



## ***Planning Proposal***

76 Berkeley Road Fountaindale

Request No. RZ/15/2009

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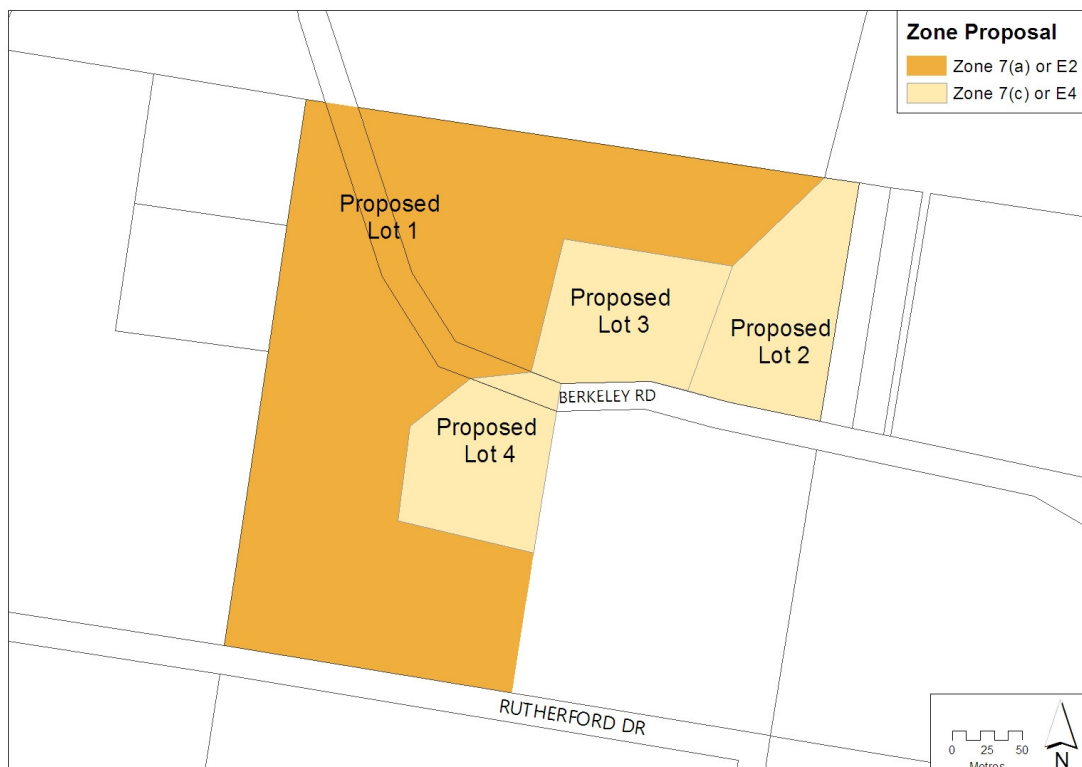
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## Part 1 Objectives or Intended Outcomes

To enable development of the land at 76 Berkeley Road for a 3 lot rural residential subdivision and the dedication of a lot for conservation purposes. The location of the site is shown below.



The proposed zones and indicative subdivision is shown below. Lot 1 is a conservation lot to be dedicated to Council.



## **Part 2 Explanation of Provisions**

### **Under Wyong LEP 2012**

Amendment of Wyong LEP 2012 (currently draft) Land Zoning Map in accordance with the proposed zoning map shown at attachment 1.

Amendment of Wyong LEP 2012 Lot Size Map in accordance with the proposed lot size map shown in attachment 2.

### **Under Wyong LEP 1991**

Alternatively, if draft LEP 2012 is delayed, amendment of Wyong LEP 1991 by adding to the definition of "the map" a reference to Wyong Local Environmental Plan 1991 (Amendment No. 185) as shown at attachment 3.

## **Part 3 Justification**

### **Section A – Need for the Planning Proposal**

**1. *Is the Planning Proposal a result of any Strategic Study or report?***

The land is listed in Council's draft Shire-wide Settlement Strategy – Rezoning Request Strategy for short term investigation. Following a request from the landowner and provision of supporting studies, Council has resolved to submit the Proposal for a Gateway determination.

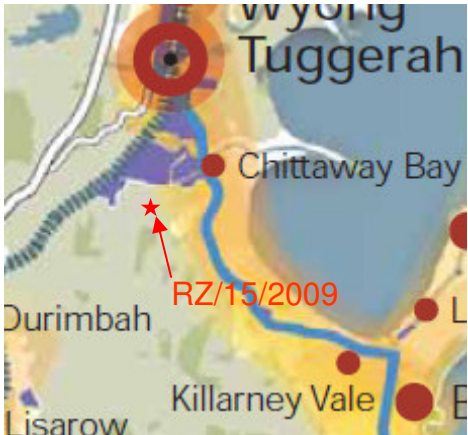
**2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?***

The simplest method of permitting rural residential subdivision of the land is considered to be an amendment to the zone and lot size maps.

**3. *Is there a net community benefit?***

The proposal has been considered against the evaluation criteria for the net community benefit test as detailed within the Draft Centres Policy. This evaluation is further detailed below. The following table provides a summary:

| <b>Evaluation Criterion</b>                                                                                                                                                                               | <b>Consistency of the Proposal</b>                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Will the proposal be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800 metres of a transit node)? | The proposal is consistent with the Central Coast Regional Strategy, as it provides for rural residential housing choice in an existing rural residential area, and does not rezone rural or resource lands for rural residential uses. |

|                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Is the proposal located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?</p> | <p>The land is located on the edge of the major corridor of urban development along Wyong Road between Tuggerah and Bateau Bay.</p>                                                                                                                                                                                                                                                   |
| <p>Is the proposal likely to create a precedent or create or change the expectations of the landowner or other landholders?</p>                                           | <p>The land is within an area that Council has been seeking landscape conservation outcomes for the past 20 years through bonus subdivision provisions under WLEP 1991. Other landowners in the locality are aware of this and may seek similar rezonings, which would further advance Council's objectives for this locality.</p>                                                                                                                                      |
| <p>Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?</p>                        | <p>The Proposal is consistent with the CCRS, and considered to be infill rezoning, consistent with the adjoining rural residential zones.</p> <p>Cumulative impacts of Proposals contained within the Rezoning Requests Strategy of the draft Settlement Strategy are being considered concurrently with this Planning Proposal. Initial assessment indicated existing infrastructure and services are capable of catering for the demands created by the rezoning.</p> |
| <p>Will the proposal facilitate a permanent employment generating activity or result in a loss of employment lands?</p>                                                   | <p>No.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>Will the proposal impact upon the supply of residential land and therefore housing supply and affordability?</p>                                                       | <p>The proposal will marginally increase the supply of rural residential land and housing supply. It is assumed that this will assist affordability.</p>                                                                                                                                                                                                                                                                                                                |
| <p>Is the existing public infrastructure (roads, rail, and utilities) capable of servicing the proposed site?</p>                                                         | <p>Yes, subject to the developer providing extension to services and contributions in accordance with current contributions plans.</p>                                                                                                                                                                                                                                                                                                                                  |

|                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Is there good pedestrian and cycling access?                                                                                                                                                                                            | No. However, there is a cycleway along Enterprise Drive, at the western end of Berkeley Road (about 900m from the site) and in Wyong Road at the eastern end (about 1,200m from the site). This is considered reasonable for infill rural residential development.                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Is public transport currently available or is there infrastructure capacity to support future public transport?                                                                                                                         | Bus services are available along Berkeley Road.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?                     | There will be no significant increase in car distances travelled. The land is located close to existing residential development and is considered to be well located for access to retail, employment and service suppliers.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?                                                            | The Proposal is expected to create a marginal increase for public schools, electricity supply, emergency services, health services, public administration, rail and main road transport and telecommunications services. All of these services are considered to be reasonably available in the locality.                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding? | The land has not been identified by the Government. The land is within a locality that Council has been pursuing landscape conservation outcomes for 20 years. There will be some environmental impacts but these are considered to be offset by the environmental gains proposed. The land is partially affected by flooding and is subject to bushfire risk. These hazards have been assessed and the development proposal has been designed to manage these risks. More detailed flood assessment will be required prior to public exhibition of the Proposal. Noise from the industrial area in Enterprise Drive has been assessed and there will be no land use conflict with residential development on the subject land. |
| Will the proposal be compatible/complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?                                                            | The proposal is for rural residential development and conservation in an area that has developed for these purposes under WLEP 1991. There will be no significant impact on amenity in the location or wider community. A significant parcel of conservation land will be rehabilitated and dedicated to Council.                                                                                                                                                                                                                                                                                                                                                                                                               |

|                                                                                                                                     |                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area? | No.                                                                                                                                                                                                                                                      |
| If a stand-alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?            | Not considered to be a stand alone proposal.                                                                                                                                                                                                             |
| What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?        | The public interest reasons for the draft plan are to secure 6.96ha of conservation land and this will form part of an important landscape link between land to the north and to the south. Not proceeding at this time will delay securing of the land. |

**Section B – Relationship to strategic planning framework**

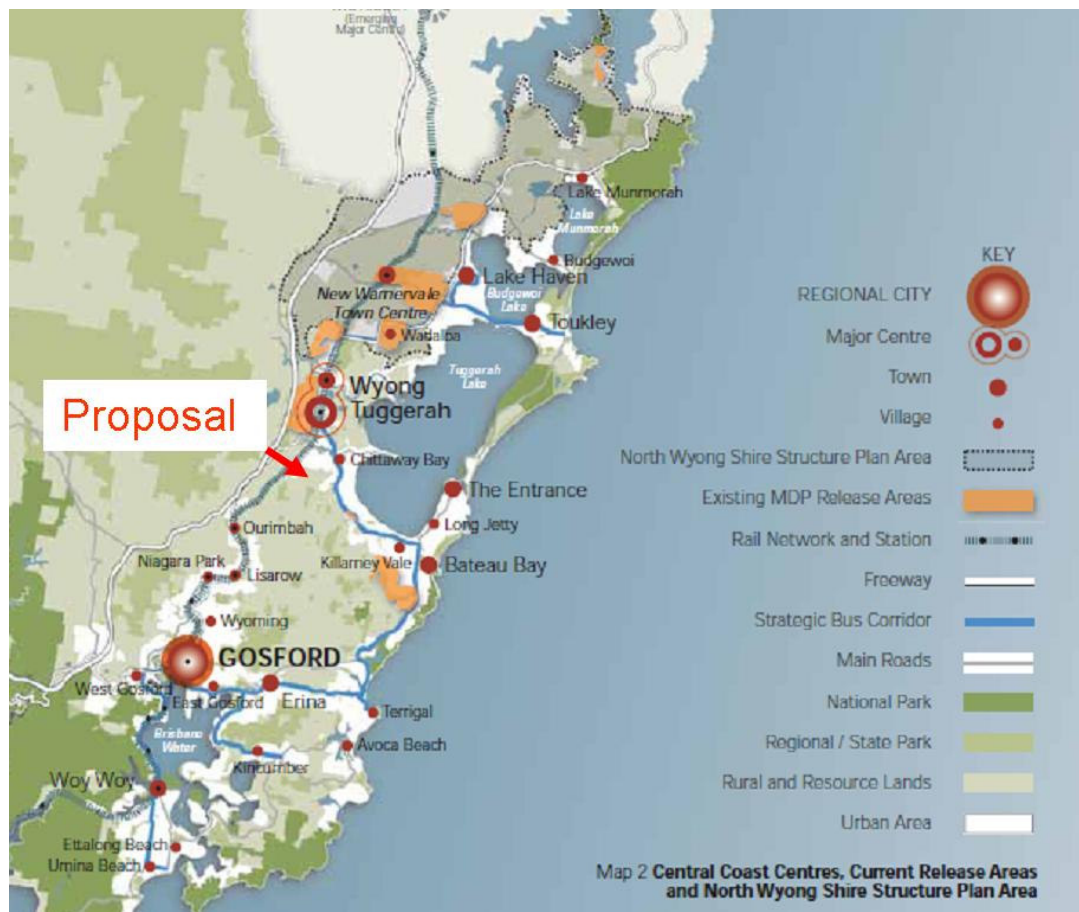
4. *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

Chapter 4 Centres and Housing states (page 21) under “Rural Residential Development” that “Existing rural residential development will continue to provide a choice of housing in the Region....opportunities for new rural residential development will be limited to those already provided in the Region and opportunities, if any, identified as a part of the North Wyong Structure Plan.

Action 6.9 states “Ensure LEPs do not rezone rural and resource lands for urban purposes or rural residential uses unless agreement from the Department of Planning is first reached regarding the value of these resources.”

The land is within an existing area of rural residential development and does not affect rural or resource lands.





5. *Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?*

The Community Strategic Plan identifies 8 priority objectives, each supported by a range of actions. The Planning Proposal is assessed as follows.

1. Communities will be vibrant, caring and connected.

The proposed development is within an area of existing rural residential development. Opportunities exist for new residents to participate in existing programs in the district, including community, business, sports, recreation, education and creative groups.

The Planning Proposal is consistent with the Wyong Shire-wide Settlement Strategy and the Central Coast Regional Strategy.

2. There will be ease of travel.

Bus services operate along Berkeley Road. There are cycleways in Enterprise Drive and Wyong Road, 900 to 1,200m from the site. Car access to services and rail transport are considered to be in reasonable proximity to the site.

The development of the land will marginally increase traffic movements on Berkeley Road and the intersection with Wyong Road and Enterprise Drive.

3. Communities will have a range of facilities and services.

The proposed development will result in the introduction of new residents who will contribute to cultural and community facilities, open space, sports and recreation

facilities. Council is currently seeking to increase utilisation of many of its existing facilities.

4. Areas of natural value will be enhanced and maintained.

A significant landscape conservation link will be secured as a result of the development. Restoration and management of this land will be achieved.

5. There will be a sense of community ownership of the natural environment.

The development will result in public ownership of key conservation land.

6. There will be a strong sustainable business sector.

Not relevant to this Proposal.

7. Information and communication technology will be world's best.

Not relevant to this Proposal.

8. The community will be educated, innovative and creative.

Not relevant to this Proposal.

6. *Is the planning proposal consistent with applicable state environmental planning policies?*

**State Environmental Planning Policy No 44 – Koala Habitat Protection**

This SEPP aims to encourage the proper conservation and management of koala habitat in areas in order to maintain the viability of koala populations. The SEPP requires an assessment of the site to determine if it is potential koala habitat. Potential koala habitat is defined as areas of native vegetation where at least 15% of the total number of trees are prescribed koala feed trees. The ecological assessment by Travers Bushfire and Ecology notes that less than 15% of trees are koala feed trees and therefore the land does not contain potential koala habitat.

**State Environmental Planning Policy No 55 – Remediation of Land**

This SEPP introduces state-wide planning controls for the remediation of contaminated land. It establishes that land must be remediated if contaminated, to a standard suitable for the end land use. Clause 6 requires Council to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines. The Preliminary (Phase 1 Assessment) concluded the site is generally compatible with the proposed residential use, and a further Phase 2 assessment was then submitted, which Council's staff have assessed and considered that the applicant has fulfilled required obligations under SEPP 55.

7. *Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?*

The proposal has been considered against the relevant Ministerial Section 117 Directions and is considered to be consistent with the relevant Directions as summarised below.

| Number                            | Direction                                              | Applicable | Consistent |
|-----------------------------------|--------------------------------------------------------|------------|------------|
| <b>Employment &amp; Resources</b> |                                                        |            |            |
| 1.1                               | Business & Industrial Zones                            | No         | NA         |
| 1.2                               | Rural Zones                                            | No         | NA         |
| 1.3                               | Mining, Petroleum Production and Extractive Industries | No         | NA         |
| 1.4                               | Oyster Aquaculture                                     | No         | NA         |
| 1.5                               | Rural Lands                                            | No         | NA         |
| <b>Environment &amp; Heritage</b> |                                                        |            |            |



|                                                        |                                                                          |     |     |
|--------------------------------------------------------|--------------------------------------------------------------------------|-----|-----|
| 2.1                                                    | Environmental Protection Zones                                           | Yes | Yes |
| 2.2                                                    | Coastal Protection                                                       | No  | NA  |
| 2.3                                                    | Heritage Conservation                                                    | Yes | Yes |
| 2.4                                                    | Recreation Vehicle Areas                                                 | Yes | Yes |
| <b>Housing, Infrastructure &amp; Urban Development</b> |                                                                          |     |     |
| 3.1                                                    | Residential Zones                                                        | No  | NA  |
| 3.2                                                    | Caravan Parks and Manufactured Home Estates                              | No  | NA  |
| 3.3                                                    | Home Occupations                                                         | Yes | Yes |
| 3.4                                                    | Integrating Land Use & Transport                                         | No  | NA  |
| 3.5                                                    | Development Near Licensed Aerodromes                                     | No  | NA  |
| 3.6                                                    | Shooting Ranges                                                          | No  | NA  |
| <b>Hazard &amp; Risk</b>                               |                                                                          |     |     |
| 4.1                                                    | Acid Sulfate Soils                                                       | No  | NA  |
| 4.2                                                    | Mine Subsidence and Unstable Land                                        | No  | NA  |
| 4.3                                                    | Flood Prone Land                                                         | Yes | Yes |
| 4.4                                                    | Planning for Bushfire Protection                                         | Yes | Yes |
| <b>Regional Planning</b>                               |                                                                          |     |     |
| 5.1                                                    | Implementation of Regional Strategies                                    | Yes | Yes |
| 5.2                                                    | Sydney Drinking Water Catchments                                         | No  | NA  |
| 5.3                                                    | Farmland of State and Regional Significance on the NSW Far North Coast   | No  | NA  |
| 5.4                                                    | Commercial and Retail Development along the Pacific Highway, North Coast | No  | NA  |
| 5.5 to 5.7                                             | Revoked                                                                  | No  | NA  |
| 5.8                                                    | Second Sydney Airport: Badgerys Creek                                    | No  | NA  |
| <b>Local Plan Making</b>                               |                                                                          |     |     |
| 6.1                                                    | Approval and Referral Requirements                                       | Yes | Yes |
| 6.2                                                    | Reserving Land for Public Purposes                                       | Yes | Yes |
| 6.3                                                    | Site Specific Provisions                                                 | No  | NA  |
| <b>Metropolitan Planning</b>                           |                                                                          |     |     |
| 7.1                                                    | Implementation of the Metropolitan Strategy                              | No  | NA  |

### **Section C – Environmental, Social and Economic Impact**

8. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

It is noted that the vegetation mapping by Travers Bushfire and Ecology on behalf of the developer differs from Council's vegetation mapping (by Bell). Internal review indicates the mapping by Travers is accepted as providing a more accurate delineation and finer grain detail of the existing vegetation.

There is a record of a Powerful Owl roosting at the site (19 May, 2011), indicating that a potential nesting tree may exist on or near the site. EPA (NPWS) recommend a 200m buffer to Powerful Owl nest trees. As the existence of a nest tree within 200m of the proposed building envelopes may result in failure of the rezoning proposal, the applicant was requested to engage an "owl specialist" ecological consultant to assess whether the nesting tree is on site or within 200m of the proposed building envelopes.

The ecological assessment by Travers Ecology indicates that there was an assessment of trees within the proposed dwelling envelopes and APZs and identified no suitable hollow bearing trees. Additional survey information was provided by Travers Ecology (dated 11 May, 2012) which documents that additional survey work undertaken on 24 April, 2012, recorded only evidence of the Southern Boobook Owl on site. The Powerful Owl was identified as being most likely to be nesting in the adjoining valley to the South-West.

The submitted proposal has been modified to reduce ecological impacts, maximise the extent of conservation land and to improve long term management practices for the land. These modifications were:

- maximise the land to be transferred for conservation,
- lot 4 southern boundary to be closer to perpendicular to eastern boundary,
- truncate north west corner of lot 4 to capture additional Blue Gum forest and *M biconvexa* into Lot 1, and improve boundary angles,
- modify lot 3 to capture all vegetation within lot 1 and to provide improved boundary angles,
- modify lot 2 to add *M biconvexa* to Lot 1 and provide improved buffering to Council conservation land to the north,
- modify lot 2 to provide for access on western side of riparian vegetation within lot 2 and avoid fence line clearing being within riparian vegetation.

These modifications, together with the proposed dedication, restoration and long term management of the conservation land, will ensure ecological impacts are minimised and offset.

9. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

#### **Biodiversity Conservation**

Council has been pursuing conservation land planning under WLEP 1991, for over 20 years. Under WLEP 1991, Council has been able to secure conservation outcomes over extensive land in the Fountaindale – Berkeley Vale - Glenning Valley – Tumby area through the subdivision bonus incentives provisions in clause 14(3) of WLEP 1991. The bonus applies to 7(c) zoned land.

This proposal intends to create 3 lots within the 7(c) zone ranging from 1.01 to 1.24ha. Under the current bonus lot provisions of WLEP 1991, this would require dedication of about 6.5ha of 7(a) zoned land. This proposal intends to dedicate about 7.5ha (when modified as above under 8) through an offer under a Voluntary Planning Agreement (VPA).

The developer has offered, through a VPA, to meet the costs associated with restoration of the land to be dedicated to Council either through undertaking the work or making an equivalent monetary payment. It is noted that the land will become Council's responsibility, and having regard to Council's Financial Strategy, the long term management costs of this new council asset should be met by the developer. Council will be seeking this commitment from the developer to meet the 10 year management costs for the land.

Prior to proceeding to public exhibition of the Planning Proposal, Council must be satisfied that these long term management costs will be met by the developer through the final version of the VPA, to be publicly exhibited with the Planning Proposal.

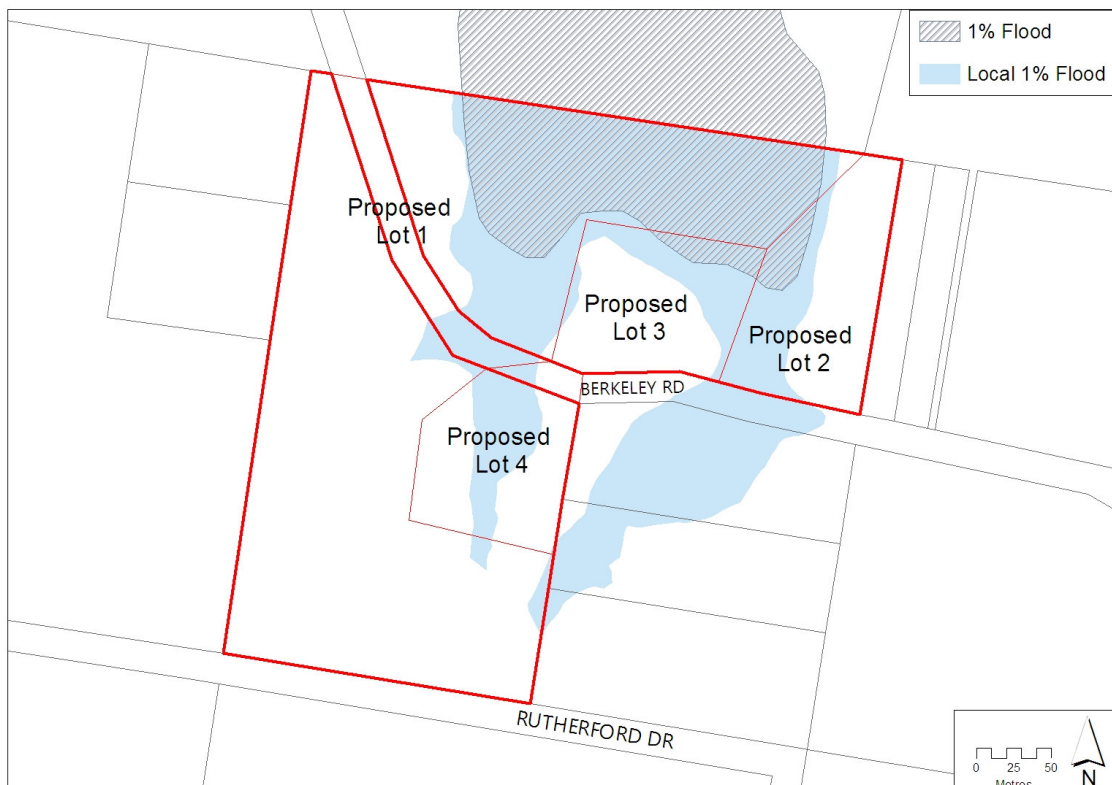
#### **Flooding**

Parts of Lots 1, 2 and 3 are affected by the 1% AEP flood level for the broader catchment. The proposed building envelopes and on-site disposal areas are located outside of the affected area.

Flood modelling was undertaken (Hoolihan Partners May 2011) to identify the 1% flood level within the local catchment. This indicates a greater extent of flood affected land on Lots 1, 2

and 3 and an affected area on Lot 4. Building envelopes and effluent disposal areas will need to be carefully located to avoid these areas.

An updated Flood Analysis Report (dated September, 2012) has been submitted to Council, reorienting the building envelope on proposed Lot 4 and providing detailed hydrological and hydraulic assessment for a range of design storm events. This report clarified concerns and determined the flood extent and Flood Planning Level for the site (24.50 m AHD). The report included further details relating to methodology, drainage calculations, velocity and flow characteristics, localised impacts of development and mitigation affect upstream and downstream, and how both stormwater quantity and quality controls can be designed to meet Council's design criteria during and post construction. This report is considered to have sufficiently addressed the concerns of Council's Hydrology Unit.



### **Bushfire Risk**

A bushfire risk assessment has been undertaken in accordance with the Planning for Bushfire Protection Guidelines (2006) to identify the required APZs and other bushfire management measures. The clearing for APZs was included in the ecological impact assessment to ensure all the development impacts were assessed.



10. *How has the planning proposal adequately addressed any social and economic effects?*

**Social**

An Aboriginal Heritage Site Assessment of the land (Darkinjung 2007) recommended that any future development of the site be managed appropriately in the event that any cultural artefact or archaeological deposits are uncovered during development.

The rezoning of the land and subsequent residential development will create a demand for community, cultural and recreational services.

The Shire Wide Contributions Plan (library stock, performing arts centre, public art commissions, regional open space and shire cycleway network and administration costs) will apply to future development of the land. The development will generate an increase in the demand for these services and facilities and will be required to contribute under the Plan and meet its share of the cost of these services.

The rezoning proposal will form an extension to the Fountaindale rural residential community. It falls within the Southern Lakes Section 94 Contribution Plan catchment. This Plan imposes a contribution rate for Open Space and Recreational Facilities Works, Community Facilities Works (and administration of the Plan). The development will generate an increase in the demand for these services and facilities and will be required to contribute under the Plan and meet its share of the cost of their provision.

**Economic**

The Planning Proposal has been assessed in terms of Council's Long Term Financial Strategy, Asset Management Strategy and operational budget. Financial impacts and appropriate management measures have been identified to ensure the development funds any specific infrastructure, facilities or services not funded through contributions plans. Assets likely to be acquired by Council as a result of the development are considered likely to be financially sustainable. Processing of the Planning Proposal is to be budget neutral.

No broad economic effects of the Proposal have been identified.

**Section D – State and Commonwealth Interests**

**11. Is there adequate public infrastructure for the planning proposal?**

The Proposal is expected to create a marginal increase in demand for public schools, electricity supply, emergency services, health services, public administration, rail and main road transport and telecommunications services. All of these services are considered to be reasonably available in the locality.

**12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

[to be completed after Gateway Determination]

**Part 4 Community Consultation**

It is recommended that the proposal be publicly exhibited for a period of 28 days.

Notification of the public exhibition is recommended to be placed in the Central Coast Express Advocate and written notification sent to owners adjacent to the site. Notices will be placed on Council's website and a link attached to Council's new ePanel initiative.

Briefing of the Berkeley Vale Precinct Committee is also proposed during the exhibition period.

The Planning Proposal, Gateway Determination, and supporting studies will be made available on Council's website, at Council's Administration Building in Hely Street Wyong.

A public hearing is considered unlikely to be necessary.



## **Attachments and Supporting Documentation**

| <b>Document</b>                                                                       | <b>Attached</b> |
|---------------------------------------------------------------------------------------|-----------------|
| 1. Amendment of Wyong LEP 2012 Land Zoning Map                                        | <b>Yes</b>      |
| 2. Amendment of Wyong LEP 2012 Lot Size Map                                           | <b>Yes</b>      |
| 3. Wyong Local Environmental Plan 1991 (Amendment No. XX (No. 185)) Map               | <b>Yes</b>      |
| 4. Council Reports and Minutes                                                        | <b>Yes</b>      |
| 5. Planning Proposal Report, Optima Developments Pty. Ltd., August 2011               | <b>Yes</b>      |
| 6. Report on Targeted Phase 2 Contamination Assessment, Douglas Partners, April, 2012 | <b>Yes</b>      |
| 7. Revised Wastewater Management Report, Whitehead and Assoc., April, 2012            | <b>Yes</b>      |
| 8. Updated Fauna Survey, Travers Bushfire and Ecology, May, 2012                      | <b>Yes</b>      |
| 9. Flood Analysis Report, Revision 3, Hoolihan Partners, September, 2012              | <b>Yes</b>      |