

ATTACHMENT 2

DRAFT VOLUNTARY PLANNING AGREEMENT

THIS VOLUNTARY PLANNING AGREEMENT

is made on the day of 2011

PARTIES TO THIS AGREEMENT are:

1. WYONG SHIRE COUNCIL of 20 Hely street Wyong, in the State of New South Wales, 2259 ("the Council") of the one part

AND

2. HAPIDO PTY LTD (ACN 001 461 356) a duly incorporated company having its registered office C/- LWM Group Pty Ltd, P O Box 456 Gosford NSW 2250

and

TSM PROJECTS PTY LTD (ACN 084 014 988) a duly incorporated company having its registered office at 10 Mercator Parade, St Huberts Island NSW 2257 in the said State ("the Landowners") of the second part.

BACKGROUND

- A This is a planning agreement as defined in Section 93C of the *Environmental Planning and Assessment Act 1979 (NSW)* ("the EP&A Act") and is made pursuant to Section 93F of that Act.
- B The Landowners are the registered proprietors of Lot 23 in Deposited Plan 1159704, No 76 Berkeley Road Fountaindale, in the said State ("the subject land"). The subject land has an area of 10.861 hectares.
- C Wyong Local Environmental Plan 1991 ("the LEP 1991") applies to the subject land. Pursuant to the LEP, the subject land is zoned part 7(a) (Conservation), part 7(c) (Environmental Protection – Small Holdings) and part 7(f) (Environmental Protection).
- D The Landowners in May 2009 made a Rezoning Request for the inclusion of a zoning change over the subject land within the Council then referred to Draft Wyong LEP 2009. This DLEP is currently referred to as DLEP 2011 and is yet to be placed on public exhibition. Part of this submission included the willingness of the landowners to enter into a Voluntary Planning Agreement (VPA) to dedicate all of the proposed E2 Environmental Conservation land identified under the proposal to Council free of costs for the public benefit.
- E Council responded on 27 October 2010, following an internal peer desktop review (see copy at Appendix A) advising that Council would be prepared to further consider a Planning Proposal subject to the following requirements being met.

"It should be emphasised that this does not represent formal support for the rezoning as the proposal has not yet been considered by Council.

- 1 Transfer of the proposed E2 - Environmental Conservation zoned land (with revised dimensions as documented in the attached plan) into Council ownership at no cost to Council.

- 2 Preparation of a Voluntary Planning Agreement which outlines land transfer arrangements and land restoration obligations of the owner to satisfy the requirements of Council's Open Space Section.
- 3 The submission of a revised subdivision layout which would allow for a three lot subdivision within proposed E4 - Environmental Living zone subject to confirming appropriate building footprints for each lot as informed by revised planning reports in Recommendation 4.
- 4 That should you wish to proceed with the proposal, you are requested to provide additional information in relation to:

- i. Bushfire
- ii. Noise
- iii. Ecological impacts and habitat restoration plan
- iv. Flooding and drainage study
- v. Effluent disposal
- vi. Aboriginal archaeological investigations
- vii. Water connection
- viii. Level 1 Contamination Land Study

as detailed within the extracts of the desktop assessment attached.

- 5 The proposal will not be submitted to the Gateway for assessment until such time that a revised Planning Proposal and relevant technical reports as outlined in Recommendation 4 have been completed.
- 6 It is requested that you notify Council of your intentions on whether you will be proceeding with a revised planning proposal within 28 days.
- 6 That should you wish to proceed with the rezoning, you are requested to enter into a funding agreement with Council to pay the reasonable costs of Council and its consultants in pursuing the planning proposal, in addition to payment of the \$8,808 Phase 2 fee as per Council's 'Spot Rezoning Procedure'. This amount includes 60 hours staff time and if further work is required it will be billed at \$145.80/hour (Professional) and \$10.40/hour Technical/Administration) payable by you for additional hours. These charges are based on the current 2010/11 Management Plan. Should assessment of the proposal continue into the next financial year, new fees will apply.

- F This VPA responds to the requirements stipulated by Council and accompanies the planning proposed now submitted for the Council's consideration.

OPERATIVE PROVISIONS:

1. Definitions and Interpretation

In this Deed the following definitions apply:

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

Local Environmental Plan means any amendment to Wyong Local Environmental Plan 1991 regarding rezoning of any portion of the subject land.

Rezoning means a change of zoning, as described in Wyong Local Environmental Plan 1991, from one or more zonings to another one or more zonings.

In the interpretation of this deed, a reference to a party includes a reference to the servants, agents and contractors of the part, and the party's successors and assigns.

2. Landowners responsibilities

The landowner's agrees to carry out the following matters:

Lodge a development application

- 2.1 The Landowners will lodge with Council a development application for subdivision of the subject land on the boundary established by the LEP within twenty one (21) days from the date of the Council notifying the landowner that the LEP was published in the NSW Government Gazette. The development application will provide for the subdivision of the subject land into two or more lots, and will replicate the subdivision of the subject land as shown in the subdivision proposal supporting the planning proposal and must be consistent with the zone boundaries of the gazetted LEP in so far as it identifies the shape and size of the lot containing all of the E2 Environmental Conservation zoned land (or an equivalent zone) identified in the LEP.

Identify each lot

- 2.2 For the purpose of that development application and this Deed the proposed Lot containing that portion of the subject land that is of high environmental conservation value and reflected by the E2 Environmental Conservation or equivalent zone, is to be identified as Lot 1. The other proposed lots containing the remaining portion of the subject land containing an E4 Environmental Living or equivalent zoning is to be identified as consecutive lots starting from Lot 2.

Obtain registration of the subdivision

- 2.3 If development consent is granted by the Council, the landowner will use his best endeavours to procure registration of the Plan of Subdivision within 90 days. The landowner agrees to meet all stamp duty and fees associated with the registration of the Plan of Subdivision.

Transfer land to Council

- 2.4 In the event that the landowner is provided with written confirmation from the Council, that the LEP has been published in the NSW Government Gazette, then the landowner must transfer Lot 1 unencumbered and in fee simple to Council, within the time specified at clause 2.7 of this Deed.

Amount of consideration for transfer

- 2.5 The landowner agree that the consideration for the transfer is the sum of \$1.00.

Landowners to meet all stamp duty and fees

- 4.7 This Deed does not prevent the Landowner from selling the subject land englobo (or nay part or parts thereof), but the landowners must ensure that subsequent Landowner enters into a Deed of Agreement with Council in similar terms to this Deed of Agreement before settlement.

5 Dispute Resolution

- 5.1 If a dispute arises in connection with this Deed, including a failure to abide by a time stipulation, then a party shall give written notice to the other party setting out the matter in dispute.
- 5.2 The parties shall use their best endeavours to settle the dispute within 10 business days after the date of notification of the dispute, or such further period as the parties may agree in writing.
- 5.3 Any disputes not resolved in accordance with clause 5.2, shall be referred to an arbitrator agreed between the parties, (and failing agreement, the President for the time being of the Institute of Arbitrators and Mediators Australia), for determination by the arbitrator at such time and place, and in accordance with such procedures as the arbitrator may determine appropriate.
- 5.4 The cost of any referral and determination under this clause will be paid by as determined by the arbitrator.
- 5.5 Neither party is entitled to commence or maintain any action, whether by way of legal proceedings or arbitration, relating to any dispute until it has first been referred and determined to arbitrator determination as provided in this clause. or may be given legal

6 Notices

- 6.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- (a) Delivered or posted to that Party at its address set out below.
 - (b) Faxed to that Party at its fax number set out below.
 - (c) Emailed to that party at its email address set out below.

Council

Attention:

Address: P O Box 20, Wyong, NSW 2259

Fax Number: (02) 4351 2098

Email:

Landowners:

Attention: HAPIDO PTY LTD (Mr Ian Everitt)

Address: C/- LWM Group Pty Ltd,
P O Box 456 Gosford NSW 2250

Fax Number: (02) 4351 2437

Email: ianeveritt@gmail.com

Attention: TSM Projects Pty Ltd (Mr Terry Moran)

Address: P O Box Woy Woy, NSW 2259

Email: terrismoran@yahoo.com.au

- 6.2 If a Party gives the other Party three (3) business days notice of a change of address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

7 Costs

Each Party must pay its own costs in connection with negotiating, preparing and executing of this Deed.

8 Prompt Execution

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

9 Governing law and jurisdiction

This Deed is governed by the law of New South Wales. The Parties submit to the non exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

10 Severability

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

11 Modification

No modification of this Deed will be of any force or effect unless it is in writing and signed by both Parties to this Deed.

Execution

Dated: August 2011

Executed as a Voluntary Planning Agreement: by the parties on the date set out above.

Landowner:

**THE COMMON SEAL of
HAPIDO PTY LTD**

was hereunto affixed on day of
2011 and attested to by

Witness _____

Landowner:

**THE COMMON SEAL of
TSM PROJECTS PTY LTD**

was hereunto affixed on day of
2011 and attested to by

Witness _____

**THE COMMON SEAL of
WYONG SHIRE COUNCIL**

was hereunto affixed on day of
2011 and attested to by

Mayor _____

General Manager _____

ATTACHMENT 3

WSC DESKTOP REVIEW OF REZONING REQUEST

27 October 2010

Ian Everitt
TSM Pty Ltd and Hapido Pty Ltd
PO Box 198
WYONG NSW 2259

Dear Mr Everitt

REZONING REQUEST NO RZ/15/2009 – 76 BERKELEY ROAD, FOUNTAINDALE

I refer to your rezoning request for the above property and advise that a desktop assessment of the request has now been completed.

Council's desktop assessment process documents the history of the proposal, provides an analysis of environmental and social issues and reviews the proposal in the context of Council and State policies and legislation.

The desktop assessment process also is subject to an internal peer review process. Following the completion of these processes, I am pleased to advise that Council would be prepared to further consider a planning proposal subject to the following requirements being met. It should be emphasised that this does not represent formal support for the rezoning as the proposal has not yet been considered by the Council:

- 1 Transfer of the proposed E2 – Environmental Conservation zoned land (with revised dimensions as documented in the attached plan) into Council ownership at no cost to Council.
- 2 Preparation of a Voluntary Planning Agreement which outlines land transfer arrangements and land restoration obligations of the owner to satisfy the requirements of Council's Open Space Section.
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 - viii Level 1 Contaminated Land Study

as detailed within the extracts of the desktop assessment attached.

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If you wish to discuss any aspect of the rezoning process in further detail, please contact Mr Scott Duncan on 4350 5547.

Yours faithfully



Martin Johnson
Acting Director
SHIRE PLANNING

Encl



Extract from RZ/15/2009 Desktop Assessment

76 Berkeley Road Fountaindale, Lot 504 DP 1134328

Issues Analysis

The following issues have been identified as being relevant to the planning proposal.

Flora and Fauna

A vegetation map covering the site and surrounding areas is provided in Figure 5 as mapped by Bell (2002). Some portions of the site contain vegetation which qualifies as Endangered Ecological Community (EEC) under the *Threatened Species Conservation Act, 1995*.

The site and surrounding area has high biodiversity value, supporting large fragments of remnant floodplain EECs and threatened species habitat. At a local scale, conservation reserves are located to the north and the south of the site (see Figure 3). Therefore the key conservation objective is the protection of the land to maintain a functional corridor. Council has previously investigated unauthorised land clearing on the site.

The applicant has submitted a copy of an Ecological Assessment from Travers Environmental Consultants that was prepared to support previous development applications for a rural subdivision:

- One (1) threatened flora species *Melaleuca biconvexa* which is protected by State and National legislation has been identified as occurring within the study area.
- A number of specimens of *Eucalyptus robusta*, which is classed as a regionally significant species by Wyong Council, were observed during the survey in addition to several species listed as Keystone Species in WSC Tree Management DCP 14.
- During the course of surveys a total of 98 Fauna species were observed including, 66 species of birds, 27 species of mammals, 2 species of reptile and 7 species of amphibian were observed.
- Five (5) threatened fauna species Grey-headed Flying-fox (*Pteropus poliocephalus*), Little Bentwing-bat (*Miniopterus australis*), Greater Broad-nosed Bat (*Scoteanax rueppellii*), Eastern False Pipistrelle (*Falsistrellus tasmaniensis*) and Yellow-bellied Glider (*Petaurus australis*) were recorded within the study area. All other fauna species are considered relatively common in the local area.

This report will need to be updated in the future, however it is likely that development of a three lot subdivision will be able to proceed with minimal tree removal, providing future dwelling sites and on-site effluent disposal areas are located in cleared paddocks which are present on the site.

Wetlands

Further to the above, the site has not been identified as containing wetlands of State significance (listed under SEPP 14 – Coastal Wetlands). The portion of the site (to the north of Berkeley Road) has been identified as being subject to Council's DCP 2005 – Chapter 30: *Wetlands* as being land of nutrient and sediment filtering significance, namely due to its topographic position upstream of wetland vegetation.

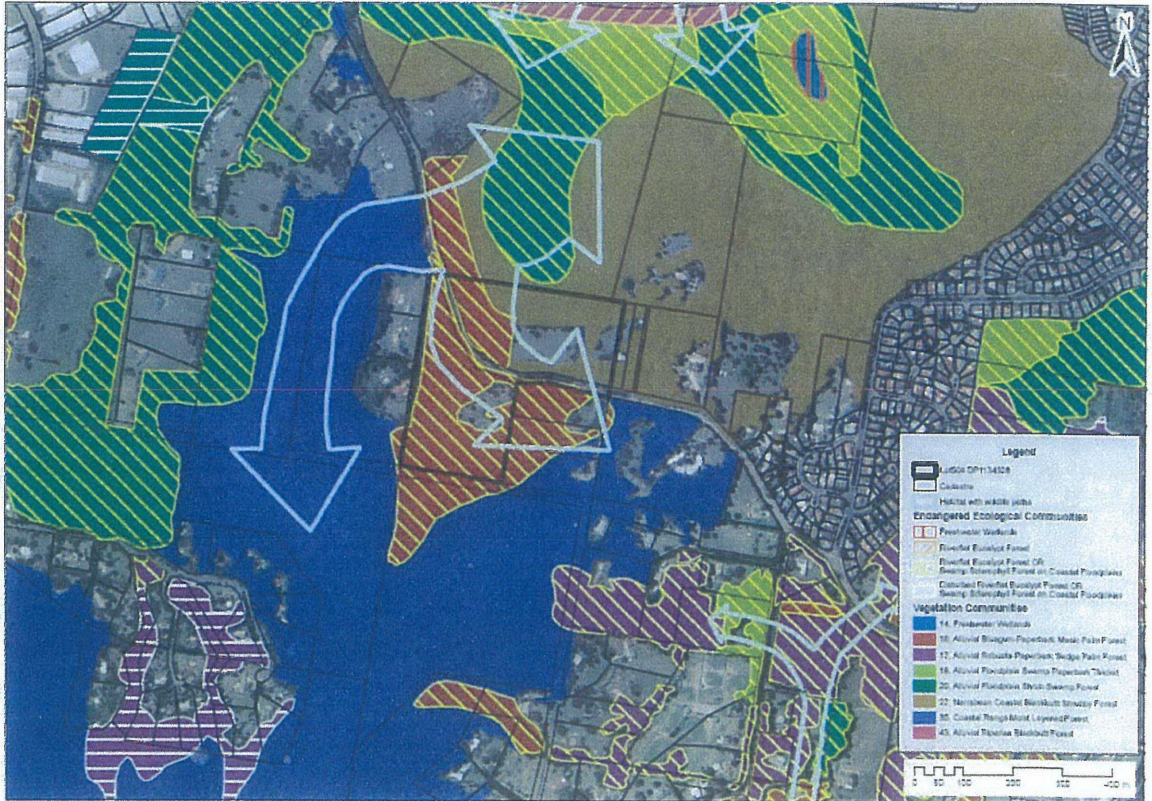
Wildlife Corridors

The position of major wildlife corridors were assessed by Payne (2002) as part of the Wyong Conservation Strategy. Although this document has not been adopted, a wildlife corridor has been identified runs through the subject site. This is the only location where this can be achieved, and this

Extract from RZ/15/2009 Desktop Assessment

76 Berkeley Road Fountaindale, Lot 504 DP 1134328

connective habitat linkage is an important biodiversity planning objective in the locality (See Figure 5). The wildlife corridor that passes through this site will also connect two large areas of Council owned land to the north and south of the site. DECCW's draft corridor mapping which will be used as part of the Regional Conservation Plan also shows the site as forming part of a regional wildlife corridor. Minor adjustments have been made to the rezoning proposal to provide a wider wildlife corridor in consultation with Council's Development Ecologist (see Figure 8 for proposed adjustments to the E2 – Environmental Conservation zone). This will ensure that this key wildlife corridor is secured under public ownership and is a minimum of 100 metres wide at its narrowest point.



Proposed Conservation Offset

The proposed areas to be dedicated as conservation land and transferred to Council will link two parcels of Council managed land locally known as Berkeley Vale Wetland to the north and Fountaindale Ridge Reserves to the south. In cooperation with the Catchment Management Authority Council's Open Space and Recreation Section has already invested \$150,000 restoring both these sites.

Council's Natural Areas Co-ordinator advises that the proposed conservation offset will be a welcome addition to Council's Open Space - Natural Area estate especially given the ecological significance of the sites.

Council's Natural Areas Co-ordinator has recommended that Council require the E2 land to be dedicated in an acceptable condition prior to hand over. This will require weeding and replanting to be conducted on all E2 – Environmental Protection land and for boundary fencing of conservation lands to be provided. Initial rehabilitation is to be provided for a 2 year period prior to land handover. A further maintenance contribution will then be required from the proponent to contribute towards Council's ongoing maintenance costs of the site for a further period of 8 years after site rehabilitation.

Extract from RZ/15/2009 Desktop Assessment

76 Berkeley Road Fountainsdale, Lot 504 DP 1134328

Bushfire

The majority of the site is classified as Bushfire Prone Land (see Figure 6).

Council's Bushfire Planner advises that the development proposal could be made to comply with the objectives and standards in *Planning for Bushfire Protection Guidelines, 2006*. To achieve this and an acceptable environmental protection a perimeter road would be required against any area of native vegetation and future areas proposed for revegetation. A predicted Asset Protection zone of 27 metres would be required.

If the proposal is further supported, it is recommended that a Bushfire Hazard Assessment is undertaken, considering the requirements of *Planning for Bushfire Protection Guidelines, 2006*, in addition to management techniques appropriate to the risk.

Travers Environmental Consultants have previously been engaged to undertake a Bushfire Protection Assessment DA/310/2008). This would need to be revised to reflect final subdivision layout and dwelling locations.



Figure 6: Bushfire Prone Land Map

Mine Subsidence

The land is not within a Mine Subsidence District.

Aboriginal and European Cultural Heritage Items

An Aboriginal site (camp ground) has been identified approximately 100 metres to the north of the subject site (Site No 45-6-2338). Council currently has limited access to DECCW's Aboriginal Heritage Information Management System (AIMS). In order to ensure that Aboriginal heritage items are not

Extract from RZ/15/2009 Desktop Assessment

76 Berkeley Road Fountaindale, Lot 504 DP 1134328

destroyed or vandalised, this data cannot be used to accurately locate Aboriginal heritage items and the actual site may be located within one kilometre of the point shown on Council's GIS records. As a result it is recommended that the applicant undertake an AIM's record search to confirm whether the site is located on the subject site. It is also recommended that an Aboriginal Archaeological Assessment be conducted on the site given the proximity of the site to a known Aboriginal site.

There are no items of European cultural heritage significance items are located within the site or will be affected by the proposed land uses.

Contaminated Land and Acid Sulfate Soils

Current and past land uses have been unlikely to result in any contamination on the subject land. There are no notations on the property identifying any land uses which would cause contaminated land.

To meet the objectives outlined under SEPP 55 the proponent will be required to undertake a Level 1 Contaminated Land Assessment to determine the existence of any contaminating material that has or may be present on the subject property. As there are no known occurrences of acid sulphate soils on the property this will not be required to be addressed.

There are no known occurrences of acid sulphate materials on the site.

Noise

Part of the land is zoned 7(f) Environmental Protection. As mentioned under "Site History and Land Uses" section of this report, this zone was established to restrict the scale of development on land near major noise generators. In this instance the likely noise sources are from industrial premises located in the Corella Close, Manns Road and Apprentice Drive industrial areas. In addition, traffic noise from Enterprise Drive and Berkeley Road also plays a part in the accumulative impact of noise.

Additional noise affecting this development is likely to arise from general traffic noise from those roads indicated above. In addition, noise from vehicle movements within the industrial area, public address systems and machinery operation will affect the development.

It is clear that the noise issue will need to be resolved through a consultant noise assessment study in order to ensure that this issue is properly addressed. Noise impacts and appropriate mitigation measures will need to be assessed and could be incorporated into future development design and/or conditions of approval.

Flooding and Drainage

The far northern portion of the property is affected by the 1% AEP flood level (see Figure 7). No dwellings will be permitted in this area. However more detailed information will be required to plot flood contours and natural drainage lines.

The rezoning is supported 'in principle' by Council's Hydrology Section however the following information will be required prior to support any Planning Proposal progressing.

Council's Senior Planning Engineer (Hydrology) advises that hydrologic and hydraulic investigations are required to determine the extent of flooding on the site, for a range of design storm events. Several tributaries traverse the site; however Council does not have any flooding information available. These investigations will determine the flood extent and Flood Planning Level for the site. Council's GIS

Extract from RZ/15/2009 Desktop Assessment

76 Berkeley Road Fountaindale, Lot 504 DP 1134328

indicates the northern part of the site is affected by flooding from Wyong River during the 1% AEP design storm event.

Similar comments were made by the Development Engineer on DA/310/2008 when an earlier proposal for subdivision of the property was considered by Council which was subsequently refused:

There are 2 identified watercourses in the location of the proposed development. Council is also aware of significant flooding of the section of Berkeley Rd in the area of the development. Flooding in this area may have a significant impact on the development of proposed Lot 5043. Therefore the applicant is to provide details of drainage calculations and flood potential in the proposed subdivision area. Issues to be identified are to include but are not limited to:

- o *Flood levels in the area including methodology and calculations.*
- o *Velocity and flow characteristics.*
- o *Affect on proposed Lot 5043*
- o *Any methods of flood mitigation and affect both up and down stream.*

Depending on the results of the information submitted, a full flood study for the area may be required.

These comments are valid for this rezoning application as well.

The property contains two relatively small intermittent drainage lines two "blue lines" that drain water off the steep slopes to the south of the site. Council's Team Co-ordinator of Development Engineering has identified a third tributary located in the gully between the two 'blue lines' when he assessed the proposal. It is advisable that all three tributaries be investigated as part of the flood study. It is considered that a concept plan for a rural-residential subdivision could readily be developed to ensure that dwellings and effluent disposal areas are placed away from watercourses and flood prone land.

Whilst a basic concept plan has been submitted with the proposal, no details have been provided which indicate how stormwater will be managed on the site during construction. The applicant has not identified how both stormwater quantity and quantity controls can be designed to meet Council's design criteria.

The site is not located within the SEPP 71 (Sensitive Coastal Location) boundary.

Extract from RZ/15/2009 Desktop Assessment

76 Berkeley Road Fountaindale, Lot 504 DP 1134328

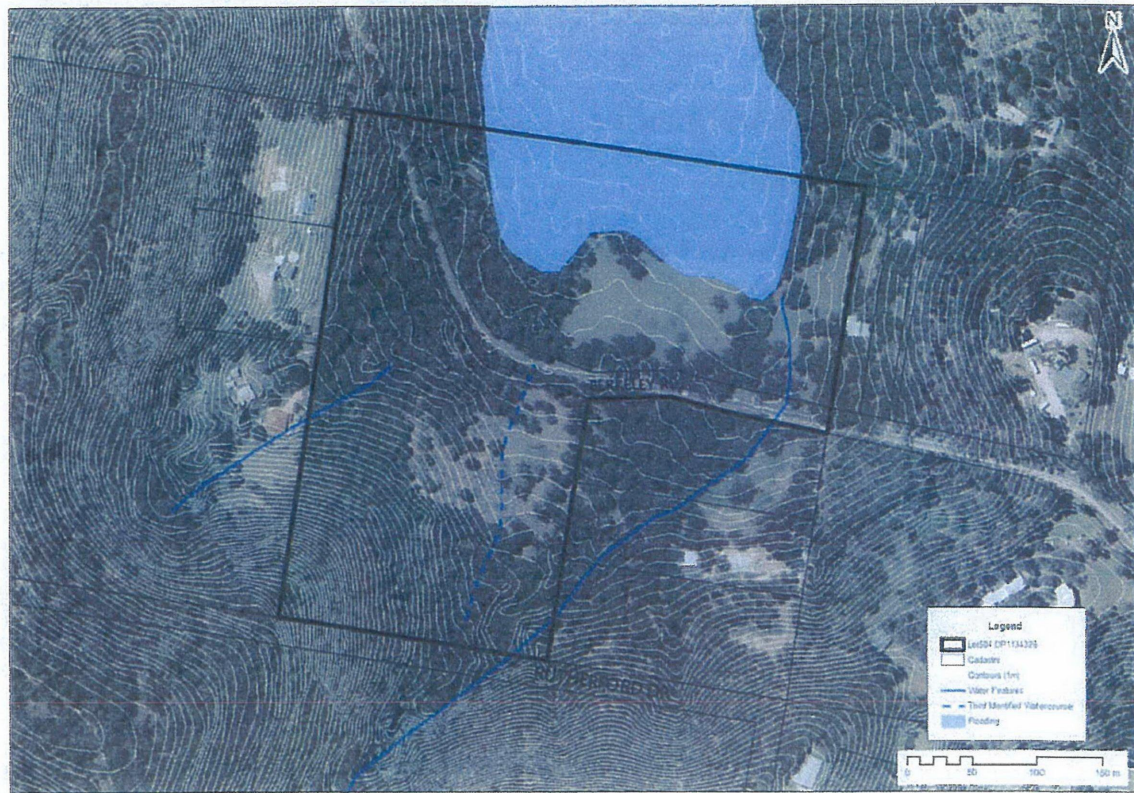


Figure 7: Contours and Water Features Lines

Traffic and Transport

The site is dissected by Berkeley Road. The eastern portion of Berkeley Road has been recently upgraded by Council and Council has plans to upgrade the western section of this road. These plans will improve the safety of the road.

Council's Team Co-ordinator of Development Engineering advises that there are sight distance constraints where there is a bend in Berkeley Road (western portion). Suitable access points are available which do not have sight distance issues on the eastern part of the site. However, the applicant will need to determine accurate driveway location points and demonstrate this as part of revised development layout.

Social Impact

The proposal will result in a minor increase in population. The proposal will provide infill development identified in the CCRS which will assist Council in meeting those targets.

It is considered that the proximity of the subject site to the above facilities and services is adequate for the proposal in the provision of relevant goods, services and community facilities.

Servicing

Water

Water supply is currently available to the eastern boundary of the property. Investigations are required to determine whether this main can be extended along Berkeley Road to service the development. Contributions for water supply will be applicable at subdivision stage.

Extract from RZ/15/2009 Desktop Assessment

76 Berkeley Road Fountaindale, Lot 504 DP 1134328

Sewer

Sewerage service is not available to the site.

On site sewer management

The applicant will be required to dispose of wastewater by way of on-site sewage systems and will be required to comply with Chapter 65: DCP Onsite Sewer Management. These will need to be sized and located in locations which are not located in areas which are flood free and in areas with suitable soils.

Other Utilities

Consultation with relevant service providers, including Energy Australia will need to be undertaken.

Economic Feasibility

The proponent has not identified that the proposal as submitted is economically feasible.