economically" taking into account the following mine subsidence parameters:

- a) Maximum ground strains of  $\pm 1$  mm/m
- b) Maximum tilt of 2 mm/m

2. All masonry components being fully articulated to cater for the Building code of Australia, site conditions and the mine subsidence parameters. The location of articulation joints being clearly shown on plan and elevations.

3. Attention is to be given to all internal finishes to ensure they have been installed in accordance with relevant codes and standards. Particular attention is to be given to tiled area. The avoidance of brittle surfaces is recommended.

4. Drainage/sewer design needs to provide for subsidence effects determined in the geotechnical report. This may necessitate additional downpipes and drainage points. Drainage pits are to be designed for subsidence movement.



All underground services are to be sufficiently flexible and where possible be located to facilitate repair or replacement.

Yours faithfully



COPY Branvel Developments Pty Ltd

Tom Hole  
District Manager

Table of Carparking Survey Results

Day	Time	Subject Site Parking (number of spaces occupied)	Sonters Lane Public Parking (number of spaces occupied)	Notes
Wed 29/02	2.00pm	4 of 6	16 of 26	2 of 4 spaces occupied in front of site on Main Road. Pizzeria closed.
Sat 03/03	7.30pm	2 of 6	9 of 26	4 of 4 spaces occupied in front of site on Main Road. Pizzeria full.
Mon 05/06	1.30pm	5 of 6	12 of 26	2 of 4 spaces occupied in front of site on Main Road. Pizzeria closed.
Sat 10/03	8.15pm	5 of 6	0 of 26	3 of 4 spaces occupied in front of site on Main Road. Pizzeria full.
Tues 13/03	10.45am	3 of 6	22 of 26	0 of 4 spaces occupied in front of site on Main Road. Pizzeria closed.
Thurs 15/03	2.30pm	4 of 6	18 of 26	2 of 4 spaces occupied in front of site on Main Road. Pizzeria closed.
Thurs 05/04	10.50am	4 of 6	20 of 26	1 of 4 spaces occupied in front of site on Main Road. Pizzeria closed.
Tues 24/04	10.00am	2 of 6	16 of 26	2 of 4 spaces occupied in front of site on Main Rd. Pizzeria closed.
Tues 15/05	3.05pm	3 of 6	20 of 26	3 of 4 spaces occupied in front of site on Main Road. Pizzeria closed.

### Comparison of Proposal to Requirements of Chapter 81

<b>5. 11.1 Streetscape</b>	<b>6. Comment</b>
7. Shopfronts should face the street, buildings should have narrow or no setbacks and windows, doors, awnings and corner façades should be used.	8. The proposed development satisfies these streetscape design criteria, where relevant, including the provision of an awning.
9. In multi-storey mixed use buildings, retail activities should be located on ground floor. Residential should be on floors above.	10. The building complies with this design requirement with the existing retail/commercial premises being retained on the ground floor & residential above.
11. To create visual interest & safety at all hours, as many doors and windows should be located on façade as possible.	12. The creation of the additional floors with façade balconies will significantly increase the number of windows and doors on the front and rear façades.
13. Corner elements should be included in buildings located on intersections.	14. Not relevant to this building.
15. Awning should be provided & should extend over at least half the width of the footpath.	16. The amended design now includes the provision of an awning over at least half the footpath fronting Main Road.
17. Roller shutters should not be installed on the front of commercial buildings.	18. Not proposed in this building's design.
19. Buildings should be aligned with footpaths.	20. Building's existing alignment is to be retained in this proposal.
21. Building façades should be aligned so as to minimise any intervening space which could become a security problem.	22. Building's existing ground floor façade is to remain unchanged (in this respect) by this proposal.
<b>23. 11.2 Architectural Character</b>	<b>24. Comment</b>
25. Large retail floor spaces not requiring continuous and direct connection to the street should be "wrapped" by smaller commercial buildings.	26. Not relevant to this particular proposal.
27. For multi-storey mixed-use buildings the façade treatment should be designed to provide character, visual legibility, human scale and delineates the distinct uses.	28. This issue is discussed in detail in the body of the report but the building has been assessed as satisfying this requirement.
29. Glass curtain walls should be minimised on building street frontages.	30. Existing ground floor façade to remain unchanged. Upper floors contain individual glass windows and doors as access to natural light and balconies but no glass curtain walls proposed.

31. Entrances should be clearly expressed through porticos or other devices. Entries to shop fronts should be recessed to define access, provide relief and visual interest to the ground floor façade.	32. The ground floor façade is suitably articulated to provide interest and relief. Access to the building is via a formal foyer and access to existing retail/commercial activities are recessed.
33. Buildings should contain no more than five metres of ground floor wall without a door or window.	34. Building's ground floor complies with this requirement.
<b>35. 11.3 Public Amenity</b>	<b>36. Comment</b>
37. Buildings, street furniture and landscaping are to contribute to the definition and amenity of the area.	38. Building is assessed as contributing to the definition and amenity of the area.
39. Landscaping areas shall be integrated with overall design.	40. Ground floor including existing planter landscaping on within façade, essentially unchanged by this proposal
41. Benches & other forms of seating should be provided internally for centres & externally.	42. None proposed & not considered relevant to this proposal.
43. Use of one colour over whole building is discouraged.	44. One colour not proposed. See photomontages provided.
45. Sunshades should be incorporated into architectural expression of the building's northern façade.	46. Provision of sunshades and movable screens now included in design.
47. All buildings should be designed with opening windows to maximise natural ventilation.	48. Building design complies with this requirement.
49. Buildings should contain large shopfronts and upper storey windows to provide passive surveillance of pedestrian areas and carparks.	50. Building design satisfies this design requirement.
51. Street furniture and paving shall take into account the needs of people with a disability or decreased mobility.	52. Public footpath already paved and no new street furniture proposed or required.
53. Pedestrian routes are to be clear, safe, well lit and legible to all.	54. Design satisfies these requirements and conditions recommended regarding lighting and security.
<b>55. 11.4 Car Parking</b>	<b>56. Comment</b>
57. Parking layouts to have logical design.	58. Carparking layout considered to be logical.
59. Parking at ground level should be behind the building line and screened from public view.	60. Parking located behind the building and not visible
61. Multi-storey carparking should incorporate ground level activities such as shops.	62. Not relevant to proposal.
63. Internal streets should be reduced in retail centres to facilitate pedestrian movement.	64. Not relevant to proposal.

65. Centres should be designed to facilitate after-hours trading.	66. Not relevant to proposal.
<b>67. 11.5 Servicing</b>	<b>68. Comment</b>
69. Unsightly yards, waste areas etc should be located underneath or behind buildings.	70. Waste collection/storage area located behind building.
71. Access to service areas will be routed away from main street to protect pedestrian amenity and safety and vehicle conflict.	72. Access to rear service area is routed away from Main Road.



DATE	ISSUE	AMENDMENTS
07/08/11	A	Issue for client approval
18/08/11	B	4th level added. Issue for client approval
21/09/11	C	Issue for pre-DA approval
09/12/11	D	Issue for DA approval
13/05/12	E	Revisions to DA drawings as per Council feedback

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- Larger scale drawings and written dimensions take precedence.
- Do not scale from drawing.
- All dimensions to be checked on site before commencement of work.
- All discrepancies to be brought to the attention of the author.



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w : www.branveldevelopments.com.au

PROJECT : Proposed three storey boarding house rooms  
AT : Lot 30 DP 17931  
No 268 Main Road TOUKLEY  
FOR : Cavallaro & Co  
TITLE : Main Road Photomontage

DATE	DRAWN	SCALE
Aug 11	CR	@ A3
JOB NO	SHEET	
008/2011	A19	



DATE	ISSUE	AMENDMENTS	DISCLAIMER	BRANVEL DEVELOPMENTS PTY LTD		PH :	PROJECT :	DATE	DRAWN	SCALE
07/08/11	A	Issue for client approval	■ This drawing is copyright and the property of the author, and must not be retained, copied or used without authority. ■ Larger scale drawings and written dimensions take preference. ■ Do not scale from drawing. ■ All dimensions to be checked on site before commencement of work. ■ All discrepancies to be brought to the attention of the author.	 <b>BRANVEL</b> DEVELOPMENTS PTY LTD Building Design & Drafting Service ABN 33 106 383 251	<ul style="list-style-type: none"> <li>■ Additions &amp; Alterations</li> <li>■ Residential Design</li> <li>■ Industrial Buildings</li> <li>■ Commercial Buildings</li> <li>■ Child care centres</li> <li>■ Member of the Building Designers Assoc of NSW</li> <li>■ Accredited Building Designer Accreditation No 6209</li> </ul>	PH : 0408 968 201 FAX : 4648-2912 P.O Box 121 Narellan NSW 2567 e : jason@branveldevelopments.com.au w : www.branveldevelopments.com.au	PROJECT: Proposed three storey boarding house rooms AT: Lot 30 DP 17931 No 268 Main Road TOUKLEY FOR: Cavallaro & Co TITLE: Sonters Lane Photomontage	Aug 11	CR	@ A3
18/08/11	B	4th level added. Issue for client approval						JOB NO	SHEET	
21/09/11	C	Issue for pre-DA approval						008/2011	A20	
09/12/11	D	Issue for DA approval								
13/05/12	E	Revisions to DA drawings as per Council feedback								

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

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TRIM REFERENCE: DA/51/2012 - D03013190

MANAGER: Jamie Loader, Manager Building Certification and Health

AUTHOR: Douglas Tytherleigh; Health and Building Surveyor

### **SUMMARY**

An application has been received for additions and alterations to an existing dwelling at Mardi. The application has been examined having regard to the matters for consideration detailed in section 79C of the Environmental Planning and Assessment Act (EP& A Act) and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

<b>Applicant</b>	Emma Blake
<b>Owner</b>	Mr R Blake and Mrs L F Blake
<b>Application No</b>	DA/51/2012
<b>Description of Land</b>	Lot 4 DP 3368 No 65 McPherson Road, Mardi
<b>Proposed Development</b>	Additions and Alterations to an Existing Dwelling
<b>Site Area</b>	9466.00m <sup>2</sup>
<b>Zoning</b>	1C Non Urban Constrained Lands
<b>Existing Use</b>	Dwelling

### **RECOMMENDATION**

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

### **PRECIS**

- The application seeks approval for a 40m<sup>2</sup> addition and alterations to an existing dwelling.
- The site is zoned 1C Non Urban Constrained Lands under the provisions of Wyong Local Environmental Plan 1991 (WLEP). A single dwelling is permissible with consent.
- There are currently two dwellings located on the subject property. Council is satisfied that the two dwellings on the property have the benefit of existing use.
- The site is wholly flood affected.



## 2.2 DA/51/2012 - Additions and Alterations to existing Dwelling at Mardi (contd)

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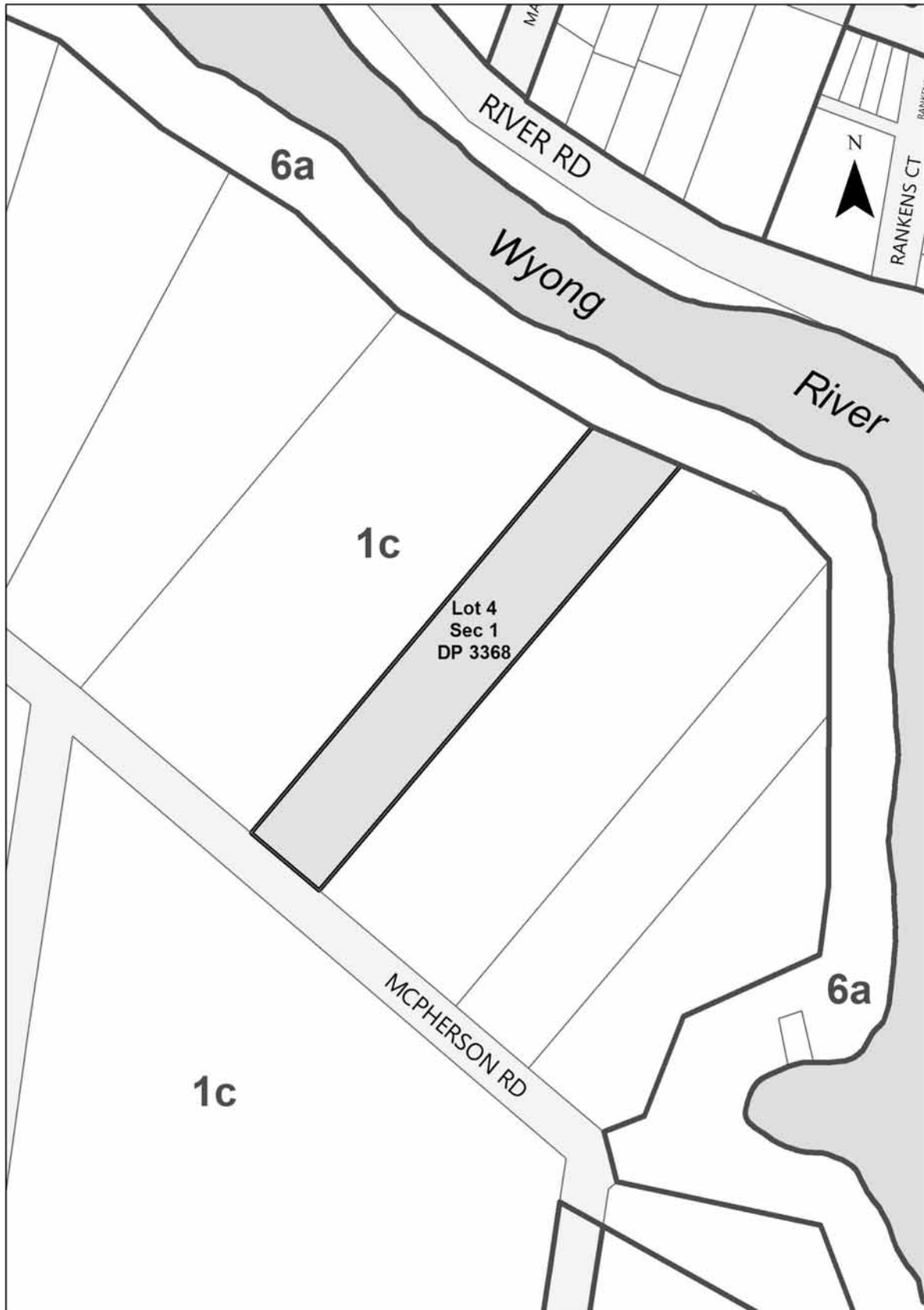
- The Lower Wyong River Floodplain Risk Management Study indicates the 1% AEP flood level in the location of the proposed works as RL 5.4m AHD. During such a flood event the average velocity is approximately 1.0m/s and will result in inundation of 1.3 m above the floor of the subject dwelling and a flood depth an average of about 1.9 m deep across the undeveloped parts of the subject site.
- Council's adopted flood hazard based on the 1% AEP flood of the Lower Wyong River Floodplain Risk Management plan categorises the site as High Hazard Floodway.
- Council's adopted development controls in the Lower Wyong River Floodplain Risk Management Plan, based on the zoning and hazard category, identify the land as being unsuitable for development and therefore the application cannot be supported.

### INTRODUCTION

#### The Site

The subject site has an area of 9466.00m<sup>2</sup>, is generally level and currently there are two dwellings located on the site. The Wyong River is approximately 35m away from the northern boundary of the lot and the property is significantly impacted by flood waters.

Existing development in the surrounding area comprises a mix of single and two storey dwellings, which are understood to have similar floor levels to the subject dwelling and accordingly would be subject to similar inundation during a significant flood event.



### The Proposed Development

The proposal is for a 40m<sup>2</sup> addition to the existing residence that is adjacent to the eastern boundary of the property. The additions comprise of a lounge room, kitchen/dining room and a verandah to the southern end of the dwelling.

The major issue for consideration relates to flooding and the development controls in Council's Lower Wyong River Floodplain Risk Management Plan. The Lower Wyong River Floodplain Risk Management Study indicates the 1% AEP flood level in the location of the proposed works as RL 5.4m AHD. The existing and proposed floor level is 4.07 AHD. The Plan identifies the land as being unsuitable for development.

### VARIATIONS TO POLICIES

Standard	High Hazard Floodway
Policy	Lower Wyong River Floodplain Risk Management Plan
Departure basis	Not supported

Standard	10 metre side boundary setback
Policy	DCP2005 Chapter 99 Building Lines
Departure basis	A 3 metre setback is proposed which is a 70% variation to the standard.

### HISTORY

Information supplied by the applicant, including aerial photographs from 1954, indicates that the two dwellings were in existence in the 1950s. Council issued an approval for a 1 bedroom addition to the subject dwelling adjacent to the eastern boundary in 1957 and in 1984 Council issued approvals for two septic tanks on the property.

Flooding records indicate that the property was inundated by floodwaters as follows;

- 1964 Approximately 4.4m AHD
- 1989 Approximately 3.8m AHD
- 2007 Approximately 3.4m AHD

### PERMISSIBILITY

The subject site is zoned 1(c) (Non Urban Constrained Lands) under the WLEP. A dwelling-house is permissible with consent. However, Clause 16(1) of WLEP permits the erection of a dwelling-house in the 1(c) zone only if the lot has an area of greater than 40 hectares or was in existence at the appointed day (15 February 1991). The lot has an area 9466m<sup>2</sup> however, was in existence prior to the appointed date. Under these circumstances dwelling alterations and additions are permissible.

## 2.2 DA/51/2012 - Additions and Alterations to existing Dwelling at Mardi (contd)

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The proposal is also an addition to a detached dual occupancy which is a prohibited development within this zone. However, the applicant has been able to demonstrate that both dwellings were in existence prior to the establishment of any planning instrument within Wyong Shire. Under these circumstances the continuance and reasonable embellishment of the existing non conforming use is permissible.

The three objectives of the 1 (c) Non Urban Constrained Zone are:

*(a) to limit the development of land that may be affected by flooding, coastal erosion, slope, and other physical constraints (including lack of adequate water supply and sewerage), and*

*(b) to prohibit development that is likely to prejudice the present and future environmental quality of the land, and*

*(c) to ensure that development is carried out in a manner that minimises risks from natural hazards and does not detract from the scenic quality.*

In regards to Objective (a), the property is located within the High Hazard Floodway where the 1% Annual Exceedance Probability (AEP) flood level is RL 5.40m AHD. The site has an average ground level of 3.5m AHD resulting in flood depths of up to 1.9metres. Despite there being an existing dwelling on site, the existing dwelling has a possible construction life of 40 years. The approval of the addition could add to the overall life of the dwelling resulting in an estimated construction life of 70 years resulting in a further 30 years of residency on an allotment which is severely affected by flooding. This is inconsistent with the objective of limiting the development of land that is affected by flooding.

In regards to Objective (c) it is considered that the proposal, by being sited within a High Hazard Floodway, does not minimise risk but increases the risk of danger to the current and future occupants of the dwelling. The proposal does not provide a suitable safe haven within the dwelling nor does it address the provision of safe egress from the property during a flood event.

Clause 10(3) of the Wyong Local Environmental Plan 1991 states:

*(3) Except as otherwise provided by this plan, the Council must not grant consent to the carrying out of development on land to which this plan applies unless, in the opinion of the Council, the proposed development is compatible with the objectives of the zone within which the development is proposed to be carried out.*

Accordingly, it is considered that the proposed detached dwelling does not satisfy the objectives of the 1(c) Non Urban Constrained Lands Zone.

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

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

- State Environmental Planning Policy 71 – Coastal Protection
- Wyong Local Environmental Plan 1991
- Lower Wyong River Floodplain Risk Management Plan
- Development Control Plan 2005, Chapter 100 (Quality Housing)
- Development Control Plan 2005, Chapter 99 Building Lines

## ECOLOGICALLY SUSTAINABLE PRINCIPLES

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

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

The development, if approved, would not be sustainable and is not consistent with the overall objective of, Lower Wyong River Floodplain Risk Management Plan in particular:

- Inter-generational equity – the proposal does not have regard for maintaining the quality of the environment for future generations. The proposal would be highly vulnerable to risk of flooding which would potentially result in damage to the built environment and environs as the proposed structure is considered likely to be significantly damaged by flood waters and associated debris which would impact on the downstream environment..

## State Environmental Planning Policy 71 – Coastal Protection

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

The aims of the policy are:

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

## 2.2 DA/51/2012 - Additions and Alterations to existing Dwelling at Mardi (contd)

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*(l) to encourage a strategic approach to coastal management.*

The development is considered to be inconsistent with objective (j) and (l) as the proposal is inconsistent with Lower Wyong River Floodplain Risk Management Plan which provides a strategic approach to the management of those areas within the Plan that are also within the operation of SEPP 71.

Furthermore, the proposal has been considered against the matters listed under Clause 8. That assessment shows that the proposal fails to satisfy the matters:

- Clauses 8 (a) owing to its inconsistency with the abovementioned objectives;
- Clause 8 (d) owing to it being considered not suitable development because its type, location and design and its relationship with the surrounding area.

It is concluded that the proposal is inconsistent with several aims of SEPP 71 and does not satisfy certain matters listed under Clause 8 of SEPP 71.

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

Clause 15 Development on land containing acid sulphate soils

Clause 15(2) states:

*“15(2) A person must not, without the consent of the Council, carry out works described in the following Table on land of the class or classes specified for those works in that Table and shown on the Acid Sulfate Soils Planning Map, except as provided by subclause (4).”*

The subject site contains Class 4 soils where works beyond 2 metres below the natural ground surface or works by which the watertable is likely to be lowered to any point beyond 2 metres below the natural ground surface require further investigation.

The construction of the dwelling additions would utilise concrete pad footings which would not have any implications for acid sulphate soils on this site.

Clause 23 – Flood Prone Lands

Clause 23 requires the applicant to seek development consent for the erection of a building or carrying out of works on flood prone land in a number of zones including the 1 (c) Non Urban Constrained Lands Zone. The applicant has complied with this requirement.

In addition, Clause 23 allows Council to set a minimum floor height to a building or work to reduce the incidence of flooding if it determines to grant consent and in making that determination is to consider the effect of the proposed development on flooding. This effect is considered in under the heading “Lower Wyong River Floodplain Risk Management Plan” in a later section of this report.

## 2.2 DA/51/2012 - Additions and Alterations to existing Dwelling at Mardi (contd)

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Development Control Plan 2005 – Chapter 100 (Quality Housing)

Clause 3.8.3.of Chapter 100 states:

*Requirements are to be applied in accordance with Council's Floodprone Lands Development Policy.*

The development does not comply with Council's Lower Wyong River Floodplain Risk Management Plan (being the most up-to-date flood study). This is discussed in detail later in the report in the section titled Lower Wyong River Floodplain Risk Management Plan.

Development Control Plan 2005, Chapter 99 Building Lines

Chapter 99 stipulates a 10 metre setback to the side boundary for dwellings on rural zoned properties. The addition is proposed at a 3.0 metre setback which is a continuance of the wall of the existing dwelling. The dwelling on the adjoining property is sited approximately 50 metres from the location of this dwelling and it is concluded that the 7.0 metre extension to the dwelling would not have any significant impact upon the amenity of the adjoining property. Under these circumstances this variation is justified.

### **ASSESSMENT**

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

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

Lower Wyong River Floodplain Risk Management Plan

The Wyong Shire LEP - 1991 only briefly mentions flood liable land to the extent that Council may fix building floor levels and consider the flood impact of development on surrounding properties. There is currently no DCP covering development of flood liable land within Wyong Shire, however Council has adopted the Lower Wyong River Floodplain Risk Management Plan which is applicable to this site.

The principle source of flooding is from Wyong River with an upstream catchment of approximately 360 square kilometres. The property is considered to be fully flood affected by the 1%, 2% and 5% Annual Exceedance Probability (AEP) design flood events.

The 1% Annual Exceedance Probability (AEP) flood event is defined as the probability or likelihood that a location will experience a flood of a particular size, in any one year. If a location has a 1% chance of a particular sized flood occurring each year, then it can also be expressed as having a chance of that particular sized flood occurring once in 100 years. However, this does not mean that if a location experiences that particular size flood one year, it will definitely not experience the same sized again flood for the next 99 years. Nor, if it has not experienced a flood of a particular size for 99 years, will it necessarily occur the next year.

## 2.2 DA/51/2012 - Additions and Alterations to existing Dwelling at Mardi (contd)

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The predicted 1% AEP flood event (100 year ARI) affects the development to a level of 5.40 metres AHD, which is approximately 1.9 metres above the natural surface level at the location of the proposed dwelling. This is approximately half way between the floor and ceiling level as highlighted in the attachment 3.

The Lower Wyong River Flood Plain Risk Management Plan classifies the site as High Hazard Floodway.

**Floodways** = those areas where a significant volume of water flows during floods which, even if only partially blocked, would cause a significant redistribution of flow.

In a floodway there are significant risks to safety due to the flood height and velocity. The limit of safe wading depth of approximately 0.8 metres would occur relatively quickly in this locality.

The later the decision is made for evacuation the more people in this area would require assistance. Evacuation by wading is generally not encouraged by emergency services personnel due to potential problems with uneven ground, submersed hazards, animal bites, mobility of the aged and children and the distance to safe ground. There is also a potential health issue with wading through flood waters as the NSW Department of Health has previously issued Public Health Warnings to treat all flood waters as contaminated. There is potential for flood water to contain untreated sewage, chemical contaminants or dead animal carcasses. The depth of flood waters and duration of inundation further exacerbates this issue. The time of day and weather conditions can also adversely affect evacuation.

Historical data and flood modelling indicating flood characteristics inhibiting access may be present for numerous days, with conditions close to peak remaining for approximately 24 hours in this area.

The flood-related development controls relevant to the site are contained within the *Lower Wyong River Floodplain Risk Management Plan (the Plan)*, which Council adopted at its Ordinary Meeting on the 27 October 2010. The adoption of the Plan, and thus the flood-related development controls contained within it, lead to the replacement of the development controls and requirements contained within Council's Policy F5 - *Flood Prone Land Development* for the Lower Wyong River catchment by those listed in the Plan.

The Plan was completed in accordance with the *NSW Floodplain Development Manual (2005)*.

Following initial data collection, the *Lower Wyong River Floodplain Risk Study* was completed in 1991. The study analyses the Lower Wyong River catchment to determine flood flow characteristics. Based upon this technical assessment, the *Lower Wyong River Floodplain Risk Management Study* was prepared in 2009 to assess and map the flood hazards for the Lower Wyong River catchment and examine a range of flood mitigation options to manage or reduce the flood risk. Following consideration of all of the flood mitigation options presented in the Study, the *Lower Wyong River Floodplain Risk Management Plan* was prepared in 2009. The Plan identifies which mitigation options Council selected and adopted to improve floodplain management of the Lower Wyong River floodplain. Public consultation was completed with both the Risk Management Study and the Plan prior to adoption. Council does not have any record of the applicant for this development objecting to the Plan.



## 2.2 DA/51/2012 - Additions and Alterations to existing Dwelling at Mardi (contd)

With the bulk of flood-liable land within the Lower Wyong River catchment already developed, the Plan concentrates on land use planning and development controls to mitigate future flood risk. These controls seek to balance social, economic, environmental and flood risk parameters to ascertain whether a particular development or use within the floodplain is appropriate and sustainable. An extract of the development controls applicable to the Lower Wyong River catchment has been reproduced below.

Type of Development	Flood Hazard Categories			
	Flood Fringe	Flood Storage		Floodway
		Low Hazard	High Hazard	
<b>LAND ZONED RESIDENTIAL</b> <sup>(1) (2) (3) (4) (5) (6)</sup>				
Concessional (see definition below)	On Merits	On Merits	On Merits	Unsuitable land use
Infill development			On Merits	
New Development			Unsuitable land use	
<b>LAND ZONED COMMERCIAL / LIGHT INDUSTRIAL / INDUSTRIAL OR SIMILAR</b> <sup>(3) (4) (5) (6)</sup>				
Concessional (see definition below)	On Merits	On Merits	On Merits	Unsuitable land use
Infill development			On Merits	
New Development			Unsuitable land use	
<b>LAND ZONED RECREATION, OPEN SPACE, CONSERVATION ZONE, NON URBAN CONSTRAINED LANDS, SPECIAL USES</b> <sup>(2) (3) (4) (5) (6)</sup>				
Structures, including buildings and filling	On Merits	On Merits	Unsuitable land use	Unsuitable land use
Other developments permissible in zone, i.e wetlands, playing fields, parks, walkways, etc...	On Merits	On Merits	On Merits	Unsuitable land use
<b>REZONING TO MORE INTENSE LAND USE</b>	On Merits	On Merits	Unsuitable land use	Unsuitable land use
<b>ALL ZONE TYPES SUBDIVISION</b>	On Merits	On Merits	Unsuitable land use	Unsuitable land use

The development of a floodplain risk management plan enables the cumulative impacts of developments in floodplains to be considered, including the filling of land and the construction of structures. The resultant development controls for the Lower Wyong River catchment indicate that introducing additional fill and/or structures into the Lower Wyong River floodplain, particularly in the high hazard areas, is not a desirable outcome, and these areas have been assessed as “unsuitable for development”.

Based upon the proposed development being located upon land zoned ‘Non-Urban Constrained Lands’ and located within high hazard flood storage and high hazard floodway, the resultant development controls within the Plan do not support the proposed residential development.

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

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

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

However the proposal does not meet the required Flood Planning Level of 5.9 metres AHD as required under the Lower Wyong River Floodplain Risk Management Plan. The depth of flood water over the site is 1.9m deep. If the proposal is constructed at the existing floor height the structure will be inundated by 1.3m of water with an expected velocity of 1.0m/sec or 3.6km/hr.

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

No issues to report.

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

No issues to report.

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

No issues to report.

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

No issues to report.

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

No issues to report.

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

No issues to report.

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

The site is identified as having Class 4 soils according to the Acid Sulphate Soils Planning Map. Therefore there is a low probability of occurrence of acid sulphate soil materials within the soil profile.

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

No issues to report.

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

No issues to report.

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

No issues to report.

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

No issues to report.

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

No issues to report.

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

**Flooding**

As discussed earlier in the report, The Lower Wyong River Floodplain Risk Management Study indicates the 1% AEP flood level in this location of the proposed works as RL 5.4m AHD. The existing and proposed floor level is 4.07 AHD.

The historical flood information indicates the flood level reached RL 4.31 AHD (1964) 4 lots upstream and RL 3.08m AHD (1978) at the bridge.

The depth of flood water over the site is 1.9m deep. If the proposal is constructed at the existing floor height the structure will be inundated by 1.3m of water at a velocity of 1.0m/sec or 3.6km/hr. Under these circumstances it is concluded that the site is so significantly impacted by flood waters that it is unsuitable for development. Approval of this development application in its current form would give rise to negative social and economic impacts, set an undesirable precedent and possibly result in liability issues for Council.

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

No issues to report.

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

No issues to report.

## 2.2 DA/51/2012 - Additions and Alterations to existing Dwelling at Mardi (contd)

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

The proposed development is considered likely to have negative social impacts if it were to be approved by Council by placing both people and property at risk and vulnerable to flooding events. The applicant has not provided any evacuation plan for the occupants of the property.

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

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

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

The site design is not considered appropriate in terms of the finished floor levels for habitable rooms. The proposed additions are below Council's Lower Wyong River Floodplain Risk Management Study and fail to achieve the Policy Statement's minimum flood planning level.

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

No issues to report.

### ***Any cumulative impacts.***

Allowing the proposed development contrary to The Lower Wyong River Floodplain Risk Management Study benchmarks would contravene Council's obligation to consider certain matters as specified in Section 79C of the Act, including the likely impacts of the development, ecologically sustainable development and the public interest.

The consequences of Council failing to meet the requirements of the Lower Wyong River Floodplain Risk Management Plan is that Council may not have the statutory presumption that it has acted in good faith and hence may find it more difficult to establish a defence that is available to it under s. 733 of the Local Government Act 1993

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

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

As outlined earlier in this report, the proposed development is not considered suitable for the site given that the floor level does not adequately address The Lower Wyong River Floodplain Risk Management Study. The site is considered unsuitable for any additional residential development due to the extreme risk posed to occupants of the extended dwelling by flood heights and velocity coupled with an absence of safe haven or paths for safe evacuation. .

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

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

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

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

No issues to report.

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

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

The information currently available to Council indicates that the site will likely be inundated if a designated flood event (1%AEP) occurs during the life of the proposed development.

Having assessed the proposal in accordance with Council's Flood Prone Land Development Policy, Lower Wyong River Floodplain Risk Management Study, the development is not considered suitable for the site.

**CONCLUSION**

The proposal has been assessed having regard to Section 79C of the EP&A Act, WLEP 1991, The Lower Wyong River Floodplain Risk Management Study and Plan, Chapter 100 (Quality Housing), DCP 2005, and is unable to be supported.

Based on the zoning objectives, flood hazard category and the associated development controls the application is not supported for approval.

**ATTACHMENTS**

- 1 Proposed Reasons of Refusal      D03013201

**Date:** 21 May 2012  
**Responsible Officer:** Doug Tytherleigh  
**Location:** 65 McPherson Road, MARDI NSW 2259  
LOT 4 SEC 1 DP 3368  
**Owner:** Mr R G Blake and Mrs L F Blake  
**Applicant:** Miss E G Blake  
**Date Of Application:** 25 January 2012  
**Application No:** DA/51/2012  
**Proposed Development:** Additions & alterations  
**Land Area:** 9466.00

**Reasons for Refusal**

- 1 Pursuant to Section 79C (1)(c) of the Environmental Planning and Assessment Act 1979 the site is not considered to be suitable for the proposed development having regard to Council's Lower Wyong River Floodplain Risk Management Plan.
- 2 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Clause 2 of State Environmental Planning Policy 71 (Coastal Protection) in the following manner:
  - a The proposed development fails to satisfy Aim 2(1)(j) in that it does not accord with the precautionary principle by proposing to site a dwelling in a high hazard flood area.
  - b The proposed development fails to satisfy Aim 2(1)(j) in that it does not promote inter-generational equity by proposing to site a dwelling in a high hazard flood area that may result in damage to the dwelling and injury or loss of life to future occupants.
  - c The proposed development fails to satisfy Aim 2(1)(k) in that it proposes to inappropriately locate a dwelling in a high hazard flood area which exposes the dwelling to damage and future occupants to danger.
  - e The proposed development fails to satisfy Aim 2(1)(l) in that the proposed development does not encourage a strategic approach to coastal management by proposing to site a dwelling in a high hazard flood area in disregard for the Lower Wyong River Floodplain Management Plan which provides strategic advice on the development potential of land within the Lower Wyong River catchment. This Plan identifies this site as unsuitable for buildings or structures.
- 3 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Clause 8 "Matters for consideration" of State Environmental Planning Policy 71 (Coastal Protection) in the following manner:
  - a The proposed development fails to satisfy Matters for consideration 8 (a) because it does not satisfy Aims 2(1)(j), 2(1)(k) and 2(1)(l) as explained 1 above.

- b The proposed development fails to satisfy Matters for consideration 8(d) because it proposes to site a dwelling house in a high hazard flood area.
  - c The proposed development fails to satisfy Matters for consideration 8(j) because the development proposes to site a dwelling where the likely impact of coastal processes (flooding) on the proposed dwelling and future occupants is classified as “high hazard” under the Lower Wyong River Floodplain Management Plan”.
- 4 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Wyong Local Environmental Plan 1991 Clause 2(g)(ii) because the proposed development seeks to locate a dwelling house in a flood prone area where it is likely to suffer damage and obstruct floodwaters.
- 5 Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with the zone objectives (a), (b) and (c) of the 1(c) (Non Urban Constrained Lands Zone) in Clause 10 of Wyong Local Environmental Plan 1991:
- a The proposed development by proposing to site a dwelling in a high hazard flood area will not limit the development of the land.
- 6 Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Development Control Plan 2005: Chapter 100 Quality Housing Clause 3.8.3.b because the proposed development is inconsistent with Council’s Floodprone Lands Development Policy which , in this area, is based upon the Wyong River Lower Floodplain Management Plan which identifies the site as unsuitable for buildings or structures.
- 7 Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with Development Control Plan 2005: Chapter 100 Quality Housing Clause 5.2.2 because the proposed development proposes to site the dwelling less than 40 metres from the bank of the Wyong River thus siting the dwelling further from areas of rescue. .
- 8 Pursuant to Section 79C (1)(b) of the Environmental Planning and Assessment Act, 1979 the development is at risk of flooding; would have a negative social and economic impact; does not respond to the specific site attributes and would contribute to the cumulative adverse impact on the environment by way of its unsuitable design for flood prone land.
- 9 Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 the proposal is not considered to be in the public interest given it does not adequately consider the impacts of flooding including the potential damage to the structure and the potential danger to future occupants and rescuers, and the development will set an undesirable precedent for the future.