

Attachment 1 - Department of Planning, Industry &  
Environment Letter to Darkinjung Local Aboriginal Land Council  
and Central Coast Council dated 12 August 2018



Mr Geoff Scott  
Chief Executive Officer  
Darkinjung Local Aboriginal Land Council  
PO Box 401  
WYONG NSW 2259

Dear Mr Scott

I write regarding the Darkinjung Local Aboriginal Land Council's proposed rezoning of Lots 512 and 513 DP 727686, Kariong. The proposal was identified in the Interim Darkinjung Development Delivery Plan (IDDDP) released in February 2019 and the land is mapped under State Environmental Planning Policy (Aboriginal Land) 2019.

While the *Central Coast Regional Plan 2036* does not propose the expansion of the Kariong urban area, it does identify the potential for development at the urban fringe provided sites can be efficiently serviced and areas with high environmental values and hazards are avoided. The regional plan also supports housing delivery in and near growth corridors.

As required by the IDDDP, the Department of Planning, Industry and Environment has undertaken a high-level assessment of land on the urban fringe at Kariong and found that several opportunities for rezoning may exist subject to further planning investigation. The northern part of Lots 512 and 513 DP 727686 has sufficient strategic merit to be further considered for rezoning.

The IDDDP includes site-specific matters to be addressed by any rezoning proposal for this land. Additionally, principles to inform any rezoning proposal have been identified in the enclosed document and are provided for Darkinjung's consideration.

The Aboriginal land planning measures announced in February 2019 include a new path for progressing Local Aboriginal Land Council rezoning proposals for independent review by regional planning panels. Darkinjung may now submit a rezoning proposal to Central Coast Council, or to the Department for independent review in accordance with the new procedure.

I have also written to the Chief Executive Officer of Central Coast Council advising him of this advice to Darkinjung. Should Darkinjung choose the independent review path, Council will be provided an opportunity to comment prior to consideration by the regional planning panel.

If you have any questions on this matter, please contact Mr Greg Sullivan, Acting Director, Central Coast and Hunter, at the Department on 4345 4400.

Yours sincerely

**Monica Gibson** 12/8/2019  
**Acting Executive Director, Regions**

Encl: Principles to guide Kariong rezoning proposal identified in the Interim Darkinjung Development Delivery Plan

## Principles to guide Kariong rezoning proposal identified in the Interim Darkinjung Development Delivery Plan

- While the land is not identified for greenfield development, it has the potential to provide housing at a suitable location adjacent to an urban area and near the Southern growth corridor identified in the Central Coast Regional Plan. The proposal would assist in the provision of housing for the growing Central Coast population.
- The land could be considered for a variety of development forms, with the focus for any urban uses being the northern part of the land.
- Any rezoning proposal will need to identify that servicing and infrastructure needs can be met and, where necessary, include commitments to provide infrastructure upgrades.
- Access options should be explored to determine the best outcome, and commitments must be made to fund access and any necessary upgrades.
- The eastern and southern edges of the land will need to provide suitable buffers to the adjoining national park and proposed regional biodiversity corridor. Potential conflicts with the large-lot residential development to the north should be assessed and mitigated.
- A variety of zonings and development types may be appropriate for the site. The area adjoining the national park should be zoned for environmental conservation in recognition of its constraints and location to ensure values are maintained and there are no offsite impacts. The remainder of the site could be considered for zoning as environmental management, environmental living, large-lot residential (similar to the existing development to the north) or low-density residential (like the land to the west).
- The development footprint should demonstrate the avoidance of impacts on vegetation, assess the impacts of any unavoidable clearing and propose an offset strategy. The developable area should be in the north of the site, with the transmission line easement forming a logical southern extent of urban development.
- Asset protection zones are to be on private land and are not to include sensitive vegetation or the removal of such vegetation.
- Offsite impacts from changed hydrological conditions are to be avoided.
- Appropriate assessment of Aboriginal cultural heritage is to be undertaken and impacts avoided.





Mr Gary Murphy  
Chief Executive Officer  
Central Coast Council  
PO Box 1148  
GOSFORD NSW 2250

Dear Mr Murphy

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The IDDDP includes site-specific matters to be addressed by any rezoning proposal for this land. Additionally, principles to inform any rezoning proposal have been identified in the enclosed document, which has been provided to Council for its consideration.

The Aboriginal land planning measures announced in February 2019 include a new path for progressing Local Aboriginal Land Council rezoning proposals for independent review by regional planning panels. Darkinjung may now submit a rezoning proposal to Central Coast Council, or to the Department for independent review in accordance with the new procedure. Should Darkinjung choose the independent review path, Council will be provided an opportunity to comment prior to consideration by the regional planning panel.

If you have any more questions, please contact Mr Greg Sullivan, Acting Director, Central Coast and Hunter, at the Department on 4345 4400.

Yours sincerely

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- 
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  - Asset protection zones are to be on private land and are not to include sensitive vegetation or the removal of such vegetation.
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  - Appropriate assessment of Aboriginal cultural heritage is to be undertaken and impacts avoided.

Attachment 2 - Central Coast Council Submission –  
Independent Review – Proposed Rezoning Lot 512 and 513 DP  
727686 Kariong



# Central Coast Council Submission - Independent Review – Planning Proposal – Lot 512 and 513 DP 727686, Kariong

## 1. Orderly Development

### Strategic Context

The Department of Planning, Industry and Environment (DPIE) advice of 12 August 2019 identifies that "while the Central Coast Regional Plan 2036 (CCRP) does not propose the expansion of the Kariong urban area, it does identify the potential for development at the urban fringes provided sites can be efficiently serviced".

At its meeting of 9 December 2019, Council adopted the *Somersby to Erina Corridor Strategy*. This strategy was prepared in direct response to the actions of Direction 2 Focus economic development in the Southern and Northern Growth Corridors of the CCRP.

The adopted strategy does not make any recommendations for the supply of additional land to support housing or job supply targets within the planning horizon for the life of the strategy (i.e. up to 2036) within the Mount Penang or Kariong localities (figure1).

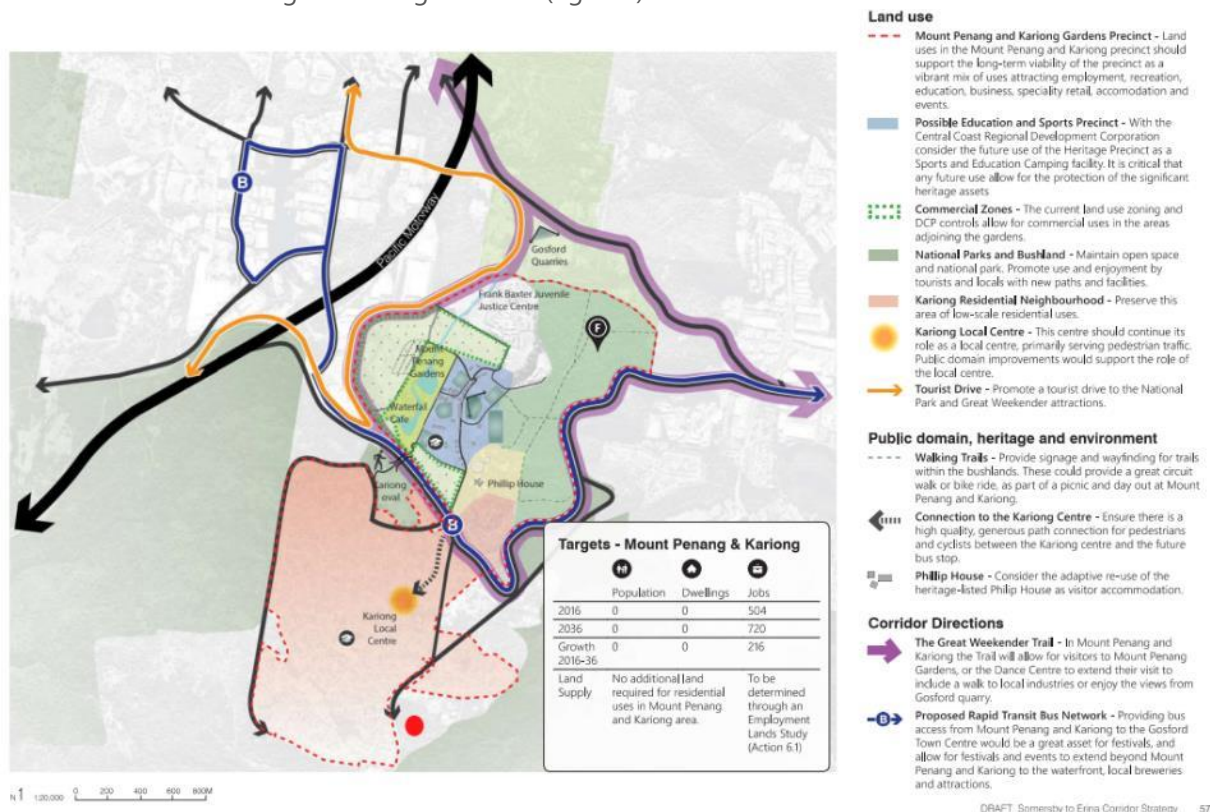


Figure 1 Somersby to Erina Corridor Strategy Extract (pg. 57 as amended - subject site (approx.) indicated by red filled circle)

The rezoning of additional land for residential purposes would be contrary to a current (and very recently) adopted strategy of Council. This could create potential matters of precedence for rezoning of land which was similarly situated.



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### ***Extent of proposed rezoning footprint***

Notwithstanding the above, if the RPP were of a mind to support a rezoning of land for residential purposes in this locality, Council recommends the inclusion of those lands north of Lot 512 and 513 DP 727686 within that area of land to be considered for rezoning (as outlined yellow identified in figure 2 below).



Figure 2 Potential additional land recommended for inclusion within rezoning proposal as outlined yellow (subject site – indicative only – show in blue dashed line)

These lands are currently zoned 7(c2) Scenic Protection under *Interim Development Order No. 122 – Gosford (IDO 122)* (except for Lot 1 DP 589198 which is zoned E2 Environmental Conservation) under *Gosford Local Environmental Plan 2014 (GLEP 2014)*.

The inclusion of these lands is considered a more appropriate land use response to expansion of the urban fringe in this locality. It would:

- promote a more orderly settlement (and zoning) pattern;
- ensure that the transition between the R2 Low Density Residential zoned land (along Brittany Crescent), the intermediate lots (as proposed for addition) and the subject site could be given greater consideration;
- Resolve outstanding non-Standard Instrument Local Environmental Plan (SILEP) zonings;
- assist with the resolution of servicing and accessibility of the subject site;
- assist with the resolution of bushfire planning matters relating to the current proposal.

Council's concerns relating to the latter matters with the current proposal are further detailed in this submission.



### ***Proposed Land Use Zone/Minimum Lot Size***

Notwithstanding whether the lands identified above are or are not included, Council does not support the proposed density of the proposal, particularly the smaller (500m<sup>2</sup>) lots proposed in the southern portion of the area of the subject site to be rezoned.

This density does not promote an appropriate transition between an urban area (i.e. the subject site) and the adjoining land located on the southern and eastern boundaries of the site, which comprises sensitive ecological and cultural heritage values.

A proposal which included generally larger lots and a commensurate zoning (e.g. R5 Large Lot Residential) as a transition to adjoining land, particularly on the southern and eastern interfaces, would be more appropriate.

### ***Recommendations:***

1. Should the RPP support a rezoning in this locality, a revised proposal be considered which:
  - a) Incorporates land holdings north of the site (as per figure 2 above)
  - b) Introduces larger minimum lot sizes generally across the site, but particularly on the southern and eastern boundaries.

## **2. Biodiversity**

The subject land is bounded to the south and south-east by land zoned E1 National Parks. The lands in this locality form part of a regionally significant Biodiversity Corridor, as defined by the CCRP (figure 3), which links Jilliby State Conservation Area through Strickland State Forest to Brisbane Water National Park.



Figure 3 Regional Corridor (subject site locality (approx.) indicated by \*)

The subject site is currently zoned E2 Environmental Conservation under GLEP 2014. Zoned as such, the land is characterised as being an area "of high ecological, scientific, cultural or aesthetic values" (E2 Environmental Conservation Zone Objective, GLEP 2014).

Council's records indicate that the vegetation on the land proposed for rezoning is predominantly in moderate to good condition (figure 4), being the highest condition rating in the classification system.

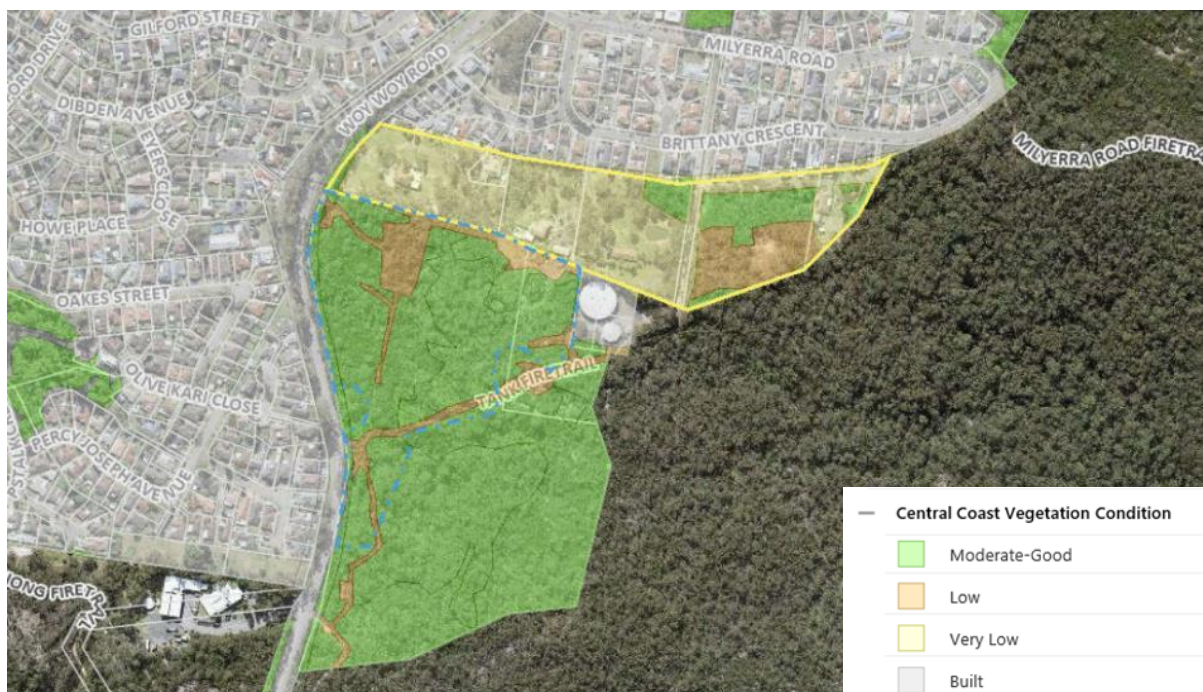


Figure 4 Vegetation Condition

Council's records also indicate the subject land (in its entirety) is identified as proposed Coastal Open Space System (COSS) land. This identification has been based on the land comprising values which are

consistent with COSS land in public ownership, i.e. land that comprises native vegetation and habitat for native animals and promotes the protection of Aboriginal cultural sites (in addition to other matters).

It is understood that a draft Biodiversity Certification Assessment Report (BCAR) has been prepared, however is not available for consideration. The ecological information supporting the proposal provided consists of a Briefing Note (Umwelt, 3 October 2019) provides summarised outcomes of the biodiversity studies. It does not include any detailed ecological survey or assessment results. It does however indicate that the existing vegetation on the area proposed for rezoning comprises suitable habitat and recorded observations of threatened flora and fauna species (figure 5) within the area proposed for rezoning.

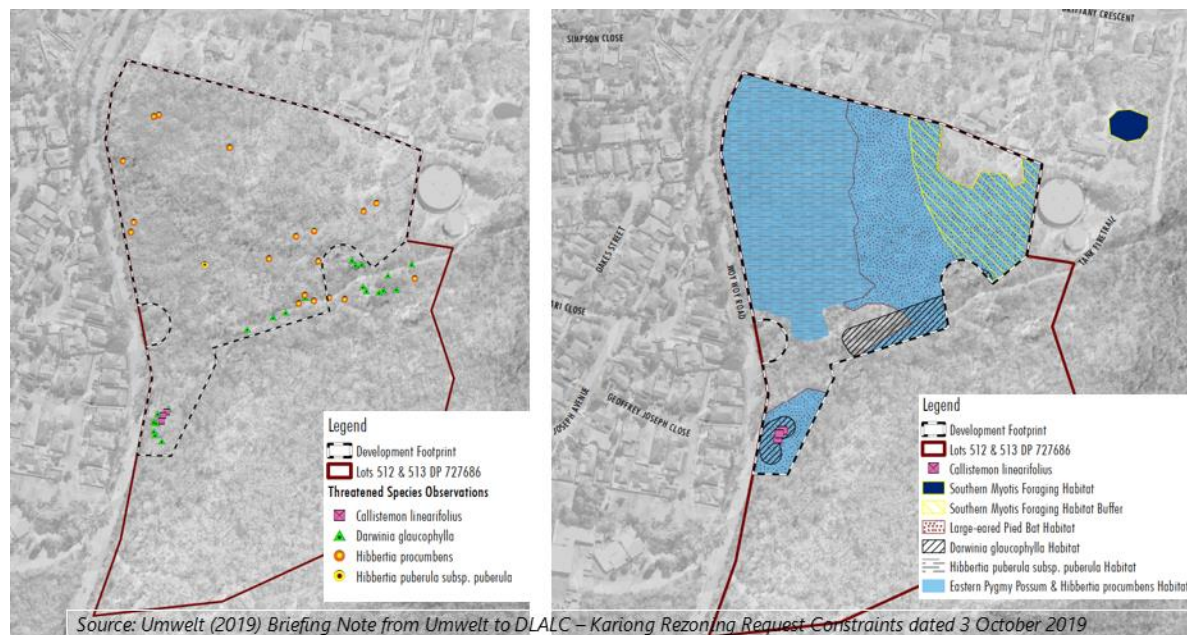


Figure 5 Recorded Threatened and Endangered Flora and Fauna Observations and Habitat

In the absence of detailed reporting, Council is unable to provide comment on whether the draft BCAR meets the requirements of the Biodiversity Assessment Method (BAM) or *Biodiversity Conservation (BC) Act, 2016*. Further, as no detail of offsets has been provided, Council cannot comment on whether the proposed conservation measures are adequate to offset the impacts of the proposal.

This limits Council's ability to provide comprehensive ecological review of the proposal. This further restricts Council's ability to provide evidence-based advice on whether the proposal has "site specific merit" regarding "the natural environment (including known significant environmental values, resources or hazards)" as per "PS 19-003 Independent review of planning proposals for identified Aboriginal land".

Based on available information, Council is unable to support an opinion that the proposal demonstrates the key principal of "Avoidance" as set out by the BAM and the *Biodiversity Conservation Act, 2016*. Further, the proposal will potentially have a significant impact upon threatened species and communities listed under both the *BC Act, 2016* and/or the *Environmental Protection and Biodiversity Conservation Act, 1999*.



At a strategic level, in relation to the potential impacts on biodiversity values, the proposal is inconsistent with:

- a) Section 9.1 Ministerial Direction 2.1 Environmental Protection Zones as the proposal does not include provisions that facilitate the protection and conservation of environmentally sensitive areas. Further, the proposal seeks to reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land);
- b) State Environmental Planning Policy (SEPP) No. 19 – Bushland in Urban Areas as the proposal does not have regard for the general or specific aims of the policy. It is noted that if there are significant social or economic values associated with a proposal, the Council should take this into consideration, however these have not been demonstrated against the impacts of the proposal; and
- c) CCRP Direction 12 – Protect and manage environmental values as the proposal does not sensitively manage natural areas in the fringe of urban areas.

**Recommendations:**

- 1. Council understands that the Darkinjung Local Aboriginal Land Council (DLALC), the applicant, is preparing an inventory of landholdings with the view to establishing which lands within its property portfolio are most suited to development or conservation. It would be preferable for the land inventory process to be more fully completed prior to the rezoning of additional land to ensure that offsets for development can be adequately provided in a local manner, as opposed to payment of funds to the Biodiversity Trust, where local conservation outcomes may not be guaranteed.
- 2. In the event the RPP were to support a rezoning in this locality, a revised proposal be considered which:
  - a) Implemented buffers from development areas to the National Park land boundaries to reduce edge effects from development encroaching into National Parks estate;
  - b) Introduces larger minimum lot sizes generally across the site, but particularly on the southern and eastern boundaries to encourage retention of some vegetation.

### 3. Serviceability

The land is located adjacent to Kariong No. 3 & 4 water supply reservoirs. A 250mm water main is located approximately 180 metres to the north of the site at the intersection of Woy Woy and Milyerra Roads.

Council sewer mains are located within residential development to the west of the site.

Notwithstanding the above, the land is not located within Councils defined water or sewer service areas and there is currently no water or sewer infrastructure servicing the land (figure 6). This is noted in the information supporting the proposal.

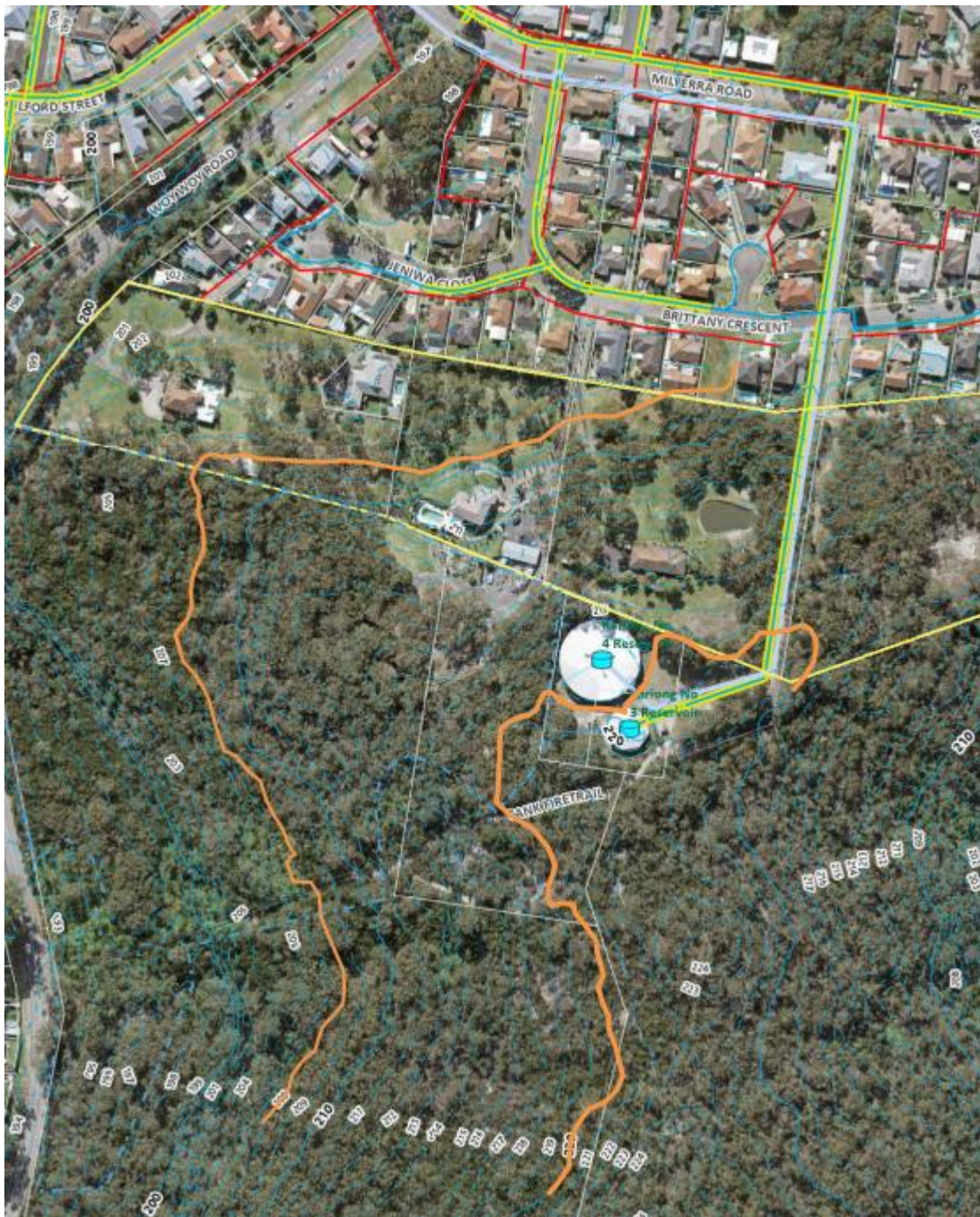


Figure 6 Existing Water & Sewer Infrastructure (RL 208 AHD & RL 220 AHD contours shown in orange)

## **Water**

Connection of land to Council's water supply system under current supply conditions is feasible for land located below RL 208m Australian Height Datum (AHD).

Land located above RL 208m AHD and below RL 220m AHD could be serviced via a water booster pump station however there would be no boosted supply permitted to service land located above RL 220m AHD. Land located above 220m AHD cannot be serviced due to constraints associated with Council's minimum level of service requirements and maintaining positive supply head within the system should failure of the station occur. Figure 6 (above) indicates the RL 208m and 220m contours as orange lines.

This advice is to be reflected in a revised Servicing Strategy.

## **Sewer**

Local infrastructure works will be required to enable servicing to be connected to the site.

Council's wastewater treatment plan has adequate capacity to support development of the subject site. However, the servicing strategy requires amendment to provide estimates of the number of potential Equivalent Tenements (ETs) and demonstrate that future servicing has the necessary infrastructure and capacity (pumps, storages etc.) to manage sewage generated from the development.

## **Recommendations:**

1. Should a rezoning of the subject site be supported by the RPP, a revised servicing strategy is required which demonstrates how the subject site will be connected to Council's existing water and sewerage infrastructure. Such a strategy is to be prepared in consultation with Council.
2. Any proposed development in the area would be required to provide the required infrastructure required the land, and all costs would be borne by the developer.
3. The developer would be required to obtain any consents to enter from the owners of any property required to be entered upon to construct sewer works, including consents for access or works on Council owned land.



#### 4. Accessibility

The proposal (figure 7) nominates access to the subject site from Woy Woy Road. An alternate access is proposed from an existing fire trail (known as "Tank Fire Trail").

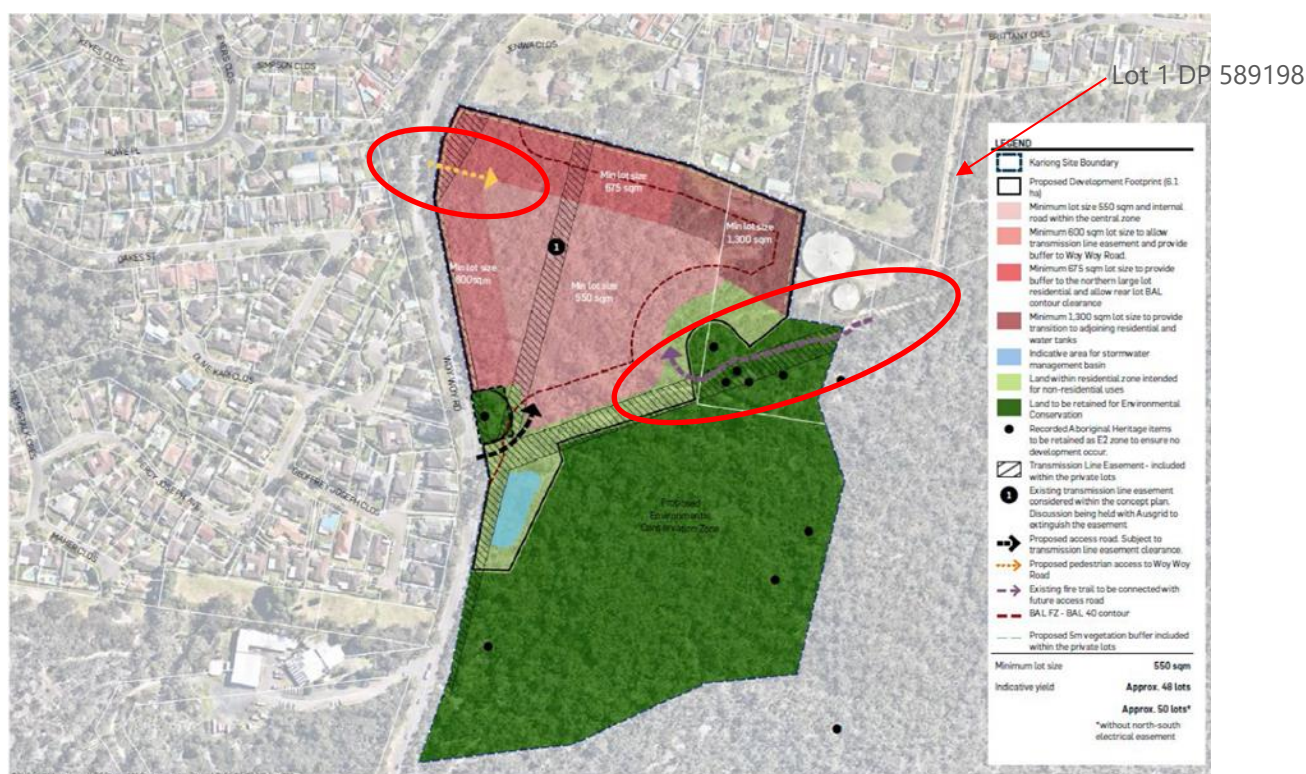


Figure 7 Proposal nominating access locations (as modified by Council)

Consideration of the proposal has been undertaken in terms of proposed street environment, road safety factors and anticipated traffic generation of the proposed development.

Concerns regarding the proposed access to and from the site, including the proposed pedestrian access points relate to the following matters:

- Utilisation of Lot 1 DP 589198 as an access road (a Council owned parcel of land);
- Compliance with minimum sight line distances for the location of intersections on Woy Woy Road, particularly considering the incidents of vehicle accidents in the locality (figure 8);
- Pedestrian safety, given the location of access points on a road bend with poor sight lines; and
- Impacts to culturally significant items/sites associated with road construction.



Figure 8 Traffic Incidents 2008 – 2018 (Source: CCC Geocortex Mapping System (2020) from RMS data)

### Recommendations:

1. Further assessment will be required during the preparation of planning proposal documentation to provide more detail on the most appropriate access location and design, including consideration of the following:
  - a) discussion with Council's asset Managers regarding the proposed use of Lot 1 DP 589198;
  - b) identification (and resolution) of any impacts associated with the proposal through completion of a traffic impact assessment which includes (but may not be limited to):
    - i) capacity of the local road network (including safe vehicle limits);
    - ii) additional traffic noise generation for residents; and
    - iii) any adjoining property acquisition requirements to enable construction of an access road of suitable dimensions.
  - c) Discussion with Roads and Maritime and Council to understand their intersection design requirements;
  - d) Provision of only one access point on the site which provides sufficient visibility for motorists in accordance with Austroads Guide to Road Design;
  - e) An auxiliary left and right turn treatment are required at the intersection to reduce the likelihood of rear end collisions; and
  - f) Design and construction requirements for roads and their potential impacts on culturally significant sites/items;



## 5. Cultural Heritage

The subject sites contain several registered culturally sensitive Aboriginal sites as identified on the Aboriginal Heritage Information Management System (AHIMS) register. In addition, investigation of the sites (Pross 2007) identified eleven sites across the landholding which are not registered on AHIMS.

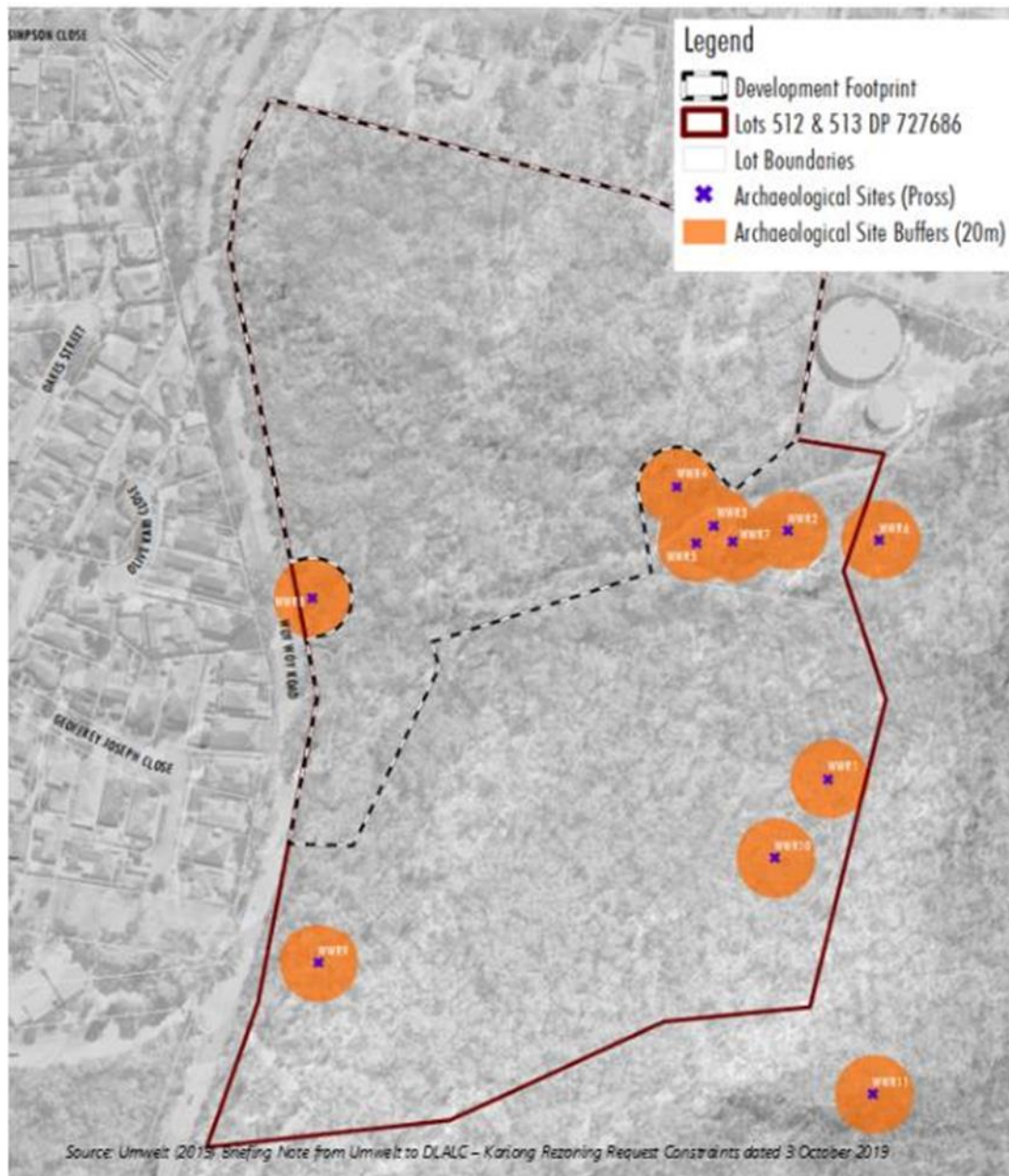


Figure 9 Culturally Significant sites with 20m buffers

The site is within proximity to other lands containing known areas of cultural significance under control of National Parks. This area is highly valued by the community and supports and identifies its significance. There has been recognised through previous planning and zoning applications in the vicinity of Bambara Road, which consequently resulted in the transfer of the subject lands from private ownership into National Parks estate.



There is high likelihood that the proposed R2 Low Density footprint contains additional unidentified areas of cultural significance that are worthy of protection and are contingent with the existing sites in the area. The site should be considered in context with the cultural heritage landscape.

It is considered that the proposed buffer areas around the nominated sites do not afford adequate protection to these culturally significant sites and direct and indirect impacts are likely to occur due to proximity to the proposed R2 Low Density Residential zone, in addition to works associated with the development of the site (e.g. road works).

At a strategic level, in relation to the potential impacts on cultural heritage values, the proposal is inconsistent with:

- a) Section 9.1 Ministerial Direction 2.3 Heritage Conservation as the proposed development area (nor buffers) facilitate the conservation of Aboriginal Cultural Heritages items.
- b) CCRP Direction 8 - Recognise the cultural landscape of the Central Coast as the proposal does not minimise the impact of urban growth and development, nor recognise its contribution to the character and landscape of the region.
- c) CCRP Direction 12 – Protect and manage environmental values as the proposal does not sensitively manage natural areas in the fringe of urban areas.

**Recommendations:**

1. Prior to supporting the rezoning of the subject site, a cultural landscape assessment of the site in context with its surrounds should be undertaken. This assessment should establish the cultural heritage significance of both the site and the locality.
2. In the event the RPP were to support a rezoning in this locality, a revised proposal be considered which:
  - a) Was supported by a cultural landscape assessment as well as a cultural heritage impact assessment;
  - b) Avoided areas of cultural significance and/or implemented greater buffer areas in accordance with a Cultural Heritage Management plan prepared prior to the completion of the rezoning

## 6. Bushfire

The subject site comprises predominantly Category 2 and 3 bushfire prone vegetation (figure 10). The proposal identifies residential development within the Flame Zone of a bushfire (Bushfire Attack Level (BAL) FZ) and within BAL 40 (figure 11).

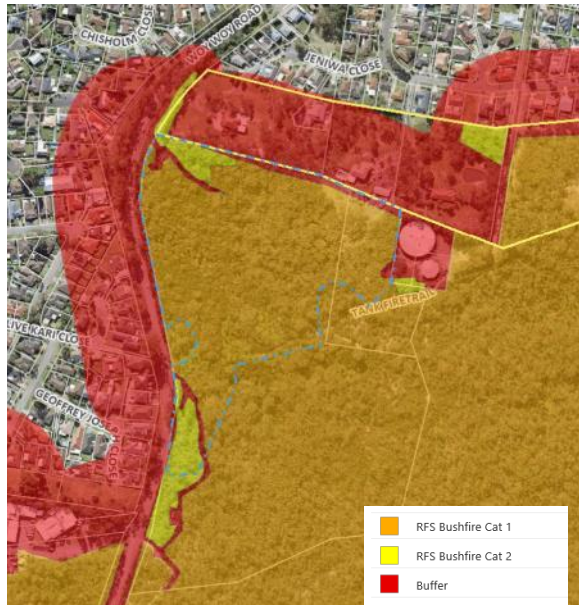


Figure 10 Bushfire Prone Vegetation

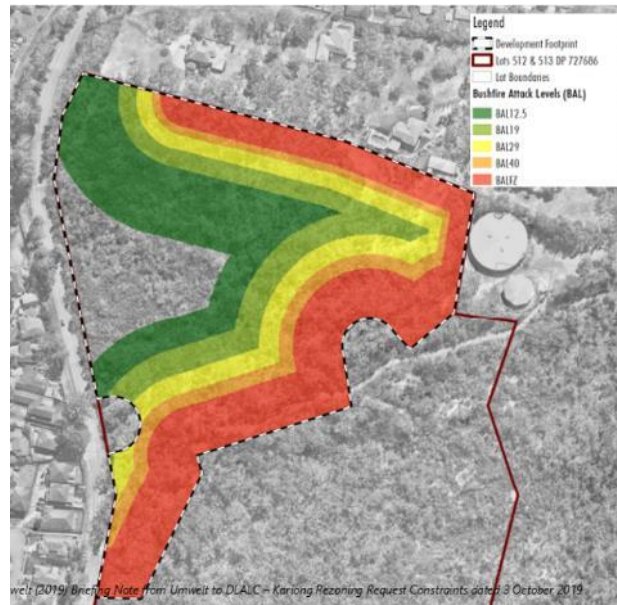


Figure 11 Modelled BALs

The NSW Rural Fire Service (RFS) Guidelines, *Planning for Bushfire Protection (PBP)* November 2019 include specific requirements for assessment of proposals at the strategic planning stage:

*"Strategic planning should provide for the exclusion of inappropriate development in bush fire prone areas as follows:*

- *the development area is exposed to a high bush fire risk and should be avoided;*
- *the development is likely to be difficult to evacuate during a bush fire due to its siting in the landscape, access limitations, fire history and/or size and scale;*
- *the development will adversely effect other bush fire protection strategies or place existing development at increased risk;*
- *the development is within an area of high bush fire risk where density of existing development may cause evacuation issues for both existing and new occupants; and*
- *the development has environmental constraints to the area which cannot be overcome"* (PBP, 2019, p.36).

Given the recent unprecedented fire season and historic fire threat to Kariong, it is considered that the development of the subject site would introduce significant bushfire risks to the new residential development. Further, the above the proposal has limited ability to provide alternate access and egress routes in times of evacuation and would result in risk to residents and emergency service staff.

Proximity of lots to the areas zoned E2 Environmental Conservation that are constrained by slope could result in the following:

- Management activities may be difficult;

- The environmental consequences of ground clearing (destabilisation of slope resulting in landslip, slump, erosion or landslide) may not be acceptable; and
- Vegetation is more readily available to a fire, significantly reducing the advantages of having a APZ.

At a strategic level, in relation to the potential bushfire risk, the proposal is inconsistent with both:

- a) Section 9.1 Ministerial Direction 4.4 Planning for Bushfire Protection; and
- b) CCRP Direction 14 - Protect the coast and manage natural hazards and climate change

as the proposed development is inconsistent with the Strategic considerations of the NSW RFS PBP 2019.

**Recommendations:**

1. In the event the RPP were to support a rezoning in this locality, a revised proposal be considered which:
  - a) Was supported by a Strategic Bushfire Study prepared in accordance with the NSW RFS PBP 2019;
  - b) Included landholdings north of the site (which may alleviate the need for extensive Asset Protections Zones (APZs) on the northern interface with existing residential development);
  - c) Introduced larger minimum lots sizes in the southern and south-eastern portions of the development area;
  - d) Included a perimeter road and adopted Council's Urban Interface Requirements (UIAs) for residential subdivision as per Chapter 2.4: Subdivision of *draft Central Coast Development Control Plan (dCCDCP)*.

## **7. Potential Contamination**

The proposal has not been supported by a preliminary assessment of the likely or potential nature of contamination on the subject site.

At a strategic level, the proposal has not demonstrated consistency of the requirements of Clause 7 of SEPP 55 – Remediation of Land.

**Recommendations:**

1. Prior to supporting a rezoning of the subject site, a Stage 1 Preliminary Contamination Assessment is required to undertaken in accordance with the relevant guidelines.