

Planning and Assessment

Plan Finalisation Report

Local government area: Central Coast

1. NAME OF DRAFT LEP

Wyong Local Environmental Plan 2013 (Amendment No 39).

2. SITE DESCRIPTION

The planning proposal applies to 380 Motorway Link Road, Wallarah that includes lots 1-3 DP 1156997 (**Attachment A**). The site is approximately 87 hectares and accessed from the Motorway Link Road and is north-west of the Central Coast & Newcastle rail line (Figure 1). There is a nearby connection via the Motorway Link Road to the M1 Pacific Motorway.

The site mostly slopes to the south and has gentle undulating topography and drains into Wallarah Creek.

The site adjoins Crown Land and other land owned or claimed by Darkinjung Local Aboriginal Land Council (Darkinjung).

Activities on land on the opposite side of the Motorway Link Road to the north are operated to manufacture bricks and tiles by Boral Montoro. The Charmhaven Sewerage Treatment Plant is located to the south east.

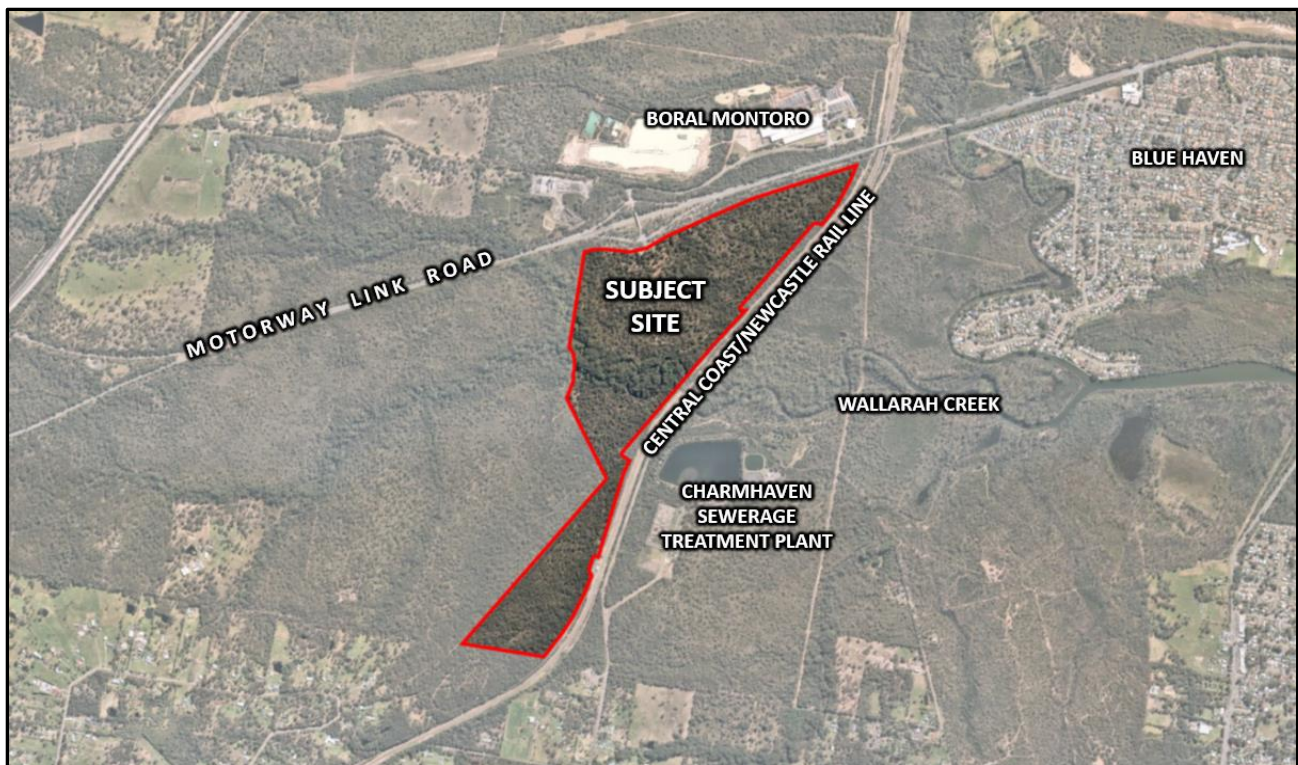


Figure 1: Site Map.

3. PURPOSE OF PLAN

The objective of the planning proposal is to give effect to the *State Environmental Planning Policy (Aboriginal Land) 2019* and the *Interim Darkinjung Development Delivery Plan* (IDDDP) to support economic and social opportunities for Darkinjung Local Aboriginal Land Council (Darkinjung) and its community.

The site is one of four sites included in the IDDDP and is strategically located near the M1 Pacific Motorway interchange to support freight and logistics connections and broader economic outcomes identified in the *Central Coast Regional Plan 2036*.

The draft local environmental plan seeks to:

- rezone the site from RU6 Transition to IN1 General Industrial and E2 Environmental Conservation (Figures 2 and 3);
- remove the minimum lot size requirements for those areas to be zoned IN1 General Industrial and apply a minimum lot size of 40 hectares to the subject land where the E2 Environmental Conservation zone applies; and
- identify the entire site as an Urban Release Area subject to the requirements of Part 6 of *Wyong Local Environmental Plan 2013*.

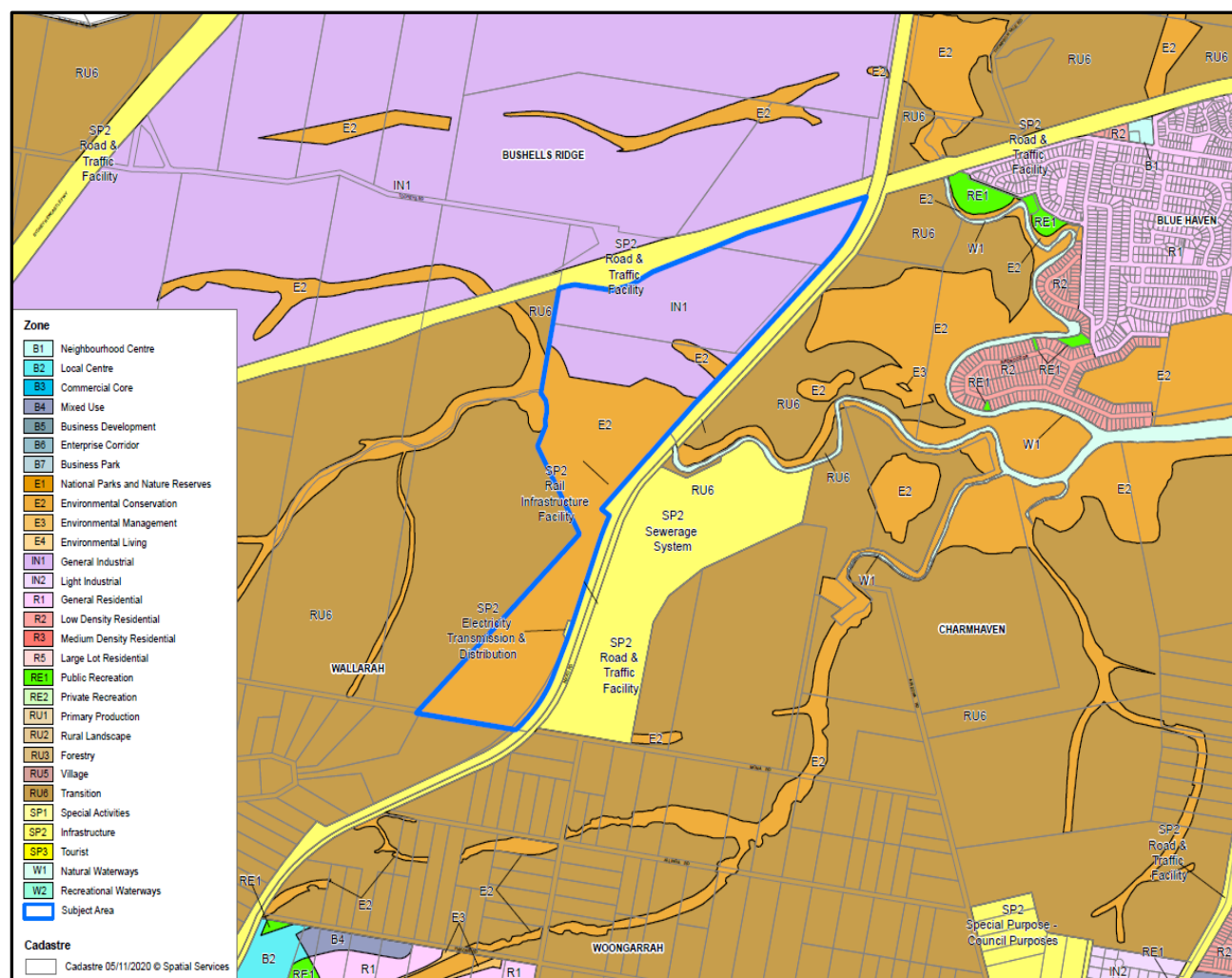


Figure 2: Proposed Zoning.

Development will be managed through a development control plan, which will provide more detailed development and subdivision controls to manage future staging and respond to development constraints.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Wyong state electorate. Mr David Harris MP is the State Member.

The site falls within the Dobell federal electorate. Ms Emma McBride MP is the Federal Member.

To the Central Coast and Hunter team's knowledge, neither MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION

The Gateway determination issued on 9 December 2016 (**Attachment B**) determined that the planning proposal should proceed subject to conditions.

The Gateway determination was altered on the following dates:

- 20 September 2018 – to extend the time for completion by 16 months; and
- 17 December 2019 - to extend the time for completion by 8 months and 21 days.

Extensions were granted to allow Council, Darkinjung Local Aboriginal Land Council and Department of Planning, Industry and Environment to progress the planning proposal.

On 24 August 2020, Central Coast Council resolved not to retain the role of the planning proposal authority. The Secretary, Department of Planning, Industry and Environment was self-appointed as the alternate planning proposal authority.

6. PUBLIC EXHIBITION

In accordance with the Gateway determination, the planning proposal was publicly exhibited by Central Coast Council from 31 January to 28 February 2020.

ISSUE	RESPONSE
Concerns with inadequately protecting the environment, including destruction of habitat of threatened species from the proposed rezoning of land to industrial.	<p>The planning proposal was amended to:</p> <ul style="list-style-type: none">• increase the setback of the southern industrial boundary from Wallarah Creek;• increase the area proposed to be rezoned E2 Environmental Conservation; and• avoid plant community types by a 10m buffer proposed to be rezoned E2 Environmental Conservation. <p>This is supported by the Biodiversity Conservation Division.</p>
Concerns with the community consultation process.	<p>Community consultation process followed the legislative requirements under section 3.34(2)(c) of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
Differences between the preliminary and final Aboriginal cultural heritage reports	<p>An Aboriginal Heritage Due Diligence Assessment was prepared in September 2017, followed by an Aboriginal Cultural Heritage Assessment in July 2020.</p>

ISSUE	RESPONSE
Site is unsuitable for industrial development given the proximity of the development footprint to Wallarah Creek.	The southern industrial boundary was amended to increase the setback from Wallarah Creek.

To the Central Coast and Hunter team's knowledge, the planning proposal was not referred to the local planning panel under section 2.19(1)(b).

7. ADVICE FROM PUBLIC AUTHORITIES

In accordance with the Gateway determination, Central Coast Council consulted with Ausgrid, Department of Primary Industries (Office of Water), Office of Environment and Heritage, Department of Industry (Resources and Energy), Transport for NSW, Department of Industry (Lands), Guringai Tribal Link, Jemena, Darkinjung Local Aboriginal Land Council and NSW Rural Fire Service.

Ausgrid

The authority advised it makes no objections to the planning proposal.

Jemena

Central Coast Council advised the authority was notified. Council received no response.

Department of Primary Industries (Office of Water)

The agency did not object to the planning proposal.

The agency did advise it may not support removal of 'undetermined' water courses until further investigation is undertaken to understand the characteristics of the watercourse and determine appropriate riparian management. A stormwater and flooding assessment was completed in response to the agency comments. The assessment investigated how the proposed development may impact on Wallarah Creek, the site catchment flood study (Wyang Shire Council) and site flooding. The assessment considered the site to have sufficient capacity to accommodate the proposed rezoning, with further investigations to support the detailed subdivision application.

The agency also advised on the appropriate riparian corridor width under the relevant guidelines, including buffer from Wallarah Creek. The proposed boundary of the industrial zone has amended to increase the size of the setback from Wallarah Creek and to include buffers around plan community types.

ISSUE	RESPONSE
Riparian corridors should be zoned E2 Environmental Conservation.	The Wallarah Creek riparian corridor is proposed to be zoned to E2 Environmental Conservation, which has been increased since the advice was provided to reflect improved environmental outcomes.
Recommended asset protection zones are located wholly within the urban development land and not in riparian corridors.	The proposed development control plan for the site states asset protection zones need to be located in the proposed IN1 General Industrial zone.

ISSUE	RESPONSE
Provided recommendations for management of stormwater and groundwater for the future development.	<p>Recommendations have been incorporated into the stormwater and flooding assessment.</p> <p>The agencies recommendations have also been incorporated into the site specific development control plan where appropriate.</p>

Office of Environment and Heritage

The agency recommended the planning proposal be delayed until the proposed rezonings are supported by the outcomes of the biodiversity certification process. In response, the proponents prepared a biodiversity conservation assessment report and addendum materials that analysed impacts upon the regional biodiversity corridor.

ISSUE	RESPONSE
Raised concerns with inadequately protecting the environment, including habitat of threatened species from the proposed rezoning to industrial.	<p>The planning proposal was amended to:</p> <ul style="list-style-type: none"> • increase the setback of the southern industrial boundary from Wallarah Creek; • increase the area proposed to be rezoned E2 Environmental Conservation; and • avoid plant community types by a 10m buffer proposed to be rezoned E2 Environmental Conservation. <p>The agency has advised these amendments are supported.</p>
Advised the site is unsuitable for industrial development, given the proximity of the development footprint to Wallarah Creek.	<p>Following advice from the agency the southern industrial boundary was amended to increase the setback from Wallarah Creek. The agency subsequently advised it did not object to the planning proposal.</p>
Further information on flooding required to determine consistency with Ministerial direction 4.3 Flood Prone Land, including full range of flood events up to the probable maximum flood and assessment of potential impacts downstream.	<p>A flood study has prepared that considers flood risk management, including the probable maximum flood and potential impacts downstream.</p> <p>A study showed that each specific sub-catchment is relatively small, and the slopes are not conducive to flooding. No part of the site is classified as floodplain and peak flows up to and including the 100 year flood will be easily contained within the appropriate flow paths, basins and drainage corridors.</p> <p>It is considered that the proposal is consistent with relevant section 9.1 Ministerial direction.</p>
Clearly identify all potential areas, objects, places or landscapes of heritage significance to Aboriginal culture and people.	<p>An Aboriginal Cultural Heritage Assessment (ACHA) was prepared in response to initial comments from the agency that recommended all potential areas, objects, places or landscapes of heritage significance to Aboriginal culture and people are clearly identified.</p>

ISSUE	RESPONSE
	<p>The ACHA prepared only applied to land proposed to be zoned IN1 General Industrial and did not apply to land proposed to be zoned to E2 Environmental Conservation.</p> <p>On 11 August 2020, further advice was provided by the agency on the ACHA. It recommended an ACHA should be undertaken over the full extent of the site to inform the planning proposal.</p> <p>The site is currently zoned RU6 Transition. The objectives of the E2 Environmental Conservation zone is to protect, manage and restore areas of ecological, cultural or aesthetic values and to prevent development that could destroy, damage or otherwise have an adverse effect on those values. This objective will provide an improve protection to any cultural values of this part of the site that currently applies.</p>

Darkinjung Local Aboriginal Land Council

Darkinjung is the landowner. Consultation with Darkinjung has been ongoing with Central Coast Council and the Department of Planning, Industry and Environment.

Wannangini Pty Ltd (former Guringai Tribal Link Corporation)

Guringai Tribal Link Aboriginal Corporation agreed that should the planning proposal proceed, the recommendations and mechanisms proposed to be implemented to protect the known cultural sites are satisfactory.

Department of Industry (Lands)

The agency advised it makes no objections to the planning proposal.

Department of Industry (Resources and Geoscience)

The agency had advised it had been unable to support the planning proposal due to the existence of a state significant clay mineral deposit which overlies the site and the presence of an easement lease application also over the site.

On 8 January 2020, the agency advised it had reviewed its position and it no longer maintained an objection to the planning proposal.

NSW Rural Fire Service

On 21 March 2018, the agency advised Council it was not satisfied the planning proposal is consistent with the section 9.1 Ministerial direction Planning for Bushfire Protection. This advice was reiterated by the agency to Council on 12 December 2018.

ISSUE	RESPONSE
proposal was inconsistent with the aims and objectives of the Planning for Bushfire Protection policy. It advised amendments were required for a perimeter road and secondary access point for emergency vehicles.	<p>The proposed development control plan for the site has been updated to incorporate the advice from the agency regarding requirements for a perimeter road and secondary access point for emergency vehicles. This was undertaken in consultation with the agency.</p> <p>On 11 December 2020, the agency advised it did not object to the planning proposal.</p>

Transport for NSW (including then Roads and Maritime Services and Sydney Trains)

The agency advised it did not raise an objection the planning proposal. The agency provided advice that any future development applications will be subject to any applicable *State Environmental Planning Policy (Infrastructure) 2007* rail corridor related requirements under clause 85 and 86 and that any future applicants should refer to the *Development Near Rail Corridors and Busy Roads – Interim Guideline*.

and raised the following issues:

ISSUE	RESPONSE
The proponent should develop a detailed traffic assessment to be reviewed by Transport for NSW prior to Council considering the planning proposal.	<p>The traffic impact assessment was updated to respond to initial comments from Transport for NSW. This revised traffic impact assessment was publicly exhibited with the planning proposal.</p> <p>Transport for NSW has advised all matters can be resolved as part of the development application process.</p>

8. POST-EXHIBITION CHANGES

On 24 August 2020, Central Coast Council resolved not to retain the role of the Planning Proposal Authority, where the Secretary was self-appointed as the alternate Planning Proposal Authority. The planning proposal has been updated to reflect this amendment.

Other post-exhibition changes have been made to improve planning outcomes for the site. These changes relate to:

- **amended zone boundary** - the proposed southern industrial boundary was amended to increase the environmental conservation area, with new mapping to reflect these changes; and
- **Updated Aboriginal cultural heritage** – an updated Aboriginal cultural heritage assessment report was prepared in July 2020. The planning proposal has been updated to reflect this updated information;

The post-exhibition changes do not require re-exhibition as they are considered minor, do not change the aims and objectives of the planning proposal to deliver industrial and environmental outcomes and are in response to advice from relevant public authorities.

9. ASSESSMENT

9.1 Section 9.1 Ministerial directions

The Gateway determination issued on 9 December 2016 agreed that inconsistencies with the section 9.1 Ministerial direction 1.2 Rural Zones was of minor significance.

Based on advice from relevant public authorities and post exhibition changes, the planning proposal is now considered consistent or justifiably inconsistent with the following relevant section 9.1 Ministerial directions:

- 1.1 - Business and Employment Zones;
- 1.3 - Mining, Petroleum and Extractive Industries;
- 2.2 - Environmental Protection Zones;
- 2.3 - Heritage Conservation;
- 3.4 - Integrating Land Use and Transport;

- 4.4 - Planning for Bushfire Protection;
- 5.1 - Implementation of Regional Strategies;
- 5.10 - Implementation of Regional Plans; and
- 6.2 - Reserving Land for Public Purposes.

In regard to section 9.1 Ministerial direction 2.2 Coastal Management, the site does not fall within a Coastal Vulnerability Area and has not been identified as a current or future coastal hazard in the local environmental plan. Part of the site is within a Coastal Environmental Area surrounding the Wallarah Creek. This area of the site falls within the proposed E2 Environmental Conservation zone. The planning proposal is consistent with this Direction.

In regard to section 9.1 Ministerial direction 4.1 Acid Sulfate Soils, a preliminary site investigation has been undertaken in the area identified for industrial zoning. It determined that acid sulfate soils do not pose a risk within the identified industrial footprint. The planning proposal is consistent with this Direction.

In regard to section 9.1 Ministerial direction 5.11 Development of Aboriginal Land Council Land, the planning proposal considers *State Environmental Planning Policy (Aboriginal Land) 2019* and the *Interim Darkinjung Development Delivery Plan* to support the economic and social opportunities for Darkinjung and its community.

9.2 State Environmental Planning Policies

SEPP Koala Habitat Protection 2019

Koalas were not identified on the site. The conservation of the southern portion of the site through an E2 Environmental Conservation zone will protect vegetation within this area that may be utilised by koalas in the future.

SEPP 55 – Remediation of Land

A preliminary site investigation was undertaken on the site. It was determined due to a past history of illegal dumping on the site that contamination poses a low-medium risk. It is considered the level of investigation is adequate for the rezoning. Further investigation will be required at the development application stage.

SEPP (Coastal Management) 2018

The site is located within the Coastal Zone. The planning proposal achieved the management objectives of the SEPP and protects the environmental assets by way of the E2 Environmental Conservation zone.

SEPP (Mining, Petroleum & Extractive Industries) 2007

Under *SEPP (Mining, Petroleum & Extractive Industries) 2007* mining development may be carried out with development consent on land where development for the purposes of agricultural or industry may be carried out. The proposed IN1 General Industrial zone will enable this to occur only with development consent.

Geological Survey of NSW has advised it does not object to the planning proposal.

SEPP (Aboriginal Land) 2019

The site is included in the Land Application Map of the SEPP that brings into effect the *Interim Darkinjung Development Delivery Plan*. The site is one of four sites identified in the Interim Plan aiming to achieve economic self-sustainability for Darkinjung and its community.

9.3 State and Regional Plans

Central Coast Regional Plan 2036

The planning proposal is considered consistent with the *Central Coast Regional Plan 2036* on the basis of:

- the rezoning will facilitate the provision of local employment opportunities and promote self-containment on the Central Coast;
- the direct access capability of the site to the major transportation routes of the M1 Pacific Motorway, Pacific Highway and Central Coast & Newcastle rail corridor, has potential to provide for improved regional connections for the movement of goods and services;
- the planning proposal will assist in strengthening the economic self-determination of Aboriginal communities; and
- the planning proposal provides for the protection of areas of environmentally significant vegetation.

By delivering on the IDDDP, planning proposal is also part of implementing Action 6.1 in the *Central Coast Regional Plan 2036*. This action sets out the Government will collaborate with Council and the Darkinjung to strategically assess the Land Council's landholdings and identify priority sites to create a pipeline of projects.

North Wyong Shire Structure Plan 2012

The *North Wyong Shire Structure Plan 2012* (NWSSP) identifies land to be strategically located in relation to existing and proposed infrastructure (e.g. major roads, water and sewer) and will also contribute to the formation of a green corridor.

The site is identified in the Structure Plan as being in an area that is strategically located, constrained sites subject to further investigation and offset strategies to define conservation requirements and development potential.

Council undertook preliminary studies for the Central Coast regarding the future supply of employment lands. This analysis indicated there is a need for the short term delivery of suitably zoned, serviced and unconstrained employment lands.

The planning proposal would aid in the delivery of increased employment land supplies and is situated in proximity to state significant road networks and has the ability to deliver larger lot sizes which are undersupplied.

The planning proposal will also create an industrial precinct that utilises the existing Tooheys Road interchange taking advantage of existing infrastructure. The site will be included in the urban release area map, therefore must satisfy any infrastructure requirements locally and of the NSW Government prior to consent being granted for any future development.

10. MAPPING

The following maps have been reviewed by the Department's ePlanning team to reflect the changes in the planning controls in the draft local environmental plan:

- LZN_012 and LZN_013 – Land Zoning map;
- LSZ_012 and LSZ_013 – Lot Size map; and
- URA_012 and URA_013 – Urban Release Area map.

The maps (**Attachment G**) and map cover sheet (**Attachment H**) have been sent to Parliamentary Counsel.

11. CONSULTATION WITH THE PLANNING PROPOSAL AUTHORITY

The Secretary, as the Planning Proposal Authority, will be consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* prior to the plan being made.

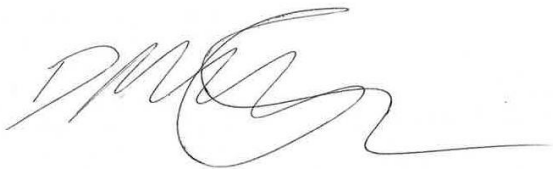
12. PARLIAMENTARY COUNSEL OPINION

On 10 December 2020, Parliamentary Counsel provided the final Opinion that the draft local environmental plan could legally be made. This Opinion is provided in **Attachment F**.

13. RECOMMENDATION

It is recommended the Minister's delegate as the local plan-making authority determine to make the draft local environmental plan under clause 3.36(2)(a) of the *Environmental Planning and Assessment Act 1979* because:

- the planning proposal is consistent with the *State Environmental Planning Policy (Aboriginal Land) 2019* and the *Interim Darkinjung Development Delivery Plan* in supporting the economic self-determination of Darkinjung and its community;
- the planning proposal is consistent with regional and local planning strategies, including the *Central Coast Regional Plan 2036*, *North Wyong Shire Structure Plan 2012*;
- matters raised by relevant public authorities and during public exhibition have been appropriately addressed; and
- the proposal provides a positive outcome by rezoning the current RU6 Transition zone, providing a balanced outcome of jobs in the industrial zone and environmental conservation.



9/12/2020
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