

Item 9.c.2 YLEP amendment – clustered rural residential

SUBJECT	Proposed amendment of Yarrowlumla Local Environmental Plan 2002 – to allow clustered rural residential development on Lots 1 & 2, DP 456367, Lot 2, DP 131294 and Lot 1, DP 1067259, 8360 Monaro Highway, Royalla		
FILE NO.	P40453		Planning and Environmental Services

Attachments

1. Planning Proposal

Synopsis

A planning proposal to amend the Yarrowlumla LEP 2002 to allow a cluster housing rural residential development on a parcel of land located adjacent to the Royalla rural residential area. The proposal includes the reclassification of a small area of public land from Community to Operational Land. This is necessary to allow the construction of an access road from Booth Road to the subject land.

Recommendation

Recommended that Council forward to the NSW Minister for Planning for a gateway determination in accordance with section 56 of the *Environmental Planning and Assessment Act 1979*, the planning proposal to amend the Yarrowlumla Local Environmental Plan 2002 such that cluster housing is permissible with development consent on Lots 1 & 2, DP 456367, Lot 2, DP 131294 and Lot 1, DP 1067259, 8360 Monaro Highway, Royalla.

Report

The land holding comprising Lots 1 & 2, DP 456367, Lot 2, DP 131294 and Lot 1, DP 1067259, 8360 Monaro Highway, Royalla has an area of 183.55 ha and is zoned 1(a) General Rural under the YLEP 2002. It is located adjacent to the Royalla rural residential area on the Monaro Highway, 20 km south of Queanbeyan (Figure 1). The majority of the land is steep timbered country with high conservation value, but there is a previously disturbed area of about 30 ha located in the north western corner of the land that is suitable for development.

Background

The land owner, Mr V Drew, has owned the property for about 25 years. Mr Drew has advised that he originally purchased the land for sheep and cattle grazing, but sheep grazing has not been feasible due to numerous dog attacks since the adjoining land was subdivided for rural residential development.

Mr Drew has been seeking LEP amendments to allow clustered rural residential development of this land since 2001. The proposal was considered by Yarrowlumla Council at a number of Committee meetings, Council meetings and workshops in March and April 2001. At that time Yarrowlumla Council considered the proposal to be a logical extension to the Royalla rural residential area to the east and north. It was acknowledged that the land had additional constraints compared with Royalla due to slope and visual impact on the Monaro Highway, and this was to be addressed by careful siting of a number

of Community Title housing clusters. On this basis the proposal was supported by Yarrawlumla Council.

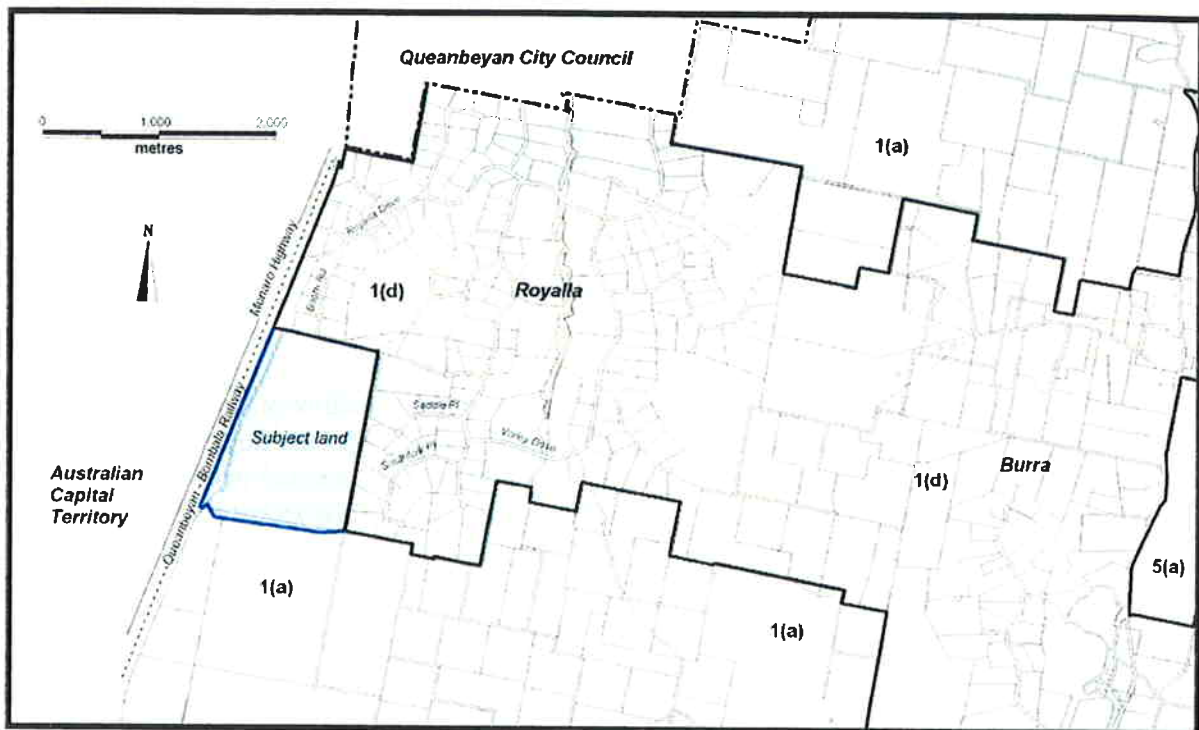


Figure 1 Location and current zoning

However the amendment could not proceed at that time because the Department of Planning advised Council in July 2001 that individual rezonings should be delayed until the Shire-wide LEP review was completed and also that the department would “generally not support rezonings providing for additional rural settlement without first having in place an agreed rural settlement strategy”.

Resource constraints and other priorities meant that the rural settlement strategy was not completed and consideration of this and other proposals was deferred for further consideration during the preparation of the Palerang LEP. However, research undertaken in the preparation of the *Rural Residential, Rural and Environmental Areas Discussion Paper May 2008* indicated that substantial areas of additional rural residential land were not required and the preparation of a rural settlement strategy was consequently not pursued. It is now intended to revisit this issue in the first review of the new Palerang LEP. The Department of Planning has expressed support for this approach and has indicated that funding assistance for such a study may be available.

In 2008 the applicant funded the engagement by Council of a planning consultant to evaluate the proposal. The consultant’s report concluded that the proposed LEP amendment could be considered as the completion of the process begun when the adjoining land was rezoned for rural residential development. Council resolved to support the necessary community land reclassification (discussed below), to support the proposal in principle and to make the necessary amendment to the planning controls in the preparation of the new Palerang LEP.

The applicant has recently asked that Council reconsider this approach in the light of the delays to the Palerang LEP and to deal with the matter as a site specific amendment.

Current situation

When first proposed in 2001 the clustered layout was designed primarily to address constraints of steep slope and high visibility from the Monaro Highway (an approach route to the National Capital). This resulted in the identification of 4 suitable sites for clusters of dwellings.

More recently the applicant has commissioned a flora and fauna assessment which *revealed extensive areas of the presence of an EEC (box woodlands) within the study area. It also located 2 threatened fauna species with a probability of a further 10 fauna species being present (the probability being high in some cases), inferred by the habitat availability and known occurrences in the nearby region. It also located some areas of higher disturbance that may be suitable for development.*

The findings of the flora and fauna report have been confirmed by Department of Environment and Climate Change ecologists who have inspected the site at the time when threatened plants would have been in flower. The Department has advised that development should only occur on the northern site (which may be able to be enlarged to a limited extent) as the second disturbed area on the southern boundary would have access and infrastructure provision issues and would yield only a relatively limited amount of blocks. The Department also advised that further detailed surveys for a number of species (recommended by the flora and fauna report) would not be necessary if development is confined to the northern disturbed area.

Several of the original proposed clusters are located on areas of high conservation value which are now considered unsuitable for development. The proposed layout will consequently need to be redesigned and only a single cluster of development will be possible. The part of the site which is suitable for development has an area of about 30 ha (see Figure 3 of the Planning Proposal, Attachment 1) and the originally proposed number of lots (28 – 30) should still be achievable, but screening from the Monaro Highway will be required to address the visual impact issues.

Reclassification of public land

The consideration of the subject proposal is complicated by the fact that the proposed access to the development is via an extension of Booth Road across part of a public reserve (see Figure 2 of the Planning Proposal, Attachment 1). Because this land has not been formally classified, it is classified by default as Community Land under the Local Government Act 1993. To enable the proposed development to proceed it will be necessary to change the classification of part of the reserve to Operational Land as the Local Government Act does not generally allow the construction of roads on Community Land.

This change in classification is done via the LEP amendment process, but it requires an additional step, the holding of a public enquiry under section 68 of the Environmental Planning and Assessment Act 1979. This hearing will be conducted by an independent person (not a Councillor or a person employed by Council within the past five years) who will consider the written submissions on the exhibited planning proposal and any verbal presentations to the hearing, and prepare a report which will be made public.

The area of the reserve to be reclassified has an area of approximately 0.4 ha. The reserve serves as an access point to the Royalla hilltop reserve and recreational trail network. Road construction will not adversely affect this access.

The Booth Road Residents have previously raised objections about the proposed LEP amendment and rural residential development of the subject land. Specifically the Booth Road Residents object to the use of Booth Road for access and are also concerned about visual impacts on "the rural vistas enjoyed by the current residents within close proximity to the development".

Booth Road is the most appropriate access to the land as the alternative of direct access from the Monaro Highway is likely to require a bridge over the railway (as at Royalla Drive) and an additional access on to the Monaro Highway (not desirable from a traffic safety point of view).

Legislative requirements

The planning proposal has been prepared in accordance with the Department of Planning's publications *A guide to preparing planning proposals* and *A guide to preparing local environmental plans* (NSW Department of Planning July 2009). The planning proposal addresses the matters required by the Director General to be addressed in all planning proposals.

If Council wishes to proceed with the draft amendment the planning proposal will be forwarded to the Minister for Planning for a "Gateway Determination". The intention of the gateway process is to allow a planning proposal to be reviewed at an early stage to make a decision whether to proceed further, before significant resources are committed.

At the gateway determination stage the Minister will decide:

- whether the proposal will proceed, with or without variation, and whether it should be re-submitted;
- the level of community consultation required;
- whether input from State and Commonwealth authorities is required;
- the necessity for a public hearing by the Planning Assessment Commission or other body; and
- the appropriate timeframes for the various stages of the proposal.

Following the gateway determination the proposal will be publicly exhibited; Government authority views will be sought; and Council will consider any submissions received.

Under the new planning procedures it is only the planning proposal and supporting documents which is exhibited. The written legal instrument (draft LEP) is prepared by the Parliamentary Counsel when the planning proposal is finalised, immediately before it is made by the Minister or her delegate. The LEP takes effect when it is published on the NSW Legislation website.

Financial considerations

Staff time preparing the planning proposal, reports to Council, and consultation with government authorities; advertising costs associated with the public exhibition. The applicant has previously paid the LEP amendment application fee. The applicant will be required to fund the engagement of a suitably qualified person to conduct the public hearing.

Policy implications

Because of the unique circumstances of the land's location it is unlikely that an undesirable precedent will be set, but it is possible that others who have sought site specific amendments in the past few years may wish to see their proposals dealt with immediately as well.

Social implications

Nil.

Environmental considerations

The planning proposal provides for ongoing management of the environmentally significant areas through the preparation of a management statement under the Community Land Development Act 1989. This is likely to provide a better environmental outcome than the current agricultural use of the land.

The public land reclassification and subsequent road construction and increased traffic may have adverse impacts on residents of Booth Road, particularly those at the southern end of Booth Road..

*Attachment 1: Planning Proposal***Rural Residential Subdivision, Lots 1 and 2, DP 456367, Lot 2, DP 131294 and Lot 1, DP 1067259, 8360 Monaro Highway, Royalla**

This planning proposal concerns a 183.55 hectare rural property located adjacent to the Royalla rural residential subdivision, 20 km south of Queanbeyan, adjacent to the Monaro Highway and the Queanbeyan – Bombala Railway. The land is currently zoned 1(a) General Rural under the Yarrowlumla LEP 2002 (Figure 1).

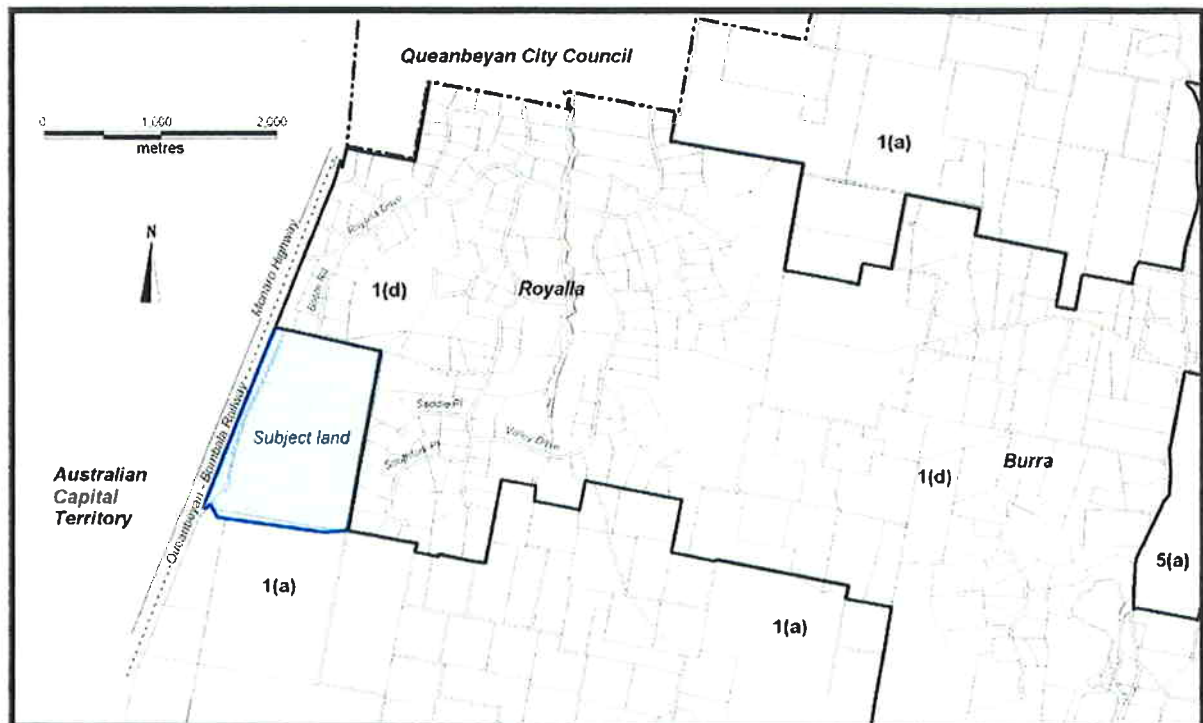


Figure 1 Location and current zoning

Part 1 – Objectives or Intended Outcomes

- (a) To enable a clustered rural residential subdivision to occur on the previously disturbed part of the subject land, and
- (b) to reclassify an area of 0.4 ha of public land (part of Lot 29, DP 1015516), at the end of Booth Road, Royalla, from Community Land to Operational Land (Figure 2). This land is located immediately to the north of the subject land and the change in classification is necessary to enable the extension of Booth Road to provide access to the subject land.

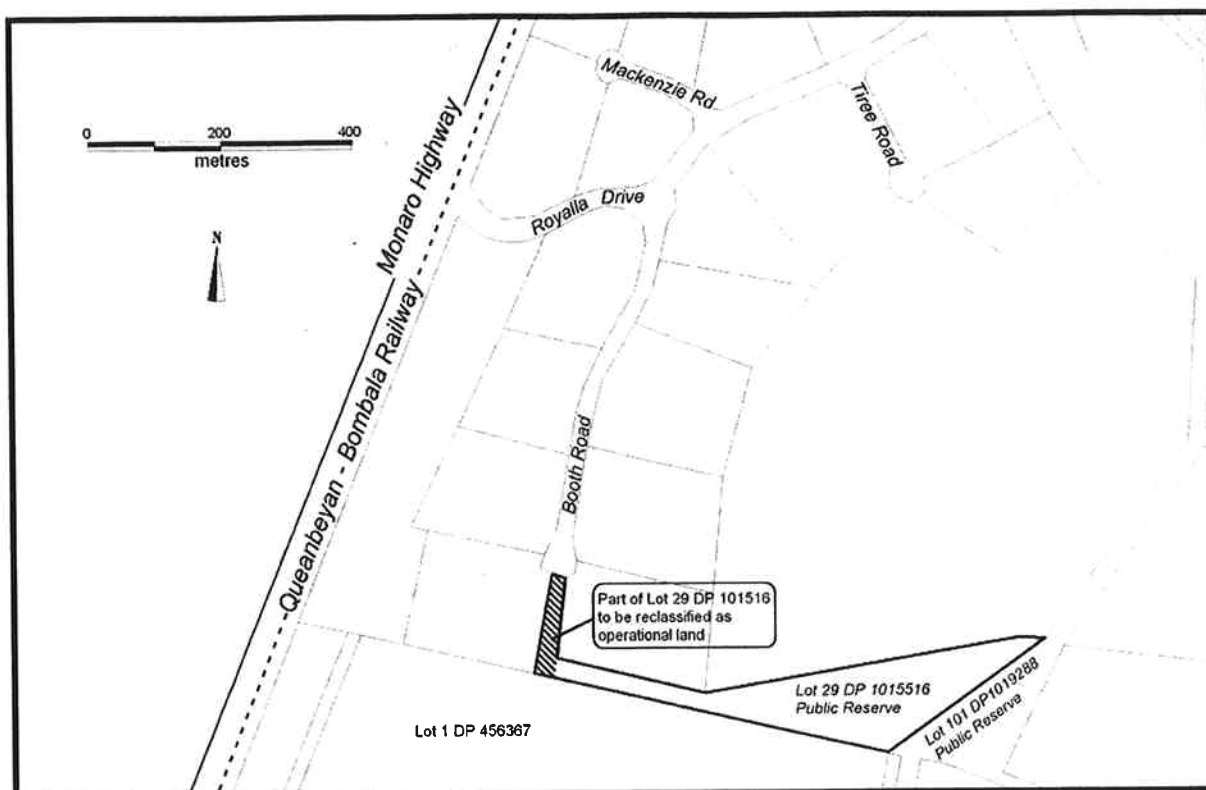


Figure 2 Area of public land to be reclassified

Part 2 – Explanation of Provisions

(a) Rural residential cluster housing

Amendment of Schedule 6 of the Yarrowlumla LEP 2002 by the addition of the following:

Lots 1 and 2, DP 456367, Lot 2, DP 131294 and Lot 1, DP 1067259, 8360 Monaro Highway, Royalla, Parish of Burra – subdivision under the Community Land Development Act 1989 into not more than 30 allotments (each having an area of not less than 1.0 ha) and neighbourhood property and the use of the allotments for rural residential purposes and the neighbourhood property for nature conservation and passive recreation purposes. Subject to the conditions that:

- (a) consent to the carrying out of development is granted within five years from the date on which Yarrowlumla Local Environmental Plan 2002 (Amendment No *) took effect or such longer period as the Minister may, before the expiration of that period of five years, notify by order published in the Gazette, and
- (b) consent must not be granted to such a subdivision unless the consent authority is satisfied that:
 - (i) the land has an adequate capability for on-site effluent disposal and that such disposal will not affect the quality of surface or ground water, and

- (ii) the subdivision makes provision for an adequate reticulated non-potable water supply to each allotment, and
- (iii) the residential allotments will be located on the area of the land in the north eastern corner of the land identified as "highly modified woodland/dry forest" in the *Flora and Fauna Assessment for Lots 1 & 2 (DP 456367) and Lot 2 (DP 131294) (8360 Monaro Highway) Parish of Burra, County Murray, Palerang Shire July 2008* prepared by Geoff Butler and Associates, and
- (iv) Asset Protection Zones in accordance with Planning for Bushfire Protection can be provided without encroaching on areas of the site outside the area identified as "highly modified woodland/dry forest" in the above flora and fauna assessment.
- (v) a community management statement that will provide for the ongoing management of the community land such that its biodiversity values are maintained and enhanced, and
- (vi) adequate provision has been made for visual screening of the residential allotments from the Monaro Highway.

This amendment, in conjunction with clause 31 of the Yarrowlumla LEP 2002, will make a cluster housing development on the subject land permissible with consent. Dwelling house lots would be clustered on the previously disturbed part of the site (about 30 ha) (Figure 3). The remainder of the site would be jointly owned by the purchasers of individual lots as community property under the Community Land Development Act 1989 and would be managed to protect its biodiversity values under a community management statement.

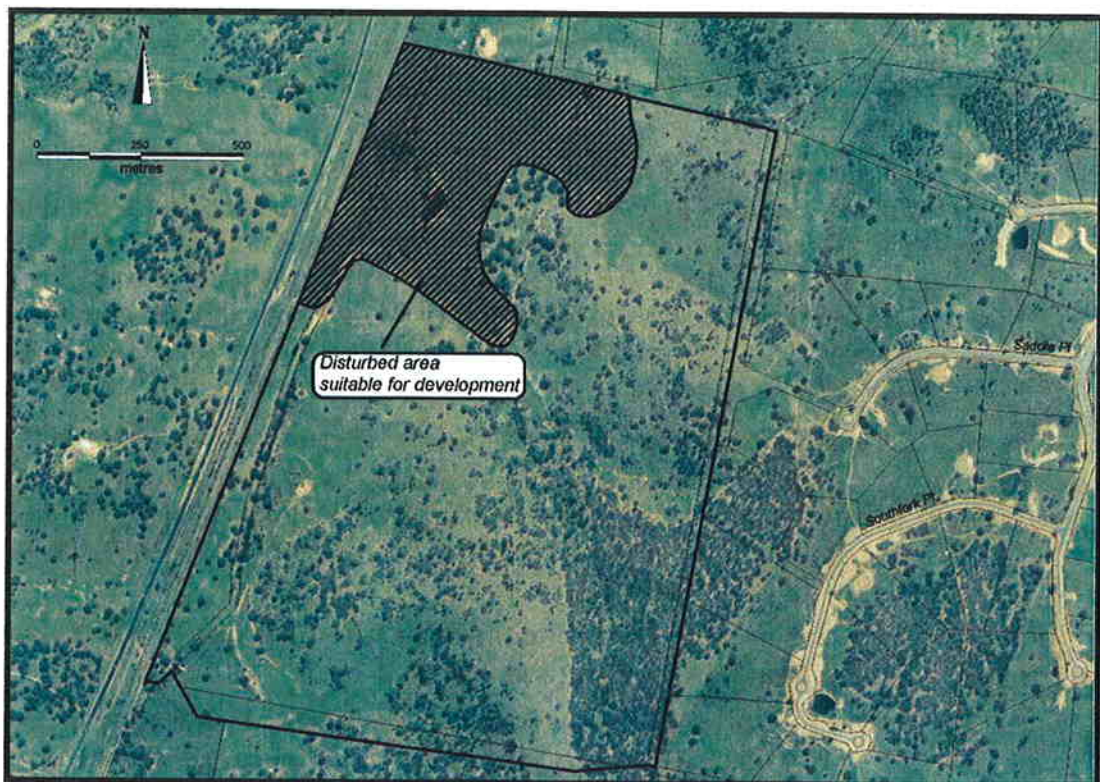


Figure 3 Previously disturbed part of site

Consistent with other cluster housing developments permitted under clause 31 and schedule 6, the planning proposal would require that development approval be obtained within five years, and that adequate arrangements are made for effluent disposal and the provision of a non-potable water supply. The planning proposal also locates the dwelling house lots to the disturbed area of the site, provides for visual screening from the Monaro Highway (an approach route to the National Capital) and requires the preparation of an appropriate community management statement.

(b) Public land reclassification

Amendment of Part 4 of Schedule 2 of the Yarrowlumla LEP 2002 by the addition of Part of Lot 29 DP 101516. This will reclassify the land from Community Land to Operational Land for the purposes of the Local Government Act 1993.

Part 3 – Justification

Section A – Need for the planning proposal

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

The planning proposal is not the result of a strategic study or report. The applicant has been seeking a change to the planning provisions to allow rural residential subdivision of this land for many years. The applicant has pointed out to Council that the use of his land (which he has owned for 25 years) for sheep grazing is no longer possible due to the increased frequency of dog attacks since rural residential subdivision of land adjoining to the east and north of the subject land has occurred over the past eight years.

Palerang Council and its predecessor Yarrowlumla Council have generally supported the proposal and had proposed to give it further consideration in the context of the new Palerang LEP currently in preparation. Because of delays in finalising the Palerang LEP, the applicant has asked Council to consider it as a site specific amendment to the current Yarrowlumla LEP 2002.

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

Yes. The alternative of zoning the whole site 1(d) Rural Residential would create false expectations as to the development potential of the land since a significant proportion of the site is not suitable for rural residential development due to slope and biodiversity constraints. It is considered preferable to not change the land zoning, but to allow a clustered rural residential development to occur on the part of the land which is suitable for this use.

c. Is there a net community benefit?

The planning proposal will benefit the community through better management of an area of land with high conservation values due to the presence of several threatened species.

The proposed reclassification of a small area of public land and subsequent road construction will not adversely affect access to the Royalla reserves and recreational trails system

Section B – Relationship to strategic planning framework**d. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?**

One of the identified key rural land challenges of the Sydney Canberra Corridor Regional Strategy is to manage the location and impacts of rural residential development. The planning proposal would result in a minor increase in the number of rural residences (30) adjoining an existing extensive rural residential area with a total of 236 lots.

The regional strategy notes that rural residential development can lead to land use conflict and the applicant has experienced problems with dog attacks. Because the planning proposal cluster the dwellings to the north eastern corner of the land close to existing rural residential development, it will not result in increased land use conflict with rural land to the south.

The planning proposal is inconsistent with the action of the regional strategy "Rural residential development should only be undertaken on the basis of an agreed local government settlement strategy" since no agreed strategy exists. This inconsistency is not considered significant due to the location of the land adjoining an existing rural residential area and the minor increase in lots proposed.

e. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

There is no current Community Strategic Plan for Palerang.

f. Is the planning proposal consistent with applicable state environmental planning policies?

Consistency with applicable State Environmental Planning Policies is indicated in the following table:

State Environmental Planning Policy	Consistency
44 Koala Habitat Protection	The flora and fauna report noted that koalas are unlikely to occur on the subject land due to a lack of suitable wet forest or wet gully habitat.
55 Remediation of land	There is no evidence of contamination on the land.
SEPP (Rural Lands) 2008	The SEPP specifies rural planning principles and rural subdivision principles to be considered under s.117 (see below). The SEPP (cl. 10) lists a number of matters which must be considered before consent is granted to a subdivision or a dwelling. These matters relate to other land uses in the vicinity and do not raise any inconsistencies because the adjoining land is rural residential.

g. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Consistency with applicable s.117 Directions is indicated in the following table.

s.117 Direction	Consistency
1.5 Rural Lands	This s.117 direction applies because the planning proposal will affect land within an existing rural zone. The planning proposal is generally consistent with the Rural Planning Principles of SEPP (Rural Lands) 2008: (a) the current use of the land for grazing is neither productive nor economically sustainable; (b) the proposal will have minimal impact on agriculture in the area; (c) the existing rural use of the land is of minor significance; (d) the proposal will provide a good balance between the social, economic and environmental interests of the community; (e) the proposal avoids constrained areas and provides for the protection and ongoing management of land with important ecological values; (f) the proposal provides additional rural lifestyle opportunities in a locality where this is already the predominant land use and where active rural residential communities are present; (g) the proposal makes use of existing infrastructure and will have minimal demands for services because of its location; (h) consistency with the regional strategy is discussed above.
2.1 Environment Protection Zones	Consistent – The planning proposal includes provisions that facilitate the protection and conservation of the environmentally sensitive areas of the site.
2.3 Heritage Conservation	Inconsistent – The planning proposal does not contain specific conservation provisions. However there are no known heritage items affected by the proposal and any that did exist would be protected by existing planning instruments. The inconsistency is of minor significance.
2.4 Recreation Vehicle Areas	Consistent – The planning proposal will not enable the land to be developed for the purpose of a recreation vehicle area.

4.4	Planning for Bushfire Protection	Part of the subject land, but not the site of the proposed dwelling houses, is bushfire prone land. The direction requires consultation with the Rural Fire Service following receipt of a gateway determination and prior to community consultation. The planning proposal requires the provision of APZs and that these be located outside the areas of high conservation value.
5.1	Implementation of Regional Strategies	Consistency with the Sydney-Canberra Corridor Regional Strategy is discussed above. The inconsistency with the strategy is considered to be of minor significance.
6.1	Approval and Referral Requirements	Consistent – The planning proposal does not contain concurrence, consultation or referral provisions.
6.2	Reserving Land for Public Purposes	Consistent – The planning proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
6.3	Site Specific Provisions	Consistent – The planning proposal imposes additional requirements in accordance with the relevant clause of the principle LEP.

Section C – Environmental, social and economic impact

- h. **Is there any likelihood that critical habitats or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of this proposal?**

The flora and fauna report commissioned by the applicant to support the proposal has *revealed extensive areas of the presence of an EEC (box woodlands) within the study area. It also located 2 threatened fauna species with a probability of a further 10 fauna species being present (the probability being high in some cases), inferred by the habitat availability and known occurrences in the nearby region. It also located some areas of higher disturbance that may suitable for development.*

The findings of the flora and fauna report have been confirmed by Department of Environment and Climate change ecologists who have inspected the site at the time when threatened plants would have been in flower. The Department has advised that development should only occur on the northern site (which may be able to be enlarged to a limited extent) as the second disturbed area on the southern boundary would have access and infrastructure provision issues for a relatively limited amount of blocks. The Department also advised that further detailed surveys for a number of species (recommended by the flora and fauna report) would not be necessary if development is confined to the disturbed area.

The planning proposal provides for ongoing management of the environmentally significant areas through the preparation of a management statement under the Community Land Development Act 1989. This is likely to provide a better environmental outcome than the current agricultural use of the land.

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

The planning proposal includes a requirement for effluent disposal reports to demonstrate that there will be no adverse impacts on surface or ground water.

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

The proposal is unlikely to generate any significant social or economic effects. Future residents would become part of the existing Royalla rural residential community.

Section D – State and Commonwealth interests

k. Is there adequate public infrastructure for the planning proposal?

Yes. The subject land adjoins an existing rural residential area with adequate public infrastructure.

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

To date only the Department of Environment Climate change and Water has been consulted. As discussed above the Department has not raised any concerns provided the development is confined to the northern disturbed area. Further consultations (including with the Rural Fire Service in accordance with s.117 Direction 4.4) will be undertaken following gateway determination.

Part 4 – Community Consultation

A 28 day consultation period is considered necessary. The planning proposal includes the reclassification of public land from community to operational and a public hearing will be required.

10. ITEMS FOR INFORMATION

Item 10.1: Braidwood Out of School Hours (OOSH) Care Facility

SUBJECT	Update on Braidwood OOSH		
FILE NO.	CS0020	DIVISION	Executive Services

Synopsis

This report provides an update on usage, accreditation and the introduction of the new Child Care Management System of the Braidwood OOSH facility, also known as Kids' Club.

Recommendation

Recommended that Council receive and note the report.

Report

Council resolved at its meeting on 10 April 2008 as follows:

