



**BELLINGEN SHIRE COUNCIL**  
**PLANNING PROPOSAL 15**  
**Version 3 – September 2019**  
**Amendment No. 12 – Bellinghen Local Environmental**  
**Plan 2010**

## THE PLANNING PROPOSAL

Pursuant to Section 3.3 of the *Environmental Planning and Assessment Act 1979* (the Act), a planning proposal must be prepared before a draft Local Environmental Plan (LEP) amendment is made. The proposal must explain the intended effect of the draft LEP amendment and provide justification for the amendment.

The proposal must address those matters identified by Section 3.3(2) of the Act, which are detailed below.

- (a) a statement of the objectives or intended outcomes of the proposed instrument,*
- (b) an explanation of the provisions that are to be included in the proposed instrument,*
- (c) the justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will give effect to the local strategic planning statement of the council of the area and will comply with relevant directions under section 9.1),*
- (d) if maps are to be adopted by the proposed instrument, such as maps for proposed land use zones; heritage areas; flood prone land—a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument,*
- (e) details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.*

### **History**

Council resolved to support the proposal at its meeting of the 12 December 2018. The relevant resolution is reprinted below.

**Item: 13.4**

**Subject: PLANNING PROPOSAL 15 - RECLASSIFY LAND AT LOOKOUT RD FROM COMMUNITY LAND TO OPERATIONAL LAND**

**File/Index: 2018/AF-00133**

**Presented by: Daniel Bennett, Senior Strategic Planner**

**001/18**

**Resolved (Cr Klipin/Cr Harrison)**

That Council resolves to prepare a Planning Proposal to reclassify land at "Lookout Road", Bellingin, from community land to operational land.

**UNANIMOUS**

Council is pursuing this planning proposal in order to be able to provide legal access to an adjoining private land parcel. Council had previously indicated to the present owner Planning Proposal 15 V3 (September 2019) – Reclassify land at Lookout Rd, Bellingin, from Community to Operational

that legal access was available to this lot from the relevant land parcel, however this was not the case.

Specifically, because the relevant land parcel is classified as "community land" pursuant to the Local Government Act 1993 (the LG Act), Council is prevented from granting the necessary legal permission to use this land for access by virtue of the provisions of Section 46 of the LG Act.

It is a pre-requisite of Council's Development Control Plan 2017 that land must have access to a dedicated Council road in order for a new dwelling to be approved on that land. In the circumstances, it is proposed that upon reclassification Council will declare the relevant section of land to be a "public road" pursuant to Section 10 of the Roads Act 1993, which will then permit the adjoining land owner to use this land for vehicular access to their property.

The parcel of land is currently zoned E3 (Environmental Management) under the provisions of Bellingen Local Environmental Plan 2010 (BLEP 2010).

Planning Proposal 15 has been publicly exhibited in accordance with the requirements of the Gateway Determination issued by the NSW Department of Planning & Environment. In response to issues raised during the public exhibition, Planning Proposal 15 has been amended to reduce the area of land proposed to be reclassified as "Operational" land.

Councils' resolution in respect of this matter, made at its meeting of 24 July 2019, is included below.

**Item: 13.7**

**Subject: PROPOSED AMENDMENT AND ADOPTION OF PLANNING PROPOSAL 15 - RECLASSIFY LAND AT LOOKOUT ROAD FROM COMMUNITY TO OPERATIONAL**

**File/Index: Planning Proposal 15**

**Presented by: Daniel Bennett, Senior Strategic Planner**

**002/19**

**Resolved (Cr Fenton/Cr Klipin)**

That Council:

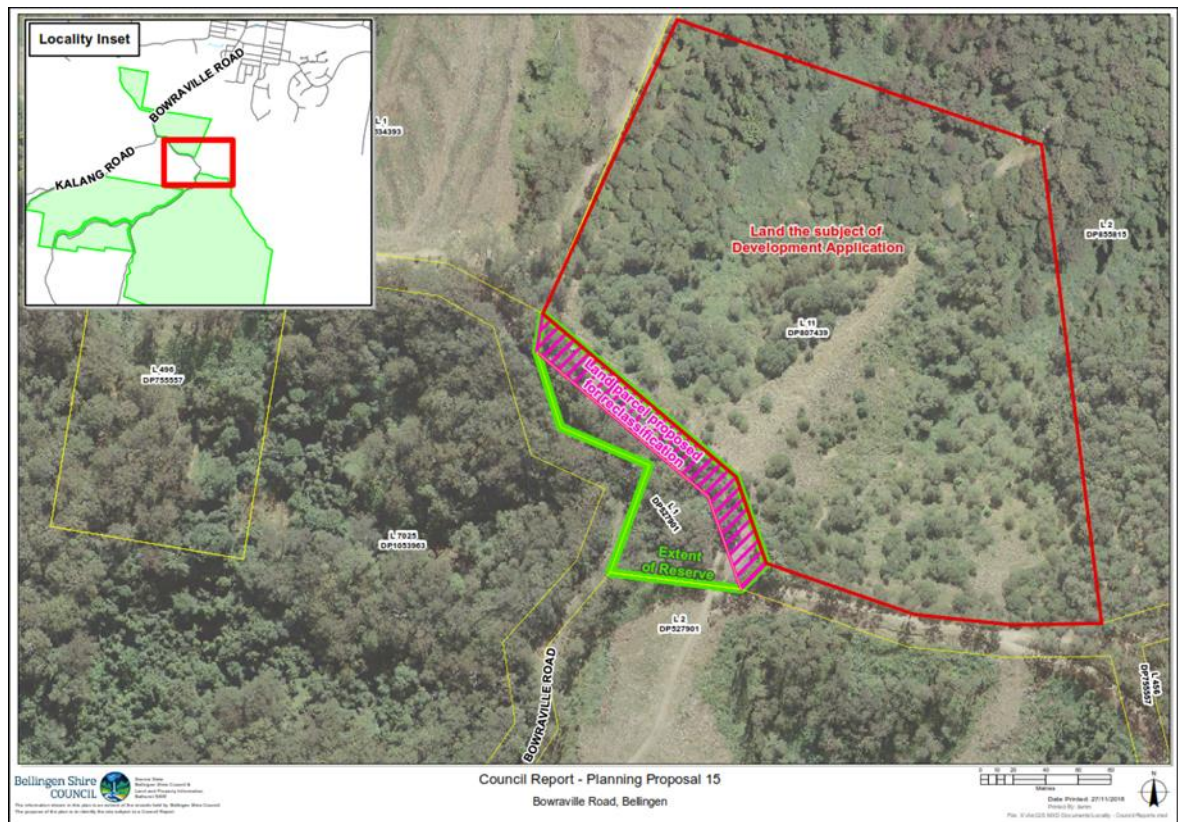
1. Resolves to amend Planning Proposal 15 to reduce the area of land proposed to be reclassified from community land to operational land.
2. Resolves to adopt the amended Planning Proposal 15, as Amendment Number 12 to the Bellingen Local Environmental Plan 2010.
3. Forwards the amended Planning Proposal 15 to the New South Wales Department of Planning, Industry and Environment, and requests them to proceed with the remaining stages of Amendment Number 12 to the Bellingen Local Environmental Plan 2010.

**UNANIMOUS**

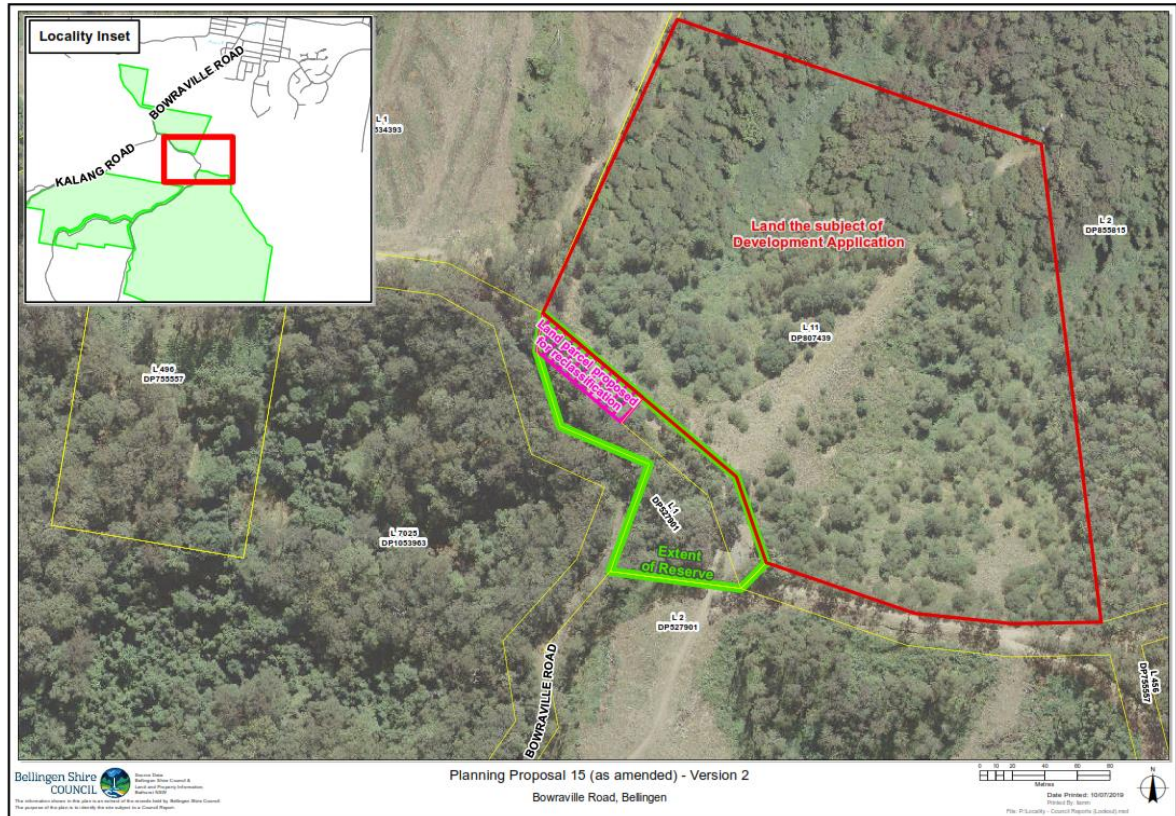
Planning Proposal 15 V3 (September 2019) – Reclassify land at Lookout Rd, Bellingen, from Community to Operational

The issues raised during the public exhibition are documented in the report to Council of 24 July 2019, which is included as an Attachment 1 to this planning proposal.

The area that was originally proposed to be reclassified is shown on the following map.



The area that is proposed to be reclassified, having regard to the outcomes of the public exhibition undertaken by Council is shown in the following map.



### **Section 3.3(2) (a) - A statement of the objectives or intended outcomes of the proposed instrument**

The objectives of the proposed LEP amendment are as follows:

1. To reclassify part of a public reserve (formerly known as Reserve R87120) adjoining Lot 1 DP 527901 & Bowraville Road, Bellingin, from "Community land" to "Operational Land".

### **Section 3.3(2)(b) - an explanation of the provisions that are to be included in the proposed instrument**

The provisions of the proposed LEP amendment will include:

1. Amend Part 2 of Schedule 4 of Bellingin Local Environmental Plan 2010 (*Land classified, or reclassified, as operational land—interests changed*) to include part of a public reserve (formerly known as Reserve R87120) adjoining Lot 1 DP 527901 & Bowraville Road, Bellingin.

It is noted that the relevant part of the Reserve is not capable of separate delineation with reference to a Lot & DP. To assist the understanding of the planning proposal, it is necessary to refer to the maps presented above, and the maps that have been prepared conforming to the Department of Planning & Environment publication "*Standard Technical Requirements for Spatial Datasets and maps*", included as Attachment 2 to this planning proposal.



An Information Checklist & Project Timeline Checklist are included as Attachments 3 & 4, in accordance with the Department of Planning & Environment publication "*A Guide to preparing planning proposals*".

**Section 3.3(2)(c) - the justification for those objectives, outcomes and provisions and the process for their implementation.**

**A. Need for Planning proposal**

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

The planning proposal is not the direct result of any strategic study or report.

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

The only way in which the relevant land parcel can be reclassified as operational land is through the process of amending the BLEP 2010.

**B. Relationship to strategic planning framework**

Is the proposal consistent with the objectives and actions contained within the North Coast Regional Plan?

North Coast Regional Plan – Statement of applicability to Planning Proposal 15			
Goal	Direction	Relevant (Yes/No)	Comment
Goal 1 – The most stunning environment in NSW			
	Direction 1 – Deliver environmentally sustainable growth	Yes	Complies. Although the land is zoned E3 (Environmental Management) the land is heavily modified by virtue of its previous use for vehicular access and the planning proposal will not have any environmentally undesirable outcomes.
	Direction 2 – Enhance biodiversity, coastal and aquatic habitats, and water catchments	Yes	Although part of the land is affected by the NSW “Biodiversity Values Map”, the section that is proposed for reclassification is already utilised for vehicular access and no additional clearing would be required.
	Direction 3 – Manage natural hazards and climate change	Yes	Complies
Goal 2 – A thriving, interconnected economy	Direction 4 – Promote renewable energy opportunities	No	
	Direction 5 – Strengthen communities of interest and	No	

Planning Proposal 15 V3 (September 2019) – Reclassify land at Lookout Rd, Bellingen, from Community to Operational

North Coast Regional Plan – Statement of applicability to Planning Proposal 15			
Goal	Direction	Relevant (Yes/No)	Comment
	cross regional relationships		
	Direction 6 – Develop successful centres of employment	No	
	Direction 7 – Coordinate the growth of regional cities	No	
	Direction 8 – Promote the growth of tourism	No	
	Direction 9 – Strengthen regionally significant transport corridors	No	
	Direction 10 – Facilitate air, rail and public transport infrastructure	No	
	Direction 11 – Protect and enhance productive agricultural lands	Yes	The land is not considered to include productive agricultural land and it is not zoned for agricultural purposes.
	Direction 12 – Grow agribusiness across the region	No	
	Direction 13 – Sustainably manage natural resources	Yes	The proposed reclassification will allow for long term legal access to the relevant land parcel without having to travel through adjoining Forestry Corporation Estate. This will ensure that future forestry operations remain unburdened by any need to provide vehicular access to the adjoining residential use.
Goal 3 – Vibrant and engaged communities			
	Direction 14 – Provide great places to live and work	No	
	Direction 15 – Develop healthy, safe, socially engaged and well connected communities	No	
	Direction 16 – Collaborate and partner with Aboriginal communities	Yes	Council has sought input from Bowraville and Coffs Harbour Land Councils with respect to the aboriginal cultural heritage of the site and has reduced the original area proposed for reclassification to address their concerns.
	Direction 17 – Increase the	No	



North Coast Regional Plan – Statement of applicability to Planning Proposal 15			
Goal	Direction	Relevant (Yes/No)	Comment
	economic self-determination of Aboriginal communities		
	Direction 18 – Respect and protect the North Coast’s Aboriginal heritage	Yes	Council was made aware of the sites significance to aboriginal stakeholders during the public exhibition of the planning proposal. The area proposed for reclassification has been significantly reduced, to ensure that the aboriginal cultural heritage significance of the lookout area is protected.
	Direction 19 – Protect historic heritage	Yes	No identified heritage items on the subject site.
	Direction 20 – Maintain the regions distinctive built character	No	
	Direction 21 – Coordinate local infrastructure delivery	No	
Goal 4 – Great housing choices and lifestyle options		Yes	The planning proposal will allow for the ultimate approval of a dwelling on the adjoining land parcel that is relatively close to town.
	Direction 22 – Deliver greater housing supply		
	Direction 23 – Increase housing diversity and choice		
	Direction 24 – Deliver well planned rural residential housing areas		
	Direction 25 – Deliver more opportunities for affordable housing		

Is the proposal consistent with Council’s strategic plans?

**Growth Management Strategy:**

The subject land was not specifically identified in the existing Bellingen Shire Growth Management Strategy 2007. Notwithstanding this, it is within an environmental protection zone and the GMS included the following commentary regarding the application of environmental protection zones.

***“Environmental Conservation, Management and Living***

*This zone would cover those areas where environmental features of the landscape should be conserved and/or managed but provide a limited range of development that does not impact upon those features. Such a zone would include 7(s) Special Emphasis.”*

The relevant land parcel was formerly zoned 7(s) under the provisions of BLEP 2003 and this was most likely on the basis of the lands slope and visibility as a ridgeline above Bellingin. The proposed reclassification of the land is not inconsistent with the Growth Management Strategy.

Is the proposal consistent with applicable state environmental planning policies?

<b>State Environmental Planning Policies – Statement of applicability to Planning Proposal 15</b>		
<b>SEPP</b>	<b>Relevant (Yes/No)</b>	<b>Comment</b>
1 – Development Standards	No	
21 - Caravan Parks	No	
30 – Intensive Agriculture	No	
33 – Hazardous & Offensive Development	No	
36 – Manufactured Home Estates	No	
44 – Koala Habitat Protection	No	The relevant section of land is less than 1ha
50 – Canal Estate Development	No	
55 – Remediation of Land	No	The land is not proposed to be rezoned.
62 – Sustainable Aquaculture	No	The land is not within the Priority Oyster Aquaculture Area.
64 – Advertising & Signage	No	
65 – Design Quality of Residential Apartment Development	No	
70 – Affordable Housing (Revised Schemes)	No	
Affordable Rental Housing (2009)	No	
Building Sustainability Index: BASIX (2004)	No	
Coastal Management (2018)	No	The land is not within the coastal zone for the purposes of this SEPP.
Concurrences (2018)	No	
Educational Establishments & Child Care Facilities (2017)	No	
Exempt & Complying Development Codes (2008)	No	
Housing for Seniors or People with a Disability (2004)	No	
Infrastructure (2007)	No	
Integration & Repeals (2016)	No	
Mining, Petroleum Production & Extractive Industries (2007)	No	
Miscellaneous Consent Provisions (2007)	No	
Rural Lands (2008)	No	
State & Regional Development (2011)	No	
State Significant Precincts (2005)	No	
Vegetation in Non-Rural Areas (2017)	Yes	The planning proposal does not propose the clearing of any vegetation regulated by the SEPP.

Is the proposal consistent with applicable Section 117 directions?

Section 117 Directions – Statement of applicability to Planning Proposal 15			
117 Category	117 Direction	Relevant (Yes/No)	Comment
Employment & Resources			
	1.1 – Business & Industrial Zones	No	
	1.2 – Rural Zones	No	
	1.3 – Mining, petroleum & Extractive Industries	No	
	1.4 – Oyster Aquaculture	No	
	1.5 – Rural Lands	No	
Environment & Heritage			
	2.1 – Environment Protection Zones	Yes	Complies. The planning proposal will not reduce the environmental protection standards that apply to the land and will not modify any development standards that apply to the land.
	2.2 – Coastal Protection	No	
	2.3 – Heritage Conservation	Yes	Complies. No changes to existing heritage protections are proposed.
	2.4 – Recreation Vehicle Areas	Yes	Complies
Housing, Infrastructure & Urban Development			
	3.1 – Residential Zones	No	
	3.2 – Caravan Parks & Manufactured Home Estates	Yes	Complies
	3.3 – Home Occupations	Yes	Complies. No change proposed.
	3.4 – Integrating Land Use & Transport	No	
	3.5 – Development Near Licensed Aerodromes	No	
	3.6 – Shooting Ranges	No	
Hazard & Risk			
	4.1 – Acid Sulfate Soils	No	
	4.2 – Mine Subsidence & Unstable Land	No	
	4.3 – Flood Prone Land	No	
	4.4 – Planning for Bushfire Protection	Yes	Complies. The planning proposal does not introduce controls that will place an inappropriate development in a hazardous area. The classification of part of the land as Operational Land to facilitate vehicular access on this section of land is likely to improve

Section 117 Directions – Statement of applicability to Planning Proposal 15			
117 Category	117 Direction	Relevant (Yes/No)	Comment
			the trafficability of the land, its accessibility for fire fighting vehicles, and its usefulness as a link to fire trail networks in the locality. Council has consulted with the Commissioner of the Rural Fire Service regarding this matter and the NSW RFS have advised that they have no specific recommendations in relation to bushfire protection.
Regional Planning			
	5.1 – Implementation of Regional Strategies	No	
	5.4 – Commercial & Retail Development along the Pacific Highway, North Coast	No	
	5.10 – Implementation of Regional Plans	Yes	Complies. See table documenting compliance in earlier section of this report.
Local Plan Making			
	6.1 – Approval & referral Requirements	Yes	Complies
	6.2 – Reserving Land for Public Purposes	Yes	Complies
	6.3 – Site Specific Provisions	No	

### C. Environmental, social and 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 relevant land parcel is shown on the NSW Biodiversity Values Map. An extract of this is shown below.



Notwithstanding this, the planning proposal will not directly result in any development that is likely to impact upon threatened species, populations or ecological communities, or their habitats. It simply proposes to reclassify an existing parcel of land from “community” to “operational” land.

The relevant land parcel was historically created as a section of road reserve, continues to serve an access function in the locality and will ultimately be dedicated as a public road upon reclassification.

The lower section of the access track is shown in the following image. This portion of the track is the only part of the land proposed to be reclassified as operational land by the amended Planning Proposal 15 and will be utilised to obtain access to the adjoining private land parcel, through the gate which is visible to the right of the photo.



The upper section of the track that leads up to the lookout area is heavily eroded and is shown in the following image.





The amended Planning Proposal 15 will not impact upon this section of track which will remain as part of the existing public reserve.

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

There are no other likely environmental effects likely to accrue from the reclassification process.

Any subsequent proposal to utilise the land for vehicular access purposes will require an examination of the suitability of the access for its intended purpose, and consideration as to whether any additional drainage measures may be warranted to prevent erosion.

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

The planning proposal, as originally proposed and exhibited, elicited significant objection from the community and aboriginal stakeholders regarding the cultural heritage significance of the lookout area, and general community usage of this precinct. The Council report included as Attachment A comprehensively details submissions received by Council and how the concerns expressed in those submissions have been addressed.

It is considered that the amended version of Planning Proposal 15, that restricts the proposed area for reclassification as operational land, adequately addresses the concerns expressed regarding the original proposal and will ensure that the lookout area remains community land, within a public reserve, with no restriction on



accessing this area by any party, whilst also allowing for the necessary vehicular access to the adjoining private land parcel.

### **State and Commonwealth interests**

#### Is there adequate public infrastructure for the planning proposal?

The planning proposal will not necessarily create any significant burden upon Council resources to maintain the relevant section of land.

Council can, as part of any process of permitting legal access to be obtained for the land, require the beneficiary of that access to perform any necessary upgrade works as a condition of granting the relevant permission.

Should Council wish to allocate future budgets towards the upgrading or maintenance of the road then this will be made easier by virtue of the reclassification of the land as operational and its gazettal as a public road.

#### Views of State and Commonwealth authorities

Prior to the exhibition of Planning Proposal 15, Council consulted with the NSW Government Department of Industry in respect of the relevant section of land who have confirmed that the relevant land parcel;

- Was formerly a Crown road, which was closed by gazettal on 19 September 1971, and
- Was added to the adjoining Crown Reserve 87120 for Public Recreation by gazettal on 18 August 1971 & 4 November 1971,
- At that point in time, included a public picnic area that was established at the lookout in the road reserve,
- Was vested in Bellingen Shire Council as a public reserve by gazettal on 17 June 1977, at which point in time Crown Reserve 87120 was also revoked.

The NSW Government Department of Industry have further confirmed that *“access through the Council reserve is entirely a matter for Council in accordance with the provisions of the Local Government Act 1993.”* In this regard, it is not proposed to undertake any further consultation with the NSW Government Department of Industry.

Consultation occurred with the following state government agencies as part of the public exhibition of the planning proposal, and in accordance with the requirements of the Gateway Determination

- NSW Rural Fire Service (pursuant to Section 117 Direction 4.4)
- NSW Office of Environment & Heritage

Comments received from these agencies are discussed in the Council Report of 24 July 2019 which is included as Attachment A to this planning proposal. No significant issues are raised in these comments.

### **Section 3.3(2) (d) - if maps are to be adopted by the proposed instrument, such as maps for proposed land use zones; heritage areas; flood prone land—a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument,**

A copy of the Reclassification Map for the amended Planning Proposal 15, as required by the Department of Planning & Environment publication "*Standard Technical Requirements for Spatial Datasets and maps*", is included as Attachment 2 to this planning proposal

**Section 3.3(2) (e) - details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.**

Council was required by the Gateway determination issued by the NSW Department of Planning & Environment (DPE) to publicly exhibit Planning Proposal 15 for a minimum period of 28 days, and to consult with the following public authorities / organisations.

- Office of Environment & Heritage
- NSW Rural Fire Service
- Coffs Harbour & District Local Aboriginal Land Council.

In addition to the statutory requirements for public exhibition advised by the DPE, Council also resolved to undertake additional consultation involving the placement of relevant details on its engagement website, Create.

The initial public exhibition of Planning Proposal 15 took place between Thursday 28 March 2019 to Friday 26 April 2019. During this time, Council became aware of significant community concern regarding this matter, and numerous requests were made to provide the community with additional time to consider this matter. It was also observed that some of the supporting information explaining the planning proposal had not been available to view on the Create website.

In view of these factors, and given that Council had not yet received the necessary comments from government agencies or the Coffs Harbour & District Local Aboriginal Land Council, it was determined that Planning Proposal 15 would be formally re-exhibited. The re-exhibition occurred from Thursday 9 May 2019 to Friday 7 June 2019 and involved the following tasks, in full compliance with the necessary pre-requisites for public exhibition of Planning Proposal 15.

- Notification of adjoining owners.
- Placement of an advertisement in the Bellinger Courier Sun advising of the re-exhibition of Planning Proposal 15 on 8 May 2019.
- Re-notification of public authorities / organisations.
- Placement of Planning Proposal 15 on Create.
- Placement of hard copy exhibition material for Planning Proposal 15 at the Bellinger Shire Council Administrative Centre and Bellinger Library,

Following the completion of the re-exhibition, Council had received 83 written submissions, and 5 comments on the Create website from 4 different people, over the two periods of public exhibition. Of the 83 written submissions, 73 of those were in the form of 'pro-forma' submissions (of which there were 4 varieties), whereby the submitters name was added to a standard letter format. Of those 73 submissions, 19 of them had some additional comments provided that added to the standard letter format.

Council also received two submissions from government agencies (NSW Rural Fire Service and Office of Environment & Heritage), and submissions from the Coffs Harbour & District Local Aboriginal Land Council, and the Bowraville Local Aboriginal Land Council.

Upon completion of the advertised public exhibition phase of the planning proposal, Council was also required to make arrangements for the conduct of a public hearing into the proposed reclassification. This is because, for LEP amendments that propose to reclassify land from "community" to 'operational' land, Council is required to go beyond the normal consultation requirements for LEP amendments, pursuant to Section 29 of the NSW Local Government Act 1993.

In compliance with the various provisions governing the holding of a public hearing, the following points are noted.

- An advertisement was placed in the Bellingen Courier Sun on Wednesday 12 June 2019 advising that the date for the Public Hearing was Thursday 4 July from 5pm at the Bellingen Shire Council Chambers.
- Council engaged Mr Simon Waterworth, from GeoLINK, to preside at the public hearing and forwarded him all copies of submission received in response to the advertising of the planning proposal. Mr Waterworth complied with the pre-requisites stipulated in Section 47G of the LG Act 2003.
- The Public Hearing was held on Thursday 4 July from 5pm at the Bellingen Shire Council Chambers.
- A report was received from Mr Waterworth regarding the outcomes of the Public Hearing on 11 July 2019. The report received by Mr Waterworth in respect of the Public Hearing was placed on the "Create" website on 11 July 2019, under the Planning Proposal 15 Activity.

As previously documented, the outcomes of the public consultation undertaken as part of this planning proposal are discussed in the Council Report of 24 July 2019 which is included as Attachment 1 to this planning proposal.

### **Delegations to make plan**

Because the subject land is a public reserve, and it is considered necessary for the planning proposal to remove the public reserve status in order for it to become operational land, the approval of the Governor will be required in this instance.

Council is not permitted to assume delegated authority for the making of the LEP amendment in these circumstances and the Department will therefore be requested to make the LEP should it proceed to this point in time.

### **Additional Matters prescribed in Attachment 1 – Information Checklist for Proposals to Classify or Reclassify Public Land through an LEP**

LEP Practice Note PN-16-001- *Classification and reclassification of public land through a local environmental plan*, requires Councils to address the matters in Attachment 1 of the Practice Note in addition to normal matters prescribed for a planning proposal.

It is noted that *Section 5.5.4 – Classification and reclassification of public land*, of the Department of Planning & Environment publication '*A Guide to preparing local* Planning Proposal 15 V3 (September 2019) – Reclassify land at Lookout Rd, Bellingen, from Community to Operational

*environmental plans*” also prescribes matters that must be considered when the sole purpose of the proposed LEP is to reclassify public land, and these are reprinted below.

- a) Is the planning proposal the result of a strategic study or report?*
- b) Is the planning proposal consistent with the local council’s community plan, or other local strategic plan?*
- c) If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished should be provided.*
- d) The concurrence of the landowner, where the land is not owned by the planning proposal authority*

As previously indicated with respect to question a), the planning proposal is not the result of a strategic study or report and, pursuant to question d), the Council is the owner of the land. Questions b) and c) are replicated in the Attachment 1 checklist and will be addressed within that checklist.

## **INFORMATION CHECKLIST FOR PROPOSALS TO CLASSIFY OR RECLASSIFY PUBLIC LAND THROUGH AN LEP**

### **(Pursuant to Attachment 1 – LEP Practice Note PN-16-001)**

*The current and proposed classification of the land;*

**Comment:**

The land is currently classified as “community land”. The proposed classification is “operational land”.

*Whether the land is a ‘public reserve’ (defined in the LG Act);*

**Comment:**

The land is a “public reserve” within the meaning of the LG Act.

*The strategic and site specific merits of the reclassification and evidence to support this;*

**Comment:**

The concepts of strategic and site specific merit are set out in the Department of Planning & Environment publication “A guide to preparing planning proposals”. These provisions are reprinted below.

#### *Strategic merit*

*“Does the proposal have strategic merit? Will it:*

- give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; or*
- give effect to a relevant local strategic planning statement or strategy that has been endorsed by the Department or required as part of a regional or district plan or local strategic planning statement; or*

- *responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing strategic plans.”*

The proposals compliance with the North Coast Regional Plan has been documented earlier in this planning proposal request. The planning proposal is not contrary to the Council's existing Growth Management Strategy and is not the result of any change in circumstances or demographic trends.

*Site specific merit*

*“Does the proposal have site-specific merit, having regard to the following?*

- *the natural environment (including known significant environmental values, resources or hazards) and*
- *the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal and*
- *the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.”*

The amended area proposed for reclassification has long been used for the purposes of vehicular access and continues to serve an access function. It is unlikely that any continued use of the land for access purposes will necessitate any further clearing of vegetation, nor any significant work to meet normal Council access standards.

The public consultation that occurred as part of the exhibition of this planning proposal revealed that the original extent of the reclassification would have impinged upon an area with high significance to local aboriginal stakeholders. As a consequence of this, detailed discussions have been had with those stakeholders regarding ways in which the planning proposal could be amended to address their concerns and protect the aboriginal cultural heritage values of the locality. The amended planning proposal, which only involves a small piece of existing access track below the lookout area, has met with the approval of both Bowraville and Coffs Harbour Local Aboriginal Land Councils.

The end result of the reclassification will be to dedicate the land as a public road.

*Whether the planning proposal is the result of a strategic study or report;*

Comment:

As previously documented, the planning proposal is not the result of a strategic study or report.

*Whether the planning proposal is consistent with council's community plan or other local strategic plan;*

Comment:

The Shire of Bellingen 2027 Community Vision details a selection of priorities for Council and the Community.

These include;

Planning Proposal 15 V3 (September 2019) – Reclassify land at Lookout Rd, Bellingen, from Community to Operational

- Resilient economy
- Community wellbeing
- Places for people
- Our living environment
- Civic leadership

The amended planning proposal is not inconsistent with the Community Vision. It is accepted that the original planning proposal was perceived by many as being incompatible with the Community Vision, with fears being held that the cultural heritage values, and general recreation values of the lookout area, were potentially under threat from the reclassification process.

The amended planning proposal will not diminish public access to any land in the locality, will not adversely impact upon the natural environment and will facilitate not only public use of, and access to, the subject land, but also the development of an adjoining land parcel.

*A summary of council's interests in the land, including:*

- *How and when the land was first acquired (e.g. was it dedicated, donated, provided as part of a subdivision for public open space or other purpose, or a developer contribution)*
- *If council does not own the land, the land owner's consent;*
- *The nature of any trusts, dedications etc.;*

Comment:

Council has consulted with the NSW Government Department of Industry in respect of the relevant section of land who have confirmed that the relevant land parcel;

- Was formerly a Crown road, which was closed by gazettal on 19 September 1971, and
- Was added to the adjoining Crown Reserve 87120 for Public Recreation by gazettal on 18 August 1971 & 4 November 1971,
- At that point in time, included a public picnic area that was established at the lookout in the road reserve,
- Was vested in Bellingen Shire Council as a public reserve by gazettal on 17 June 1977, at which point in time Crown Reserve 87120 was also revoked.

At the time of vesting in Council as a public reserve, the following reservations and exceptions applied. It is not intended to vary those reservations or exceptions as part of this planning proposal.

do, by this notification, respectively vest the lands described in each of those Schedules in the council specified therein for an estate in fee simple subject to the following reservations and exceptions unto Her Majesty Elizabeth the Second, by the Grace of God Queen of Australia and Her Other Realms and Territories, Head of the Commonwealth, Her Heirs and Successors of—

- (i) all minerals which those lands contain with full power and authority for Her Majesty, Her Heirs and Successors and such person or persons, as shall from time to time be authorized by Her Majesty, Her Heirs or Successors to enter upon those lands and to search for mine dig and remove those minerals;
- (ii) all such parts and so much of those lands as may hereafter be required for public ways in over and through the same to be set out by His Excellency the Governor for the time being of the State of New South Wales or some person by him authorized in that respect with full power for Her Majesty, Her Heirs and Successors and for His Excellency the Governor as aforesaid by such person or persons as shall be by Her Majesty, Her Heirs or Successors or His Excellency the Governor as aforesaid authorized in that behalf to make and conduct all such public ways; and
- (iii) the right of full and free ingress, egress and regress into out of and upon those lands for the several purposes aforesaid or any of them.

*Whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why;*

Comment:

The proposed reclassification will discharge any existing obligations to manage the land as “community land” or as a “ Reserve for Public Recreation”.

The land has historically been used moreso for vehicular access functions, rather than “public recreation” purposes and the reclassification of the land to operational will ultimately allow for the land to be dedicated as a public road and better managed for access purposes.

*The effect of the reclassification (including, the loss of public open space, the land ceases to be a public reserve or particular interests will be discharged);*

Comment:

The land the subject of amended Planning Proposal 15 possesses no significant utility value for public recreation in its own right, owing to its historic and ongoing use to serve vehicular access functions in the locality. Notwithstanding this, any value that is currently served by the land parcel will continue to exist as the land will remain in Council ownership with no additional restrictions placed upon accessing or using the land parcel by the general public.

*Evidence of public reserve status or relevant interests, or lack thereof applying to the land (e.g. electronic title searches, notice in a Government Gazette, trust documents);*

Comment:

The NSW Government Department of Industry have provided Council with the relevant documents attesting to the public reserve status of the land, and it's vesting in the ownership of Council. These are included as Attachment 5 to this planning proposal..



*Current use(s) of the land, and whether uses are authorised or unauthorised;*

Comment:

The land is currently used for vehicular access purposes to the adjoining privately owned land parcel, and potentially by members of the public to access the lookout area at the top. Given the lands public ownership status, these uses are not necessarily considered to be unauthorised however the permanent approval of a dwelling on the adjoining land requires legal access by virtue of a dedicated public road, rather than a public reserve whose gazetted purpose is for public recreation.

*Current or proposed lease or agreements applying to the land, together with their duration, terms and controls;*

Comment:

There are no current or proposed leases or agreements applying to the land.

*Current or proposed business dealings (e.g. agreement for the sale or lease of the land, the basic details of any such agreement and if relevant, when council intends to realise its asset, either immediately after rezoning/reclassification or at a later time);*

Comment:

Council does not intend to enter into any business dealings regarding the reclassified land besides gazetted it as a "public road" in accordance with Section 10 of the Roads Act 1993.

*Any rezoning associated with the reclassification (if yes, need to demonstrate consistency with an endorsed Plan of Management or strategy);*

Comment:

It is not proposed to rezone the land.

*How council may or will benefit financially, and how these funds will be used;*

Comment:

Council will not benefit financially from the proposed reclassification. It is not proposed to sell the land.

*How council will ensure funds remain available to fund proposed open space sites or improvements referred to in justifying the reclassification, if relevant to the proposal;*

Comment:

No funds will be generated from the reclassification of the land and there is no need to identify other comparable areas of public land for purchase in order to justify the proposal.

*A Land Reclassification (part lots) Map, in accordance with any standard technical requirements for spatial datasets and maps, if land to be reclassified does not apply to the whole lot; and*

Comment:

The relevant map has been produced and is included as Attachment 2 to this planning proposal.

*Preliminary comments by a relevant government agency, including an agency that dedicated the land to council, if applicable.*

Comment:

The NSW Government Department of Industry have advised Council that “access through the Council reserve is entirely a matter for Council in accordance with the provisions of the Local Government Act 1993.”

In this regard, it is considered that there is no preliminary objection from the Crown to the proposed reclassification.

**PLANNING PROPOSAL 15**  
**VERSION 3 ATTACHMENTS INDEX**  
**September 2019**

- Attachment 1 Council Report 24 July 2019
- Attachment 2 Reclassification Map
- Attachment 3 Planning Proposal 15 – Information Checklist Template
- Attachment 4 Planning Proposal 15 – Project Timeline
- Attachment 5 Evidence of creation of public reserve and vesting in Council

**AGENDA**

**ORDINARY COUNCIL**  
**24/07/2019**



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**Item:** 13.7

**Subject:** **PROPOSED AMENDMENT AND ADOPTION OF PLANNING PROPOSAL 15 - RECLASSIFY LAND AT LOOKOUT ROAD FROM COMMUNITY TO OPERATIONAL**

**File/Index:** Planning Proposal 15

**Presented by:** Daniel Bennett, Senior Strategic Planner

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**ALIGNMENT WITH DELIVERY PROGRAM**

(CL) CIVIC LEADERSHIP

(CL.1) Council is an organisation that embraces business excellence.

(CL.1.4) Best practice, sustainability principles, accountability and good governance are incorporated in all we do..

(CL.1.4.2) Council's Planning and development assessment services provides advice and planning assistance and process Development Applications and other relevant applications.

**RECOMMENDATION**

That Council:

1. Resolves to amend Planning Proposal 15 to reduce the area of land proposed to be reclassified from community land to operational land.
2. Resolves to adopt the amended Planning Proposal 15, as Amendment Number 12 to the Bellingen Local Environmental Plan 2010.
3. Forwards the amended Planning Proposal 15 to the New South Wales Department of Planning, Industry and Environment, and requests them to proceed with the remaining stages of Amendment Number 12 to the Bellingen Local Environmental Plan 2010.

**EXECUTIVE SUMMARY**

Council, at its meeting of 12 December 2018, resolved to reclassify part of a public reserve at Lookout Rd, Bellingen, from community land to operational land, in order to facilitate legal access to an adjoining private land parcel. The initial public exhibition of this proposal elicited significant community interest regarding potential impacts on the aboriginal cultural heritage significance of the lookout area contained within the public reserve.

Following re-exhibition of the planning proposal, targeted meetings with aboriginal stakeholders and the conduct of a public hearing into this matter, it is considered that the proposal can be amended to both address community concerns, and achieve the access related objectives of the proposal. It is therefore recommended that Council adopts the amended planning proposal.

**REPORT DETAIL****Background**

Council resolved as follows at its meeting of 12 December 2018 with respect to this matter.

**Item: 13.4**

**Subject: PLANNING PROPOSAL 15 - RECLASSIFY LAND AT LOOKOUT RD FROM COMMUNITY LAND TO OPERATIONAL LAND**

**File/Index: 2018/AF-00133**

**Presented by: Daniel Bennett, Senior Strategic Planner**

**001/18**

**Resolved (Cr Klipin/Cr Harrison)**

That Council resolves to prepare a Planning Proposal to reclassify land at "Lookout Road", Bellingen, from community land to operational land.

UNANIMOUS

Planning Proposal 15 aims to reclassify a parcel of public reserve at Lookout Rd, Bellingen, from "community" land to "operational land". The land has historically been used for access purposes, and is part of a lookout area with panoramic views of Bellingen and beyond. The proposed reclassification does not propose any change to public access to the public reserve, rather the reclassification of land would allow for an adjoining private parcel of land to obtain legal access to their land parcel.

Upon the initial public exhibition of the planning proposal, Council became aware of significant concern expressed by aboriginal land council stakeholders, and the wider community in general, regarding the aboriginal cultural heritage significance of the lookout area. In response to these concerns, Council re-exhibited the planning proposal to ensure adequate time for all interested parties to make comment on the proposed changes, and to allow for further specific consultation with aboriginal stakeholder groups, local aboriginal land councils and the Office of Environment and Heritage.

Following a Public Hearing into the proposed changes, and receipt of comments from key aboriginal stakeholders, it is considered that the proposal can be amended to ensure that land at the top of the lookout area continues to remain as "community" land, in a public reserve, whilst still achieving the necessary level of access to the adjoining private land parcel.

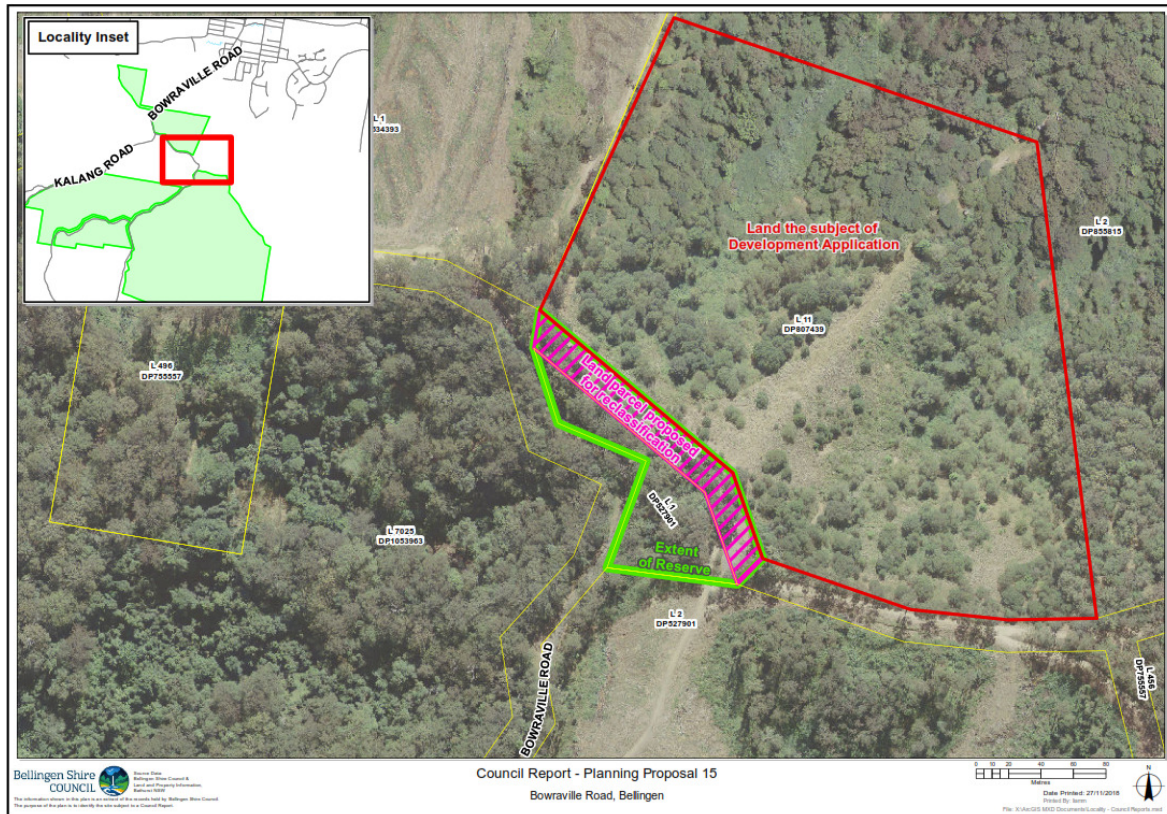
This report documents the outcomes of the public consultation that has taken place, and recommends that Council adopt the proposed amendments. The amended Planning



Proposal 15, describing and depicting the reduced area of land proposed to be reclassified is included as Attachment A to this report.

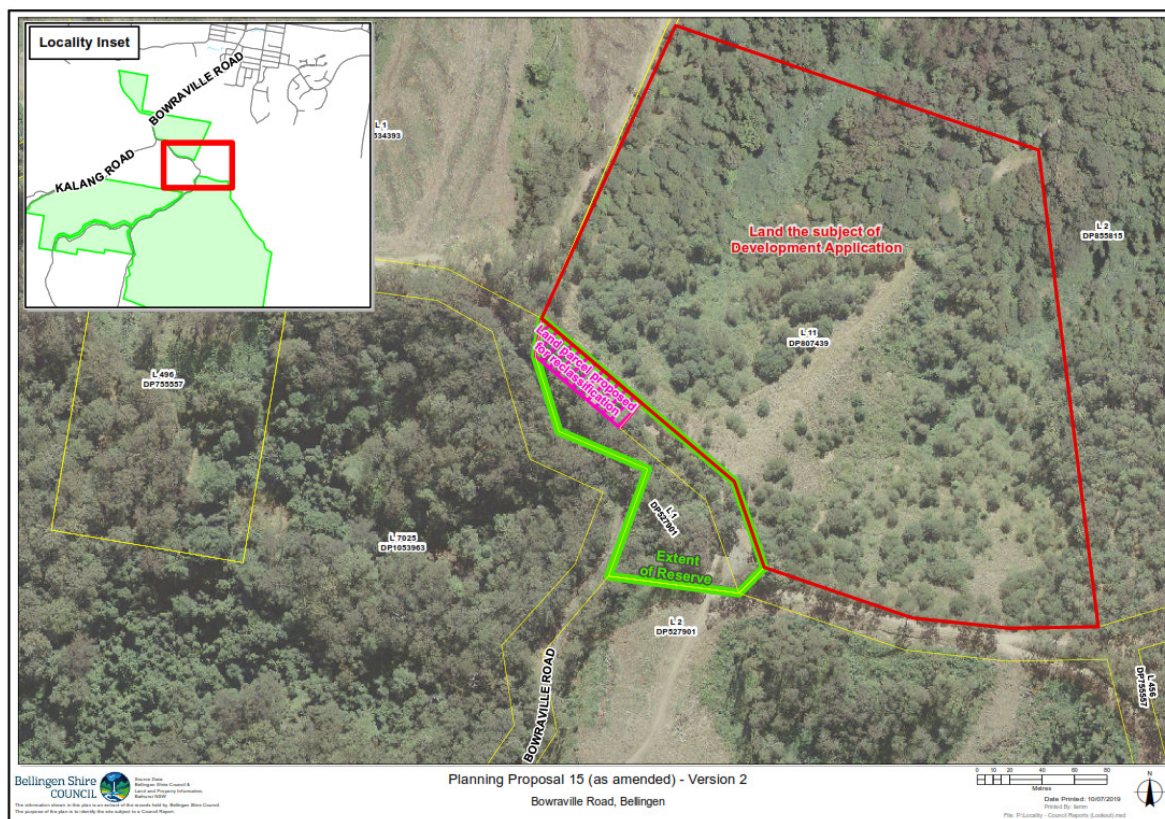
The original and amended extents of the proposed reclassification are shown in the images below.

### Original reclassification proposal



## Amended reclassification proposal





### Procedural aspects regarding the public exhibition of Planning Proposal 15

Council was required by the Gateway determination issued by the NSW Department of Planning & Environment (DPE) to publicly exhibit Planning Proposal 15 for a minimum period of 28 days, and to consult with the following public authorities / organisations.

- Office of Environment & Heritage
- NSW Rural Fire Service
- Coffs Harbour & District Local Aboriginal Land Council.

In addition to the statutory requirements for public exhibition advised by the DPE, Council also resolved to undertake additional consultation involving the placement of relevant details on its engagement website, Create.

The initial public exhibition of Planning Proposal 15 took place between Thursday, 28 March 2019 to Friday, 26 April 2019. During this time, Council became aware of significant community concern regarding this matter, and numerous requests were made to provide the community with additional time to consider this matter. It was also observed that some of the supporting information explaining the planning proposal had not been available to view on the Create website.

In view of these factors, and given that Council had not yet received the necessary comments from government agencies or the Coffs Harbour & District Local Aboriginal Land Council, it was determined that Planning Proposal 15 would be formally re-exhibited. The re-exhibition occurred from Thursday 9 May 2019 to Friday 7 June 2019 and involved the following tasks, in full compliance with the necessary pre-requisites for public exhibition of Planning Proposal 15.

- Notification of adjoining owners.





- Placement of an advertisement in the Bellinger Courier Sun advising of the re-exhibition of Planning Proposal 15 on 8 May 2019.
- Re-notification of public authorities / organisations.
- Placement of Planning Proposal 15 on Create.
- Placement of hard copy exhibition material for Planning Proposal 15 at the Bellingen Shire Council Administrative Centre and Bellingen Library,

Following the completion of the re-exhibition, Council had received 83 written submissions, and 5 comments on the Create website from 4 different people, over the two periods of public exhibition. Of the 83 written submissions, 73 of those were in the form of 'pro-forma' submissions (of which there were 4 varieties), whereby the submitters name was added to a standard letter format. Of those 73 submissions, 19 of them had some additional comments provided that added to the standard letter format.

Council also received two submissions from government agencies (NSW Rural Fire Service and Office of Environment & Heritage), and submissions from the Coffs Harbour & District Local Aboriginal Land Council, and the Bowraville Local Aboriginal Land Council.

- Copies of the 4 pro-forma submissions are included as Attachment B to this report.
- Copies of the pro-forma submissions with additional comment are included as Attachment C to this report.
- Copies of the submissions that were not pro-forma submissions are included as Attachment D to this report.
- A copy of the Project Report from the Create website is included as Attachment E to this report.
- Copies of the submission from government agencies are included as Attachment F to this report.
- Copies of the submission from Coffs Harbor & Bowraville Land Councils are included as Attachment G to this report.

Upon completion of the advertised public exhibition phase of the planning proposal, Council is also required to make arrangements for the conduct of a public hearing into the proposed reclassification. This is because, for LEP amendments that propose to reclassify land from "community" to 'operational' land, Council is required to go beyond the normal consultation requirements for LEP amendments, pursuant to Section 29 of the NSW Local Government Act 1993. This section is reprinted below.

#### *29 Public hearing into reclassification*

- (1) A council must arrange a public hearing under section 57 of the Environmental Planning and Assessment Act 1979 in respect of a planning proposal under Part 3 of that Act to reclassify community land as operational land, unless a public hearing has already been held in respect of the same matter as a result of a determination under section 56 (2) (e) of that Act.*

Section 47G of the NSW Local Government Act 1993 also makes provisions regarding the conduct of the public hearing. This section is reprinted below.

**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.*

Further guidance on the conduct of the public hearing is provided in the DPE *LEP Practice Note PN 16-001 – Classification and reclassification of public land through a local environmental plan*. The Practice Note recommends that following the completion of the advertised public exhibition phase that at least 21 days public notice is to be given of the proposed public hearing date, during which time the proposed facilitator will have sufficient time to consider the written submission that were received by Council.

In compliance with the various provisions governing the holding of a public hearing, the following points are noted:

- An advertisement was placed in the Bellingen Courier Sun on Wednesday 12 June 2019 advising that the date for the Public Hearing was Thursday 4 July from 5pm at the Bellingen Shire Council Chambers.
- Council engaged Mr Simon Waterworth, from GeoLINK, to preside at the public hearing and forwarded him all copies of submission received in response to the advertising of the planning proposal. Mr Waterworth complied with the pre-requisites stipulated in Section 47G of the LG Act 2003.
- The Public Hearing was held on Thursday 4 July from 5pm at the Bellingen Shire Council Chambers.
- A report was received from Mr Waterworth regarding the outcomes of the Public Hearing on 11 July 2019. This is included as Attachment H to this report.
- The report received by Mr Waterworth in respect of the Public Hearing was placed on the "Create" website on 12 July 2019, under the Planning Proposal 15 Activity.

**Key issues raised in response to the public exhibition of Planning Proposal 15****Aboriginal Cultural Heritage significance**

*The planning proposal incorrectly describes the cultural and heritage qualities of the reserve. There are historical references to the lookout area, known as Banbarrajilin in Gumbaynggirr and NSW Police Records. The area was a stop off area on the traditional travelling routes of aboriginal people in all directions and continues to be used for cultural interpretation purposes. It appears that BSC may be unaware of its significance as an aboriginal place.*

*It also contains plants of significance to the aboriginal community, including fig tree which is unusual on a ridge.*

*Recommend that BSC consult with Land Council and relevant aboriginal stakeholders regarding all activities in the vicinity of Banbarrajilin.*



*Request that BSC immediately withdraw Planning Proposal 15 and be advised by relevant aboriginal stakeholders regarding all activities in the vicinity of Banbarrajilin.*

*The lookout area has become degraded over years through drunken parties, littering and ease of 2wd access. The planning proposal suggests further degradation of area will occur. An alternative proposal to manage use of and access to this area would be for a partnership between Aboriginal stakeholders, Forestry NSW and Bellingen Shire Council to restrict normal vehicular access to the peak of Banbarrajilin, and retain existing trails for pedestrian / cycling access.*

*The site should be preserved and protected for the Aboriginal and wider community. The tar should be removed and put back to grass with interpretive signage describing importance to aboriginal people.*

*Should be given its aboriginal name, Banbarrajilin*

*As local Gumbaynggirr woman, land should be protected and preserved for next generations to come – need to protect and keep reserved as cultural resource.*

*As traditional owners (TOCYRS & Yurruun.ga Corporation) we acknowledge that it is of some significance but we are ok with proposal for development purposes provided that BSC recognise future claims.*

*As Gumbaynggirr man from Upper Bellinger River Tribe, advise that this is sacred site to our people. Strongly oppose any works being carried out at Banbarrajilin. BSC don't have our permission to destroy sacred sites.*

*There are many landscape features that point to the significance of Banbarrajilin to the Gumbaynggirr (as relayed by Muurbaay Aboriginal Language Centre).*

- *Can see Budaabang country to N, NE & NW*
- *Looking further north to Garlambirla country,*
- *Past Old Man Sleeping to the west look towards homeland of Gambalaman clan and beyond to homeland of Baanbay people*
- *Past Nunguu Miirlalr (Picket Hill), Mt England & Mt Gladstone towards coast, will be looking at homeland of Bagaba clan in the Nambucca area*
- *Past Mt Gladstone, looking at homeland of Buurrgadi people and beyond to homeland of Janggadi people.*

*Banbarrajilin is in direct line of sight with the following significant peaks which would have allowed it to be a central communication point for signalling to those peaks which would likely have been kept clear and open with traditional vegetation management to maintain line of sight.*

- *To north – Mt Moonbil, Goobergooberyam, Roogatargah, Wondurrigah, Tuckers Nob, Bonville Peak*
- *To west – Old Man Sleeping*
- *To south - Nunguu Miirlalr (Picket Hill), Mt England & Mt Gladstone*

*Banbarrajilin lies on traditional aboriginal east west travel route from plateau to coast – also highly likely meeting point on north-south travel pathway. Gentle spur runs down to Bellinger River at tidal limit – in low flows would be safe and convenient crossing point without need for canoes or risk from Bull Sharks in deeper brackish water.*



*The trail and the peak are vitally important parts of aboriginal travelling route – unobstructed views in all direction are an important cultural feature of the place – site needs to be protected and visitor impacts managed.*

Comment:

Council was unaware of the significance of Banbarrajilin to aboriginal stakeholders when developing this planning proposal. A review of the Aboriginal Heritage Information Management System (AHIMS) whilst developing the planning proposal did not reveal any information or register of the significance of the site.

As a precautionary measure, the planning proposal did propose further consultation with the Coffs Harbour & District Local Aboriginal Land Council to ensure that any cultural heritage values that may exist, but had not been publicly recorded, would be taken into consideration. This consultation confirmed the value of the site and the need to contemplate amendments to the planning proposal.

In order to ensure that issues of concern to aboriginal stakeholders were properly understood, Council met on two separate occasions, on site, with representatives of the Coffs Harbour & District Local Aboriginal Land Council, and the Bowraville Local Aboriginal Land Council. It was subsequently noted that the actual site is within the administrative area of Bowraville Local Aboriginal Land Council, however was also of wider importance to the aboriginal community in view of the sites location on historic travelling paths from both north – south and east – west.

At these meetings, discussions centred on whether the planning proposal could be amended in some way to ensure that the cultural heritage values of Banbarrajilin were adequately protected. An amended proposal that restricted the area of reclassification to the lower section of access track was suggested, and this has met with the endorsement of both Land Councils, as demonstrated in Attachment F to this report.

Additional suggestions that the lookout area should be officially renamed as Banbarrajilin, and that the lookout area should be restricted from normal vehicular access to protect its cultural heritage values are noted, however are considered beyond the scope of this planning proposal to deal with. Notwithstanding this, should any formal request be received from aboriginal stakeholders to either rename the lookout, or contemplate changes to accessibility to preserve cultural values, then it is recommended that Council act to facilitate those requests where possible in view of the obvious and special significance of the site. This may require the commitment of administrative resources to support a renaming process, and further budgetary resources to prepare a Plan of Management for the site, which would be necessary in the event of any change in accessibility to the lookout site.

*Social, Recreation and Community values of the Reserve*

*Social qualities of reserve are understated – it is an area of high community use for walking, cycling, pilgrimage, fitness, and quiet reflection, communion with nature and prayer and spiritual practices. Bellingen Community Vision details community wellbeing, places for people and our living environment as priority values and proposal will threaten these values.*

*Area is important for photographic opportunities and bird watching. Idea that area will be unavailable is appalling.*



*Family enjoy the lookout weekly.*

*Is where I take my visitors.*

*Only community space where you get the full view of town and surrounding mountains and weather coming in.*

*Removal of the public reserve only compounds an error – community land should not be carved up for a private driveway.*

*Object to any changes which would limit access to this area – must not be opened up or developed in any way.*

Comment:

The value of the lookout area and its approaches to the general community are acknowledged. Although it was never the intention of the planning proposal to in any way restrict community access to this area, or to facilitate significant structural modifications to the access track or lookout area, it is considered that the proposed amendment is a preferable outcome in that it will very clearly ensure that the public reserve containing Banbarajilin will remain as community land.

The small portion of land that is proposed to be reclassified as operational land, and then gazetted as a public road, is already constructed as an access track and will not require any significant upgrading to permit the adjoining private land parcel to use it for vehicular access. For example, there is no need to seal the road to comply with Council access standards. As a public road, this land will remain accessible to all members of the public, with no exclusivity of access to any party, similar to any other dedicated road in Councils asset base.

Suggestions for future management

*Area needs to be kept special.*

*Would like to see slab and its roof rebuilt and some love and respect put back – has become neglected.*

*Forestry road leading to lookout should be used for safe access and safe car park behind the lookout – lookout part of trail should be used for foot and pushbike traffic only.*

*BSC promotes green image encouraging residents to engage in environment – Hill St Trail & Rotary Lookout used by many and many interesting habitats and wildlife on trail. There is already a Forestry 2Wd access to the lookout – if necessary, upgrade this and replace sign so users can enjoy.*

Comment:

The varying suggestions that have been made regarding ongoing management practices for the public reserve area are noted, however it is not the role of this planning proposal to resolve what may be competing interests regarding future management. Should Council wish to formalise future management practices for this area, or consider alternative access scenarios, then the appropriate way to do so is to commit to the preparation of a Plan of Management for the public reserve area, in consultation with relevant aboriginal stakeholders and other relevant parties such as the NSW Forestry Corporation.



Concerns with road construction

*Object to change in classification which would allow Council to make structural changes to the area such as roads. Any road constructed on steep section of existing access track would be dangerous and disrupt peaceful enjoyment of lookout area.*

*Concreting the steep access track would only increase the velocity of water and its erosive effect, which would damage ecology of area.*

Comment:

The proposed amended extent of the area to be reclassified as “operational” land only involves a small section of existing access track that has a gentle gradient, and which would require minimal if any modification to conform to Council access standards. The steeper section of access track will remain as ‘community’ land within the public reserve area, and no changes are proposed to this area.

The planning proposal was not advertised correctly or for long enough

*Description of area as “Lookout Rd” was ambiguous and difficult to find unless looking at Planning Proposal 15 documentation.*

*The planning proposal was not available to view online, contrary to advice provided by Council that it would be. An extension of time should be provided on this basis.*

*Why has there been no consultation?*

*No development signage was visible at boundary of site.*

Comment:

The area the subject of the proposed reclassification was adequately shown on a map within the documentation that was placed upon public exhibition. It is accepted that all relevant documentation was not available on the Create website during the first period of public consultation, however this was rectified when the planning proposal was re-exhibited from Thursday 9 May 2019 to Friday 7 June 2019. The re-exhibition of the planning proposal fully complied with all statutory requirements, and provided ample opportunity for any interested party to make a submission.

There is no statutory requirement to place a sign at the boundary of the site during the public exhibition of a planning proposal.

There are alternative access scenarios that could be investigated for the private land parcel

*The adjoining private property to the north has a common boundary with Bowraville Rd in its far south western corner which should be adequate for access. Alternative forms of legal access should be explored for this property, including across Forestry Corporation estate. Land should not become privately owned land.*

Comment:

The private land to the north does not in fact have a common boundary with Bowraville Rd that would allow for vehicular access to the property. The access scenario that would be facilitated by this planning proposal is the least disruptive in terms of the need to construct additional access tracks within a locality that is steep, and where new access tracks would require significant additional landform modification.



It is agreed that the land proposed to be reclassified should not become private land, and that is why it is Councils intention to gazette this area as a new section of public road to ensure ongoing access to the whole of the community.

### **Key issues raised in submissions from agencies / authorities**

Council received the following comments from those agencies / authorities that it was required to consult with by virtue of the Gateway Determination issued by the NSW DPE.

#### NSW Rural Fire Service

*The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and has no specific recommendations in relation to bush fire protection.*

#### NSW Office of Environment & Heritage

##### Aboriginal Cultural heritage

- *Notes absence of AHIMS record but advises that this is not conclusive. Recommend that BSC consult with Bowraville LALC prior to determination of reclassification proposal regarding Aboriginal Cultural Heritage Constraints or values on the site.*
- *Further recommend that a physical assessment of subject lands is carried out by suitably qualified heritage professional in consultation with aboriginal community to determine if any aboriginal deposits or archaeological artefacts existed.*

#### Comment:

Council has consulted with the Bowraville LALC over two separate site inspections and has received confirmation that no objection is offered to the proposal, provided that Planning Proposal 15 is amended to not make any land “operational” beyond the existing access gate.

Having regard to the inspection of the site by Bowraville LALC and relevant knowledge holders, a further request was made that the owner of the private land to the north conducted an archaeological assessment over the “proposed building site” on the private land to determine if any aboriginal deposits or archaeological artefacts existed. This assessment was completed and no relevant objects were uncovered.

In the circumstances, it is not considered necessary to request an additional archaeological assessment of the amended area for reclassification given that the area of obvious concern to relevant knowledge holders was the area proposed for development on the private land, and not the area proposed to be retained as public reserve, or the existing access track leading to the gate onto the adjoining private land.

#### Biodiversity

*Reclassification would allow Council to declare as public road and potentially improve ability to maintain eroded sections of the existing access track, which would benefit adjoining vegetation and watercourses.*

#### Comment:

The proposed amendment to the planning proposal would restrict the area to be reclassified to that area of existing access track leading to the gate on the adjoining private property. This part of the access track is gentle in gradient and not displaying obvious signs of erosion.



**Key issues raised in Public Hearing**

The report received by Council from the Independent Facilitator of the Public Hearing does not raise any additional matters of concern that have not already been addressed to date.

The Report does however note that the attendees at the Public Hearing were supportive of the proposed amendment to the planning proposal that would restrict the area for reclassification to that section of the existing access track that leads from Bowraville Road to the existing gate, as discussed extensively already in this report.

**What are the next steps should Council resolve to amend and adopt Planning Proposal 15?**

The next step in the process is to submit the amended Planning Proposal 15 to the NSW New South Wales Department of Planning, Industry and Environment (DPIE) to request that they make the amendment to Bellingen Local Environmental Plan 2010 (BLEP). Given that Planning Proposal 15 seeks to remove the public reserve status of a small parcel of land proposed to be reclassified, the DPIE will also need to seek the Governors approval before the amendments to the BLEP can be legally made.

It will be necessary for Council to prepare a survey of the lot proposed for reclassification, arrange for the excision of the lot from the balance of the existing public reserve through preparation and registration of a plan of subdivision, and to gazette the reclassified operational lot as a public road.

The precise sequencing of these activities is to be determined, however for the purposes of Council being sufficiently informed to amend and adopt Planning Proposal 15 however all statutory requirements have been fulfilled and there is no impediment to Council resolving to amend the Planning Proposal as detailed within this report. Further, it is considered that the information presented in this report is sufficient to make the necessary resolutions and commence the next steps in the process.

**BUDGET IMPLICATIONS**

The completion of Planning Proposal 15 will require the allocation of funding from the Planning Studies Budget to undertake the necessary survey work to formally identify the area proposed for reclassification and to register a plan of subdivision. This work is within the scope of existing budgetary allocations.

**SUSTAINABILITY ASSESSMENT**

The public exhibition of this planning proposal has been of significant value to Council, and the community, in bringing to light the significance of the lookout area from an aboriginal cultural heritage perspective. The proposed amendment to Planning Proposal 15 will restrict the area of reclassification to a reduced area of the existing track that will require little to no further construction works to meet Council standards for vehicular access, and will have no adverse impact upon the natural environment or the social and cultural values of the lookout area.

The ongoing retention of the lookout area as part of the Public Reserve will ensure that no alterations are made to this area, or access to it, as part of this planning proposal.

**ENGAGEMENT**

The Bellingen Shire Council Community Engagement Strategy was adopted by Council at its Meeting 22 February 2012. This strategy is designed to outline the approach Bellingen Shire takes towards engaging with our community.



The public engagement undertaken by Council in respect of this matter has been comprehensively detailed elsewhere in this report.

**ATTACHMENTS**

- 13.7.A Planning Proposal 15 - Version 2 (July 2019)
- 13.7.B Pro-forma style Submissions Types 1-4
- 13.7.C Pro-forma submissions with additional comment
- 13.7.D Non Pro-forma submissions
- 13.7.E Project Report - Create
- 13.7.F Government Agency Submissions
- 13.7.G Land Council Submissions
- 13.7.H Public Hearing Report



## Site Identification Map - 006B

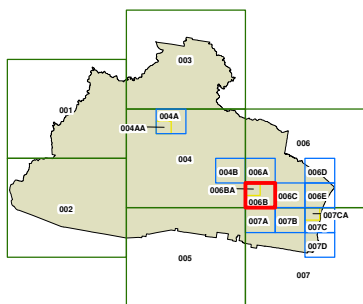
### Legend



## Cadastre

Base data  
24/2/2009 ● Land and Property Information (LPI)  
Addendum data  
18/2/2019 ● Bellingen Shire Council

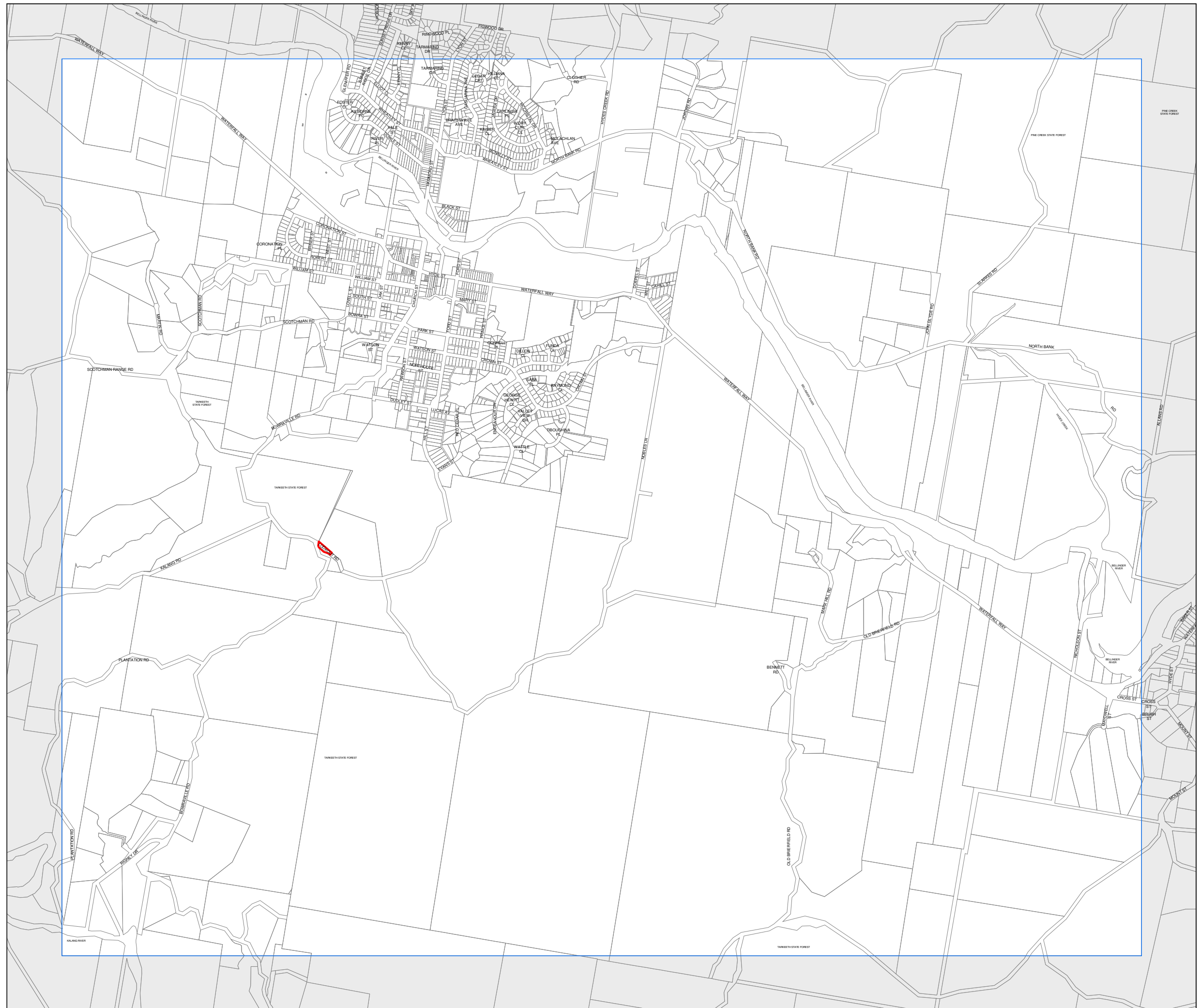
This map is for explanation purposes only.  
This map is not a legal document.



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Projection: GDA 1994  
MGA Zone 56

Map identification number: Planning Proposal 15 - SIM 006B










# Bellinghen Local Environmental Plan 2010

## Land Reclassification (Part Lots) Sheet RPL\_006B

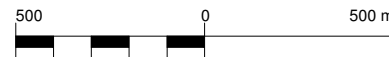
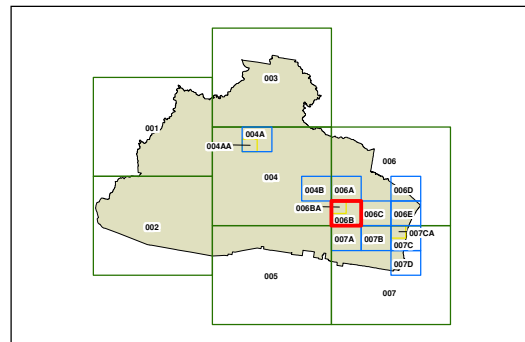
### Land Reclassification (Part Lots)

-  Operational Land
-  Community Land

### Cadastre

-  Base data  
24/2/2009  Land and Property Information (LPI)  
Addendum data  
18/2/2019  Bellinghen Shire Council

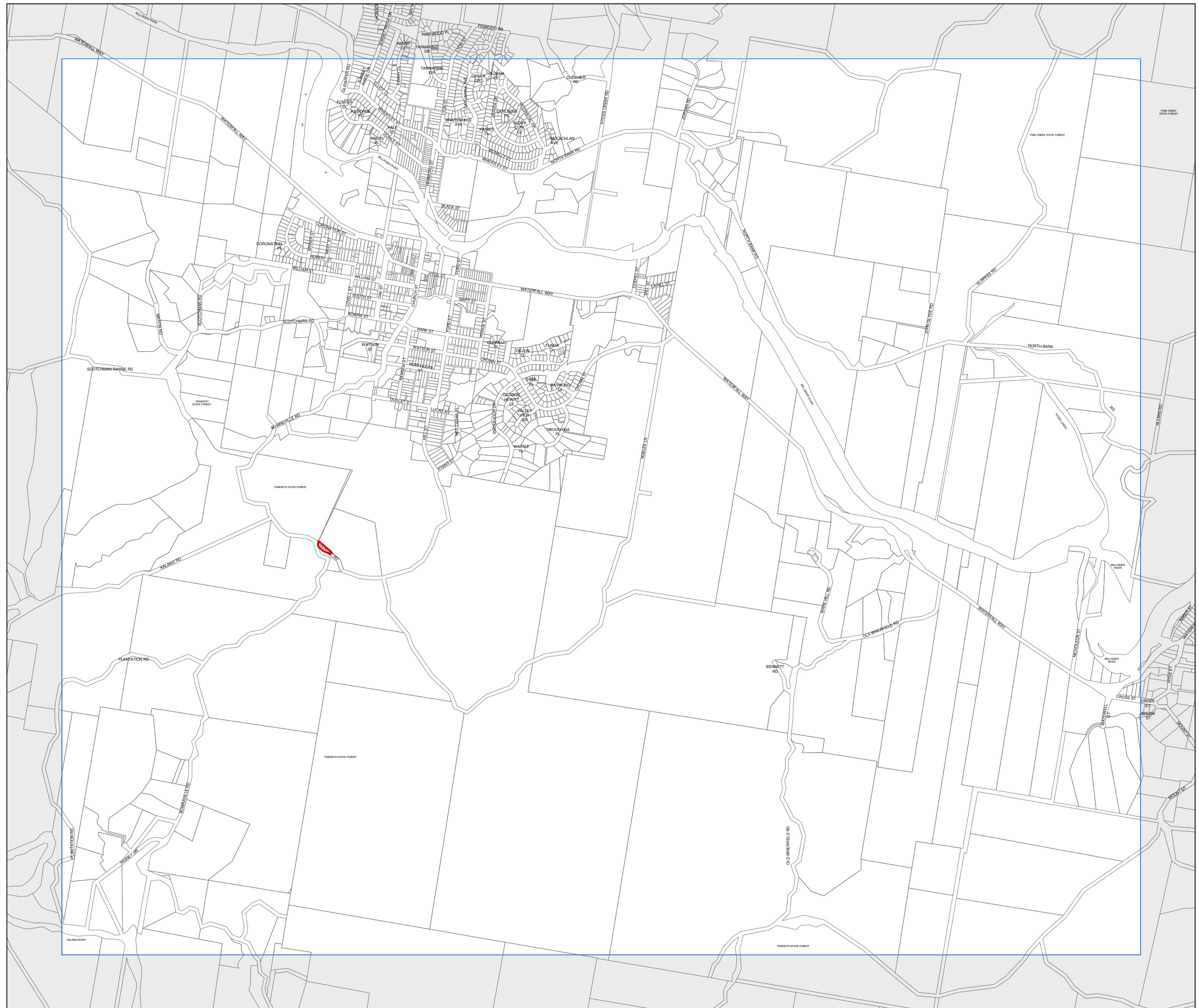
This map is for explanation purposes only.  
This map is not a legal document.



Scale 1:20 000 @ A3

Projection: GDA 1994  
MGA Zone 56

Map identification number:  
0600\_COM\_RPL\_006B\_020\_20190918





# INFORMATION CHECKLIST

## > STEP 1: REQUIRED FOR ALL PROPOSALS

(under s55(a) – (e) of the EP&A Act)

- Objectives and intended outcome
- Mapping (including current and proposed zones)
- Community consultation (agencies to be consulted)
- Explanation of provisions
- Justification and process for implementation (including compliance assessment against relevant section 117 direction/s)

## > STEP 2: MATTERS - CONSIDERED ON A CASE BY CASE BASIS

(Depending on complexity of planning proposal and nature of issues)

PLANNING MATTERS OR ISSUES	To be considered	N/A	PLANNING MATTERS OR ISSUES	To be considered	N/A
<b>Strategic Planning Context</b>			<b>Urban Design Considerations</b>		
• Demonstrated consistency with relevant Regional Strategy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	• Existing site plan (buildings vegetation, roads, etc)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Demonstrated consistency with relevant sub-regional strategy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	• Building mass/block diagram study (changes in building height and FSR)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Demonstrated consistency with or support for the outcomes and actions of relevant DG endorsed local strategy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	• Lighting impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Demonstrated consistency with Threshold Sustainability Criteria	<input type="checkbox"/>	<input checked="" type="checkbox"/>	• Development yield analysis (potential yield of lots, houses, employment generation)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Site Description/Context</b>			<b>Economic Considerations</b>		
• Aerial photographs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	• Economic impact assessment	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Site photos/photomontage	<input type="checkbox"/>	<input checked="" type="checkbox"/>	• Retail centres hierarchy	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Traffic and Transport Considerations</b>			• Employment land	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Local traffic and transport	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Social and Cultural Considerations</b>		
• TMAP	<input type="checkbox"/>	<input checked="" type="checkbox"/>	• Heritage impact	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Public transport	<input type="checkbox"/>	<input checked="" type="checkbox"/>	• Aboriginal archaeology	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Cycle and pedestrian movement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	• Open space management	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Environmental Considerations</b>			• European archaeology	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Bushfire hazard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	• Social and cultural impacts	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Acid Sulphate Soil	<input type="checkbox"/>	<input checked="" type="checkbox"/>	• Stakeholder engagement	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Noise impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>Infrastructure Considerations</b>		
• Flora and/or fauna	<input checked="" type="checkbox"/>	<input type="checkbox"/>	• Infrastructure servicing and potential funding arrangements	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Soil stability, erosion, sediment, landslip assessment, and subsidence	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Miscellaneous/Additional Considerations</b>		
• Water quality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	List any additional studies		
• Stormwater management	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
• Flooding	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
• Land/site contamination (SEPP55)	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
• Resources (including drinking water, minerals, oysters, agricultural lands, fisheries, mining)	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
• Sea level rise	<input type="checkbox"/>	<input checked="" type="checkbox"/>			





## Bellingen Planning Proposal 15

The proposed project timeline for this Planning Proposal is 7 months.

Stage	Estimated completion date
Commencement (date of Gateway Determination)	8 March 2019
Obtaining technical information	N/A
Government agency consultation	4 April 2019
Public exhibition period	10 May 2019
Consider submissions (and hold Public Meeting)	7 June 2019
Council to consider submissions & Planning Proposal	24 July 2019
Anticipated date RPA will make Plan	23 August 2019
Anticipated date RPA will forward to Department for notification	30 August 2019



PART OF PORTION 435  
PLAN MICROFILMED

NO ADDITIONS OR AMENDMENTS TO BE MADE

County... *Raleigh*

Scales  $\frac{2}{3}$  Chains to an Inch

**Last Plan:**

SCALE : 2Ch. to an inch.

Lot 1 app'd. for 2 a. 0. 38  
Per \_\_\_\_\_  
by ded'n (Rds 71.935). (ded'n. / sale'n)  
ex. fcs. \_\_\_\_\_ J.S.L.  
(Closed road added)  
Authorised Officer. *[Signature]*

REFERENCE MARKS			
Cor	Bearing	Distance	From
a	110° 10' 30"	2.31	G. I. Pipe
b	215° 30'	2.52	G. I. Pipe

*Note: Steeply falling land, medium timber.*

Surround Areas:

Lot 1: ~~+23920 ac.~~

Lot 2: 27.59196 ac.

- ② This area has been bulldozed, leveled & partly grassed.

SCALE: 5 Ch. to an inch.

27a 2r 14sp

456

Charted on Head Office Maps

加

9 am

Areas altered in  
Land Board Office.

### Signatures, Seals and Statements of Dedications and Easements.

Lot 1: Measured for Reserve for Public Recreation.

do ~~R86523 from Sale or Lease generally (25A) Notified 10-11-67 Rev'd 10-11-67~~  
" ~~R86523 from Sale or Lease generally (25A) Notified 28-3-69 Rev'd 28-3-69~~

Checked & Charted *W. Giersbach* 25.7.67

Examined *J. Youman* 31.7.1967

Plan Approved *OK* 31.7.67

Lot 1: R87120 for Public Recreation. Not'd. 28<sup>th</sup> March '69  
~~for~~ Road closed gatz 17.9.71 Rd's 71.935. (Added 19.11.71 to R87120.)

4424.3050

Ms. 4424 Gfn

LB. 65-206. Pks. 65-239

1. Richard Owen Rushton

of Coffs Harbour

1167  
a surveyor registered under the Surveyors Act, 1929, as amended, hereby certify that the survey represented in this plan is accurate and has been made (1) by me (2) under my immediate supervision in accordance with the Survey Practice Regulations, 1933 and was completed on 15. March 1963

Signature... *R.O. Kushtera*

Surveyor registered under Surveyors Act, 1929 as amended.  
Datum Line of Azimuth. *X-Y*

Approved by Council. I hereby certify that the requirements of the Local Government Act, 1919 (other than the requirements for registration of plans), have been complied with by the applicant in relation to the proposed subdivision and ~~and~~ <sup>as now</sup> ~~set~~ <sup>set</sup> out herein.

Subdivision No. 8/66 Date 22/9/66

Council Clerk.....

\* Strike out either (1) or (2).      † Insert date of survey.



### FIRST SCHEDULE

*Land District and Shire—Bellingen*

The lands in this Schedule are vested in The Council of the Shire of Bellingen.

## SECOND SCHEDULE

*Land District—Bellingen; Shire—Nambucca*

Parish Nambucca, County Raleigh, about 5.056 hectares in the Town of Nambucca Heads, Reserve 63695 for Public Recreation, notified 23rd December, 1932, being the land shown by hatched edging on diagram hereunder. Plan 3690-1714.

IN pursuance of section 233 (1), Crown Lands Consolidation Act, 1913, the Crown lands hereunder described are withdrawn for the purpose of "Public Recreation" from the special lease mentioned.

W. F. CRABTREE, Minister for Lands.

Parish Forster, County Gloucester, 1.424 hectares, being portion 425, and being Special Lease 64-30, Taree, held by the New South Wales Planning and Environment Commission. Pks 76-1089.

NOTIFICATION OF VESTING OF LANDS IN PURSU-  
ANCE OF THE PROVISIONS OF SECTION 37AAA OF  
THE CROWN LANDS CONSOLIDATION ACT, 1913

IN pursuance of the subject provisions, I, WILLIAM FREDERICK CRABTREE, Minister for Lands, being of the opinion that—

- (a) the lands described in the First to the Seventh Schedules and in each Part of the Eighth to the Fourteenth Schedules hereto are respectively a public reserve or are suitable for use as a public reserve within the meaning of the Local Government Act, 1919; and
- (b) it is proper that, having regard to the purpose (if any) for which the lands described in the First to the Seventh Schedules and in each Part of the Eighth to the Fourteenth Schedules are used, those lands should be respectively vested in the council specified in each Schedule.

do, by this notification, respectively vest the lands described in each of those Schedules in the council specified therein for an estate in fee simple subject to the following reservations and exceptions unto Her Majesty Elizabeth the Second, by the Grace of God Queen of Australia and Her Other Realms and Territories, Head of the Commonwealth, Her Heirs and Successors of—

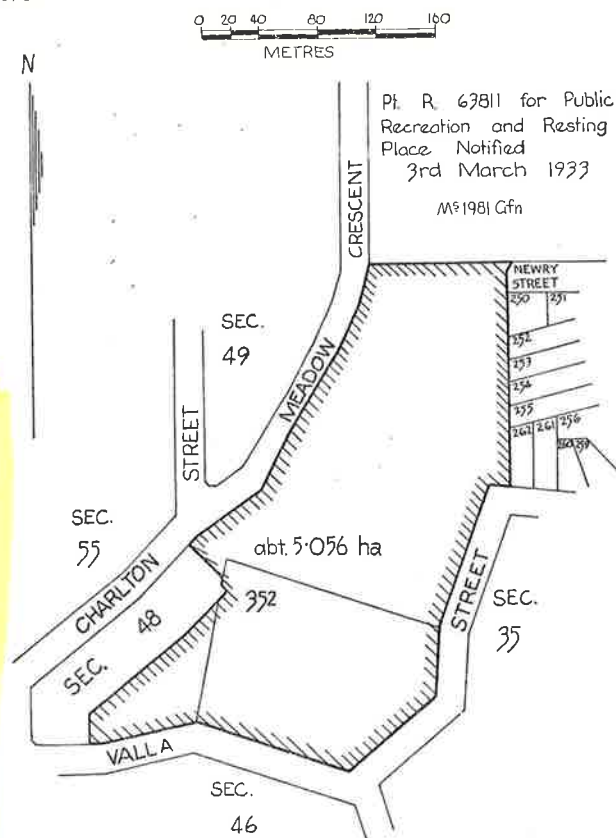
- (i) all minerals which those lands contain with full power and authority for Her Majesty, Her Heirs and Successors and such person or persons, as shall from time to time be authorized by Her Majesty, Her Heirs or Successors to enter upon those lands and to search for mine dig and remove those minerals;
- (ii) all such parts and so much of those lands as may hereafter be required for public ways in over and through the same to be set out by His Excellency the Governor for the time being of the State of New South Wales or some person by him authorized in that respect with full power for Her Majesty, Her Heirs and Successors and for His Excellency the Governor as aforesaid by such person or persons as shall be by Her Majesty, Her Heirs or Successors or His Excellency the Governor as aforesaid authorized in that behalf to make and conduct all such public ways; and
- (iii) the right of full and free ingress, egress and regress into out of and upon those lands for the several purposes aforesaid or any of them.

The lands described in the First to the Seventh Schedules and in each Part of the Eighth to the Fourteenth Schedules hereto are respectively declared to be a public reserve for the purposes of the Local Government Act, 1919.

This notification shall take effect on and from the date of publication of this Gazette.

Signed at Sydney, this sixth day of June, 1977.

W. F. CRABTREE, Minister for Lands.



The lands in this Schedule are vested in The Council of the Shire of Nambucca.

### THIRD SCHEDULE

*Land District—Casino; Shire—Richmond River*

Parish Nandabah, County Richmond, about 6.116 hectares in the Village of Rappville, Reserve 75563 for Public Recreation, notified 30th January, 1953, being the land bounded by Coombell Street, Green Street, Pearse Street and a line being the northerly prolongation of the eastern boundary of allotment 10 of section 5. The area of this land is limited to the surface and to a depth of 20 metres below the surface.

The lands in this Schedule are vested in The Council of the Shire of Richmond River.

## FOURTH SCHEDULE

*Land District and City—Grafton*

Parish Great Marlow, County Clarence, 8 878 square metres at Grafton, Reserve 75420 for Public Recreation, notified 7th November, 1952, being the land bounded by allotments 17, 9, 10 and 12 of section 95, Powell Street and Turf Street. The area of this land is limited to the surface and to a depth of 20 metres below the surface.

The lands in this Schedule are vested in The Council of the City of Grafton.

## FIFTH SCHEDULE

*Land District—Murwillumbah; Shire—Tweed*

Parish Terranova, County Ross, about 3.9 hectares at Tweed Heads, Reserve 58447 for Public Recreation, notified 4th December, 1925, being the land bounded by Adelaide Street, Florence Street, Recreation Street and the land appropriated for Housing Purposes, Gazette, 18th July, 1947. The area of this land is limited to the surface and to a depth of 20 metres below the surface. Plan Ms 1832 Gfn R.

The lands in this Schedule are vested in The Council of the Shire of Tweed.