

## Planning and Assessment

IRF20/1719

### Gateway determination report

<b>LGA</b>	Cowra
<b>PPA</b>	Cowra Shire Council
<b>NAME</b>	Reclassification reclassify from community to operational land, remove public reserve status, rezone to R1 General Residential and impose a minimum lot size of 700m <sup>2</sup> to part Lot 1 DP 1001729, at Binni Creek Road, Cowra (0 homes, 0 jobs)
<b>NUMBER</b>	PP_2020_COWRA_002_00
<b>LEP TO BE AMENDED</b>	Cowra Local Environmental Plan 2012
<b>ADDRESS</b>	Binni Creek Road, Cowra
<b>DESCRIPTION</b>	Part Lot 1 DP 1001729 – land adjoining 7 Yarrowonga Crescent Cowra
<b>RECEIVED</b>	20 April 2020, additional information on 15 May 2020
<b>FILE NO.</b>	IRF20/1719
<b>POLITICAL DONATIONS</b>	There are no known donations or gifts to disclose and a political donation disclosure is not required.
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no known meetings or communications with registered lobbyists with respect to this proposal.

## 1. INTRODUCTION

### 1.1 Description of planning proposal

Cowra Shire Council have worked with the landholders of 7 Yarrowonga Crescent to submit a planning proposal to resolve historic, approved encroachment of private structures onto Council owned, public land. The planning proposal will enable sale of the affected land (93.6m<sup>2</sup> of part Lot 1 DP 1001729) to the landholders of 7 Yarrowonga Crescent to resolve the encroachment. This will be achieved through multiple amendments to the Cowra Local Environmental Plan 2012 including:

- Reclassification of affected land from community to operational.
- Removal of interests, namely the public reserve status.
- Rezoning from RE1 Public Recreation to R1 General Residential.
- Imposing a Minimum Lot Size (MLS) of 700m<sup>2</sup>.

### 1.2 Site description

The subject site is approximately 2km north of Cowra CBD. Lot 1 DP 1001729 is a part of a larger public reserve within a residential area (**Figure 1**). Lot 1 DP 1001729 is an approximately 2.86ha, vegetated, public reserve which backs onto multiple private dwellings. As there is no fencing between the public reserve and these

dwelling, there may be other instances of private structures encroaching onto the public reserve. This proposal will only address the encroachment of structures from 7 Yarrowonga Crescent onto part Lot 1 DP 1001729 (**Figure 2**).



**Figure 1:** Extent of Lot 1 DP 1001729 (yellow boundary) showing RE1 Public Recreation zone



**Figure 2:** Aerial imagery of the affected land, showing 7 Yarrowonga Crescent (blue boundary).

### 1.3 Existing planning controls

Lot 1 DP 1001729 is a public reserve, classified as community land, with no MLS and zoned RE1 Public Reserve. There are no constraints mapped on the land under the Cowra LEP 2012 such as bushfire, flooding, heritage or biodiversity values.

Council advise that the lot is used by the local community for recreation, as evidenced by tree houses, swings, access tracks and other signs of use. Given the isolation and lack of easily identifiable access points, it is unlikely this lot is used by the wider community. This lot is categorised for 'general community use' under section 36I of the *Local Government Act 1993*. Council does not have any records of when or how they came into ownership of Lot 1 DP 1001729.

To rectify this matter Council have resolved to reclassify from community to operational land, remove public reserve status, rezone to R1 General Residential and impose a minimum lot size of 700m<sup>2</sup> so that the land can be sold the adjoining landowner.

### 1.4 Summary of recommendation

Proceed with condition as:

- The proposal is required to rectify encroachment of private structures onto the public reserve.
- Loss of 93.6m<sup>2</sup> of public land will not adversely impact the local community.
- Given the minor nature of the proposal, it is consistent with relevant State, regional and local strategic frameworks.

- There are no inconsistencies with section 9.1 Ministerial Directions or State Environmental Planning Policies.

## **2. PROPOSAL**

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### **2.1 Objectives or intended outcomes**

The objective of the proposal is to allow sale of part Lot 1 DP 1001729 to the landholders at 7 Yarrawonga Crescent to resolve encroachment of private structures onto the public reserve.

### **2.2 Explanation of provisions**

To enable the sale of 93.6m<sup>2</sup> of part Lot 1 DP 1001729, the public reserve status extinguished and change from community to operational land classification. This will be achieved through seeking the Governors approval to remove the public reserve status of the land and amend Part 2, Schedule 4 of the Cowra LEP 2012 to reclassify part of the land to operational land.

To ensure 7 Yarrawonga Crescent does not incur a split zone and MLS once the transfer of land occurs, these development controls will also be amended. Part Lot 1 DP 1001729 will be rezoned from RE1 Public Recreation to R1 General Residential and gain a 700m<sup>2</sup> MLS to match the development controls of 7 Yarrawonga Crescent.

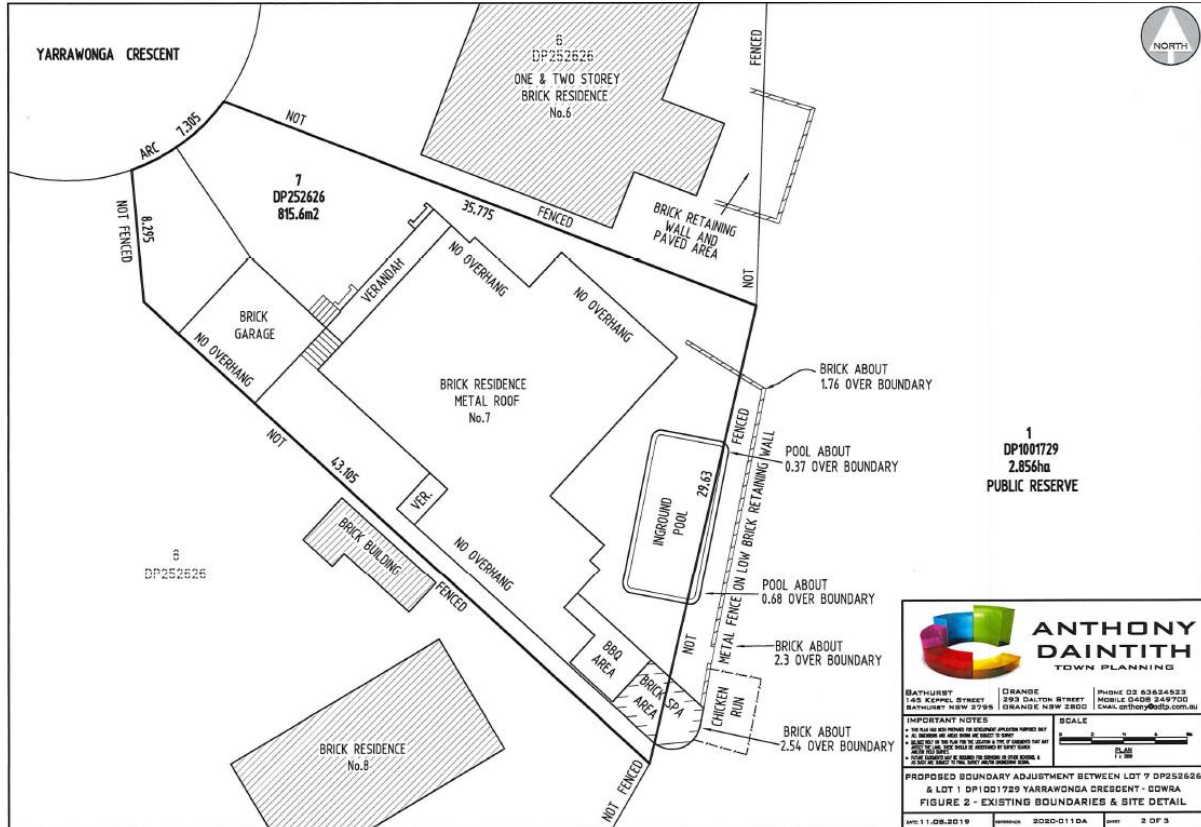
### **2.3 Mapping**

The proposed changes to Part Lot 1 DP 1001729 includes amendments to following LEP maps:

- Land Zoning Map Sheet LZN\_002F: to enable rezoning from RE1 Public Recreation to R1 General Residential.
- Lot Size Map Sheet LSZ\_002F: to impose a 700m<sup>2</sup> MLS.

### 3. NEED FOR THE PLANNING PROPOSAL

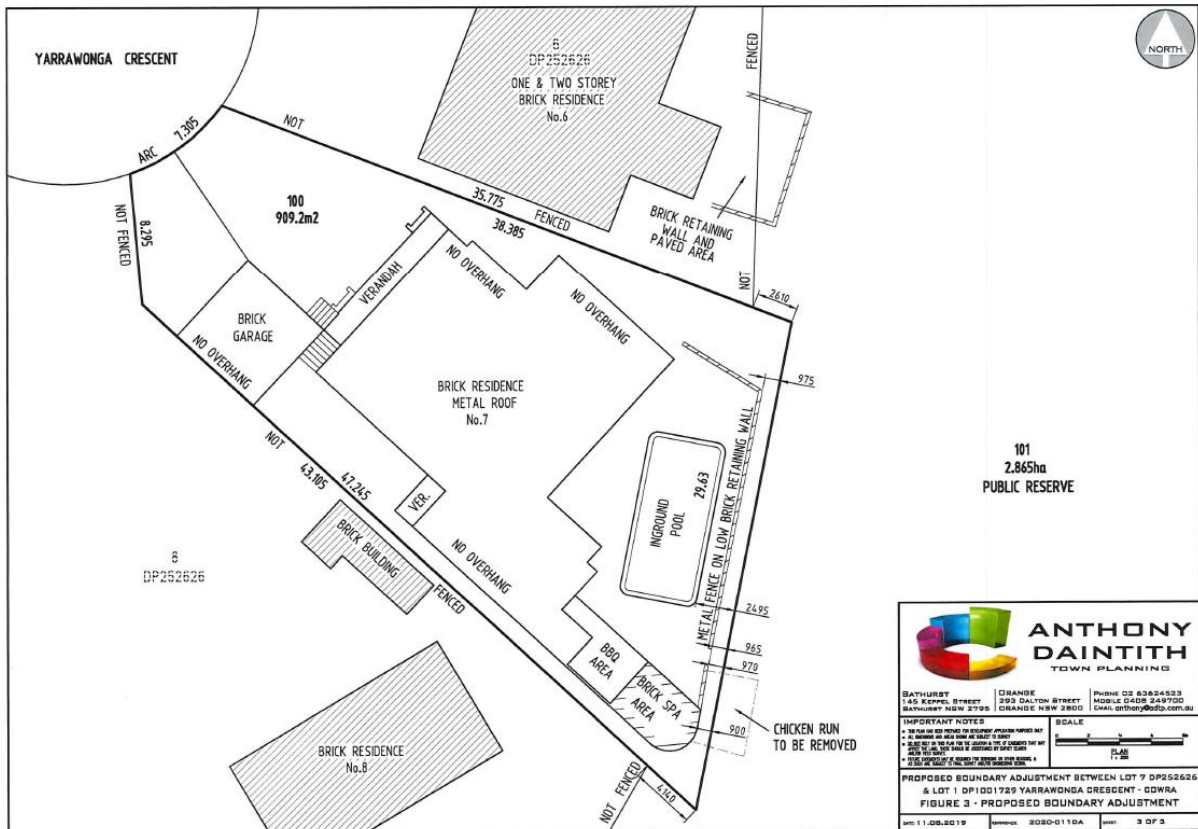
Between 1981 and 1987 multiple structures at 7 Yarrowonga Crescent were approved by the local council at the time, however, the encroachment onto the public reserve (**Figure 3**) was not identified at the time. A site survey was conducted in 1993 which first identified the encroachment, which is yet to be resolved.



**Figure 3:** Drawing of the encroachment of private structures onto part Lot 1 DP 1001729 (Anthony Daintith Town Planning, 2019).

Council have investigated multiple methods of resolving the encroachment issue, however, all the identified methods first require the affected land to be reclassified to operational and the public reserve status removed. Once this occurs Council can proceed with resolving the issue via their preferred method as a local matter.

The affected land includes a 93.6m<sup>2</sup> strip along the boundary of the two lots (**Figure 4**). The remaining 2.85ha of public land will be unaffected by the proposal. Submission of a planning proposal to reclassify and remove the public reserve status is a method chosen by Council to achieve these changes to the affected land is supported as submitted.



**Figure 4:** Drawing of the proposed boundary realignment between Lot 1 DP 1001729 and 7 Yarrowonga Crescent (Anthony Daintith Town Planning, 2019).

#### 4. STRATEGIC ASSESSMENT

##### 4.1 State

There are no known state strategic planning frameworks which apply to the proposal.

##### 4.2 Regional / District

The Central West Orana (CWO) Regional Plan applies to all planning proposals within the Cowra LGA. There are no Directions within the CWO Regional Plan which directly relate to classification public land. Given the minor nature of the proposal, no inconsistencies with the CWO Regional Plan have been identified.

##### 4.3 Local

The proposal relates to the Cowra Community Strategic Plan (CSP) priority L3 Public Facilities. Given the minor nature of the proposal it is not inconsistent with this action of the Cowra CSP.

The proposal relates to the Cowra Shire Land Use Strategy (LUS) 2009, section 4.4 Open Space and Recreation. The Cowra Shire LUS states there is adequate open space in the Cowra township and the focus will be on enhancing this land through improved pathways and facilities. Additional areas of open space are identified to meet the needs of the community in the future. The proposal will remove 93.6m<sup>2</sup> of community land, which is inconsistent with the Cowra Shire LUS, however, the small size of land to be remove is of minor significance given the public reserve has an area of 2.86ha.

##### 4.4 Section 9.1 Ministerial Directions

The proposal is consistent with the following section 9.1 Ministerial Directions:

- 1.3 Mining, Petroleum Production and Extractive Industries as the proposed rezoning will not restrict land available for any extractive activities.
- 2.6 Remediation of Contaminated Land – as the land is being used for residential purposes and is not inconsistent with this Direction. Refer to SEPP No 55 comments below.
- 3.1 Residential Zones as the proposal will rezone land for residential uses and not restrict any existing land uses.
- 3.3 Home Occupations as the proposal will permit home occupations in the future residential rezoning.
- 5.10 Implementation of Regional Plans as the proposal is consistent with CWO Regional Plan as outlined previously.
- 6.1 Approval and Referral Requirements as the proposed LEP changes will not impose additional approval or referral requirements on local development.
- 6.3 Site Specific Provisions as the proposal will not restrict or impose additional controls on how certain development can be conducted on the land.

The proposal is inconsistent with section 9.1 Ministerial Direction 6.2 Reserving Land for Public Purposes as it will reduce the amount of land available for public purposes. The proposal will remove a 93.6m<sup>2</sup> strip of community land used which is a part of a public reserve. Given the existing encroachment of private structures on the public reserve, this land hasn't been used by the public for over 30 years. Formal removal of a 93.6m<sup>2</sup> strip of community land which cannot be reasonably accessed by the community is of minor significance. Therefore, the delegate of the Secretary can be satisfied the inconsistency with this Direction is justified and approval is granted in terms of item 4 of Direction 6.2.

#### **4.5 State environmental planning policies (SEPPs)**

State Environmental Planning Policy No 55—Remediation of Land (SEPP 55) applies as the proposal will rezone land. The 93.6m<sup>2</sup> of land to be rezoned is already used for residential purposes by the owners of 7 Yarrowonga Crescent for over 30 years. An initial site inspection found no evidence of land contamination. Therefore, the requirements of SEPP 55 have been met for the proposed rezoning.

## **5. SITE-SPECIFIC ASSESSMENT**

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### **5.1 Social**

The proposal will remove a 93.6m<sup>2</sup> strip of community land used which is a part of a public reserve. In reality, the existing encroachment of structures has prevented this strip of land being used as a public reserve for over 30 years. The planning proposal will facilitate an administrative change of the land in terms of ownership, rather than what will occur on the land. Therefore, the proposal is not expected to have an impact on the community. Furthermore Council has considered this as the best mechanism to rectify this longstanding issue.

### **5.2 Environmental**

The affected land has no environmental protection or hazard constraints as identified by the Cowra LEP 2012. The planning proposal will facilitate an administrative change of the land in terms of ownership, rather than what will occur on the land. Therefore, the proposal is not expected to have an impact on the environment.

### **5.3 Economic**

There are no council services or infrastructure on the affected land. Council will incur a small economic benefit from the eventual sale of the land to the owners of 7 Yarrowonga Crescent, which will be used towards administrative and maintenance costs of managing other public land within the LGA.

## **6. CONSULTATION**

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### **6.1 Community**

Council has proposed a 28 day community consultation period. This is considered appropriate as reclassification proposals do not qualify as low impact proposals which are eligible for a reduced 14 day exhibition period. In addition to this, a public hearing will be required to reclassify the land as required by section 29 of the *Local Government Act 1993*.

### **6.2 Agencies**

No agency consultation has proposed by Council. Given the proposal will only affect 93.6m<sup>2</sup> of public land which has no environmental protection or hazard constraints, no agency consultation is considered appropriate.

## **7. TIME FRAME**

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Council has proposed a six month time frame for completing the LEP. Given the current restrictions to community gatherings and requirement to hold a public hearing for this proposal, a 12 month time frame is recommended to help accommodate effective consultation.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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Council has requested to be the local plan-making authority. However, Council cannot be authorised to be the local plan-making authority as the Governors' approval is required to remove the public reserve status of the affected land. Therefore, delegation will be retained as outlined in LEP practice note (PN 16-001) *Classification and reclassification of public land through a local environmental plan*.

## **9. CONCLUSION**

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Preparation of the planning proposal is supported to proceed with conditions to meet the consultation requirements of a reclassification. Given the nature of the proposal, no site specific conditions or agency consultation is recommended. Amending the Plan will allow sale of part Lot 1 DP 1001729 to the landholders at 7 Yarrowonga Crescent to resolve a longstanding encroachment of private structures onto the public reserve. This is considered a local matter and loss of a 93.6m<sup>2</sup> strip of community land which has not been accessible to the community for over 30 years is of minor significance and justifiable against any State, regional or local strategic planning.

## **10. RECOMMENDATION**

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It is recommended that the delegate of the Secretary approves and agrees that any inconsistencies with section 9.1 Direction 6.2 Reserving Land for Public Purposes are minor or justified.



It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
2. Cowra Shire Council is to conduct a public hearing in accordance with the requirements of section 29 of the *Local Government Act 1993*, as the proposal involves reclassification of public land from community to operational land.
3. No consultation is required with public authorities/organisation under section 3.34(2)(d) of the Act.
4. Prior to submission of the planning proposal under section 3.36 of the Act, the final LEP maps must be prepared and be compliant with the Department's 'Standard Technical Requirements for Spatial Data sets and Maps' 2017.
5. The time frame for completing the LEP is to be **12 months** following the date of the Gateway determination.



1.6.20

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3.6.20

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