

9.2 Initial Gateway Consideration of the Planning Proposal for consideration of part of Lot 100 DP710456 and Lot 101 DP 710456, 26 Drualla Road, Jamberoo

CSP Objective: 2 Well Planned and Managed Spaces, Places and Environment

CSP Strategy: 2.9 Ensure the principles of sustainable development and legislative compliance underpin our land uses and the design of our buildings and subdivisions

Delivery Program: 2.9.3 Prepare and process planning proposals in a timely manner in accordance with the Environmental Planning and Assessment Act requirements

Item 9.2

Summary

Council has received a Planning Proposal for consideration of part of Lot 100 DP 710456 and Lot 101 DP 710456, 26 Drualla Road, Jamberoo (Attachment 1 - map). This report overviews the reports submitted by the applicant against criteria outlined in Council's Planning Proposal Policy and recommends the Planning Proposal proceed to the Department of Planning and Environment to obtain a Gateway determination.

Finance

A fee structure for submittal and review of planning proposals has been developed by Council and is contained in Council's fees and charges schedule. Relevant fees have been paid in regard to this proposal.

Policy

Consideration of requests for rezoning of land require consideration of a number of Acts, Government policies, Council environmental planning instruments and planning documents. Specifically the *Environmental Planning and Assessment Act 1979*, *Kiama Local Environmental Plan 2011*, Illawarra-Shoalhaven Regional Plan, Kiama Urban Strategy and the Kiama Planning Proposal Policy.

Reason for Report to Council

In accordance with the adopted Kiama Planning Proposal Policy, Council is required to support the consideration of a planning proposal in order for the proposal to proceed to the Department of Planning and Environment for consideration.

Attachments

- 1 Attachment 1 - subject site
- 2 Attachment 2 - Zoning
- 3 Figure 1 - Conceptual Subdivision Lot Layout

Enclosures

Nil

RECOMMENDATION that Council:

- 1) Endorse this Planning Proposal to proceed to the Department of Planning and Environment for a Gateway determination

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- 2) Request plan making delegations for this proposal as a part of the Gateway determination.
 - 3) On receipt of the Gateway Determination, undertake any requirements of such determination.

BACKGROUND

Council has received a Planning Proposal (PP) for consideration part of Lot 100 DP 710456 and Lot 101 DP 710456, 26 Drualla Road, Jamberoo (known hereafter as 'the subject site'). In line with the Kiama Planning Proposal Policy, this report details the submitted concept PP and provides an assessment of the specialist consultant reports.

Planning Proposal Details

The subject site (figure 1 attached), part of Lot 100 DP 710456 and Lot 101 DP 710456, is located at 26 Drualla Road, Jamberoo. The site is approximately 6,900m² – consisting of all of Lot 101 DP 710456 (4,745m²) and some 2,155m² of the adjoining Lot 100 DP 710456. The site gains vehicular access via frontage to the intersection of Drualla Road and Downes Place. The site contains a dwelling and associated pool, outbuilding and landscaping on Lot 101 and open agricultural/farming land on Lot 100. The site is currently zoned RU2 Rural Landscape and E3 Environmental Protection under the provisions of the *Kiama Local Environmental Plan (LEP) 2011*. It is noted that the areas of Lot 100 not included in this PP contains a dwelling and the land zoned E3 Environmental Protection.

Intent of Planning Proposal

The PP aims to rezone the land which fronts the unformed section of Drualla Road from RU2 Rural Landscape to R2 Low Density Residential and apply the associated controls in keeping with the adjacent land on Downes Place and Drualla Road. The subject site is identified as Site 24 in the Kiama Urban Strategy as it would provide an appropriately defined and accessible western boundary to Jamberoo Village.

It should be noted that there is no change proposed to the majority of Lot 100 that is not included in this PP.

The PP seeks the following amendments to the *Kiama Local Environmental Plan 2011* to ensure that the 6,900m² site is consistent with the existing eastern boundary of Jamberoo Village. An outline of the existing and proposed controls is provided below:

Controls	Current controls	Proposed controls
Zone	Zone RU2 Rural Landscape	Zone site to R2 Low Density Residential
Floor Space Ratio (FSR)	FSR – none	FSR – C 0.45:1
Height of Building (HOB)	HOB – none	HOB – I 8.5m

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Lot Size	Lot size 40ha	Lot size – S 800 (sq m)
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Review and Assessment of the Planning Proposal

The results of the review will be framed around the requirements of the Kiama Planning Proposal Policy.

Step 1: If the proposal meets any of the following criteria Council staff may agree in principle that a PP be prepared.

Criterion for proceeding to Step 2	Compliance
Land is identified as a nominated area in the Urban Strategy.	The subject site is identified as Site 24 in the Kiama Urban Strategy as it would provide an appropriately defined and accessible western boundary to Jamberoo Village.
Land can be identified as assisting to meet Council's strategic direction.	N/A
A clear zoning anomaly exists on site.	N/A

Step 2: Concept Planning Proposal presented to Council.

In order to adequately assess the viability of the land for residential development a number of specialist consultant reports were required to be undertaken by the applicant as part of the Concept PP. The reports were requested in order to demonstrate:

- An assessment of environmental impacts.
- The suitability of the site for the proposed residential land uses.

Through the peer review process additional information was requested from the applicant in order to further clarify potential outcomes on site. This additional information was reviewed and assessed by staff and found at this point to meet the required level of detail. The results of this assessment process have been summarised below:

Concept Planning Proposal Report – Prepared by Plannex Environmental Planning Pty Ltd

The Concept PP report overviewed the intent of the PP, addressed the justification for the proposal, and gave an overview of the conceptual layout of the future residential subdivision of the site. The Planning report also addresses the relevant *State Environmental Planning Policies (SEPPs)*, Illawarra-Shoalhaven Regional Plan, Kiama Urban Strategy and applicable Section 117 Ministerial Directions.

The Concept PP report concluded that:

The subject site is considered to be suitable for the proposed subdivisions and subsequent residential development having regard to the availability of public utility infrastructure and the proximity of the site to existing facilities and services within Jamberoo Village.

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Assessments of the proposal undertaken to date indicate development of the site is possible as there are limited constraints, and there is not likely to be any detrimental environmental or Aboriginal cultural heritage impacts arising from the proposed development. Furthermore, the social and economic impacts are likely to be positive.

Comment

Staff have reviewed the Concept PP report and have concluded that it has addressed all of the relevant issues required, and has indicated that the proposed change will not have significant adverse impacts on environmental or social attributes on site.

The site is mapped as prime crop and pasture under Illawarra Regional Environmental Plan No 1, (as is a significant proportion of the Kiama LGA). This issue has not been adequately addressed by the applicant. Whilst it is not ideal, the Proposal can be supported as it:

- (a) proposes to rezone only a small proportion of Prime Crop and Pasture land available for agricultural purposes,
- (b) the site is located adjacent to existing residential development on two sides to the east and will form the western edge of urban development for the Jamberoo township,
- (c) the site had been investigated, publically exhibited and supported by Council with the adoption of the Kiama Urban Strategy,
- (d) the Proposal does not further fragment agricultural land.

These issues will require discussion in any reports submitted to the Department of Planning and Infrastructure.

As a result of the internal review process staff noted that while the Concept PP would result in residentially zoned land, subdivision of the site in its entirety would not be possible under the current provisions of the LEP 2011. As a result of the Concept PP Lot 100, which has an area of 27.6 hectares, would be zoned R2 Low Density, RU2 Rural Landscape and E3 Environmental Protection under the provisions of the LEP 2011. A minimum subdivision lot size of 40Ha would be required for the land zoned RU2 and E3 with a 800m² minimum lot size for the land zoned R2. Council would be unable to approve the subdivision of any of Lot 100 as it would result in an allotment with an area less than 40Ha. It is noted that this issue is not particular to the Kiama Municipality. A number of New South Wales (NSW) Councils have adopted provisions in their LEPs, through the planning proposal process, that enable the subdivision of lots with multiple zones. Accordingly, staff have drafted a clause for inclusion into the LEP 2011 based on the wording and formation of clauses that have been approved by the NSW Department of Environment and Planning in other LEPs.

To rectify this issue, the following clause is proposed for inclusion in LEP 2011:

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• **4.1C Exceptions to minimum subdivision lot sizes for resulting lots**

- (1) *The objectives of this clause are as follows:*
- (a) *to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,*
 - (b) *to ensure that the subdivision occurs in a manner that promotes suitable land use and development.*
- (2) *This clause applies to a lot (an **original lot**) that contains land in:*
- (a) *a rural or environment protection zone, and*
 - (b) *one or more other zones.*
- (3) *Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the **resulting lots**) if:*
- (a) *in relation to an original lot containing land in more than one zone, one of the resulting lots will contain all of the land within a rural or environment protection zone, and:*
 - (i) *any existing dwelling, or*
 - (ii) *any land within any other zone with an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and*
 - (b) *all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.*
- (4) *In determining whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:*
- (a) *whether or not the development is likely to maintain or improve the environmental values and agricultural viability of the land,*
 - (b) *the potential impact on the natural and physical constraints affecting the land, taking into account the long-term maintenance, management and protection of the land,*
 - (c) *the compatibility with existing or potential land uses and measures that are deemed necessary to avoid or minimise any potential for land use conflicts.*

The figures below illustrate what subdivision is currently possible on a lot with split zoning and what will be possible under the proposed provisions listed above.

Figure 1: Scenario 1 – Existing dwelling on lot with split zoning

Current Scenario under LEP 2011	Outcome of clause 4.1C(3)(a)(i)
• 30ha parcel comprising 29Ha RU2 (min. lot size 40ha), and 1ha R2 (min.	• Total of 13 lots/dwellings possible

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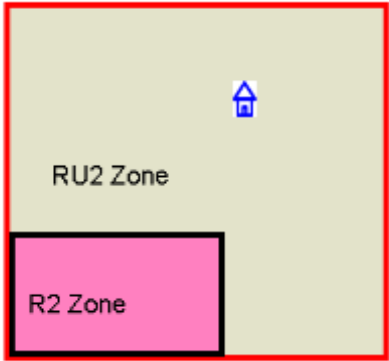
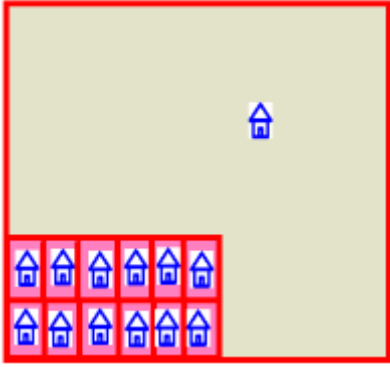
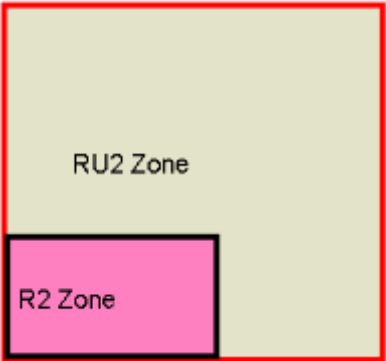
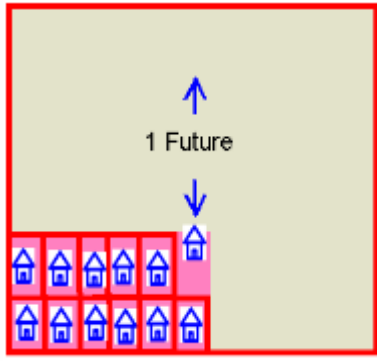
lot size 800m²) - Existing dwelling - R2 land cannot be subdivided as it will deliver a resulting lot of 29Ha (RU2), smaller than minimum lot size of 40Ha.	from lot size map - Result in 12 x 800m² R2 lots and 1x 29.04Ha RU2 lot - Result in 12 additional dwelling entitlements
	

Figure 2: Scenario 2 – Vacant lot with split zoning

Current Scenario under LEP 2011 30ha parcel comprising 29Ha RU2 (min. lot size 40ha), and 1ha R2 (min. lot size 800m²) - Existing dwelling R2 land cannot be subdivided as it will deliver a resulting lot of 29Ha (RU2) smaller than minimum lot size of 40Ha.	Outcome of clause 4.1C(3)(a)(ii) - Total of 12 lots/dwellings possible from lot size map - To enable subdivision of R2 land, a section of R2 must be incorporated with RU2 land. - Result in 11 x 800m² R2 lots and 1 x 29.12Ha split zoned lot - Result in 12 additional dwelling entitlements
	

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Flora & Fauna Assessment - Prepared Wirrimbirra Environmental Consultants Pty Ltd

An assessment on any ecological constraints associated with the site that might impact upon the PP was requested by staff after reviewing the initial Concept PP. A Flora & Fauna Assessment was prepared by Wirrimbirra Environmental Consultants Pty Ltd on behalf of the applicant. The Flora & Fauna Assessment included a four day field survey of the site, including fauna trapping and biodiversity inspections. The survey conducted indicated that the proposal ensures that any disturbance or modification to the environment will occur in areas significantly ecologically degraded. The site is cleared pasture improved land. The Assessment concluded that:

...there would be no constraints to the proposed development under the EP&A Act, EPBC Act or the TSC Act. No further investigation is required, i.e. a Species Impact Statement is not required, nor is referral to the Commonwealth Minister.

Staff Comment

The report was peer reviewed by staff who agreed with the results and conclusion of the submitted Flora & Fauna Assessment and concluded that the PP could proceed.

Stage 1 - Site Contamination Assessment & Preliminary Geotechnical Assessment – Prepared by Network Geotechnics Pty Ltd

An investigation of any geotechnical or contamination constraints associated with the site was undertaken by Network Geotechnics Pty Ltd on behalf of the applicant and accompanied the initial Concept PP. The Assessment included an investigation of subsurface soil and rock profiles across the site, geotechnical recommendations and lot classification as per AS2870-2011, recommendations on drainage and the potential for site contamination. The Assessment concluded that:

Based on the desk study, field investigation and laboratory tests the following conclusions are made:

- The site is assessed to be of low risk of contamination. It is assessed that a Stage 2 Contamination Assessment is not required for the proposed subdivision.
- Stripping of topsoil for construction of the subdivision should be carried out under the supervision of an experienced consultant and any foreign objects/materials identified should be subjected to further investigation.
- The proposed building sites are provided interim AS2870-2011 classification of Class H1 (Highly reactive) classification.

Staff Comment

The report was peer reviewed by staff who agreed with the results and conclusion of the submitted Stage 1 Site Contamination Assessment & Preliminary Geotechnical Assessment and concluded that the PP could proceed.

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Bushfire Hazard Assessment - Prepared Wirrimbirra Environmental Consultants Pty Ltd

A Bushfire Hazard Assessment was requested by staff after reviewing the initial Concept PP as it was identified that portions of Lot 100 contained bushfire prone land. Bushfire Hazard Assessment was prepared by Wirrimbirra Environmental Consultants Pty Ltd on behalf of the applicant. The Assessment assessed the bushfire threat to the property and the capabilities of the site to provide safe residential development in accordance with the *Rural Fires Act 1997* and Planning for Bushfire Protection 2006. The Assessment recommended minimal asset protection zones (i.e. 10 metres) would need to be employed in order to achieve the lowest construction for bushfire attack level. A 1.8 metre high non-combustible fence around the perimeter of the subdivision will assist in minimising ember attack. The Assessment concluded that:

While the above measures will not guarantee that a building will not burn, they will increase the probability that it will survive a fire attack and that the safety to residents and fire fighters will experience a lower level of risk.

Staff Comment

The report was peer reviewed by staff who agreed with the results and conclusion of the submitted Bushfire Hazard Assessment and concluded that the PP could proceed. As the land identified as bushfire prone is over 400 metres south of the development site the risk of bushfire is considered minimal.

Flood Study – Prepared by Site Plus Pty Ltd

An assessment on any flood constraints associated with the site that might impact upon the PP was requested by staff after reviewing the initial Concept PP. A Flood Study was prepared by Site Plus Pty Ltd on behalf of the applicant. The Flood Study assessed the hydrological and hydraulic characteristics of the catchment and addressed the current 100 year and Probable Maximum Flood (PMF) flooding for the site. The Flood Study concluded that:

...the flood waters only marginally effect the proposed land. Only inundating what would be half width of the proposed perimeter road with a low hydraulic hazard.

In the event of development of the site, freeboard of 0.5m must be maintained to all finished floor levels from the surface level of the 1% AEP event.

Staff Comment

The report was peer reviewed by staff who agreed with the results and conclusion of the submitted Flood Study and concluded that the PP could proceed.

Due Diligence Assessment – Prepared by Ainsworth Heritage

A Due Diligence Assessment was carried out by Ainsworth Heritage on behalf of the applicant and accompanied the initial Concept PP. The Assessment was undertaken to investigate the potential for the site to contain items of Aboriginal heritage significance and if the proposed development will impact upon those items. The Assessment concluded that:

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Following the steps of the Due Diligence process it was determined that the proposed development could Proceed with Caution and reference Chapter 8 (of the Due Diligence Assessment), due to impact upon known sites being avoided, no site being located in the development areas, and though the project possess features related to some archaeological potential, no sites were located in the areas to be impacted.

Staff Comment

The Due Diligence Assessment that accompanied the initial Concept PP was peer reviewed by staff who requested clarification over some of the terminology and recommendations contained within the assessment, specifically in regards to the ridgeline on site. Further amendments to the initial Concept PP included the requested clarifications and as such staff have since agreed with the results and conclusion of the submitted Due Diligence Assessment and concluded that the PP could proceed.

State and Regional Environmental Planning Policies (SEPPs and REPs) Compliance Assessment – Prepared by Plannex Environmental Planning Pty Ltd

Although the PP is mostly consistent with the intent of applicable state and regional planning policies, as it is concerned with the residential boundary of Jamberoo Village, it triggers the Deemed SEPP, Illawarra Regional Environmental Plan No 2 Jamberoo Valley (IREP 2). IREP 2 is concerned with protection of the environment and amenity of Jamberoo Valley. Although the PP does not present a threat to majority of the aims and objectives, it is unclear at this point in time, if the PP would alter the boundary of Jamberoo Village as applied in IREP 2. The property is very close to the village boundary line depicted in IREP 2 with part the northern sections of the property certainly adjacent to the village boundary.

It should be noted that as a result of the PP recently considered in Wyalla Road Jamberoo, Council has received State Government and independent legal advice concerning the village boundaries and IREP 2. This process indicated minor inconsistency with elements of IREP 2 can be justified by way of a local strategy. Planning and Environment further stated on 10 Feb 2015 that “*it has always been the intention to repeal the plan [IREP 2] once the Illawarra Regional Growth and Infrastructure Plan was finalised.*”

Section 117 Ministerial Directions Compliance Assessment – Prepared by Plannex Environmental Planning Pty Ltd

The applicant has carried out an assessment of the Concept PP against the relevant Section 117 Ministerial Directions. With the exception of Directions 1.2 Rural Zones and 1.5 Rural Lands, the Concept PP was found to be consistent with the relevant Section 117 Ministerial Directions. As the Concept PP is consistent with the adopted Kiama Urban Strategy the inconsistencies with Directions 1.2 and 1.5 are justified.

Comment

The assessment was peer reviewed by staff who agreed that the Concept PP was consistent with the relevant Section 117 Ministerial Directions with the exception of

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Directions 1.2 Rural Zones and 1.5 Rural Lands. Staff concurred that these inconsistencies were justified by the Kiama Urban Strategy. It is considered best practice for Council to prepare an independent report addressing Section 117 Directions Compliance as a part of the Gateway Report.

Assessment Summary

Report	Appropriate to proceed to Gateway
Concept Planning Proposal Report – Prepared by Plannex Environmental Planning Pty Ltd	✓
Flora & Fauna Assessment - Prepared Wirrimbirra Environmental Consultants Pty Ltd	✓
Stage 1 Site Contamination Assessment & Preliminary Geotechnical Assessment – Prepared by Network Geotechnics Pty Ltd	✓
Bushfire Hazard Assessment - Prepared Wirrimbirra Environmental Consultants Pty Ltd	✓
Flood Study – Prepared by Site Plus Pty Ltd	✓
Due Diligence Assessment – Prepared by Ainsworth Heritage	✓
State and Regional Environmental Planning Policies (SEPPs and REPs) Compliance Assessment – Prepared by Plannex Environmental Planning Pty Ltd	✓
Section 117 Ministerial Directions Compliance Assessment – Prepared by Plannex Environmental Planning Pty Ltd	✓

Plan Making Delegations

Council has received delegations for local plan making under section 59 of the *Environment Planning and Assessment Act 1979*. It is intended to request Plan making delegations for planning proposals consistent with an endorsed strategy and/or surrounding zones such as this PP. This request will be sent to gateway with the planning proposal delegation following council approval to proceed. Following the Gateway determination, council will be directed as to any further requirements to obtain additional studies and exhibit the Draft Kiama LEP.

Council will receive notification of this with the gateway determination.

Conclusion

The Planning Proposal meets the criteria outlined in the Planning Proposal Policy, as it is an endorsed site (Site 13) under the Kiama Urban Strategy.

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The technical reports obtained by the applicant have provided enough information to enable Council staff to support this stage of the Concept Planning Proposal.

Attachment 1

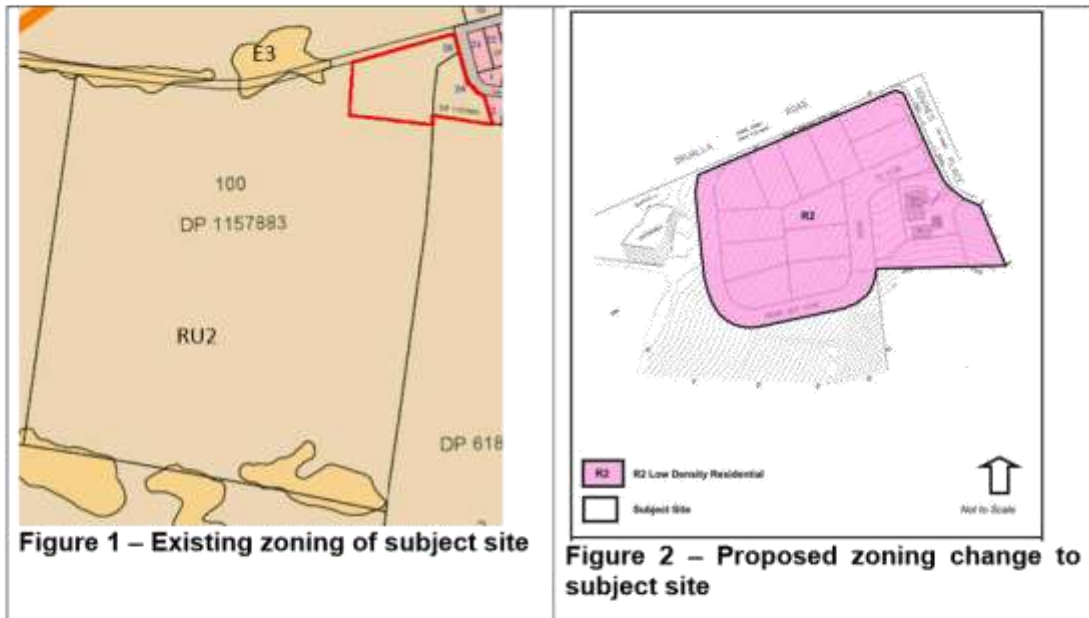


Figure 1 – 26 Drualla Road & 2A Downes Place, Jamberoo (Subject Site)

Item 9.2

Attachment 1

Attachment 2



Attachment 3

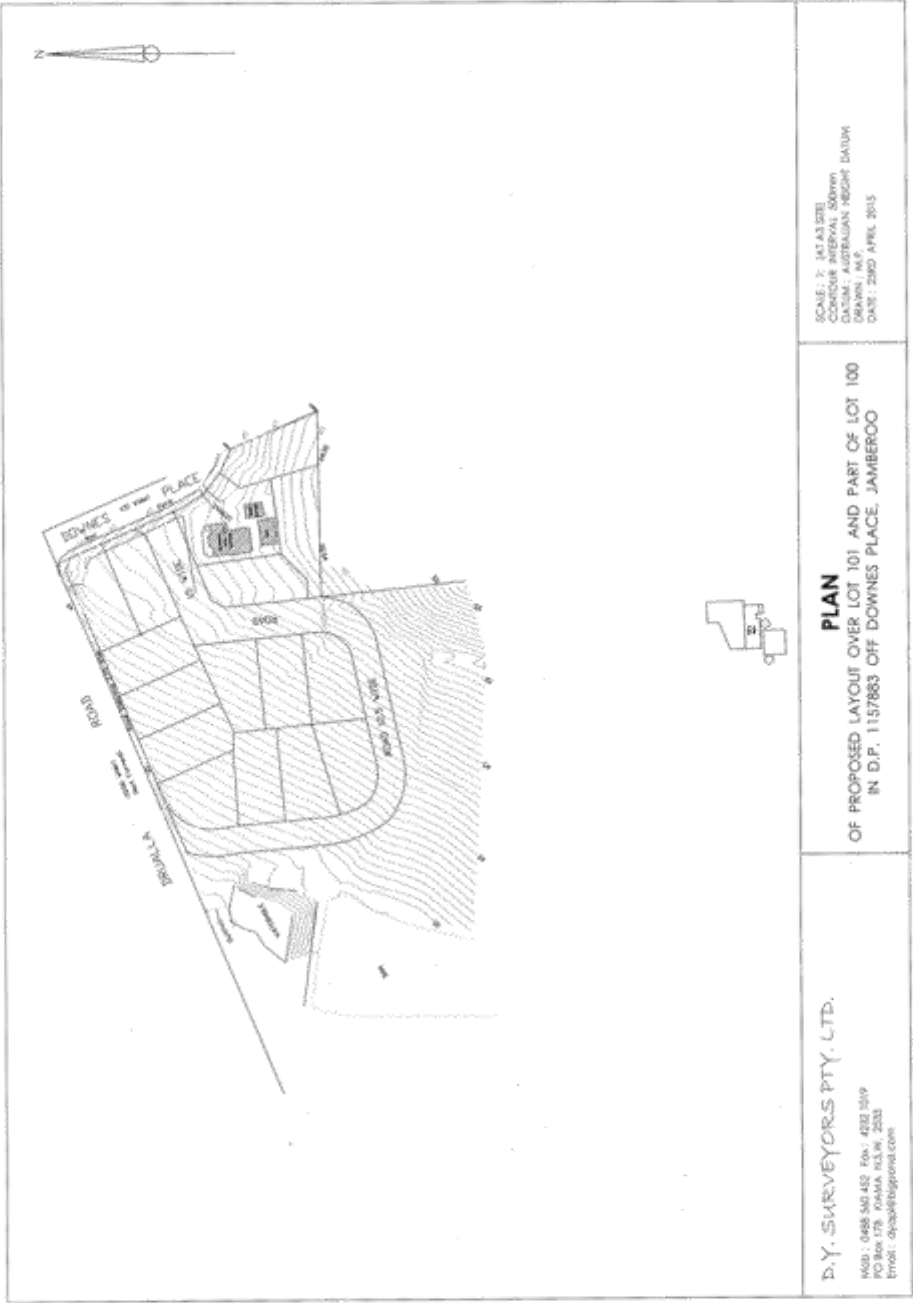


Figure 1 – Conceptual Subdivision Lot Layout