

## Planning and Assessment

IRF20/3856

### Gateway determination report

<b>LGA</b>	Yass Valley
<b>PPA</b>	Yass Valley Council
<b>NAME</b>	Murrumbateman rural residential (8 homes)
<b>NUMBER</b>	PP_2020_YASSV_004_00
<b>LEP TO BE AMENDED</b>	Yass Valley LEP 2013
<b>ADDRESS</b>	80 Murrumbateman Road Murrumbateman
<b>DESCRIPTION</b>	Lot 10 DP 12128866
<b>RECEIVED</b>	5 August 2020
<b>FILE NO.</b>	IRF20/26115
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required.
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 1. INTRODUCTION

### 1.1 Description of planning proposal

Yass Valley Council seeks to amend Yass Valley LEP 2013 to rezone 80 Murrumbateman Road (Lot 10 DP 12128866) from RU4 Primary Production Small Lot zone to R5 Large Lot Residential Zone with a 2-hectare minimum lot size.

### 1.2 Site description

The 18.4 hectare site is generally cleared and undulating agricultural land located east of the Barton Highway. The site contains an existing dwelling house, farm buildings and two farm dams on an irregularly shaped lot. Lot 10 has a direct vehicular access to Murrumbateman Road and the site contains tree belts, including tree belts along the site boundaries.

### 1.3 Existing planning controls

The site is currently zoned RU4 Primary Production Small Lots Zone with a 16-hectare minimum lot size under Yass Valley LEP 2013.

### 1.4 Surrounding area

Land west of the site and west of Murrumbateman Road is zoned R5 Large Lot Residential Zone and contains over 50 rural lifestyle lots ranging in size from 1-3 hectares in size.

Land to the north, east and south are used for agricultural activities, including vineyards and wineries (Figure 1 – Source SIXMap).

Figure 1 Site location and surrounds



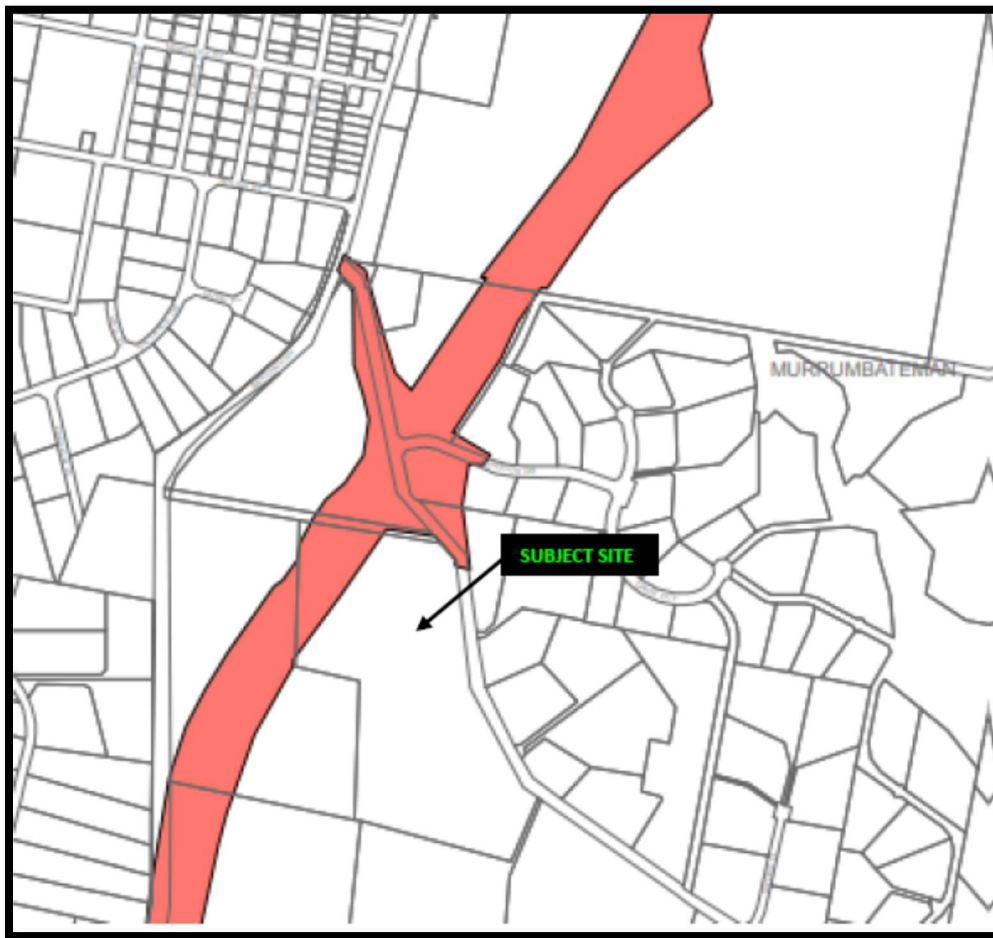
The site is approximately 1 kilometre east of the village of Murrumbateman and is located on the Barton Highway. At the 2016 ABS Census Murrumbateman had a population of 3,804 people. Murrumbateman is located approximately 17 kilometres south of the town of Yass and approximately 20 kilometres north of Canberra.

Land adjoining the site to the west is identified for the Barton Highway bypass corridor on the Yass LEP 2013 Barton Highway Duplication Map (Map sheetCL1\_005C). Clause 6.19 of the Yass LEP 2013 outlines provisions for the assessment of development applications on land intended to be acquired for the Barton Highway duplication.

The site is not included in the Barton Highway bypass corridor.

Figure 2 is an extract from the Yass LEP 2013 Barton Highway Duplication Map showing the highway duplication corridor on land adjoining the site to the west.

Figure 2 Extract Barton Highway Duplication Map and site location (source: planning proposal).



### 1.5 Summary of recommendation

It is recommended that the planning proposal proceed subject to conditions on community consultation and consultation with agencies. The planning proposal to rezone 18 ha of land to R5 Large Lot Residential Zone has merit because the site has been identified for rural lifestyle development in the Yass Valley Settlement Strategy endorsed by the Department and the proposal does not appear to raise any significant issues with servicing or with adverse environmental impacts.

## 2. PROPOSAL

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### 2.1 Objectives or intended outcomes

The planning proposal clearly indicates that it seeks to rezone 80 Murrumbatman Road, Murrumbatman from a rural zone to R5 Large Lot Residential Zone and 2-hectare minimum lot size to accommodate subdivision for rural lifestyle development.

### 2.2 Explanation of provisions

The planning proposal clearly indicates that it seeks to amend Yass Valley LEP 2013 Land Zoning Map Sheet LZN\_005C and Lot Size Map Sheet LSZ\_005C to R5 Large Lot Residential Zone with a 2-hectare minimum lot size.

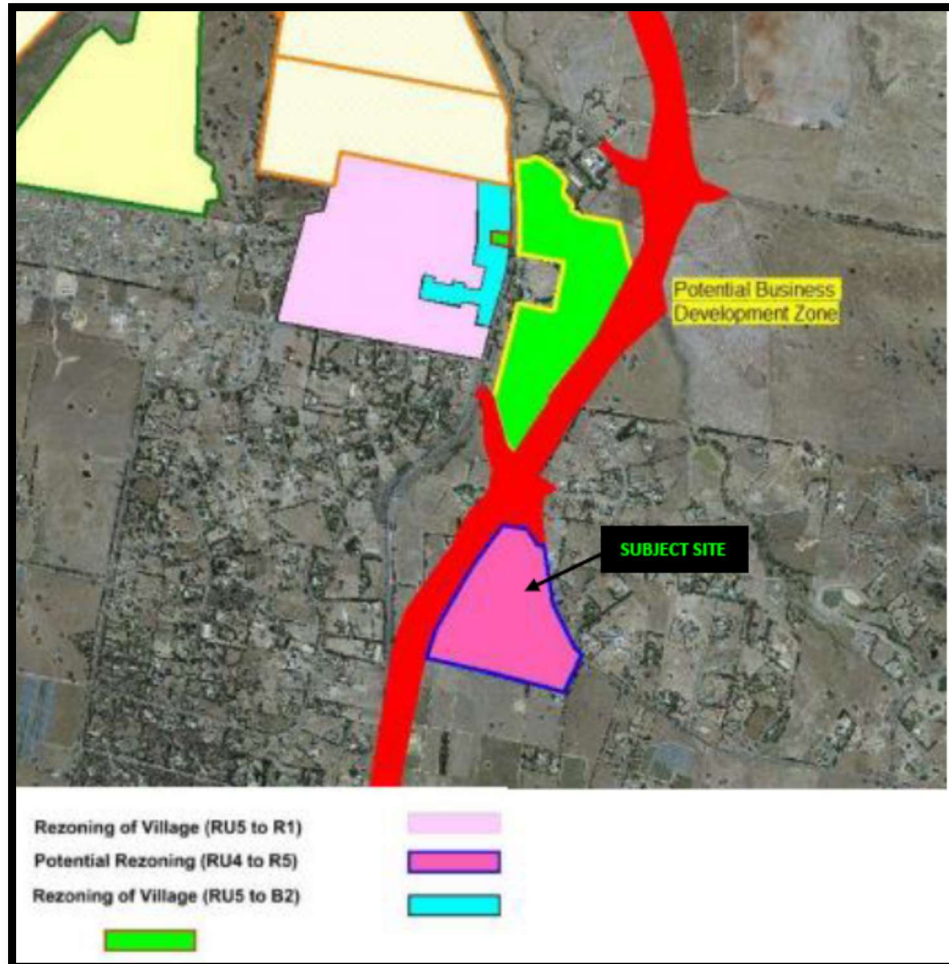
### 2.3 Mapping

The planning proposal identifies and labels the land proposed to be rezoned from RU4 Primary Production Small Lots to R5 Large Lot Residential Zone. Figure 3



below is from the planning proposal and is an extract from the Yass Valley Settlement Strategy.

Figure 3 Extract from planning proposal showing the site location and proposed rezoning to R5 Large Lot Residential Zone. The diagram was sourced from the Yass Valley Settlement Strategy.



Council will be required to prepare amendments to the Land Zoning Map Sheet LZN\_005C and Lot Size Map Sheet LSZ\_005C in accordance with the Department's mapping guidelines when finalising the plan as the local plan maker.

### 3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is the only mechanism to rezone the land to R5 Large Lot Residential Zone with a 2 hectare minimum lot size as part of the implementation of the Yass Valley Settlement Strategy. The rezoning will provide an opportunity to create 9 house lots and an additional 8 dwelling houses in close proximity to Murrumbateman and near an existing area of rural lifestyle housing.

### 4. STRATEGIC ASSESSMENT

#### 4.1 State

The planning proposal is not inconsistent with any State policies.

## **4.2 Regional**

The planning proposal indicates that it is consistent with the following Directions under the South East and Tablelands Regional Plan:

- Direction 8 Protect important agricultural land,
- Direction 14 Protect important environmental assets,
- Direction 15 Enhance biodiversity connections,
- Direction 18 Secure water resources,
- Direction 23 Protect the Region's Heritage,
- Direction 24 Deliver greater housing supply and choice,
- Direction 25 Focus housing growth in locations that maximise infrastructure and services,
- Direction 27 Deliver more opportunity for affordable housing,
- Direction 28 Manage rural lifestyles, and
- Local Government Narrative for Yass.

### **Comment**

The planning proposal is consistent with the South East and Tablelands Regional Plan, particularly Direction 28 Manage rural lifestyles and Action 28.1. Action 28.1 states rural residential development is to be enabled only where the site has been identified in a local housing strategy prepared by council and approved by the Department of Planning and Environment. The Yass Valley Settlement Strategy that identifies the site for rural lifestyle development was endorsed by the Department on the 20 September 2018.

The additional 8 rural residential house lots will also be in close proximity to Murrumbateman, avoid areas of high environmental, cultural and heritage significance and avoids areas of important agricultural land consistent with Action 28.2 of the Regional Plan.

## **4.3 Local**

The planning proposal states that it is consistent with the Yass Local Strategic Planning Statement and Yass Valley Settlement Strategy. The proposal is consistent with the Local Strategic Planning Statement because it is consistent with the Yass Valley Settlement Strategy.

### **Comment**

The Yass Valley Settlement Strategy identifies the site for rural residential development (see Figure 3).

The Department's endorsement of the Yass Valley Settlement Strategy in 2018 included a requirement that future planning proposals for greenfield urban development in Murrumbateman must demonstrate that a secure water supply is available. This was in response to concerns by the Department that Council needed to secure another source of water to service urban growth with a public reticulated water supply to 2036.

The planning proposal indicates that the land is not currently serviced by reticulated public water supply or sewerage and that it is intended that future house lots will be

reliant on harvesting rainwater, or possibly bore water, for water supply. Water supply will therefore not be sourced from a Council reticulated water supply. Rural residential development on the site will therefore not increase demand on Council's reticulated water supply.

The planning proposal also indicates that on-site effluent management systems will also be used to manage effluent disposal associated with individual house lots. A supporting report for the planning proposal entitled 'Land Capability' concluded that *"there are adequate areas of suitable site and soil conditions located on the proposed Building Envelopes to enable the on-site disposal of effluent generated by any future dwellings."*

#### **4.4 Section 9.1 Ministerial Directions**

##### **Directions 1.2 Rural Zones and 1.5 Rural Lands**

The planning proposal indicates that it is inconsistent with section 9.1 Directions 1.2 Rural Zones and 1.5 Rural Lands because it seeks to rezone rural land to an R5 Large Lot Residential Zone and reduce the minimum lot size to 2 hectares.

The planning proposal further states that the inconsistencies with these Directions are justified because;

- The proposal is not inconsistent with adopted regional and local strategic planning policy
- Does not create an undesirable precedent;
- The site is currently not used for agriculture and therefore will not result in loss of rural zoned land used for agriculture
- The minimum lot size is consistent with preserving the existing character of Murrumbateman and surrounding environments.

##### **Comment**

The planning proposal has adequately justified inconsistencies with Direction 1.2 Rural Zones and 1.5 Rural Lands.

The site is identified for rural residential development under the Yass Valley Settlement Strategy endorsed by the Department.

The site also adjoins land to the north-east and east that is currently used for rural lifestyle development and is in close proximity to the existing urban settlement of Murrumbateman and the Barton Highway.

Environmental reports accompanying the planning proposal indicate that the site does not, or is unlikely to contain, any areas of significant environmental value or environmental hazard.

##### **Direction 2.6 Remediation of Contaminated Land**

The planning proposal does not provide a response to Direction 2.6 Remediation of Contaminated Land. Direction 2.6 however applies to the planning proposal because under Table 1 of the contaminated land planning guidelines the planning proposal authority must consider if land previously used for agriculture is contaminated and if the land requires remediation before being used for residential development.

The planning proposal does include commentary on the consistency with SEPP 55 Remediation of Land.

## Comment

Clause 6 of SEPP 55 in relation to planning proposals was repealed and replaced with Direction 2.6 Remediation of Contaminated Land in April 2020. The planning proposal should be amended to replace this commentary with a response to Direction 2.6.

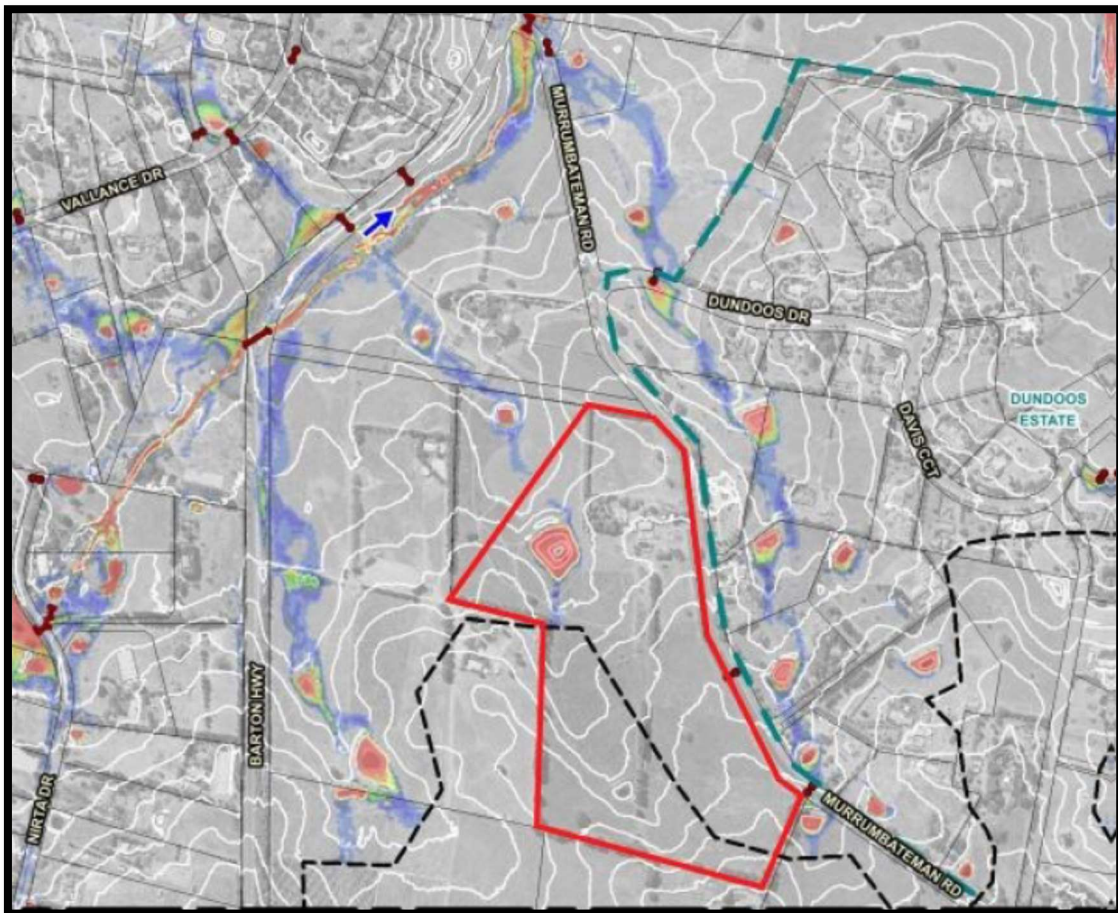
The planning proposal's response to SEPP 55 adequately addresses the requirements of Direction 2.6 because it includes a report prepared by Murrang Earth Sciences on a preliminary investigation on the potential for land contamination on the site. The report found no indications of potential contaminants of concern within any area of the site for which development is proposed. (See the section below on SEPP 55).

It appears that contamination issues can be managed and that the land is suitable for the intended purposes.

### Direction 4.3 Flood Prone Land

The planning proposal indicates in Appendix 3 that Direction 4.3 Flood Prone Land is not relevant. However, the report to the Council meeting on the 27 May 2020 indicates that a small portion of the land located to the north-west of the site is flood prone land (See Figure 4).

Figure 4 Map showing flood prone land (Source: Council Report 27 May 2020)





#### Comment

A planning proposal is potentially inconsistent with Direction 4.3 if it seeks to rezone flood prone land from a rural zone to a residential zone. The planning proposal should be amended to address any potential inconsistency with Direction 4.3 prior to community consultation and consultation with agencies.

Council may also need to obtain the agreement of the Secretary prior to the plan being made to comply with the requirements of relevant section 9.1 Direction 4.3 Flood Prone Land.

#### Direction 4.4 Planning for Bushfire Protection

Appendix 3 of the Planning proposal has indicated that the proposal is inconsistent with Direction 4.4 Planning for Bushfire Protection.

The planning proposal is accompanied by a Bushfire Assessment Report. The 6-page report indicates that *"Given the grassland setting and gentle topography of the surrounding landscape, the subject site is considered to possess a low threat level."*

The initial assessment of the concept subdivision plan outlined in the report has found that it largely to complies with all the relevant criteria in the Planning for Bushfire Protection 2018 with the exception for the requirements for perimeter roads and number of road access points. The report states that *"Verbal, in-principle support has been gained from the RFS for a potential alternative Solution."*

#### Comment

Direction 4.4 Planning for Bushfire Protection applies to planning proposals that seek to rezone bush fire prone land or land in proximity to bushfire prone land to a residential zone. A planning proposal is inconsistent with the Direction if it seeks to rezone rural land identified as bush fire prone to a residential zone.

It is assumed that Direction 4.4 applies to the site because the planning proposal indicates that it is inconsistent with this Direction.

In accordance with Direction 4.4 the relevant planning authority will be required to consult with the NSW Rural Fire Service.

#### **4.5 State environmental planning policies (SEPPs)**

The planning proposal indicates that it is not inconsistent with any SEPPs including SEPP No 55 Remediation of Land and SEPP Primary Production and Rural Development 2019.

#### SEPP 55 Remediation of Land

A report prepared by Murrang Earth Sciences on a preliminary investigation on the potential for land contamination on the site that accompanied the planning proposal concluded from a desktop assessment and inspection of the site found no indications of potential contaminants of concern within any area of the Site for which development is proposed.

The report did identify an underground petroleum storage system containing diesel located immediately adjacent to the residence on proposed Lot 3. This tank is considered to be an environmental hazard by Murrang Earth Sciences. Both Murrang Earth Sciences and the New South Wales Environment Protection Authority recommends the tank be removed and a validation assessment of the remaining



excavation be undertaken. The underground petroleum storage system is considered to not be an area of environmental concern, unless the UPSS remains at the Site.

Comment

SEPP 55 is no longer relevant to planning proposals because clause 6 of the SEPP has been repealed and replaced with section 9.1 Direction 2.6. However, the discussion and outcomes on SEPP 55 are still relevant and address the requirements of Direction 2.6 Remediation of Contaminated Land.

It is recommended that the planning proposal be updated to reflect that clause 6 of SEPP 55 has been repealed and replaced with Direction 2.6 Remediation of Contaminated Land. It appears that contamination issues can be managed.

#### SEPP Primary Production and Rural Development 2019

The planning proposal indicates that it is consistent with the SEPP because the proposal;

- responds to the needs and changing nature of agriculture in the Region,
- is consistent with adopted regional strategic land use policy
- does not have a significant impact on the Region's agricultural worth –
- makes a positive contribution towards the Region's social and economic diversity.
- addresses established community expectations relating to sustainable residential growth whilst preserving environmental quality and land use diversity.
- maintains a balance between sustainable growth, development and environmental protection through governance and sensible planning.
- will allow for a variety of large lot residential developments including single dwellings, dual occupancies and secondary dwellings consistent with the residential use envisaged for the site in the Yass Settlement Strategy and will provide greater diversity in housing throughout Murrumbateman.

Comment

The planning proposal is not inconsistent with the SEPP because the SEPP focuses on the protection of land identified as 'State significant agricultural land'. Currently there are no areas identified as State significant agricultural land under the SEPP.

The site has also been identified for rural residential development in the Yass Valley Settlement Strategy prepared by Council and endorsed by the Department.

## **5. SITE-SPECIFIC ASSESSMENT**

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### **5.1 Social**

The rezoning of the 18 hectare site to provide an opportunity to create 8 additional rural residential house sites in proximity to the Murrumbateman is unlikely to create any adverse social impacts. The two hectare minimum lot size appears to provide an adequate area to create buffers between adjoining land used for agriculture.

It is recommended that the planning proposal and environmental studies/assessments be referred to DPI Agriculture for comment on the rezoning of agricultural land.

## 5.2 Environmental

The planning proposal includes the following environmental reports:

- Aboriginal Due Diligence Report (August 2019) – The site assessment and report concluded there were no Aboriginal objects and no areas of potential archaeological sensitivity identified on the site.
- Heritage Assessment (August 2019) - No historic heritage places or objects as defined under the *Heritage Act 1977* were identified within the study area. No areas of potential historical archaeological sensitivity were identified within the study area.
- Biodiversity Assessment Report (April 2020) – The site assessments and report concluded that the proposed development will not result in any other direct impacts on native vegetation or threatened species habitat. No threatened fauna or flora were recorded during field studies.
- Land Capability Assessment (October 2019) – The report concluded that there are adequate areas of suitable site and soil conditions to enable on-site effluent disposal based on the proposal for a 9-lot rural residential development with a minimum lot size of 2 hectares.
- Bushfire Assessment Report. The 6-page report determined that *“Given the grassland setting and gentle topography of the surrounding landscape, the subject site is considered to possess a low threat level”*.

The report further indicates that an initial assessment of the concept subdivision plan has found that it largely complies with all the relevant criteria in the Planning for Bushfire Protection 2018, with the exception for the requirements for perimeter roads and number of road access points. The report states that *“Verbal, in-principle support has been gained from the RFS for a potential alternative Solution based on increased road dimensions, accessible landscape and low fuel loads.”*

- Preliminary Site Investigation (January 2020) – The site assessment and report found no indications of potential contaminants of concern within any area of the Site for which development is proposed. The report did identify an underground petroleum storage system containing diesel located immediately adjacent to the existing residence considered to be an environmental hazard. The report recommended that the tank be removed, and a validation assessment of the remaining excavation be undertaken.

### Comments

The planning proposal and accompanying environmental reports provide sufficient information to conclude that the rezoning of the land for rural lifestyle development is unlikely to create any adverse environmental impacts on biodiversity, Aboriginal or European heritage or that the development will be significantly affected by bushfire hazard or land or water contamination.

The planning proposal does not provide sufficient information of the flood impacts that were identified in the Council report dated 37 May 2020.

It is recommended that the planning proposal be amended to include information on any potential flood impacts.

It is further recommended that the planning proposal and environmental studies/assessments be referred to the following agencies for comment:

- DPIE Biodiversity and Conservation (flooding)
- Transport for NSW (access and proximity to proposed Barton Highway bypass corridor)
- Natural Resources Access Regulator (on-site effluent disposal)
- NSW Environmental Protection Authority (land contamination).

### **5.3 Economic**

The rezoning of the 18-hectare site to provide an opportunity to create 8 additional rural residential house sites in proximity to the Murrumbateman is unlikely to create any adverse economic impacts.

## **6. CONSULTATION**

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### **6.1 Community**

The planning proposal has indicated that it is likely that the planning proposal will be exhibited for a period of not less than 28 days. The proposal is not considered minor and it is therefore recommended that community consultation be a minimum of 28 days.

### **6.2 Agencies**

It is recommended that consultation is undertaken with the following public authorities because the proposal seek to rezone rural land to accommodate an increase in the supply of residential development:

- DPIE Biodiversity and Conservation - biodiversity and flooding.
- DPI Agriculture - loss of agricultural land for rural lifestyle development
- Transport for NSW – proposed road access to Murrumbateman Road and proximity of the site to the proposed Barton Highway bypass corridor
- Natural Resources Access Regulator – on-site effluent disposal and water supply
- NSW Environmental Protection Authority – land contamination

## **7. TIME FRAME**

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The planning proposal indicates that the plan will be completed in 8 months, i.e. completed by May 2021 if a Gateway determination is issued in September 2020.

It is recommended that the timeframe for completing the plan be 12 months. This will provide Council with enough time to make the required changes to the planning proposal outlined in this report, undertake community and agency consultation and finalise the plan with the Parliamentary Counsel.



## **8. LOCAL PLAN-MAKING AUTHORITY**

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Council has requested to be the local plan-making authority. It is recommended that Council should be authorised to be the local plan-making authority because the planning proposal seeks to rezone land to rural lifestyle development consistent with a local strategy endorsed by the Department.

## **9. CONCLUSION**

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The planning proposal is supported to proceed subject to conditions to amend the planning proposal to improve clarity, to address Directions 2.6 Remediation of Contaminated Land and 4.3 Flood Prone Land and to require community consultation and consultation with state agencies.

The planning proposal is consistent with the Yass Valley Settlement Strategy endorsed by the Department.

The planning proposal and accompanying studies/assessments do not appear to raise any significant social, environmental or economic issues that prevent the issuing of a Gateway determination to permit Council to proceed to the next step in the process, i.e. community and stage agency consultation.

## **10. RECOMMENDATION**

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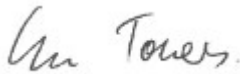
It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.2 Rural Zones and 1.5 Rural Lands are minor or justified;
2. note that Council may still need to obtain the agreement of the Secretary to comply with the requirements of relevant section 9.1 Direction 4.3 Flood Prone Land.
3. note that the consultation is required with the NSW Rural Fire Service to ensure consistency with section 9.1 Directions 4.4 Planning for Bushfire Protection, and

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities:
  - DPIE Biodiversity and Conservation
  - DPI Agriculture
  - Transport for NSW
  - Natural Resources Access Regulator
  - NSW Environmental Protection Authority
3. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.

5. The planning proposal is to be amended prior to community consultation to;
- (a) Remove the reference State Environmental Planning Policy 55 Remediation of Land now repealed and include a response to section 9.1 Direction 2.6 Remediation of Contaminated Land,
  - (b) Provide a response on the potential for flooding of the site and provide an updated response to section 9.1 Direction 4.3 Flood Prone Land,
  - (c) Amend Figure 3 and Figure 5 to include labels to identify the current zones applying to the site and surrounding area, and
  - (d) Amend Figure 6 to include labels to identify the current minimum lot sizes applying to the site and surrounding area and insert the correct title "Existing Lot Sizes under YVLEP 2013"



2/09/2020

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