



PUBLIC HEARING REPORT



Cowra
Council

**RECLASSIFICATION FROM “COMMUNITY LAND”
TO “OPERATIONAL LAND”**

DATE: 25 August 2020

DESCRIPTION: Report on Public Hearing

CLIENT: Cowra Shire Council

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1. Introduction

Clark McNamara Lawyers was commissioned by Cowra Council to independently chair a public hearing and prepare a public hearing report into the reclassification of Council owned land from 'Community' land to 'Operational' for a parcel of land being Lot 1 DP1001729 in the Cowra Local Government Area.

The reclassification is part of a Planning Proposal lodged with Council on behalf of Allan and Rachel Tarrant that proposes to amend Cowra Local Environmental Plan 2012 (LEP).

The Planning Proposal was publicly exhibited from **31 July 2020 to 28 August 2020**. There were **no** submissions were received from the community during the exhibition period specifically in relation to this planning proposal.

The public hearing relating to the proposed reclassification of land was conducted on **25 August 2020** and this public hearing report has been prepared in accordance with Section 29 of the *Local Government Act 1993*.

2. Statutory Context

Public land is defined in the *Local Government Act 1993* as any land (including a public reserve) vested in Council, or under Council control. Public land is managed by Council under the *Local Government Act 1993* based on its classification.

Council is obligated under the *Local Government Act 1993* to classify land as either community land or operational land.

Community land is land, that Council makes available for use by the general public, for example, parks, reserves, or sportsground. This land cannot be sold, exchanged, or disposed of by Council. It can be leased/licenced under certain conditions.

Operational land is land which facilitates the functions of Council, and may not be open to the general public, for example, Council's works depot or a public drainage basin.

Classification or reclassification of public land may be undertaken pursuant to Section 27(1) of the *Local Government Act 1993* via a Local Environmental Plan (LEP) made under the *Environmental Planning and Assessment Act 1979* or pursuant to Section 27(2) of the *Local Government Act 1993* via a resolution of council. Should Council resolve to reclassify community land to operational land via a LEP, a Council is required by Section 29 of *Local Government Act 1993* to convene a public hearing. Reclassification of land does not in itself affect any estate or interest a Council has in the land. Section 47G of the *Local Government Act 1993* provides in part as follows:

47G Public hearings

- (1) *In this section, public hearing means any public hearing required to be arranged under this Part.*
- (2) *The person presiding at a public hearing must not be:*
 - (a) *a councillor or employee of the council holding the public hearing, or*
 - (b) *a person who has been a councillor or employee of that council at any time during the 5 years before the date of his or her appointment.*
- (3) *Not later than 4 days after it has received a report from the person presiding at the public hearing as to the result of the hearing, the council must make a copy of the report available for inspection by the public at a location within the area of the council.*

For the purposes of Section 47G of the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979*, Zoe Bagnall has not been an employee of Cowra Shire Council within the last 5 years. Further, Zoe Bagnall has never been a Councillor at Cowra Shire Council.

3 Subject Land (Lot 1 in Deposited Plan 1001729)

The Subject Land is identified as Binni Creek Road Cowra being Lot 1 in Deposited Plan 1001729, which is a public reserve.

4. Ownership and Land Use

The Subject Land is owned by Cowra Shire Council.

5. Planning Proposal Overview

The purpose of the reclassification of land is to facilitate a boundary adjustment with Lot 7 DP252626 (known as 7 Yarrawonga Drive, Cowra) that will correct a building encroachment onto the Subject Land. It is also proposed to amend the zoning and MLS LEP mapping to reflect the change in the reclassification of land (i.e rezone the land from RE1 and changes the MLS to 7000m²).

A full analysis of the Planning Proposal is included as **Attachment 1**.

6. Public Exhibition and Public Hearing

6.1 Public Exhibition

The Planning Proposal was publicly exhibited from 31 July 2020 to 28 August 2020. Council has advised that advertising and notification of the proposal was undertaken in accordance with the relevant legislative requirements and Gateway Determination.

Interested parties were notified of the exhibition via:

- A notice posted on Council's website
- Local newspaper

Note: The Gateway Determination issued 3 June 2020 (and annexed as **Attachment 3**) did not require consultation with any public authorities/organisations.

No submissions were received from the community or government agencies during the exhibition notification period in relation to this particular Planning Proposal.

6.2 Public Hearing

Council arranged a public hearing for the proposed reclassification of the site on **25 August 2020** at 10.30am at Cowra Council Chambers.

Council confirmed that an advertisement was placed in the Cowra Guardian advising of the public hearing in accordance with the relevant legislation.

The public hearing was conducted in accordance with Clause 29 of the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979*.

The public hearing was chaired by Zoe Bagnall of Clark McNamara Lawyers.

The following Council staff attended:

- Kate Alberry
- Dean Steward

No members of the community attended the public hearing.

The public hearing followed the ensuing protocol:

- Welcome and introduction to the public hearing by the chairperson
- Brief overview of the project
- Public Land Classifications – a general overview
- Consultation requirements
- Overview of the site proposed for reclassification
- Concluding remarks and comments on next steps from chairperson

A copy of the public hearing presentation is **Attachment 2**.

The public hearing concluded at 11.00am.

7. Community Public Hearing Submissions

No members of the public attended the public hearing.

A copy of the minutes of the public hearing forms **Attachment 4**.

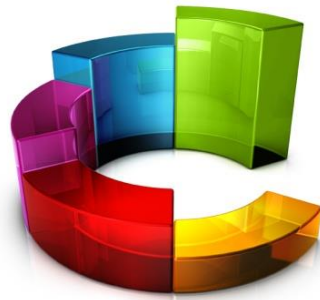
8 Conclusion and Recommendations

In conclusion, after consideration of the issues surrounding the reclassification of the Subject Land it has been determined that, having regard to the circumstances and merits of the case as well as the broader public benefit, the proposed reclassification to “operational” of the Subject Land is appropriate.

The following recommendations are made:

- a) Council proceed with the reclassification of the Subject Land in accordance with the Planning Proposal from ‘Community’ to ‘Operational’ land.
- b) A copy of this report be made available to the public within four (4) business days in accordance with Section 47(G)(3) of the *Local Government Act 1993*.

Attachment 1 – Planning Proposal



**ANTHONY
DAINTITH**
TOWN PLANNING

PLANNING PROPOSAL



PROPOSAL: Reclassification of Land (associated zoning and MLS mapping changes)

ADDRESS: 7 Yarrawonga Crescent Cowra

DATE: 4 May 2020



DESCRIPTION: Planning Proposal – Reclassification of Land

CLIENT: Allan and Rachel Tarrant

Anthony Daintith Town Planning Pty Ltd

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QUALITY ASSURANCE

This document has been prepared, checked and released in accordance with the Quality Control Standards established by Anthony Daintith Town Planning.

Version	Date	Description	By
1.0	28/8/2019	Approved	AD
2.0	12/12/2019	Revised	AD
3.0	1/5/2020	Revised	AD
4.0	4/5/2020	Revised	AD

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A handwritten signature in black ink, appearing to read "ADTP", is positioned above the signature line.

This document has been authorised by

 Anthony Daintith (Principal)
 Date: 4 May 2020



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1 BACKGROUND

1.1 INTRODUCTION

Allan and Rachel Tarrant have engaged Anthony Daintith Town Planning (ADTP) to prepare a Planning Proposal that seeks to amend the *Cowra Local Environmental Plan 2012* by seeking the reclassification of part of Lot 1 DP 1001729 (adjacent to the rear of 7 Yarrowonga Drive, Cowra) from community to operational land. The purpose of the reclassification of land is to facilitate a boundary adjustment with Lot 7 DP 252626 that will correct a building encroachment onto Lot 1. It is also proposed to amend the zoning and MLS LEP mapping to reflect the change in the reclassification of land (i.e. rezone the land from RE1 and R1 and changes the MLS to 700m²).

If supported, the applicant will lodge an application to Council for a boundary adjustment (approximately 93.6m² to be transferred to 7 Yarrowonga). This is depicted on the proposed boundary adjustment plan attached to the Planning Proposal.

A planning proposal is a document that explains the intended effect of a proposed local environmental plan (LEP) and sets out the justification for making that plan. It will be used and read by a wide audience including the general community as well as those who are responsible for deciding whether or not the proposal should proceed. As such it must be concise and accessible to its audience. It must also be technically competent - founded on an accurate assessment of the likely impacts of the proposal and supported where necessary by technical studies and investigations.

The preparation of a planning proposal is the first step in preparing a LEP. Throughout the course of preparing the proposed LEP, the planning proposal evolves. This is particularly the case for complex proposals in which the initial gateway determination will confirm the technical studies and consultation required to justify the proposal. As the studies and consultation are undertaken, relevant parts of the planning proposal will be updated, amended and embellished.

The role of a planning proposal within the overall process for preparing LEPs is explained in the publication "A guide to preparing local environmental plans" (Department of Planning & Environment, December 2018).

A planning proposal is comprised of five parts:

Part 1 - A statement of the objectives or intended outcomes of the proposed instrument;

Part 2 - An explanation of the provisions that are to be included in the proposed instrument;



Part 3 - The justification for those objectives, outcomes and the process for their implementation;

Part 4 – Maps, where relevant, to identify the intent of the planning proposal and the area to which it applies;

Part 5 - Details of the community consultation that is to be undertaken on the planning proposal.

Section 3.33(3) of the Act allows the Planning Secretary to issue requirements with respect to the preparation of a planning proposal. The Secretary's requirements include:

- Specific matters that must be addressed in the justification (Part 3) of the planning proposal
- A project timeline to detail the anticipated timeframe for the plan making process for each planning proposal.

The project timeline forms Part 6 of a planning proposal.

1.2 PROPONENT AND OWNER

The proponent is Allan and Rachel Tarrant, C/- Anthony Daintith Town Planning. The registered owner of the subject land is Cowra Shire Council.

2 SUBJECT LAND

2.1 SITE DESCRIPTION

The subject land is identified as Binni Creek Road, Cowra. Refer to **Figure 1**, which depicts the site within the locality. **Figure 2** provides an aerial photo of the site.

The area of the subject land is 2.856 ha.

Note: Lot 7 DP 252626 (7 Yarrawonga Crescent) has an area of 815.6m².

The land title description is:

Table 1: Land Title Details

Lot	Deposited Plan
1	1001729

Figure 1: Extract of DP 1001729

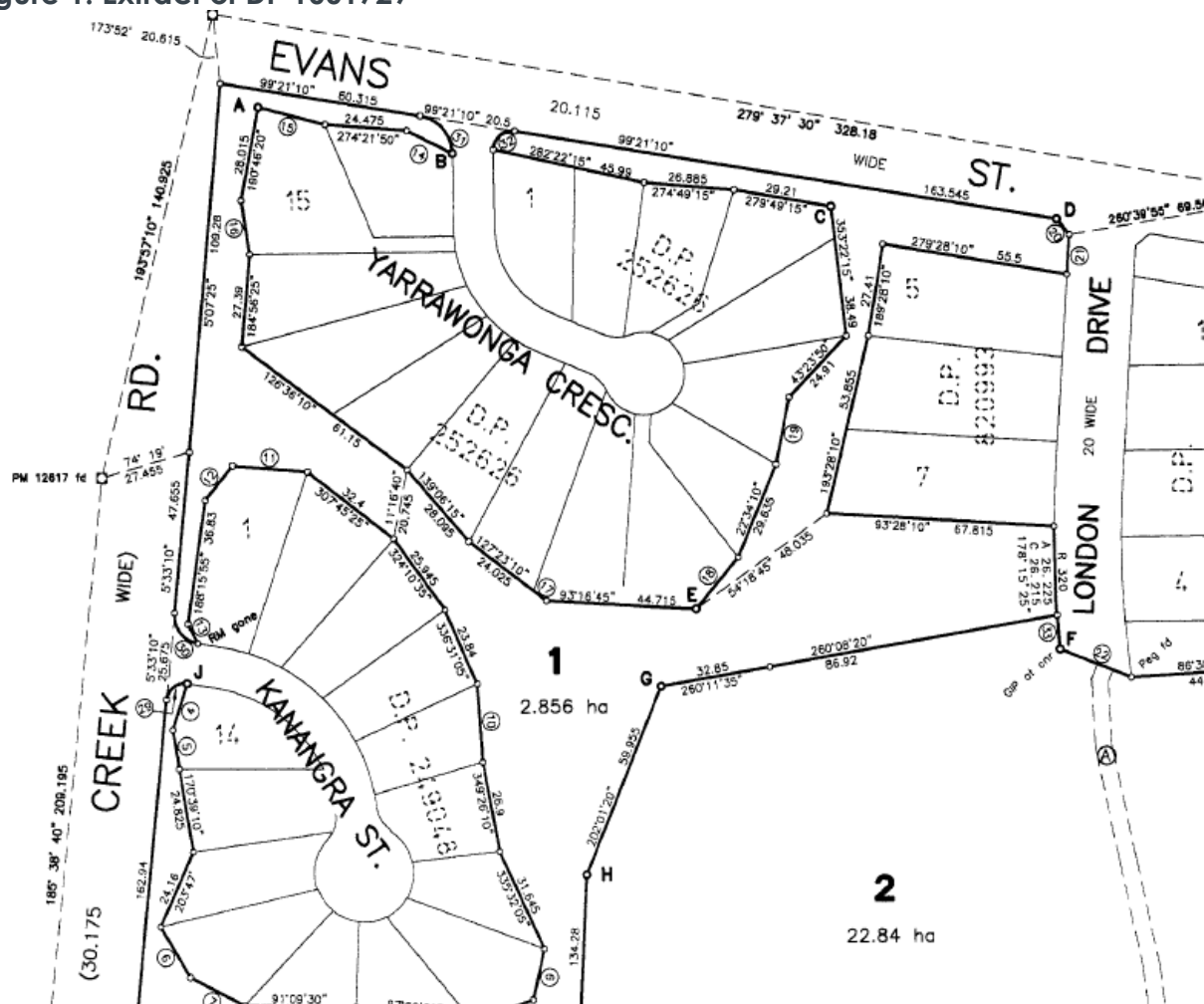


Figure 2: Existing site detail

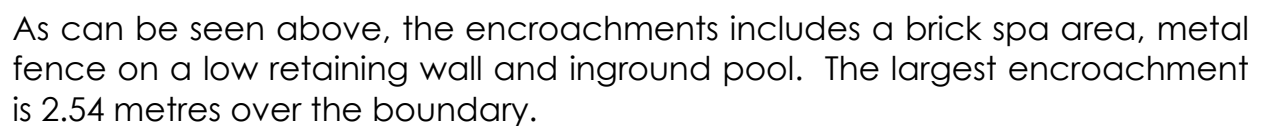


Figure 3: Locality Plan**Figure 4: Aerial Photo**

2.2 GENERAL SITE DESCRIPTION

Topography

The land is relatively level.

Vegetation

The site is cleared with the exception of one tree (which is proposed to be retained).

Waterways

There are no watercourses traversing the site.

Buildings

the encroachments includes a brick spa area, metal fence on a low retaining wall and inground pool

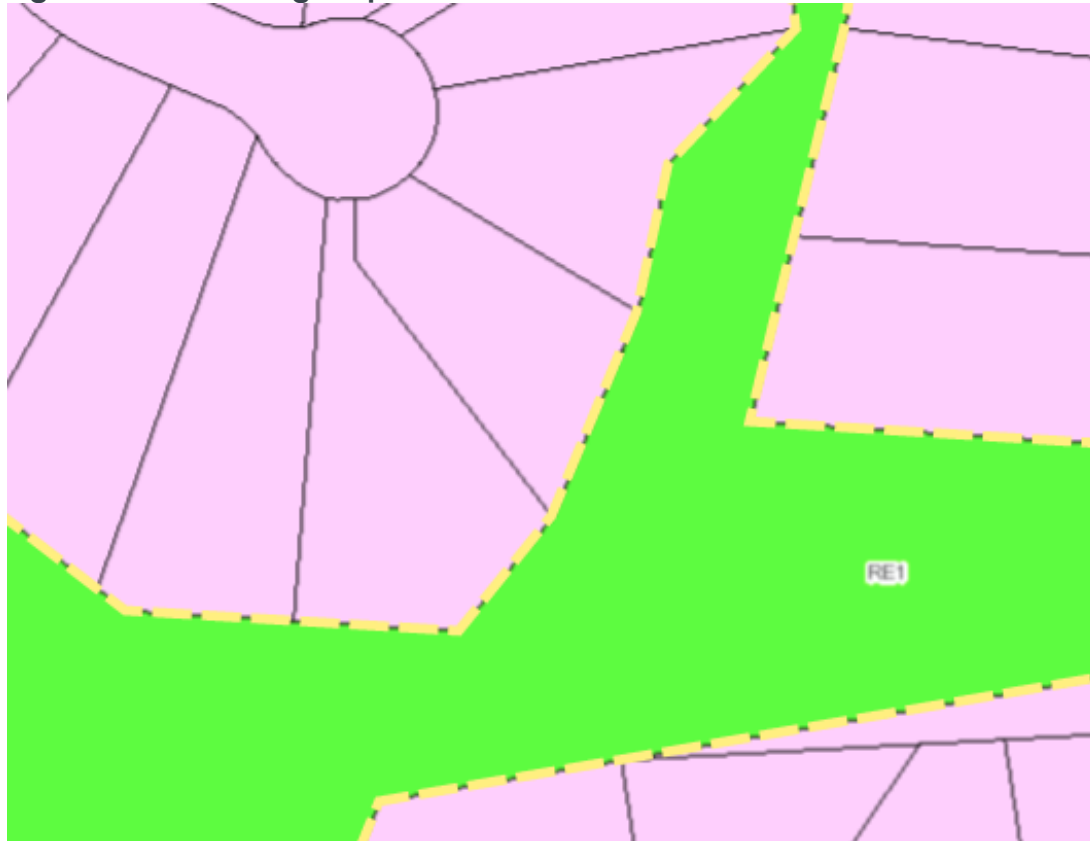
Photo 1: Subject land showing encroachments.



2.3 COWRA LOCAL ENVIRONMENTAL PLAN 2012

The subject land is currently zoned RE1 Public Recreation under the Cowra Local Environmental Plan 2012 (refer to **Figure 5** below).

Figure 5: LEP - Zoning Map



Zone RE1 Public Recreation

1 Objectives of zone

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To maximise public transport patronage and encourage walking and cycling.

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Aquaculture; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Camping grounds; Caravan parks; Charter and tourism boating facilities; Community facilities; Environmental facilities; Information and education facilities; Jetties; Kiosks; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Roads; Water recreation structures; Water recycling facilities; Water supply systems

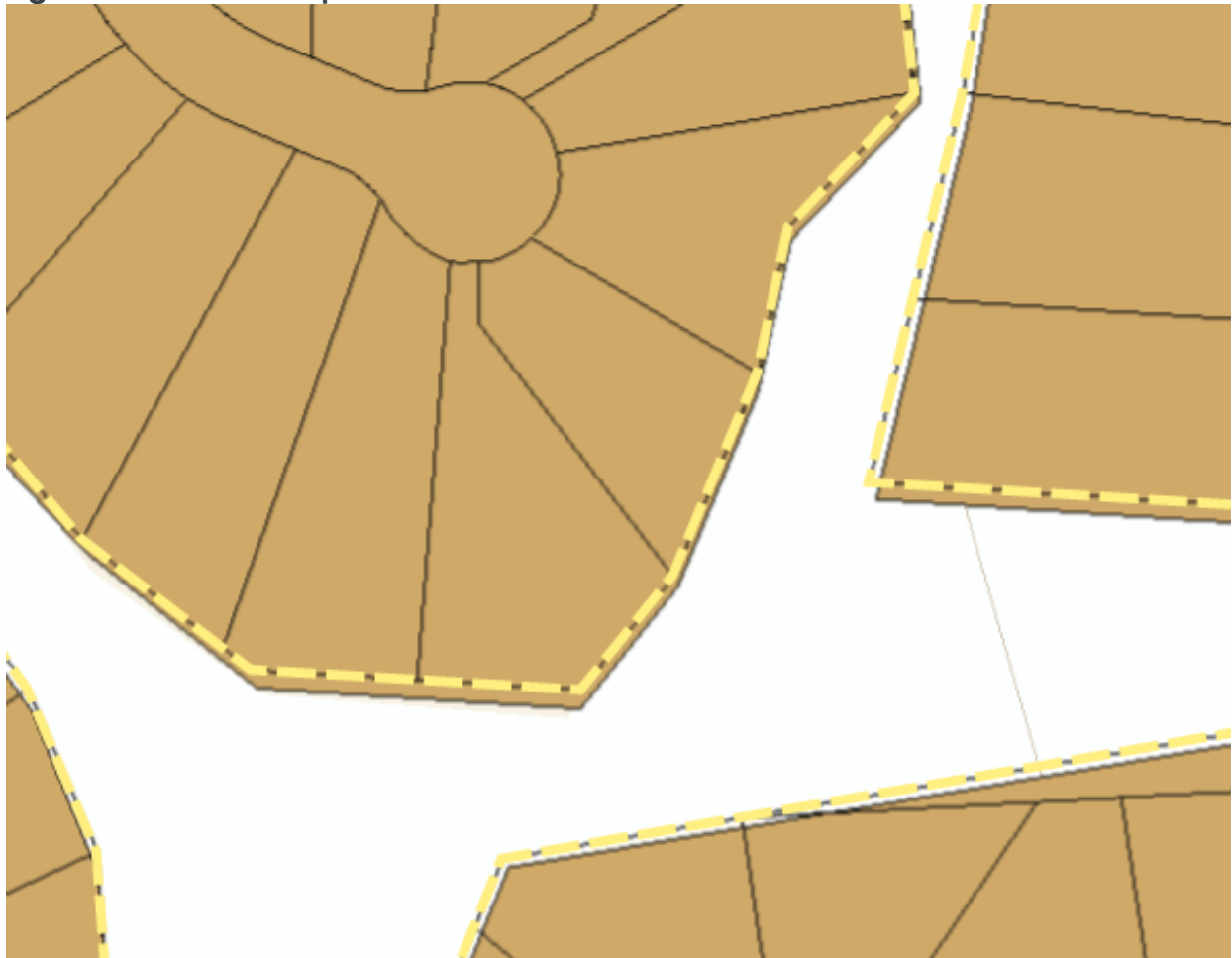
4 Prohibited

Water treatment facilities; Any other development not specified in item 2 or 3

It is proposed to change the land proposed to be reclassified to operational from RE1 to R1. This will ensure that there will be no split zones of the land once the future boundary adjustment takes place.

There is no minimum lot size (MLS) applicable for the subject land (refer to **Figure 6** below). It is proposed to amend the MLS to 700m² (it is noted that the MLS for 7 Yarrowonga Crescent is 700m²). This will ensure that there is no split MLS areas once the future boundary adjustment of the land takes place.

Figure 6: LEP - MLS Map



PART 1 – OBJECTIVES OR INTENDED OUTCOMES

Part 1 of the planning proposal should be a concise statement setting out the objectives or intended outcomes of the planning proposal. It is a statement of what is planned to be achieved, not how it is to be achieved. It should be written in such a way that it can be understood by the layperson.

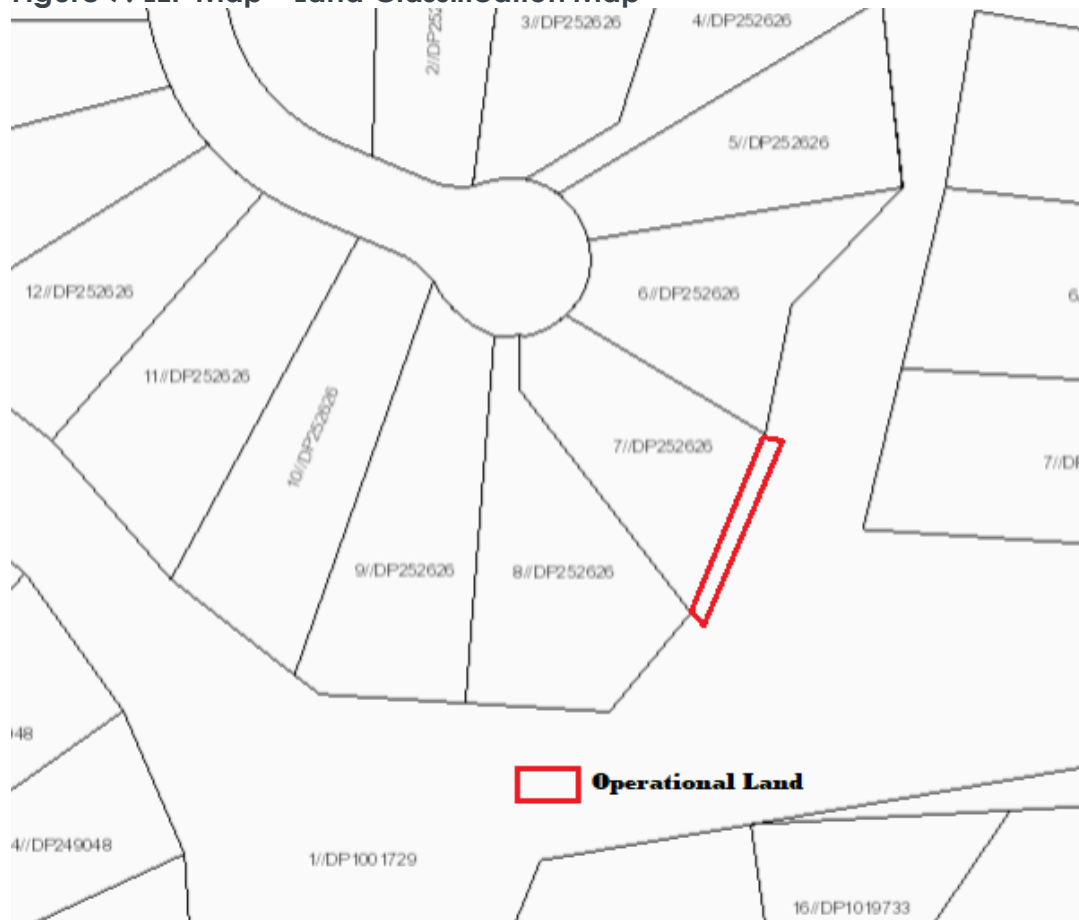
The objective of this Planning Proposal is to amend the *Cowra Local Environmental Plan 2012* by:

- Change to Schedule 4 (Part 1) by the reclassification of part of the subject land from Community Land to Operational Land.
- Change the Zoning Map and MLS Map (to reflect the land to be reclassified). The land proposed to be reclassified to operational, be rezoned R1 General Residential with a minimum lot size of 700m².

This change will enable a boundary adjustment between the subject land and the neighbouring Lot 7 to correct a building encroachment (and sale of public land).

This Planning Proposal will require a change to the LEP mapping (Land Reclassification Map). The new map will include 93.6m² of Lot 1.

Figure 7: LEP Map - Land Classification Map



PART 2 – EXPLANATION OF PROVISIONS

The explanation of provisions is an explicit statement of how the objectives or intended outcomes are to be achieved by means of new controls on development imposed via a LEP.

It is proposed to amend the *Cowra Local Environmental Plan 2012* by including the subject land (part of Lot 1 DP 1001729) under Schedule 4 Part 1 (Land classified, or reclassified, as operational land – no interests changed) as “Operational Land”. It is also proposed to rezone the land to be operational to R1 General Residential and change the MLS to 700m².

A title search for Lot 1 DP 1001729 shows that the land has a public reserve status. The public reserve status of the land is an ‘interest’ that will need to be discharged (for the relevant part of the land) before a reclassification can occur. The land will be detailed under Schedule 4 Part 2 of the LEP accordingly.

PART 3 JUSTIFICATION

The justification sets out the case for changing the zones and/or development controls on the land affected by the proposed LEP.

Within the justification there are a number of specific questions that must be discussed with reasons explained.

Section A – Need for Planning Proposal

Is the planning proposal a result of any strategic study or report?

No - the Planning Proposal is not a result of any strategic study or report.

The Planning Proposal will provide the opportunity for a boundary adjustment between the subject land and Lot 7 DP 252626 to correct a building encroachment issue.

The planning proposal will provide an improved planning outcome for the subject land that has been determined in consultation with the Cowra Council Planning Department.

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

The Planning Proposal is the best way of achieving the objectives and intended outcomes. There are no other feasible methods to achieve this final outcome.

Is there a net community benefit?

There is a negligible impact on the community. The issues associated with the planning proposal are localised and won't have any offsite impacts. It is of the public benefit to remedy the boundary encroachment, but first the land needs to be reclassified to "operational land".

Section B – Relationship to Strategic Planning Framework

Is the planning proposal consistent with the objectives and actions contained within the applicable regional or subregional Strategy?

The relevant Regional Plan is the Central West and Orana Regional Plan 2036. The Planning Proposal relates to a matter that is considered to be of local planning significance only. A review of the proposal against the planning directions of the Regional Plan has not identified any inconsistencies. Further detail consideration of the Regional Plan would appear unnecessary in this instance.

Is the planning proposal consistent with the local Council's Community Strategic Plan or other local strategic plan?

It is considered that the Planning Proposal is not inconsistent with Councils Land Use Strategy:

- There are no significant environmental or natural features affecting the site.
- There are no known heritage issues affecting the site.
- Adequate cost-effective servicing already exists on site and is available to the proposed future development on the site.
- There are no servicing issues applicable to this proposal.
- There are no significant topographical features affecting the subject land.
- Negligible impact on the economy.
- Will enable a building encroachment to be corrected.

Is the planning proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is considered to be consistent with the relevant State Environmental Planning Policies (SEPPs) including the following:



State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

Council must consider Clause 6 of the SEPP when determining a Development Application:

6 Contamination and remediation to be considered in zoning or rezoning proposal

(1) In preparing an environmental planning instrument, a planning authority is not to include in a particular zone (within the meaning of the instrument) any land specified in subclause (4) if the inclusion of the land in that zone would permit a change of use of the land, unless:

(a) the planning authority has considered whether the land is contaminated, and

(b) if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and

(c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.

Note.

In order to satisfy itself as to paragraph (c), the planning authority may need to include certain provisions in the environmental planning instrument.

(2) Before including land of a class identified in subclause (4) in a particular zone, the planning authority is 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.

(3) If a person has requested the planning authority to include land of a class identified in subclause (4) in a particular zone, the planning authority may require the person to furnish the report referred to in subclause (2).

(4) The following classes of land are identified for the purposes of this clause:

(a) land that is within an investigation area,

(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,

(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:

(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and

(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

(5) In this clause, planning authority has the same meaning as it has in section 145A of the Act.



The potential for contamination appears minimal (the site has been used for residential purposes). This is based upon an inspection of the site and surrounding lands and discussions with the current landowners.

Accordingly, it is recommended that a detailed investigation is not necessary or warranted in this instance.

State Environmental Planning Policy (Infrastructure) 2007

The proposal is not inconsistent with the provisions of the SEPP.

Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

The following provides a summary of the Section 9.1 Directions issued on 1 July 2009 in accordance with the *Environmental Planning & Assessment Act 1979*, as relevant to the planning proposal:

Table 2: Section 9.1 Directions

Direction No.	Provisions	Consideration
1.1 Business & Industrial Zones	<p>When this Direction Applies</p> <p>This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).</p> <p>What a relevant planning authority must do if this direction applies</p> <p>A planning proposal must:</p> <ul style="list-style-type: none"> (a) give effect to the objectives of this direction, (b) retain the areas and locations of existing business and industrial zones, (c) not reduce the total potential floor space area for employment uses and related public services in business zones, (d) not reduce the total potential floor space area for industrial uses in industrial zones, and (e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning. 	<p>Not applicable. There are no business/industrial zones affected.</p> <p>The planning proposal is not considered to be inconsistent with this s9.1 Direction.</p>
1.2 Rural Zones	<p>What a relevant planning authority must do if this direction applies</p>	<p>It is not proposed to rezone land from a rural zone to a residential, business,</p>

	<p>A planning proposal must:</p> <p>(a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.</p> <p>(b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).</p> <p>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:</p> <p>justified by a strategy which:</p> <p>gives consideration to the objectives of this direction,</p> <p>identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and</p> <p>is approved by the Director-General of the Department of Planning, or</p> <p>(b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or</p> <p>(c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or</p> <p>(d) is of minor significance.</p>	<p>industrial, village or tourist zone – it will enable the reclassification of the subject land from community to operational.</p> <p>The planning proposal will not contain any increase in the permissible density of land within a rural zone – the proposal will not result in any increase in dwelling entitlements.</p> <p>Accordingly, it is considered that this proposal is consistent with this direction.</p>
1.3 Mining, Petroleum Production and Extractive Industries		Not considered applicable to this proposal.
1.4 Oyster Aquaculture		Not considered applicable to this proposal.
1.5 Rural Lands	<p>When this direction applies</p> <p>This direction applies when:</p> <p>(a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or</p>	<p>Not considered applicable to this proposal.</p> <p>There is no proposal to rezone any rural lands.</p>

	<p>(b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone.</p> <p>What a relevant planning authority must do if this direction applies:</p> <p>(4) A planning proposal to which clauses 3(a) or 3(b) apply must be consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>.</p> <p>(5) A planning proposal to which clause 3(b) applies must be consistent with the Rural Subdivision Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>.</p>	
2.1 Environment Protection Zones		Not applicable to this proposal.
2.2 Coastal Protection		Not applicable to this proposal.
2.3 Heritage Conservation		Not applicable to this proposal. The subject land is not affected by any Heritage Conservation Area of heritage item (including neighbouring lots).
2.4 Recreation Vehicle Areas		Not applicable to this proposal.
3.1 Residential Zones	<p>When this direction applies</p> <p>(3) This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:</p> <p>(a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary),</p> <p>(b) any other zone in which significant residential development is permitted or proposed to be permitted.</p> <p>What a relevant planning authority must do if this direction applies</p> <p>(4) A planning proposal must include provisions that encourage the provision of housing that will:</p> <p>(a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and</p>	It is recommended that the small area proposed to be reclassified to operational land also change the zoning to R1 General Residential and change the MLS to 700m ² to align with the neighbouring residential zoning.

	<p>(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and</p> <p>(d) be of good design.</p> <p>(5) A planning proposal must, in relation to land to which this direction applies:</p> <p>(a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and</p> <p>(b) not contain provisions which will reduce the permissible residential density of land.</p>	
3.2 Caravan Parks & Manufactured Home Estates	<p>When this direction applies</p> <p>(3) This direction applies when a relevant planning authority prepares a planning proposal.</p> <p>What a relevant planning authority must do if this direction applies</p> <p>(4) In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must:</p> <p>(a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and</p> <p>(b) retain the zonings of existing caravan parks, or in the case of a new principal LEP zone the land in accordance with an appropriate zone under the Standard Instrument (Local Environmental Plans) Order 2006 that would facilitate the retention of the existing caravan park.</p> <p>(5) In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a planning proposal, the relevant planning authority must:</p> <p>(a) take into account the categories of land set out in Schedule 2 of SEPP 36 as to where MHEs should not be located,</p> <p>(b) take into account the principles listed in clause 9 of SEPP 36 (which relevant planning authorities are required to consider when assessing and determining the development and subdivision proposals), and</p>	<p>Not applicable.</p> <p>The planning proposal is not considered to be inconsistent with this S9.1 Direction.</p>

	(c) include provisions that the subdivision of MHEs by long term lease of up to 20 years or under the <i>Community Land Development Act 1989</i> be permissible with consent.	
3.3 Home Occupations		Not applicable to this proposal.
3.4 Integrating Land Use and Transport		No new access is proposed or required.
3.5 Development Near Licensed Aerodromes		The subject land is not within the OLS of the Cowra Airport.
3.6 Shooting Ranges		Not applicable to this proposal.
4.1 Acid Sulfate Soils		Not applicable to this proposal.
4.2 Mine Subsidence and Unstable Land		It is understood that the land is not affected by mine subsidence or unstable land.
4.3 Flood Prone Land	<p>When this direction applies</p> <p>(3) This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.</p> <p>What a relevant planning authority must do if this direction applies</p> <p>(4) A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>).</p> <p>(5) A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.</p> <p>(6) A planning proposal must not contain provisions that apply to the flood planning areas which:</p> <p>a. permit development in floodway areas,</p>	The subject land is not mapped as being flood liable land.

	<p>b. permit development that will result in significant flood impacts to other properties,</p> <p>c. permit a significant increase in the development of that land,</p> <p>d. are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or</p> <p>e. permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodway's or high hazard areas), roads or exempt development.</p> <p>(7) A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director- General (or an officer of the Department nominated by the Director-General).</p> <p>(8) For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).</p>	
4.4 Planning for Bushfire Protection	<p>When this direction applies</p> <p>This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.</p> <p>What a relevant planning authority must do if this direction applies</p> <p>(4) In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination</p>	<p>The subject is not mapped as Bushfire Prone Land.</p> <p>The planning proposal is not considered to be inconsistent with this S9.1 Direction.</p>

	<p>under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made,</p> <p>(5) A planning proposal must:</p> <p>(a) have regard to Planning for Bushfire Protection 2006,</p> <p>(b) introduce controls that avoid placing inappropriate developments in hazardous areas, and</p> <p>(c) ensure that bushfire hazard reduction is not prohibited within the APZ.</p> <p>(6) A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:</p> <p>(a) provide an Asset Protection Zone (APZ) incorporating at a minimum:</p> <p>(i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and</p> <p>(ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,</p> <p>(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the <i>Rural Fires Act 1997</i>), the APZ provisions must be complied with,</p> <p>(c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,</p> <p>(d) contain provisions for adequate water supply for firefighting purposes,</p> <p>(e) minimise the perimeter of the area of land interfacing the hazard which may be developed,</p> <p>(f) introduce controls on the placement of combustible materials in the Inner Protection Area.</p>	
5.10 Implementation of Regional Plans	When this direction applies:	Central West Orana Regional Plan applies to the Cowra LGA. The subject of the planning proposal is of



	(2) This direction applies to land to which a Regional Plan has been released by the Minister for Planning	local rather than regional significance – accordingly the Regional Plan is not particular relevant to the proposal.
6.1 Approval and Referral Requirements		This proposal is consistent.
6.2 Reserving Land for Public Purposes	<p>When this direction applies</p> <p>This direction applies when a relevant planning authority prepares a planning proposal.</p> <p>What a relevant planning authority must do if this direction applies</p> <p>(4) A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).</p> <p>(5) When a Minister or public authority requests a relevant planning authority to reserve land for a public purpose in a planning proposal and the land would be required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991, the relevant planning authority must:</p> <p>(a) reserve the land in accordance with the request, and</p> <p>(b) include the land in a zone appropriate to its intended future use or a zone advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), and</p> <p>(c) identify the relevant acquiring authority for the land.</p> <p>(6) When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal relating to the use of any land reserved for a public purpose before that land is acquired, the relevant planning authority must:</p> <p>(a) include the requested provisions, or</p> <p>(b) take such other action as advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-</p>	<p>The Planning Proposal will not create, alter or reduce any existing zonings. No public/recreational lands are proposed to be rezoned as part of the Planning Proposal.</p> <p>Whilst there is no change to any zoning, the planning proposal will reduce an existing reservation of land for a public purpose (by a very small area with no impact at all on the management of the remainder of the public reserve).</p> <p>None of the lands identified in the Planning Proposal have been acquired under the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> nor have been identified by a public authority or the Minister as being required for future public purposes.</p> <p>The planning proposal is not considered to be inconsistent with this S9.1 Direction.</p> <p>Note: The reclassification of the land to operational and potential sale to the neighbour through a boundary adjustment to fix a building encroachment will only result in the loss of 93m² of Council owned land (which is not used by the public) – impact is negligible.</p> <p>Practice Note 16-001 provides guidance on the</p>

	<p>General) with respect to the use of the land before it is acquired.</p> <p>(7) When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal to rezone and/or remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the relevant planning authority must rezone and/or remove the relevant reservation in accordance with the request.</p>	<p>process for reclassifying public land. Attachment 1 of this Practice Note contains a checklist for the matters needing to be addressed by the Planning Proposal. These considerations are addressed in Appendix 1.</p>
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Section C Environmental, Social & Economic Impact

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?

The proposal is unlikely to adversely affect critical habitat or threatened species, or ecological communities, or their habitats. The site is clear of vegetation except for 1 tree that is to be retained.

Accordingly, an "Assessment of Significance" in accordance with Section 5A of the *Environmental Planning and Assessment Act 1979* is not required. No identified issues relation to the Biodiversity Conservation Act provisions.

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

The proposed planning proposal on the land is unlikely to result in adverse environmental effects.

There are no identified natural hazards, such as flooding, land slip, bushfire hazard and the like within the subject land.

How has the planning proposal adequately addressed any social and economic impacts?

The planning proposal is considered unlikely to result in adverse social or economic impacts in the locality (any impacts are negligible).

There are no known items or places of European or Aboriginal cultural heritage located on the subject land that would be impacted upon by the Planning Proposal.



The proposal will facilitate the future correction of a building encroachment onto the subject land via a boundary adjustment.

Section D – State and Commonwealth Interests

Is there adequate public infrastructure for the planning proposal?

The proposal will not require any upgrading to existing services.

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

Council has already been consulted regarding this proposal to reclassify the subject land to Operational under the Cowra LEP 2012. The Planning Proposal is considered consistent with the requirements of Council and the relevant planning legislation.

It is proposed that any issues raised by State and Commonwealth public authorities will be addressed during the LEP's public exhibition phase.

Due to the relative small scale of the proposal, there are no identified issues that would be affected any State or Commonwealth public authority.

If any issues are raised at the Gateway stage, they can be resolved at this stage.

4. COMMUNITY CONSULTATION

Pursuant to Section 3.34 of the *Environmental Planning and Assessment Act 1979*, the Director General of Planning must approve the form of the Planning Proposal under the Gateway process before community consultation is undertaken.

The Planning Proposal is considered to be Low Impact and would be publicly exhibited for a period and in a manner set out in the Gateway determination (it is understood that such a Planning Proposal will be publicly exhibited for a period of 28 days.)

The Planning Proposal is considered to be only of minor interest to the wider public due to the relatively localised nature of potential impacts. It is believed that the potential impacts would be negligible.

It is anticipated that the LEP will be finalised within a maximum period of six (6) months.

5. CONCLUSIONS

The objective of this Planning Proposal is to amend the *Cowra Local Environmental Plan 2012* by the reclassification of the subject land to Operational (and associated change to the zoning and MLS to R1 and 700m²) to achieve the aims of the proposal (to ultimately correct a building encroachment).

The planning proposal has been assessed against the provisions of the relevant environmental planning instruments and Section 9.1 Directions by the Minister and is considered appropriate and is recommended that it should be supported.

APPENDIX 1 – PN 16-001

Item	Consideration	Description / Response
1	Property Description	Part Lot 1 DP 1001729
2	Ownership	Cowra Shire Council.
3	Current Land-use	The land contains a number of encroaching structures (brick spa area, metal fence, low retaining wall and an in-ground pool) associated with the adjoining residential property known as 7 Yarrawonga Crescent.
4	Relevant Site History	<ul style="list-style-type: none"> - The dwelling at 7 Yarrawonga Crescent was approved by Council under BA 117/1980. - The swimming pool was approved by Council under BA 51/1981. The site plan submitted with the application did not identify an encroachment of the structure onto public property. - A recreation area (including spa) was approved by Council under BA 64/1987 (plans attached). The site plan submitted with the application did not identify an encroachment of the structure onto public property. There is evidence on the file to suggest that this application was lodged in retrospect to validate physical works completed without Council approval. - A pergola was approved by Council under BA 104/1987. The site plan submitted with the application did not identify an encroachment of the structure onto public property. - The issue of the encroachment was revealed by a survey commissioned by a neighbouring property owner (Ross Fittler). Mr Fittler raised with issue with the (then) Department of Conservation & Land Management via written letter dated 31 Aug 1993. - The (then) Department of Conservation & Land Management wrote to Cowra Council on 19 October 1993 enclosing a copy of Mr Fittler's letter for Council's attention. Council was asked to provide the Department with advice relating to the sequence of events in regard to building applications that could have led to the encroachment. - Cowra Council provided a written response to the (then) Department of Conservation & Land Management on 26 October 1993. Council's letter



		<p>confirms that BA 64/1987 related to works completed without Council approval, and that the issue of the encroaching structures were not shown on the submitted site plan.</p> <ul style="list-style-type: none"> - The file does not include any subsequent correspondence from this period in the early 1990's to show that the issue of the encroachment was followed up by Cowra Council or the (then) Department of Conservation & Land Management. - A Section 149D Building Application was subsequently lodged with Council in 2002 accompanied by a site survey from CPC Land Development Consultants. The site survey shows the full extent of the encroachments. - There is no subsequent file history.
5	Current Classification	Lot 1 DP 1001729 is currently classified as community land.
6	Proposed Classification	93.6m ² of Lot 1 DP 1001729 is proposed to be reclassified to operational land. This land is clearly shown in the Planning Proposal.
7	Is the land a Public Reserve?	Yes. See attached title search.
8	What are the strategic merits?	The reclassification is not required for strategic planning reasons.
9	What are the site specific merits?	The reclassification of the relevant part of the land will enable the Council and affected landowner to resolve the issue of the encroaching structures on the land.
10	Consistency with local strategy	There are no relevant matters to consider in the Council's local strategy.
11	Summary of interests in land.	<p>Cowra Council is the owner of the land in fee simple.</p> <p>Cowra Council does not hold a mortgage on the land.</p> <p>The land is not managed by any trusts.</p> <p>The land has a public reserve status.</p> <p>Title search is included in Appendix 3 of this Planning Proposal.</p>
12	Will any interests be discharged? Why?	The land will be discharged from its status as a Public Reserve. The discharge of the reserve status is only proposed for the specific part of the land that is described and mapped in the Planning Proposal. This will require approval of the Governor and is being sought by Council as part of the reclassification



		process. Justification for the discharge is included in the Planning Proposal.
13	What are the effects of reclassification?	The reclassification will enable Council to dispose of the land by sale to the owners of Yarrawonga Crescent. The sale of the land has been identified by Council as the most appropriate way to resolve the issue of encroaching structures on the land.
14	Current or proposed lease or agreements?	No. The land is not currently under lease or licence.
15	Is a rezoning proposed?	No. The land is currently zoned RE1 Public Recreation.
16	How will Council benefit financially?	A financial benefit would result should the Council resolve to sell the land to the owners of the land at 7 Yarrawonga Crescent.
17	How will funds from any future sale be used?	Funds from any future sale would be directed towards the administrative and maintenance costs associated with the management of public lands in Cowra LGA.
18.	Does the reclassification relate to a part lot?	Yes. 93.6m ² of Lot 1 DP 1001729 is proposed to be reclassified to operational land. This land is clearly shown in the Planning Proposal.
19.	Government agency comments	Consultation will be completed as part of exhibition of Planning Proposal.

Attachment 2 – Public Hearing Presentation



PLANNING PROPOSAL
PP_2020_COWRA_002_00

PUBLIC HEARING

7 YARRAWONGA CRESCENT

- » RECLASSIFICATION OF LAND FROM COMMUNITY TO OPERATIONAL STATUS
- » REMOVE PUBLIC RESERVE STATUS
- » REZONE LAND FROM RE1 PUBLIC RECREATION TO R1 GENERAL RESIDENTIAL
- » IMPOSE A MINIMUM LOT SIZE OF 700M2 ON PART LOT 1 DP 1001729



1.0

Introductions

» Zoe Bagnall – Associate – Clark McNamara Lawyers

Independent Chair Person for today's Public Hearing

» Kate Alberry - Director Environmental Services – Cowra Shire Council

Project Manager

» Dean Steward – Land-use Planner - Cowra Shire Council

Project Officer



2.0

Today's Proceedings

» Purpose of today.

Zoe Bagnall

» Consultation Requirements

Zoe Bagnall

» Description of land, Site History and Overview of Proposal

Dean Steward

» Dealing with public land

Dean Steward

» Open Forum

Questions and answers

» Closing Address

Zoe Bagnall



3.0

Purpose of Today

Today's public hearing relates to a Planning Proposal that has been lodged with Council by Anthony Daintith Town Planning on behalf of their clients A & R Tarrant.

What is a Planning Proposal? This is a study that seeks to explain and justify a proposed amendment to the Cowra Local Environmental Plan 2012.

What is being proposed? The Planning Proposal has been lodged with Cowra Shire Council with the aim of resolving an issue related to the encroachment of privately owned structures (at 7 Yarrawonga Crescent) onto publicly owned land. See maps on next slide.

What is a public hearing required? An assessment of the Planning Proposal triggers a range of public consultation requirements. Because this particular proposal involves public land, there is a legislative requirement for a public hearing into the matter to be carried out.



4.0

Consultation Requirements

Clause 4 of Schedule 1 of Environmental Planning & Assessment Act 1979 requires Council to consult with the community in relation to a Planning Proposal. Interested persons can view the consultation material at Council's Customer Service Centre or on the Council's website.

Section 29 of the Local Government Act 1993 requires Council to hold a public hearing in respect of any Planning Proposal that reclassifies community land as operational land. Today's hearing satisfies this requirement.



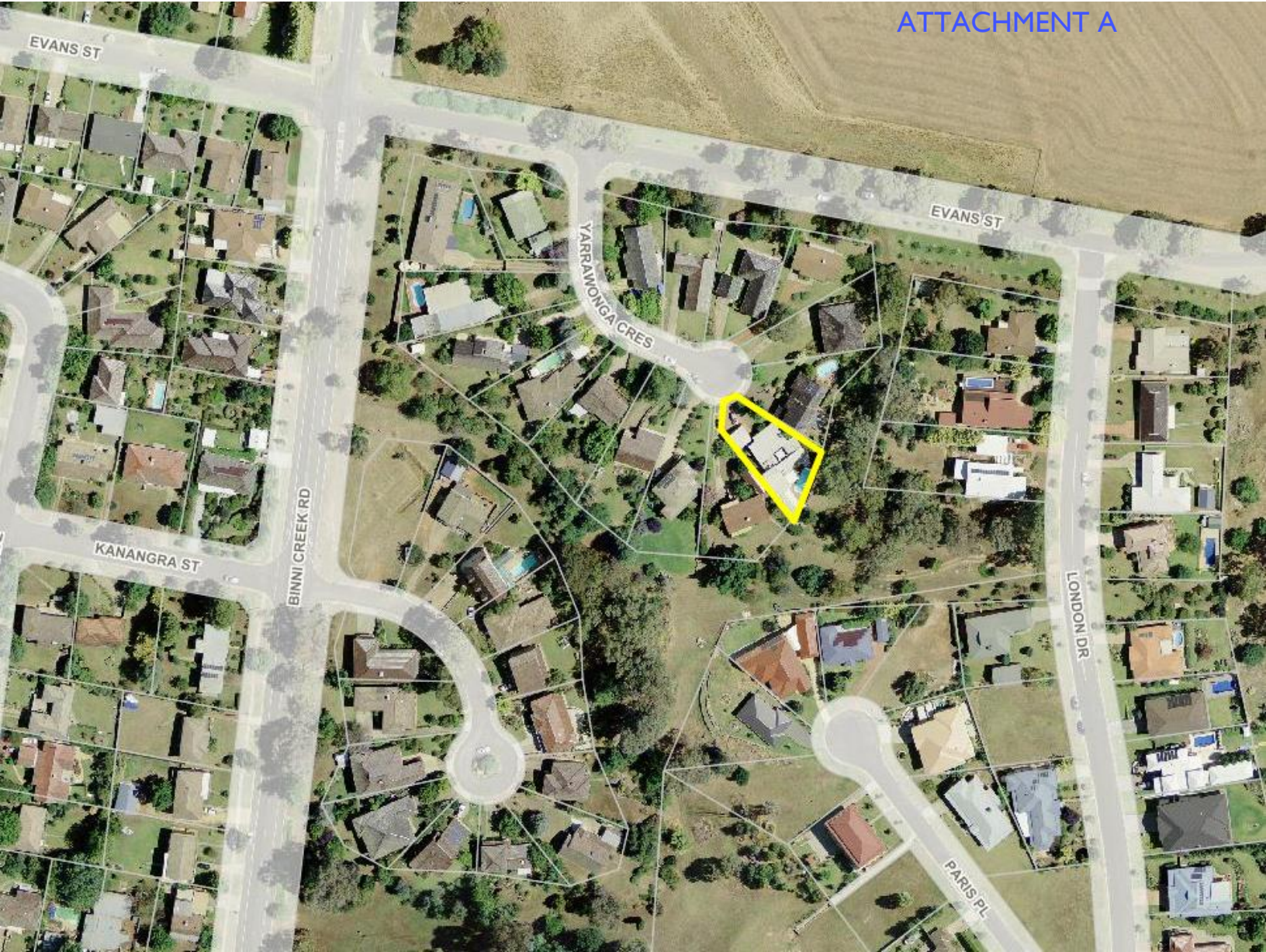
5.0

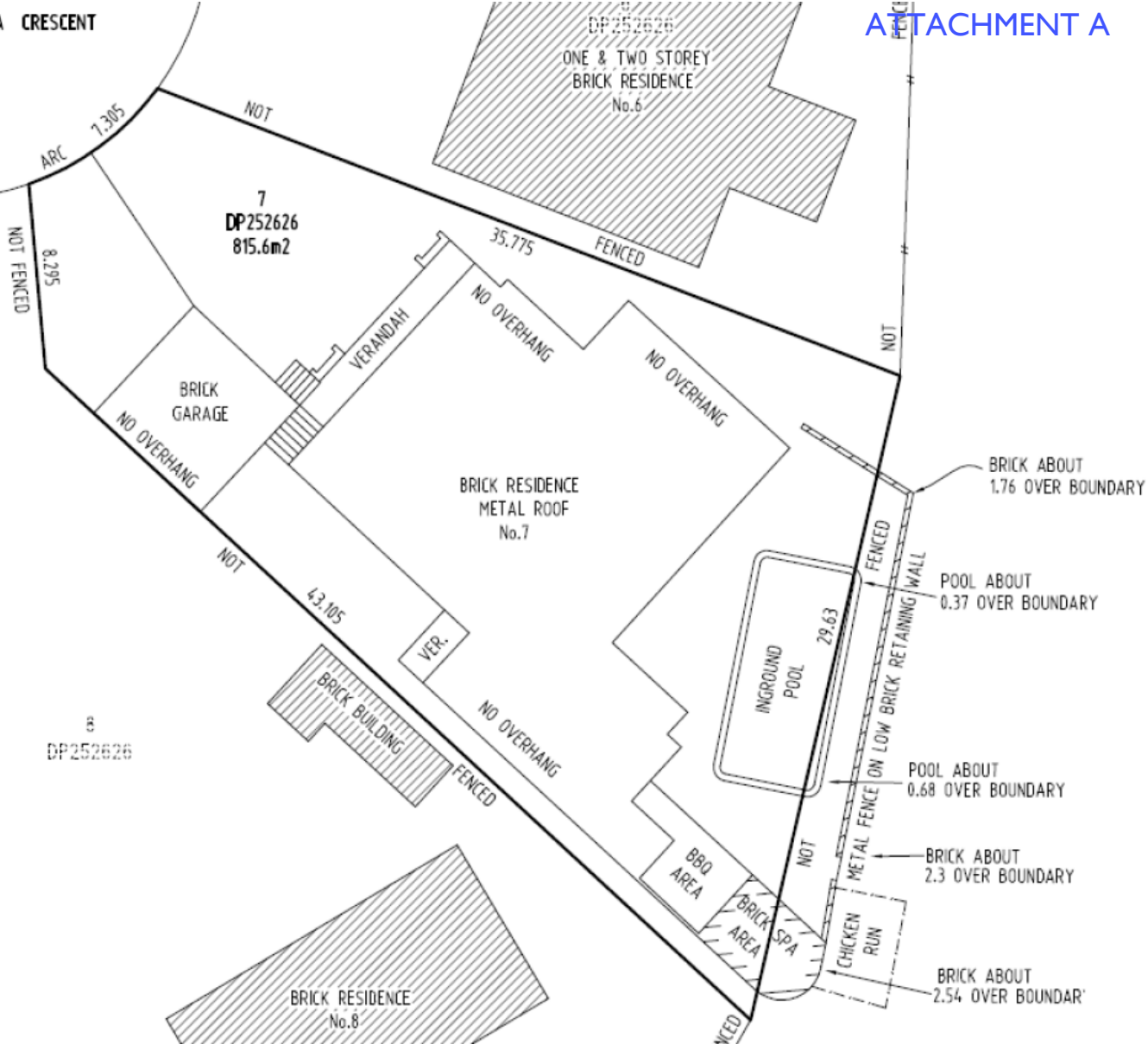
Description of land

The encroaching structures belong to the property at 7 Yarrawonga Crescent.

The structures encroach onto land that is a public reserve that is owned by Cowra Shire Council.

Maps showing the two sites are included on the next slides.





DP10
2.8
PUBLIC



6.0 Site History

Swimming pool approved in 1981. The encroachment onto public land was not shown on site plan submitted with application and subsequently approved by Council.

Recreation area (including spa) was approved in 1987. Approval was issued to validate works completed without consent. Again, the encroachment onto public land was not shown on site plan.

Encroachment issue identified by a survey commissioned by a neighbouring property owner in 1993. Issue raised with Crown Lands (owner at the time) and Council. No action taken at this time.

Encroachment issue again identified by site survey in 2002. Full extent of encroachments shown on survey. No subsequent file history.

Current owners, A & R Tarrant, were not responsible for the construction of the encroaching structures.



7.0

The Proposal

The proposal by the owners of 7 Yarrawonga Crescent is to:

- Properly delineate the extent of the encroaching structures (i.e. the affected land).
- Seek to have the public reserve status of the affected land removed.
- Seek to have the classification of the affected land under the LG Act changed from community to operational.
- Seek to have the land rezoned from public recreation to general residential.
- Enter into negotiations with Council to purchase the land with the aim of resolving the encroachment issue.



8.0

Dealing with public land

Public land is managed under the Local Government Act 1993 based on its classification. All public land must either be classified as either community land or operational land.

This proposal deals with land that has a 'community classification'. This land is available for use by the general public (e.g. parks, sportsgrounds) and cannot be sold, exchanged or otherwise disposed of by Council.

Before Council can deal with the owners of 7 Yarrawonga Crescent in relation to this public land, the affected part must be changed to 'operational classification'. There are no special restrictions on Council powers to manage, develop, dispose or change the nature and use of 'operational land'.

The proposal is to use Cowra Local Environmental Plan 2012 to change the classification of the affected land, and as part of this same process, have the land rezoned for residential purposes.



9.0 Open Forum

The public hearing welcomes any questions.



10.0

Closing Address

Report on Public Hearing

Zoe will prepare a report on the findings of this public hearing. This report will form part of a future report to Council on the findings of public consultation in relation to the Planning Proposal.

Written Submissions

Any person may make a written submission in relation to the Planning Proposals currently on exhibition until 28 August 2020.

Finalisation of LEP Amendment

Subject to the findings of public consultation, it is anticipated that Council will proceed to finalise the amendment to Cowra LEP 2012 within the next 4-6 months. For further details, please speak with Dean Steward

Attachment 3 – Gateway Determination



Gateway Determination

Planning proposal (Department Ref: PP_2020_COWRA_002_00): to reclassify from community to operational land, remove public reserve status, rezone to R1 General Residential and impose a minimum lot size of 700m² on part Lot 1 DP1001729, Binni Creek Road, Cowra

I, the Director, Western Region at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Cowra Local Environmental Plan (LEP) 2012 to reclassify from community to operational, remove public reserve status, rezone to R1 General Residential and impose a minimum lot size of 700m² to part Lot 1 DP1001729, Binni Creek Road, Cowra 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.

Dated 3rd day of June 2020.

Damien Pfeiffer
Director, Western Region
Local and Regional Planning Department
of Planning, Industry and Environment

**Delegate of the Minister for Planning and
Public Spaces**

Attachment 4 – Public Hearing Minutes

**MINUTES OF THE PUBLIC HEARING IN RELATION TO PLANNING PROPOSAL FOR
PUBLIC LAND RECLASSIFICATIONS HELD AT COWRA COUNCIL ADMINISTRATION
CENTRE ON TUESDAY 25 AUGUST 2020.**

Chair Person: Zoe Bagnall of Clark McNamara Lawyers

Council staff: Ms Kate Alberry and Mr. Dean Steward

Members of the Public: No attendances

Meeting commenced at 10.30am.

No members of the public attended meeting.

There being no further business, the meeting concluded at 11.00am.



Zoe Bagnall

Independent Chairperson

25 August 2020