

0805-54



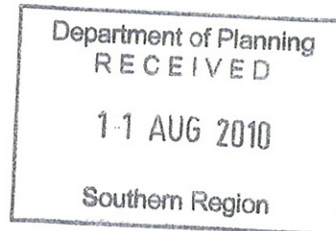
PWG000280



Tumut Shire
COUNCIL

6th August 2010

Brett Whitworth
Regional Director - Southern Region
Department of Planning
PO Box 5475
Wollongong NSW 2520



Dear Sir

Re: Tumut Local Environmental Plan 1990 (Amendment No. 36)

Council recently resolved to make an amending Local Environmental Plan under Section 73A of the *Environmental Planning and Assessment Act 1979*, namely the Tumut Local Environment Plan 1990 (Amendment No. 36). The amending LEP seeks to rectify an obvious error that exists in the Tumut LEP 1990.

In accordance with the Department of Planning's Circular PS 06-014 the relevant completed pro forma for such an amendment, along with the report made to Council and Council's resolution, is attached for your action. Should you require any further information on this matter please contact Jim Mumford, Senior Town Planner on (02) 6941 2531 or Dialina Da Costa, Town Planner on (02) 6941 2594.

Yours faithfully

Dialina Da Costa
Town Planner



Section 73A EP&A Act submission

Part A. Council to complete

Subject:

Tumut Local Environmental Plan 1990 (Amendment No. 36).
Report requesting the making of amending local environmental plan under section 73A of the Environmental Planning and Assessment Act 1979

Background:

Tumut Shire Council resolved on 27th July 2010,
to amend Tumut Local Environmental Plan 1990 and to request that the Minister for Planning make the plan under section 73A of the *Environmental Planning and Assessment Act 1979*.
The draft amending plan is attached.
The land to which this amendment applies is Lot 350 DP 757214

Why there is a need for the amendment:

During the implementation of the Tumut LEP1990, an error was made whereby a private property in Batlow was incorrectly included within the property zone directly adjoining the west (zone 8(a) National Park, Nature Reserve and Flora and Fauna Reserve). This property is owned by the Crown and is used for purposes reflected in the 8(a) zoning. The subject property is not being used for such purposes and is privately owned. The current property owners have suffered financial hardship and there is an urgent need for them to sell the property. Because the zoning is incorrect, this has been putting off prospective purchasers. The property owners depend on this change in order to successfully market their property.

What the amendment does:

The amendment will change the zoning of the subject property from 8(a) National Park, Nature Reserve and Flora and Fauna Reserve to 1(b) Rural (Special Agriculture) zone. It will specifically change the colour of the map to reflect the new zoning, and will make a slight change to the definition of "the map" within the Tumut LEP 1990.

Why the amending plan is suitable to be made in accordance with section 73A:

It is considered that this amendment corrects what is a minor error to "the map" and a minor amendment to the definition of "the map" of the Tumut Local Environmental Plan 1990.

The council requests that the Minister agree to make draft Tumut LEP1990 (AmendmentNo.36)

Signed: Date: 6th August, 2010
Name: Dialina Da Costa Position: Town Planner
On behalf of: Tumut Shire Council (Name of council)

Part B. Department of Planning use only

Date of referral to LEP Review Panel: (Insert date)



Section 73A EP&A Act submission

Department position:

The draft LEP amendment has been considered by the Department and it is satisfied that the amendment can be considered as a minor amendment under section 73A (see advice tagged 'A').

Parliamentary Counsel opinion:

The Parliamentary Counsel has provided an opinion indicating that the plan may legally be made (tagged 'B').

Recommendation:

It is recommended that the Minister:

- (a) under section 73A of the *Environmental Planning and Assessment Act 1979* maketagged 'B')
(Name of LEP)
- (b) authorise the Department to advise council of the Minister's decision.

Date:

Signed: Name:

Position:
for Director-General

Tumut Local Environmental Plan 1990 (Amendment No 36)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the
Environmental Planning and Assessment Act 1979. (Amendment 36)

Minister for Planning

Tumut Local Environmental Plan 1990 (Amendment No 36)

under the

Environmental Planning and Assessment Act 1979

1. Name of plan

This plan is the *Tumut Local Environmental Plan 1990 (Amendment No 36)*.

2. Aims of plan

This plan aims to amend *Tumut Local Environmental Plan 1990 (the 1990 plan)* to correct a minor map error on land to 1(b) (Rural (Special Agriculture) Zone).

3. Land to which this plan applies

This plan applies to privately owned land situated at Tumbarumba Road, Batlow (Lot 350 DP 757214) which is currently zoned 8 (a) (National Park, Nature Reserve and Flora and Fauna Reserve).

4. Amendment of Tumut Local Environmental Plan 1990

Tumut Local Environmental Plan 1990 is amended as set out in Schedule 1:

Schedule 1 Amendments

(Clause 4)

[1] Clause 5 Definitions

Insert:

"the map"

Tumut Local Environmental Plan 1990 (Amendment No 36).

MANAGER DEVELOPMENT & ENVIRONMENT REPORTS

REPORT NUMBER: MD&E 1
SUBJECT: Minor amendment to Tumut Local Environmental Plan 1990- application to Department of Planning (0805-54)
REPORT AUTHOR: Dialina Da Costa
RESPONSIBLE MANAGER: Paul Mullins

PURPOSE OF REPORT: To seek Council resolution to make a minor amendment to the Tumut Local Environmental Plan 1990
APPLICANT: Tumut Shire Council
OWNER: AJ and AD Shaw
PROPOSAL: Minor amendment to Tumut Local Environmental Plan 1990- minor amendment to rectify incorrect zoning
EXISTING USE: Vacant land
ZONING: 8(a) National Park, Nature Reserve and Flora and Fauna Reserve
LAND USE: Vacant land
DECISION DUE: 27/7/10

KEY ISSUES

Privately owned land incorrectly zoned 8(a) National Park, Nature Reserve and Flora and Fauna Reserve

BUDGET IMPACTS

NIL

SOCIAL IMPACTS

NIL

ENVIRONMENTAL IMPACTS

NIL

MANAGEMENT PLAN IMPACTS

NIL

INTRODUCTION

Lot 350 DP 757214 is privately owned land which is incorrectly zoned 8(a) National Park, Nature Reserve and Flora and Fauna Reserve. The land directly adjoins land zoned 8(a) National Park, Nature Reserve and Flora and Fauna Reserve and land which is zoned 1(b) (Rural (Special Agriculture) Zone). The subject property is not dedicated for national parks purposes and therefore is supposed to be zoned 1(b) (Rural (Special Agriculture) Zone).

MANAGER DEVELOPMENT & ENVIRONMENT REPORTS

Section 73A(1)(a) and 73A(2) of the Environmental Planning and Assessment Act 1979 (EPA Act) is being exercised in order to rectify this obvious error/misdescription and because the rectification of this error involves a change of the zoning map. The error the subject of this report has been so since the implementation of the Tumut Local Environmental Plan (LEP) in 1990.

Council would usually incorporate minor changes such as these into proposals which Council would consider at a particular time, such as rezoning applications in the shire. This was done due to the fact that prior to 2009 s73A of the EPA Act only incorporated minor amendments in text form, rather than to the zoning map, which is what the subject application required. Since the amendment of s73A in 2009, which included s73A(2), incorporating minor amendments to the zoning map, an independent application is now able to be made the Department of Planning in order to rectify the subject issue.

Such changes as a result of zoning errors would generally be made when it is brought to Council's attention that the matter was causing significant hardship to the property owner and that it was a matter of urgency that the matter be rectified. This matter was initially brought to Council's attention in 2005. Other zoning errors which may also exist in the shire are generally not dealt with in this urgency unless the property owner justifies their urgent need for the issue to be rectified and therefore the need to bring the matter forward for consideration.

Through the abovementioned section of the EPA Act a minor amendment is being made to the Tumut LEP 1990 in order to finally rectify this zoning issue.

In order to make this minor amendment, a Council resolution is required, which is an ordinary process required when making amendments to an environmental planning instrument such as the Tumut LEP.

The owner of the land which is subject to the 8(a) National Park, Nature Reserve and Flora and Fauna Reserve has been contacted and no objections were raised with regards to the proposal (see attachment).

COMMENTS

As a result of the incorrect zoning which was not their fault, the property owners have suffered considerable hardship. Their property has been marketed since 2007 and the incorrect zoning has put off buyers from purchasing the land. The rectification of the zoning issue is a priority in order to alleviate their hardship and be able to sell their land.

The subject property is owned by a Council staff member, although this staff member is not directly involved with the Council department which would be rectifying this issue through the technical processes involved. In accordance with the Council Policy "Assessment of Development Applications lodged by Councillors and Designated Staff" the property owner is not a designated staff member.

Despite this, the Council employee has registered their pecuniary interest with Council's General Manager regarding the subject matter.

MANAGER DEVELOPMENT & ENVIRONMENT REPORTS

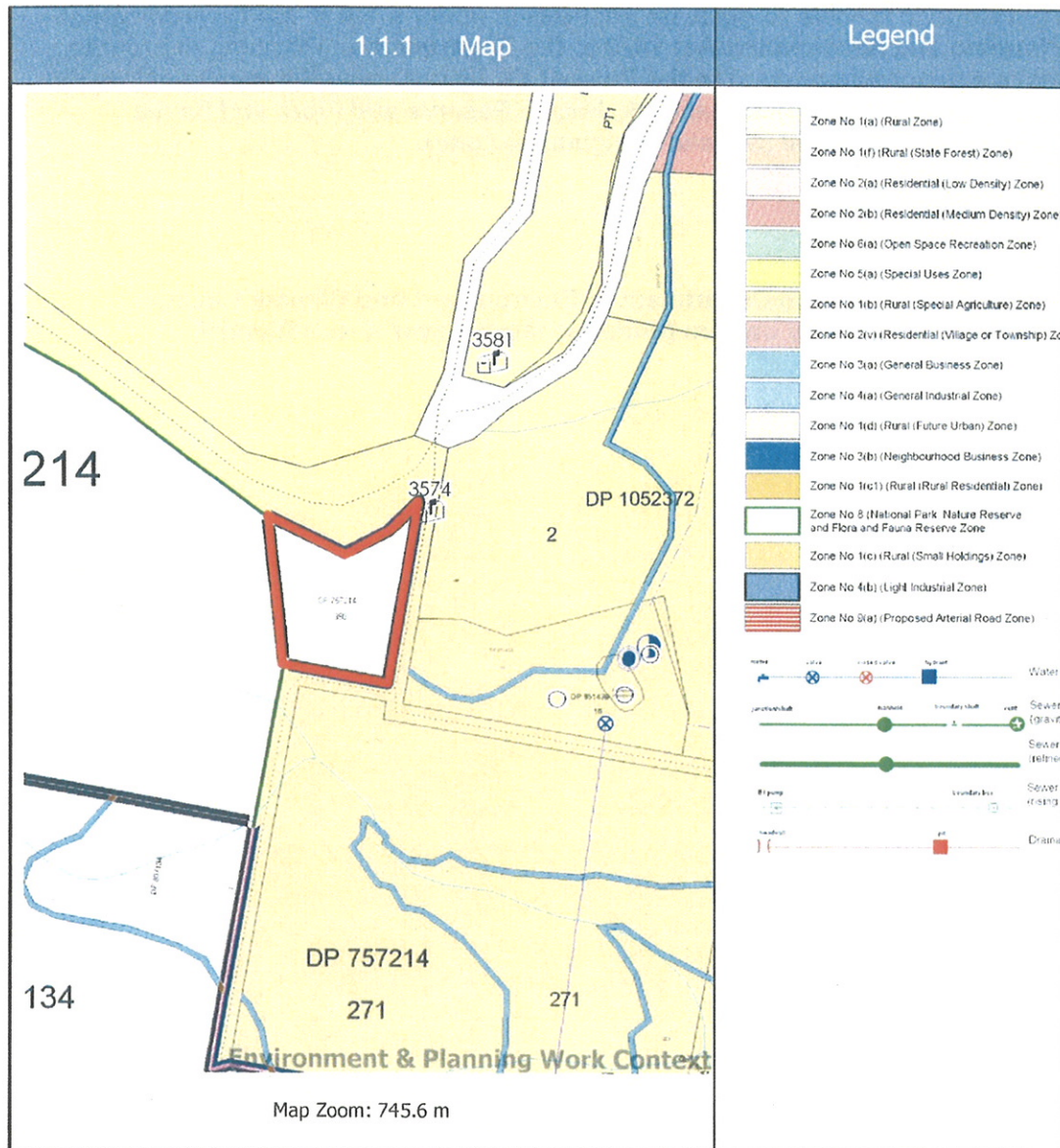
RECOMMENDATION

That Council resolve to make an application under s73A of the Environmental Planning and Assessment Act 1979 to the Department of Planning in order to make a minor amendment to the Tumut LEP by changing the zoning of Lot 350 DP 757214 from 8(a) National Park, Nature Reserve and Flora and Fauna Reserve to 1(b) (Rural (Special Agriculture) Zone).

ATTACHMENTS

Locality plan
Correspondence from Department of Environment and Climate Change
Letters from property owners (under separate cover in confidential)

Locality plan



TUESDAY, 27 JULY, 2010

MANAGER DEVELOPMENT & ENVIRONMENT REPORTS

Correspondence from Department of Environment and Climate Change

35 Printed from Infovision EDMS at : 02:27PM on Thu 26 Apr 2007

Your reference: JULY LJS 206-5
Our reference: 717/01

Jim Mumford
Environmental Planner
Tumut Shire Council
76 Cooper St
TUMUT NSW 2720

TUMUT SHIRE COUNCIL		
FILE No	113/10/24	
SCAN No		
DOC ID		
STANDARD	1/2/2000	
SEARCHED	INDEXED	FILED
SERIALIZED		
FILED		
APPROVED		
RECEIVED		
DATE		
TIME		
USER		

206-5
643

Dear Sir

REF: 31965-A40

Lot 350 DP 757214 Tumbarumba Road Batlow Rezoning from National Park Zone.

I refer to your letter of 7 March 2007. The Department of Environment and Conservation has no objection to the proposed rezoning if the private land has been included in the National Parks zone in the Tumut LEP map. The National Park zone should only apply to public lands gazetted under the *National Park Wildlife Act 1974*. The most appropriate zone would be as in the adjoining private lands.

For specific comments relating to location and surrounding areas more information on the property should be provided. No map was included.

If you have any questions concerning this letter contact Miles Beak on 6298 9705 in DEC Planning and Aboriginal Heritage Section.

Yours sincerely

MICHAEL HOOD
Manager, Planning and Aboriginal Heritage Section
South Branch

717/01

Department of Environment and Conservation NSW

PO Box 724 Queanbeyan NSW 2621
Tel: 6298 2100 Fax: 6298 2101

Telegraph (02) 6294 0200
Parish (02) 6294 0201

RECEIVED
09 JUN 2010

BY: 


Batlow NSW 2730


Tumut Shire Council
76 Capper St Tumut
NSW 2720

Att: Dialina Da Costa

Re: Re zoning of Lot 350 DP 757214

Dear Dialina

As per you request, I am writing to you regarding the correct zoning of the above property. This as you are aware has dragged on for quite some time now. Back in 2007 when we first placed this block on the market we discovered that the block had been incorrectly zoned.

Due to changes in legislation, Tumut Council staff work loads and several other factors, the correct rezoning of our block has been delayed indefinitely. As mentioned, the block has been on the market for some time however every time we get close to a sale, the buyer pulls out because of the zoning issue.

My wife and I need to sell this block, more urgently now than before to pay down debt that is associated with another property. Because the zoning issue is through no fault of our own, we would greatly appreciate it if this matter can be finally rectified.

I look forward to you reply.

Kind Regards





15 May 2007

Mr. Paul Mullins
Manager Development & Environment.
Tumut Shire Council
76 Capper St
Tumut NSW 2720

Re: [REDACTED] - Lot 350 DP 757214 Batlow

Dear Paul

Back in February 2005, I made some enquiries to your department via email with regard to our block of land in Batlow in particular we needed to know what the process was to gain approval of a building permit on our block of land.

I understood that your team was very busy at the time so I didn't push the issue and when I hadn't received any correspondence I contacted Jim Mumford via email on 11/Aug/2005. I also contacted the General Manager at this time to notify him of our intentions to build however was told that this was not necessary at this stage of the process.

After not hearing anything back I again contacted Jim via email on the 16th Sep 2005 asking if there had been any progress. I also followed up with a phone call and was told they were working on it.

On 11th Jan 2006 I spoke with Jim and he informed me that Linda Seymour would have worked on this over the Christmas break. Jim also stated that he had applied to you for overtime so he could catch up with a backlog of paperwork sitting on his desk.

Linda came to see me in late 2006 and told me that our block had been mistakenly zoned 8(a) "*National Park, Nature Reserve and Flora and Fauna reserve Zone*" which was not the case and in fact after a search discovered that our block already had a building permit.

Jim had previously written to NP&WS explaining that the land was incorrectly zoned and asked for it to be rezoned to 1(b) (Rural(Special Agriculture)zone) in accordance with our adjoining land to which NP&WS agreed (please see attached letters).

I am told that a report now needs to go to council and council needs to provide a Section 73A EP&A Act submission to the NSW Government Dept of Planning.

Our circumstances have now changed and my wife and I now have this block of land on the market and our Real Estate Agents and solicitor are requesting an updated 149 certificate (front page only would suffice) showing the rezoning. We have already lost one potential sale due to the uncertainty of the building status of the block.

Once again I understand that your team is very busy especially with the new subdivisions in the Tumut area however given the amount of time it has taken, and patience that we have displayed to this point, we would greatly appreciate if some urgent priority be given to this matter.

We look forward to your reply.

Yours faithfully,

[Redacted signature block]

NSW 2730

MD&E 2 - Minor amendment to Tumut Local Environmental Plan 1990- application to Department of Planning (0805-54)

PURPOSE OF REPORT: To seek Council resolution to make a minor amendment to the Tumut Local Environmental Plan 1990

493 RESOLVED that Council resolve to make an application under s73A of the Environmental Planning and Assessment Act 1979 to the Department of Planning in order to make a minor amendment to the Tumut LEP by changing the zoning of Lot 350 DP 757214 from 8(a) National Park, Nature Reserve and Flora and Fauna Reserve to 1(b) (Rural (Special Agriculture) Zone).

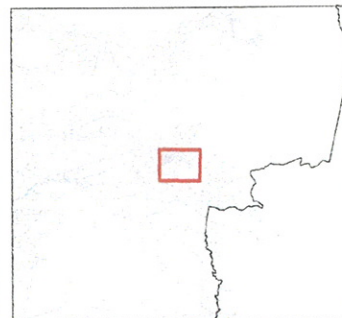


Site Map

Legend

Lot 350 DP757214

DCDB boundaries



Area of Detail



Scale 1 10 000 20 30

Project: CNA 1004

Projection GDA 1994

1000

DISCLAIMER: No responsibility is taken for any omissions or inaccuracies that may be contained within any report and associated data in any form.

No guarantee is given as to the accuracy of the information contained within any report or data. Credit asset holders should be arranged before proceeding with any transactions. You should not rely solely on the information appearing in this report, including in a prospectus, as a basis for any investment decision. If you are buying a property, checking its proper management and title documents is your responsibility. The information in this report is derived from the Land & Property Management Authority (LPA) and is used under license from the Land & Property Management Authority.



Before Amendment Map

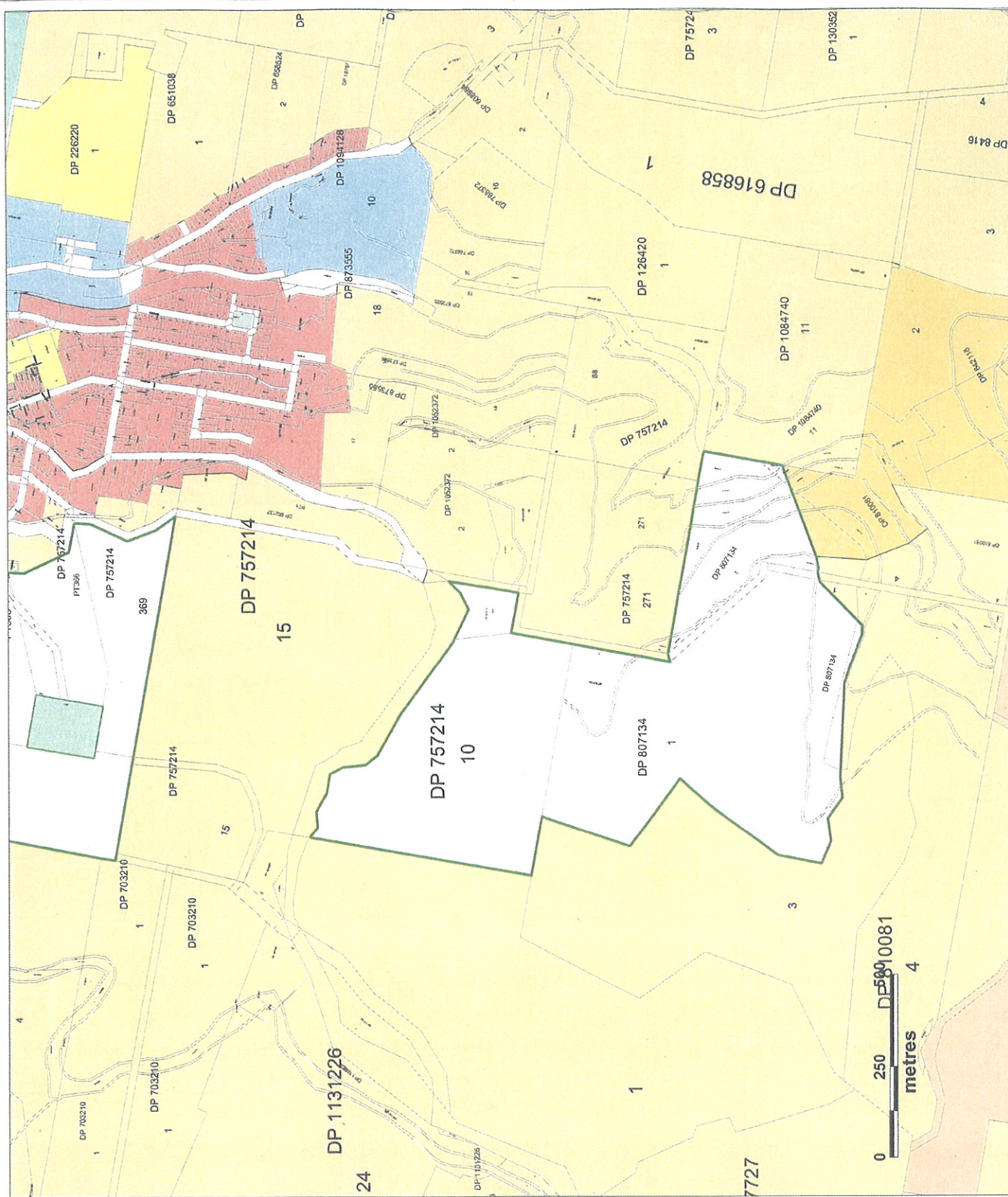
- Legend**
- | | |
|---|--|
|  | Zone No 1(a) (Rural Zone) |
|  | Zone No 1(f) (Rural (State Forest) Zone) |
|  | Zone No 2(v) (Residential (Village or Township) Zone) |
|  | Zone No 8 (National Park, Nature Reserve and Flora and Fauna Reserve Zone) |
|  | Zone No 1(b) (Rural (Special Agriculture) Zone) |
|  | Zone No 6(a) (Open Space Recreation Zone) |
|  | Zone No 7(a) (Residential (Low Density) Zone) |
|  | Zone No 8(a) (Proposed Arterial Road Zone) |
|  | Zone No 2(b) (Residential (Medium Density) Zone) |
|  | Zone No 4(a) (General Industrial Zone) |
|  | Zone No 5(a) (Special Uses Zone) |
|  | Zone No 1(c) (Rural (Rural Residential) Zone) |
|  | Zone No 1(c) (Rural (Small Holdings) Zone) |
|  | Zone No 3(a) (General Business Zone) |
|  | Zone No 1(d) (Rural (Future Urban) Zone) |
|  | Zone No 4(b) (Neighbourhood Business Zone) |
|  | Zone No 4(b) (Light Industrial Zone) |
|  | Zone No 2(b) (Residential (Medium Density) Zone) |
|  | DCDB boundaries |



ca. 110,000 @ A3
Projection: GDA 1994
MGA Zone 55

TSC File Number 805-54 Proposed Amendment No36
Printed 05/08/2010

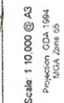
DISCLAIMER: No responsibility is taken for any errors or omissions that may be contained within any map and associated data in any form. No guarantee is given as to the accuracy of the information contained within any map or data. Onsite asset locations should be arranged before proceeding with any excavations. You should NOT rely solely on this information especially if you are buying a property, building on a property or making a final decision. It is recommended that you seek legal advice before proceeding. Any data from the iCCOB is used under license from the Land & Property Management Authority.





Proposed Amendment Map

- | Legend | |
|---|--|
|  | Zone No 1(a) (Rural Zone) |
|  | Zone No 1(f) (Rural (State Forest) Zone) |
|  | Zone No 2(v) (Residential (Village or Township) Zone) |
|  | Zone No 8 (National Park, Nature Reserve and Flora and Fauna Reserve Zone) |
|  | Zone No 1(b) (Rural (Special Agriculture) Zone) |
|  | Zone No 6(a) (Open Space Recreation Zone) |
|  | Zone No 2(a) (Residential (Low Density) Zone) |
|  | Zone No 8(a) (Proposed Arterial Road Zone) |
|  | Zone No 2(b) (Residential (Medium Density) Zone) |
|  | Zone No 4(a) (General Industrial Zone) |
|  | Zone No 5(a) (Special Uses Zone) |
|  | Zone No 1(c) (Rural (Rural Residential) Zone) |
|  | Zone No 1(c) (Rural (Small Holdings) Zone) |
|  | Zone No 3(a) (General Business Zone) |
|  | Zone No 1(d) (Rural (Future Urban) Zone) |
|  | Zone No 3(b) (Neighbourhood Business Zone) |
|  | Zone No 4(b) (Light Industrial Zone) |
|  | Zone No 2(b) (Residential (Medium Density) Zone) |
|  | DCDB boundaries |



TSC File Number: 805-04 Proposed Amendment No.32
Printed: 04/06/2010