

## **DE20.50 Further Report - Proponent Initiated Planning Proposal - Lot 1 DP 949932 - Taylors Lane, Cambewarra (Moss Vale Road South URA)**

**HPERM Ref:** D20/165855

**Section:** Strategic Planning

**Approver:** Phil Costello, Director Planning Environment & Development Group

**Attachments:** 1. Riparian Lands Study - Lot 1 DP 949932 - Niche Environment & Heritage (under separate cover)

### **Reason for Report**

- Present results of the independent riparian lands study undertaken for this Planning Proposal (PP),
- Consider the resulting revised rezoning proposal submitted by the Proponent and
- Determine how to proceed.

### **Recommendation (Item to be determined under delegated authority)**

That Council:

1. Prepare a Planning Proposal for part of Lot 1 DP 949932, Taylors Lane, Cambewarra, to:
  - a. Rezone part of an existing riparian area from E2 Environmental Conservation to R1 General Residential (based on the Proponent's revised rezoning proposal at Figure 4);
  - b. Amend the classification and extent of the watercourse on the Riparian Lands and Watercourses Map;
  - c. Apply a 500m<sup>2</sup> minimum lot size and the provisions of Clause 4.1H to the rezoned land;
  - d. Extend the Moss Vale Road South URA boundary to include the rezoned land.
2. Forward the Planning Proposal to the NSW Department of Planning, Industry and Environment for a Gateway determination.
3. Proceed to place the Planning Proposal on public exhibition and invite community feedback in accordance with the Gateway Determination.
4. Receive a subsequent report on the outcome of the public exhibition period and to enable the Planning Proposal to be finalised.
5. Prepare a draft amendment to Shoalhaven Development Control Plan 2014 Chapter NB3 - Moss Vale Road South URA and the MVRs Integrated Water Cycle Assessment to include the land in the indicative layout plan and other relevant sections and exhibit the draft amendments with the Planning Proposal.
6. Prepare a draft amendment to Shoalhaven Contributions Plan 2019 to include the land in the catchment areas for the following infrastructure projects and exhibit the draft amendment with the Planning Proposal:
  - a. 01DRAI0006 Moss Vale Road South URA Drainage
  - b. 01OREC0015 Moss Vale Road South URA Passive Recreation

- c. 01ROAD0154 Moss Vale Road South URA Roads
7. Advise the Proponent, affected and adjoining landowners, the Cambewarra Residents and Ratepayers Association and those who previously made a submission, of this resolution.

### Options

1. Adopt the recommendation.

Implications: This is the preferred option as it will enable the Proponent's revised rezoning proposal to advance to a Planning Proposal and commence the process to amend Shoalhaven Local Environmental Plan (LEP) 2014. The Proponent's revised proposal is generally supported by the independent riparian lands study undertaken on the subject land. If a rezoning ultimately proceeds it will facilitate the supply of additional housing in an appropriate location and the protection and enhancement of an existing riparian corridor.

This option also commences the process to include the rezoned land in the Shoalhaven Development Control Plan (DCP) 2014 chapter, Integrated Water Cycle Assessment (IWCA) and relevant Shoalhaven Contributions Plan (CP) 2019 projects for Moss Vale Road South URA. Part 6 of Shoalhaven LEP 2014 requires a DCP and satisfactory arrangements for the provision of essential infrastructure to be in place before development consent can be granted for the subdivision of the subject land. This option will satisfy these requirements and enable the proposed changes to be considered together as one overall package.

2. Make an alternative resolution.

Implications: This is not the preferred option. Depending on its nature, an alternative resolution could delay an amendment to Shoalhaven LEP 2014 and the related amendments to Shoalhaven DCP 2014, IWCA and CP 2019. If the amendments are contrary to the findings and recommendations of the riparian lands study there is the potential for detrimental environmental impacts on site and downstream, negative community perception if assessment and communication is not adequate, and undesirable precedent to remove riparian lands and E2 zoned land (cumulative negative impact). Council may not have the ability to grant development consent to a future subdivision of the subject land if the related amendments to the DCP 2014, IWCA and CP 2019 are delayed or do not proceed with the PP.

3. Do not proceed with a Planning Proposal to rezone the subject land.

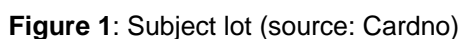
Implications: This is not the preferred option. If a PP does not proceed it may be a missed opportunity to provide housing in an appropriate location to meet the needs of a growing population and to facilitate the enhancement of an existing riparian corridor. It may also provide an opportunity for a 'pre-gateway' review (this is a potential risk irrespective of whether the PP request is not 'supported' or is amended).

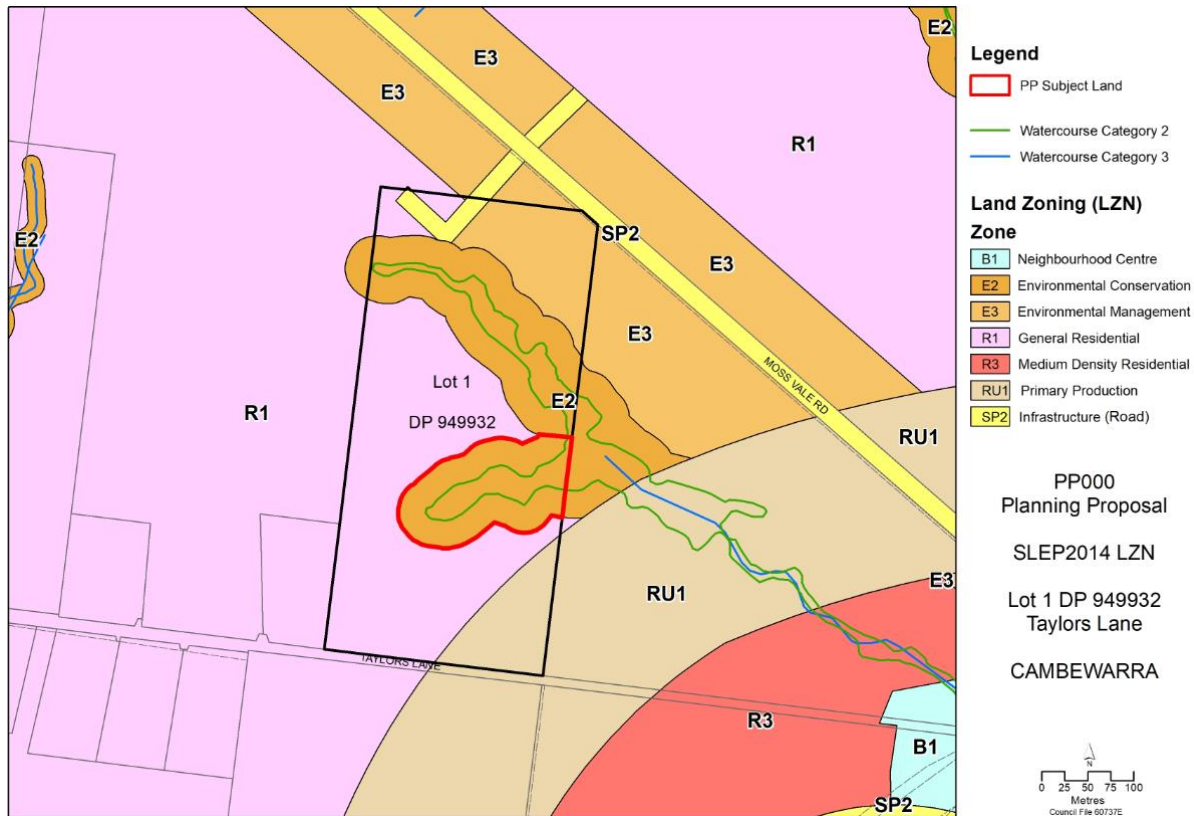
### Background

Council is in receipt of a PP request to rezone part of Lot 1 DP 949932, Taylors Lane, Cambewarra. The request was submitted by Biara Grove Developments Pty Ltd (the Proponent) on behalf of the landowners CJ Taylor, GR Taylor and BM Featonby.

The subject lot traverses the irregular north eastern boundary of the existing Moss Vale Road South urban release area (MVRSA URA). The portion of the lot within the URA boundary is

**Figure 1** shows the subject lot and **Figure 2** shows its existing zoning under Shoalhaven Local Environmental Plan (SLEP) 2014.





**Figure 2:** Subject land and existing zoning

The PP request applies to the section of E2 zoned land outlined red in Figure 2 (the subject land) which is currently identified in the LEP as a category 2 watercourse. The Proponent identified that the watercourse is potentially incorrectly classified and zoned and originally requested that Council remove the watercourse and:

- Rezone the land from zone E2 Environmental Conservation to zone R1 General Residential to permit residential subdivision;
- Extend the MVRs URA boundary to include the land;
- Reduce the mapped minimum lot size of the land (currently 40ha in the E2 zone) to allow subdivision from 500sqm and potential to enact LEP Clause 4.1H in appropriate circumstances to allow minimum lot sizes of  $\geq 300\text{sqm}$ .

The future proposed subdivision of the subject land is part of a wider proposed subdivision of Lot 1 DP 949932. Stages 1a and 1b of the proposed subdivision cover the R1 zoned land around PP area and are subject to development application (DA) SF10632 which is currently under final Council assessment. The subject land is potentially Stage 1c. The developer of Stages 1a and 1b is the Proponent of this PP request.

Council's preliminary assessment of the PP request noted that further investigation into the classification and function of the identified watercourse was needed in order to determine whether or not the PP had merit to proceed. It also noted that additional information regarding the Aboriginal Cultural Heritage Assessment, integrated water cycle management and the proposed application of 300sqm lot sizes would be required should the PP proceed further.

Council initially considered the PP request at the 3 September 2019 Development & Environment Committee meeting and resolved (MIN19.614) to:

1. *Accept the proponent initiated Planning Proposal for land within Lot 1 DP 949932, Taylors Lane, Cambewarra as a possible 'major' Planning Proposal that Council will take forward dependent of the outcome of Part (2) of this resolution.*

2. *Undertake an independent Riparian Lands Study for the subject land, at the proponent's expense, that includes rigorous assessment of the riparian land function and watercourse classification.*
3. *If the outcome of the Riparian Lands Study shows the PP has merit to proceed, develop a Planning Proposal in Council's format, for submission to the NSW Department of Planning, Industry and Environment (DPIE) for initial Gateway determination, and report back to Council when a response is received.*
4. *Receive a further report to determine how to proceed, if the Riparian Lands Study does not provide clear justification for the Planning Proposal.*

A riparian lands study (the Study) has now been completed in accordance with Part 2 of the resolution. The Study has concluded that there is merit in rezoning some, but not all, of the subject land from E2 to R1. As a result, the Proponent has submitted a revised rezoning proposal in response to the Study. As the proposal now differs to what was originally considered by Council, it is being reported back to Council in accordance with item 4 of the resolution.

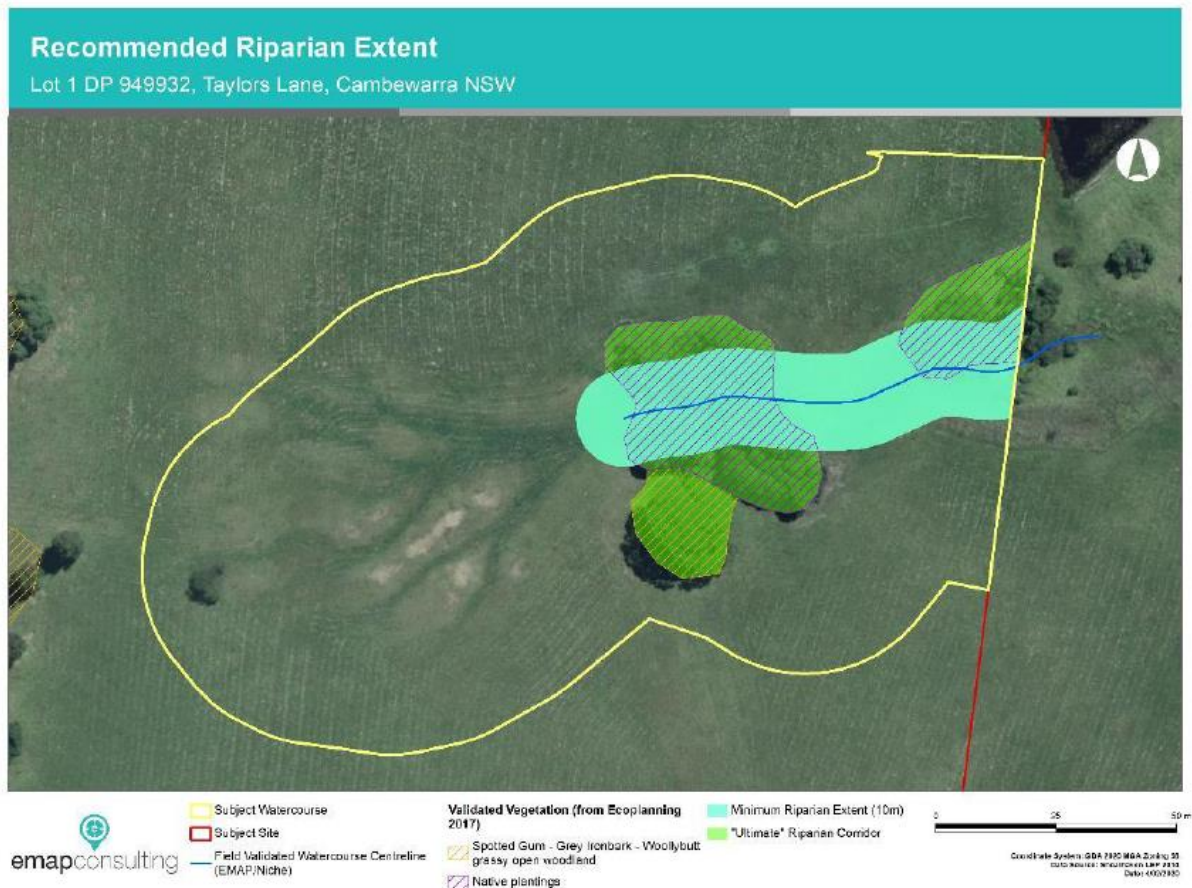
### **Riparian Lands Study**

The Study was undertaken for Council by consultants Niche Environment and Heritage who were engaged. It was managed independently of the Proponent but funded by them. The completed Study is provided as **Attachment 1**. Its findings and recommendations are summarised below:

- Subject land contains a watercourse, albeit a smaller Strahler Category 1 watercourse than the Strahler Category 2 watercourse currently identified.
- Functions of the watercourse include conveyance of flows from the upstream catchment (from within MVRs URA) and maintenance of water quality flowing to downstream catchments.
- The 'minimum recommended riparian zone' is 10m either side of the watercourse centreline (total corridor width of 20m). This will maintain the conveyance and water quality functions of the watercourse and is in accordance with the *Water Management Act 2000* and recommendations of the Natural Resource Access Regulator's (NRAR) "Guidelines for Riparian Corridors on Waterfront Land".
- The existing native vegetation in and around the subject watercourse is of ecological value. It would be ideal to incorporate it into a wider 'Ultimate riparian corridor' which would enhance the ecological value of the riparian corridor.
- There is potential to rezone the remainder of the existing E2 zoned land for residential development.
- A Vegetation Management Plan (VMP) should be prepared for the adopted riparian zone to revegetate it with local native species and improve the ecological functions of the watercourse. It should consider the controls relating to management of riparian areas and stormwater flows in DCP Chapter NB3 for MVRs URA.

**Figure 3** from the Study depicts the 'minimum recommended riparian zone' (light blue area) and 'ultimate riparian corridor' (light blue and light green areas combined).



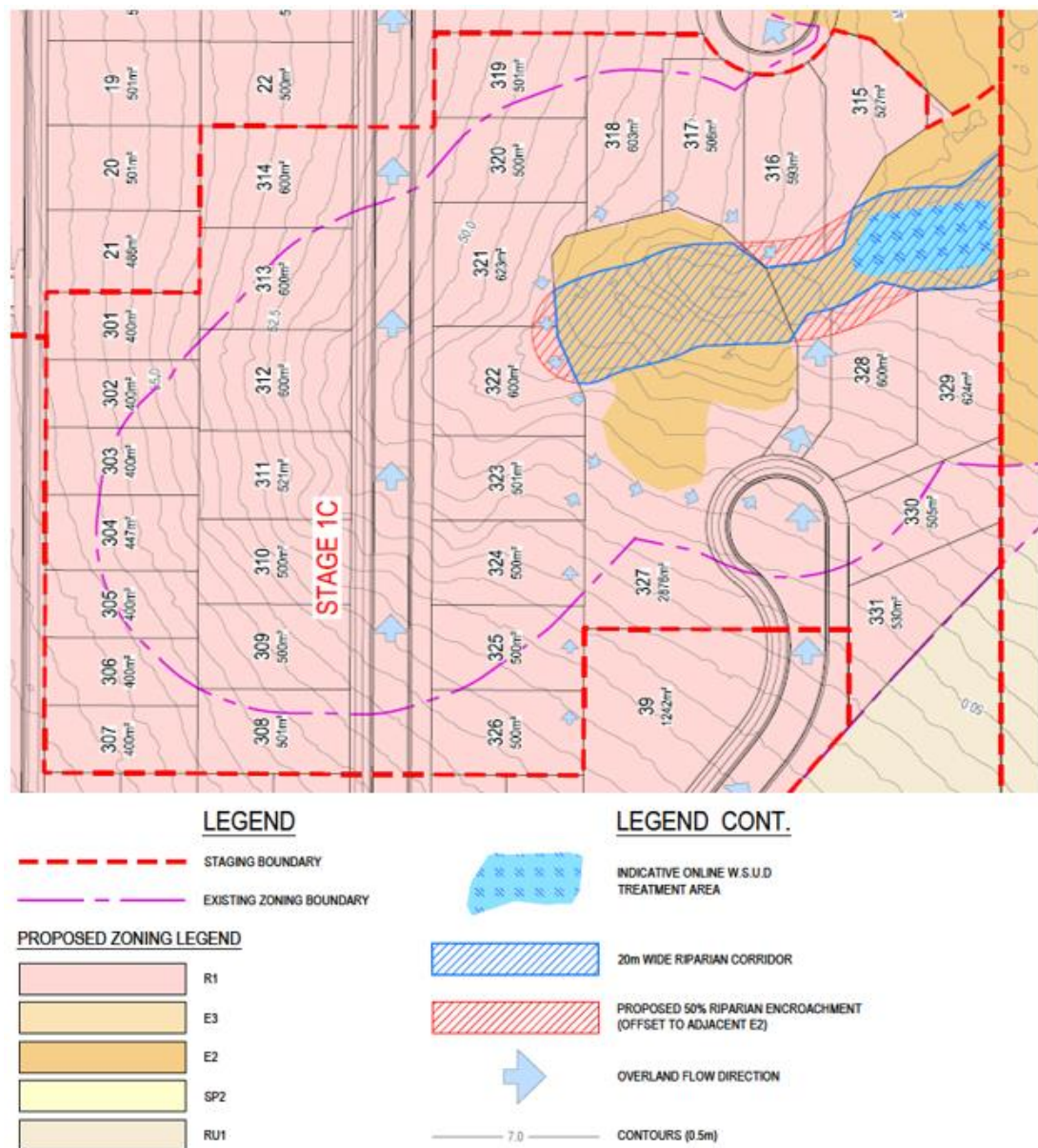


**Figure 3:** Recommended riparian extent

A copy of the Study when completed was provided to the proponent who advised that they were generally satisfied with its findings and recommendations.

## Revised Rezoning Proposal

In response to the Study, the proponents subsequently submitted a revised rezoning proposal and conceptual lot layout in response, refer to Figure 4.



**Figure 4:** Proponent's revised rezoning proposal and conceptual lot layout

Their revised proposal seeks to reduce/narrow the riparian corridor at the unvegetated western and middle sections (the red hatched areas in Figure 4) and incorporate the vegetated areas into the corridor. This would see:

- The 'ultimate riparian corridor', minus red hatched areas, zoned E2 Environmental Conservation with 40ha minimum lot size;
- The remainder of the subject land, including red hatched areas, rezoned from E2 Environmental Conservation to R1 General Residential;

- Minimum lot size of 500sqm and LEP Clause 4.1H applied to the rezoned land. Under the criteria of Clause 4.1H, lot sizes of  $\geq 300$ sqm would be possible along the western edge of the subject land (opposite a future park); and
- The URA boundary extended to include the rezoned land.

The narrowed sections of the corridor are intended to provide some flexibility in how the future subdivision can be designed, once water cycle, grading and road geometry are all considered in more detail at development application stage. It should be noted that the lot layout and WSUD treatment area in Figure 4 is indicative only and is likely to change with further investigation and assessment. It has been provided with the PP request to indicate broadly how the subdivision could occur.

## Discussion

The revised proposal seeks to use the principles of NRAR's 'averaging rule' which is discussed in the Study. The rule allows the outer 50% of a riparian corridor to be used for non-riparian works and activities such as asset protection zones, roads and development lots, provided that the average required width of the riparian zone can be achieved over the length of the watercourse. This requires an equivalent offset area to be included in the riparian corridor. The Proponent proposes to use the existing vegetated areas around the riparian corridor as the offset. Unvegetated sections of the outer riparian corridor would be narrowed and potentially used for development lots or infrastructure.

Council sought comment from Niche Environment and Heritage on the revised proposal. They are unclear as to its consistency with the 'averaging rule' but provided it is acceptable to NRAR, they will have no objection. They recommended that Council seek advice from NRAR in this regard. Comments from NRAR have been sought but not received at the time of writing. It is noted however that NRAR will be formally consulted after the issue of a Gateway Determination if the PP progresses. If any concerns are raised the PP could be revised, if necessary, at that stage. On this basis it is suggested that Council endorse the Proponent's revised proposal and prepare a planning proposal to submit to DPIE for a Gateway determination.

Council supports the Study recommendation for a Vegetation Management Plan (VMP) over the adopted riparian zone. A VMP would facilitate the revegetation and management of the riparian corridor which would be an important outcome of this PP. It is however acknowledged that a VMP would generally be implemented at the DA stage and does not need to be prepared as part of the PP.

## Integrated Water Cycle Management

Council's Floodplain & Stormwater Quality Engineer raised no objections to the PP proceeding based on the proponent's revised rezoning proposal, noting that stormwater management will be considered in further detail at the development application stage. Revegetation of the riparian corridor with native species is also supported and would provide some pre-treatment of pollutants prior to stormwater entering the stormwater treatment area. Specific matters that will need to be addressed further at the development stage in consultation with the developer include:

- The subdivision's compliance with the stormwater treatment, retention and onsite stormwater detention objectives of the DCP;
- The adopted riparian corridor will need to provide for a stormwater overland flow path that can safely convey flows up to a 1% Annual Exceedance Probability (AEP) event; and
- The integration of Stage 1c with adjoining Stages 1a and 1b. The local topography means Stages 1a and 1b require separate stormwater treatment devices. Council staff are not supportive of a third stormwater treatment device for Stage 1c due to the higher ongoing



maintenance costs for Council. A third treatment device would also be more costly for the developer to construct. The preference is for the Stage 1b stormwater treatment device to be enlarged and shared with Stage 1c.

### **Aboriginal Cultural Heritage**

The initial report to Council on 3 September 2019 suggested that the Aboriginal Cultural Heritage Assessment (ACHA) was inconclusive and needed to be updated to include the subject land. A review of the ACHA, prepared by Biosis in 2018 notes that:

- The area studied encompasses all of Lot 1 DP 949932.
- An archaeological survey and test excavations were undertaken on the land subject to the PP due to the presence of an archaeological site (artefact scatter) recorded in a previous ACHA undertaken in 2017. The archaeological survey and test excavations identified no Aboriginal sites or objects and did not detect any evidence of the previously recorded site.
- Based on background research, consultation with Aboriginal stakeholders and site investigations the ACHA concludes that Lot 1 DP 949932 has low potential for archaeological sites and objects.
- An Aboriginal Heritage Impact Permit (AHIP) will be obtained for Stages 1a and 1b once DA SF10632 is determined to allow for the development to impact on the previously recorded archaeological site. The AHIP may need to be updated if and when the subject land proceeds to a development application.

The ACHA prepared in 2018 is considered to be sufficient to support the PP request over the subject land. Staff at the former NSW Office of Environment and Heritage (now DPIE – Biodiversity and Conservation) also indicated this in preliminary advice to the proponent. Given the presence of a previously recorded archaeological site, formal consultation with DPIE – Biodiversity and Conservation will most likely be required if the PP progresses.

### **Amendment to Shoalhaven Development Control Plan (DCP) 2014 and Integrated Water Cycle Assessment (IWCA) for MVRs**

A consequential amendment to Shoalhaven DCP 2014 Chapter NB3: Moss Vale Road South URA and the IWCA will ultimately be required to include the rezoned land in the indicative layout plan, staging plan and other relevant sections.

In this regard, the proponent has also requested that the adjoining Stage 1a and 1b land be changed from 'medium density/integrated housing' to 'standard lot residential' on the indicative layout plan, with land adjacent to public parks and tree lined boulevards changed to 'small lot residential'. This adjustment is not supported at this point and will be largely dependent on how the existing DCP provisions are considered and weight given to them as part of the assessment and finalisation of the current development application over Stages 1a and 1b.

Should the PP progress, it is recommended that work commence on the preparation of a draft DCP and IWCA amendment to enable public exhibition at the same time as the PP.

### **Amendment to Shoalhaven Contributions Plan (CP) 2019**

The CP 2019 will also need to be amended to include the subject land in the catchment area of the following infrastructure projects:

- 01DRAI0006 Moss Vale Road South URA Drainage
- 01OREC0015 Moss Vale Road South URA Passive Recreation
- 01ROAD0154 Moss Vale Road South URA Roads

Should the PP progress, it is recommended that Council also commence the preparation of a draft CP amendment to be publicly exhibited at the same time as the PP.

### **Community Engagement**

Preliminary community engagement was undertaken on the original PP request and was reported to Council on 3 September 2019.

If endorsed by Council, the proponent's revised proposal will form the basis of a PP that will be submitted to DPIE for a Gateway determination and it will be publicly exhibited at a future date in accordance with the requirements of any Gateway determination received.

Affected and adjoining landholders, the Cambewarra Residents and Ratepayers Association, relevant industry representatives and those who previously made a submission will be notified of future opportunities to comment on the PP.

### **Policy Implications**

If a rezoning ultimately proceeds, in addition to relevant amendments to the LEP, as noted earlier, updates will be required to Shoalhaven DCP 2014 – Chapter NB3 Moss Vale Road South URA, the Integrated Water Cycle Assessment for MVRs, and the Shoalhaven Contributions Plan 2019.

### **Financial Implications**

In accordance with Council's Planning Proposal (rezoning) Guidelines this PP request is considered to be 'major' and the relevant fees are applicable. This will also include:

- Full cost recovery on the above basis for staff time for preparation of any associated amendments to SDCP 2014, SCP 2019 and the IWCA for MVRs URA.
- Any additional studies/reports at the expense of the Proponent but managed by Council.