

cw-CS9 Planning Proposal to Amend WLEP 2010 to Permit Subdivision - Lot 103 DP 751271 15 Wattle Ridge Road, Hill Top.

Reference: PN 1581100, 5901
Responsible Officer: Group Manager Strategic and Assets

PURPOSE

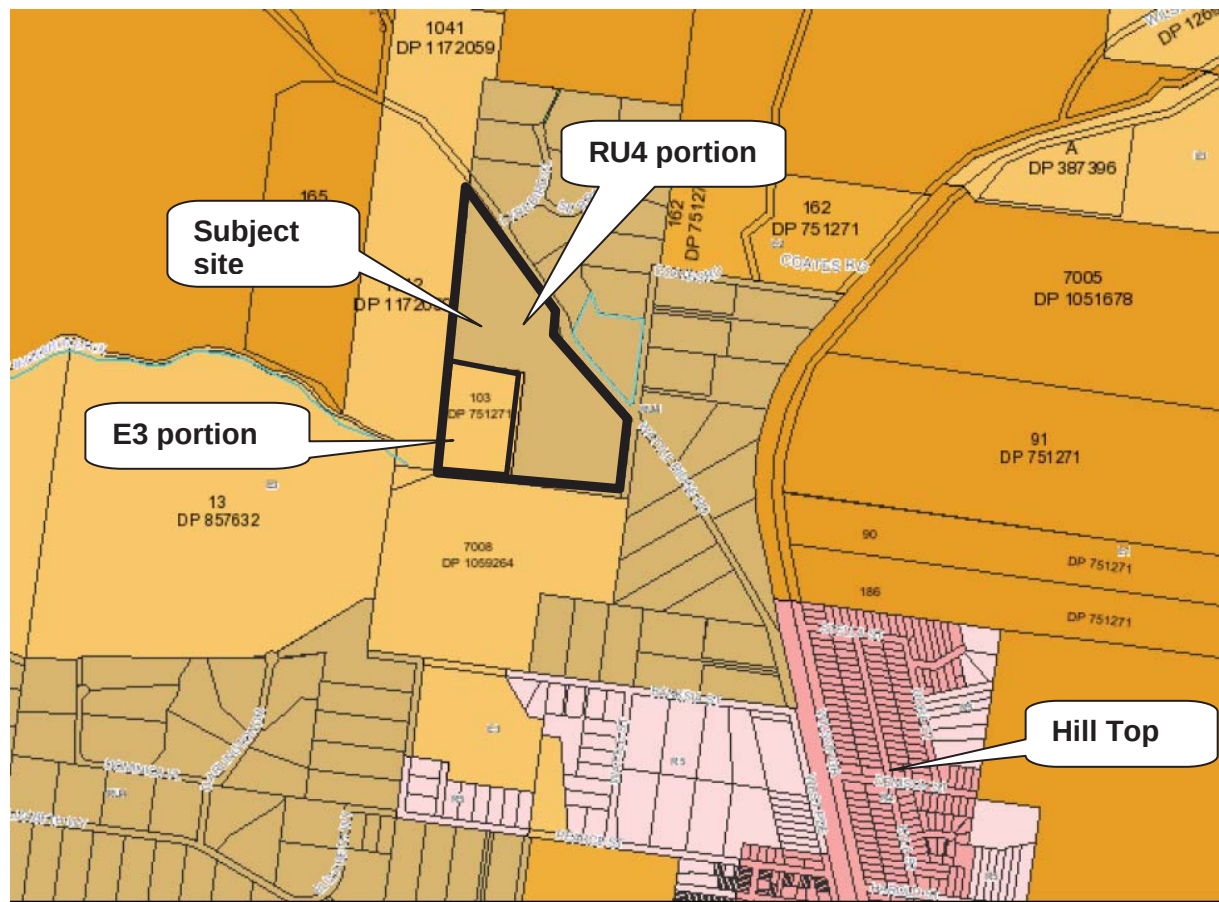
The purpose of this report is to present to Council a submission to amend WLEP 2010 to permit subdivision of Lot 103 DP 751271, 15 Wattle Ridge Road, Hill Top. A Planning Proposal is required because the subject site contains an area of E3 Environmental Management zoned land of 6.7 hectares which is below the minimum lot size of 40 hectares which would permit subdivision through a Land Use Application. It is recommended that the Planning proposal be supported.

DESCRIPTION OF PROPOSAL

BACKGROUND

The subject site is located to the north of Hill Top as indicated in the following figures.



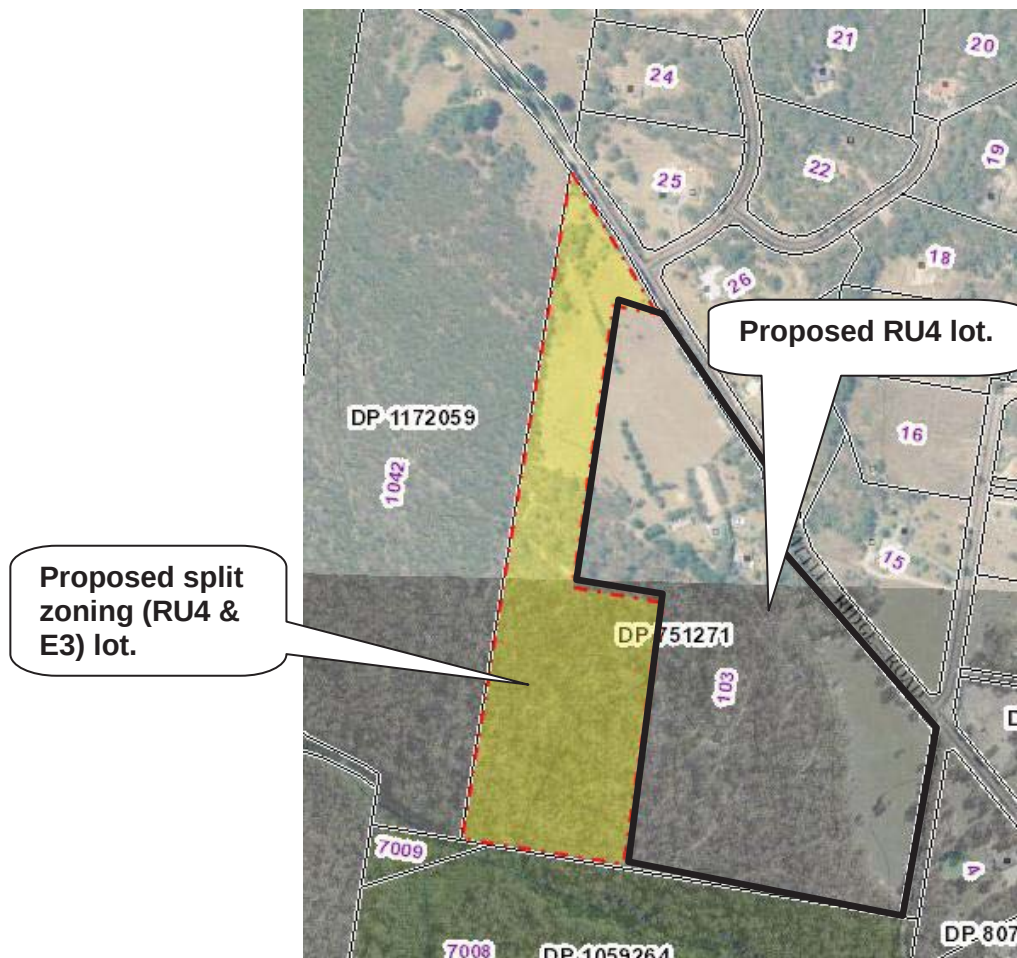


The site is zoned part RU4 Primary Production Small Lots and part E3 Environmental Management under WLEP 2010 as indicated above. The RU4 portion is part of an RU4 zoned area to the north of Hill Top. The E3 portion is part of a band of E3 land between RU4 zoned land to its north and south. The E3 portion of the site is heavily vegetated and contains a Category 2 (Aquatic and Terrestrial Habitat) Riparian Corridor.

DETAILS OF PROPOSAL

The subject site occupies a total area of some 25.2 hectares. The RU4 portion of the site covers an area of 18.6 hectares. The minimum lot size for 2 hectares means that potentially this portion of the site is capable of being subdivided into a total of 8 to 9 lots, depending on the road layout.

The applicant seeks to have the land subdivided into two new lots, one covering an area of 16.6 hectares and consisting entirely of RU4 zoned land, the second covering an area of 8.6 and containing the remaining RU4 portion and the E3 portion of the site. The proposed subdivision is shown below. A copy of the Planning Proposal request is included as Attachment 1 to this report.



PLANNING CONSIDERATIONS

There is no intention to develop the E3 portion of the site, or to obtain more than 9 new lots from the land. The proposed 16.8 hectare lot will be potentially sub divisible into a maximum of 8 lots with the proposed 8.6 hectare lot providing the 9th.

The need for a Planning Proposal arises from the fact that the split zone lot will include an E3 portion with an area of only 6.7 hectares, but because the minimum lot size for this E3 land is 40 hectares, the new lot will be an 'undersized allotment' under clause 4.6 of WLEP 2010.

To ensure there is no further subdivision potential in the new lot containing the E3 zoned land, it is proposed to place a minimum lot size of 4 hectares over that 6.7 hectare lot.

It is noted that Council has a number of properties with split zones across the Shire and there may be merit in considering, through the Local Planning Strategy Steering Committee Sunset Working Group, a draft clause to allow the subdivision of such lots without the need for a Planning Proposal.

STATUTORY PROVISIONS

Wingecarribee LEP2010 (WLEP 2010)

In order to amend WLEP 2010 a Planning Proposal is required under the Gateway process introduced in July 2009. The gateway process contains the following steps:

Planning Proposal - the relevant planning authority (Council) is responsible for the preparation of a planning proposal, which explains the effect of and justification for the plan. If initiated by the Minister (rather than the local council which is mostly the case) the Minister can appoint the Director-General of the Department of Planning or a joint regional planning panel to be the relevant planning authority.

Gateway - The Minister (or delegate) determines whether the planning proposal is to proceed. This gateway acts as a checkpoint to ensure that the proposal is justified before further studies are done and resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Consultations occur with relevant public authorities and, if necessary, the proposal is varied.

Community Consultation - the proposal is publicly exhibited (generally low impact proposals for 14 days, others for 28 days). A person making a submission may also request a public hearing be held.

Assessment - The relevant planning authority (Council) considers public submissions and the Proposal is varied as necessary. It is noted that clause 58 of the EP&A Act allows Council to vary, at any time, its Proposal as a consequence of its consideration of any submission or report during community consultation or for any other reason. Council may also resolve to not proceed with the Planning Proposal under this clause.

If the Planning Proposal does proceed, Parliamentary Counsel then prepares a draft local environmental plan (the legal instrument).

Decision - With the Minister's (or delegate's) approval the plan becomes law and is published on the NSW Legislation website.

Review of Decisions

On 29 October 2012, the Minister for Planning and Infrastructure announced that proponents seeking a rezoning can now request an independent review of decisions through the local Joint Regional Planning Panel. These changes came into effect on 2 November 2012 and allow an independent body to review some decisions by councils and the department, in the following situations:

(5) Pre-Gateway reviews

If a proponent (e.g. developer, landowner) has requested that a council prepare a planning proposal for a proposed instrument, the proponent may ask for a pre-Gateway review if:

- a) the council has notified the proponent that the request to prepare a planning proposal is not supported, or
- b) the council has failed to indicate its support 90 days after the proponent submitted a request accompanied by the required information.

(6) Gateway reviews

A council or proponent may request the Minister (or delegate) to alter a Gateway determination, when a Gateway determination is made that:

- a) the planning proposal should not proceed,
- b) the planning proposal should be resubmitted to the Gateway, or
- c) imposes requirements (other than consultation requirements) or makes variations to the proposal that the council or proponent thinks should be reconsidered.

Development Control Plans (DCPs)

This Planning Proposal does not require any amendment or reference to any DCP provisions.

State Environmental Planning Policies (SEPPs)

Several SEPPs apply to the subject site as follows:

SEPP 44 Koala Habitat Protection

All land within the Wingecarribee Shire Local Government Area is covered by the provisions of SEPP 44. Because this Planning Proposal is to effect potential subdivision which is already allowed due to the 2 hectare minimum lot size applicable to the RU4 zone, it is considered to be consistent with the SEPP.

SEPP Rural Lands 2008

The Rural Lands SEPP applies principles to development of rural land, especially for subdivision and dwellings with the aim of reducing conflicts between rural residential and rural pursuits such as agriculture. Because this Planning Proposal is to effect potential subdivision which is already allowed due to the 2 hectare minimum lot size applicable to the RU4 zone, it is considered to be consistent with the SEPP.

SEPP Sydney Drinking Water Catchment 2011

The Sydney Drinking Water SEPP applies to the site as it is located within the Sydney Drinking Water Catchment and all Planning Proposals must seek comment from the Sydney Catchment Authority (SCA) prior to being forwarded to DP&I. SCA is unlikely to have any objection, as the use of the sites would remain the same and restricted to those current particular uses.

Section 117 Directions

The Minister for Planning, under section 117(2) of the EP&A Act issues Directions that Council must follow when preparing Planning Proposals. The Directions cover the following broad categories:

1. Employment and Resources
2. Environment and Heritage
3. Housing, infrastructure and urban development
4. Hazard and risk
5. Regional planning
6. Local plan making.
7. Metropolitan Planning

Relevant Directions are considered below

2.1 Environment Protection Zones

This Direction applies as part of the subject land is zoned E3 Environmental Management. Council must ensure that the environmental protection standards that apply to the land will not be reduced. The Planning Proposal will not result in any change of standard as no additional dwelling entitlement will be created.

The LUA assessment stage will require that all environmental protection standards are maintained.

4.4 Planning for Bushfire Protection

This Direction requires that, following Gateway Determination, the Planning Proposal is to be referred to the NSW Rural Fire Service (NSW RFS) for comment.

5.2 Sydney Drinking Water Catchment

This Direction applies as the subject land is located within the Sydney drinking water catchment. The application will need to be referred to the SCA should Council resolve to support the Planning Proposal.

6.1 Approval and Referral Requirements

This Direction applies to all Planning Proposals. The Planning Proposal is considered consistent with this Direction as it will not create designated development or allow development that will require significant concurrence, consultation or referral to the Minister of Planning and Infrastructure.

6.3 Site Specific Provisions

This Direction requires that a Planning Proposal must not require further development standards under the environmental planning instrument to be imposed on the sites that are the subject of the planning proposal. As the Planning Proposal will not amend any development standards on the subject sites, it is considered to be consistent with this direction.

Relevant State Legislation

No other State legislation is relevant at this stage.

CONSULTATION

External Referrals

The Gateway Determination would identify what referrals to public authorities are required.

Internal Referrals

No internal referrals have yet occurred but would be done during the community consultation phase should Council resolve to proceed with the Planning Proposal.

Community Consultation

Community consultation will occur as set out in the Gateway Determination.

SUSTAINABILITY ASSESSMENT

• Environment

The imposition of a 4 hectare minimum lot size over the new split zone lot will ensure that the E3 portion cannot be further subdivided for development. Any potential environmental impacts from subdivision of the subject site will be addressed at the LUA stage.

- **Social**

Any potential social impacts from subdivision of the subject site will be addressed at the LUA stage.

- **Broader Economic Implications**

The Planning Proposal seeks to address the anomaly between the restrictions of clause 4.6 of WLEP 2010 and the ability of the site to be developed to the extent permissible under the zoning and minimum lot size controls for the RU4 zoned portion of the site.

- **Culture**

Any potential cultural impacts from subdivision of the subject site will be addressed at the LUA stage.

- **Governance**

The Planning Proposal seeks to address the anomaly between the restrictions of clause 4.6 of WLEP 2010 and the ability of the site to be developed to the extent permissible under the zoning and minimum lot size controls for the RU4 zoned portion of the site.

RELATIONSHIP TO CORPORATE PLANS

The creation of a dwelling entitlement on the subject lots contributes to the following Goals and/or Strategies from the Wingecarribee 2031+ Community Strategic Plan:

Goal 3.4 – Wingecarribee housing options are diverse.

Goal 4.1 – Wingecarribee distinct and diverse natural environment is protected and enhanced.

BUDGET IMPLICATIONS

Planning Proposals are subject to an application fee as per Council's adopted Fees and Charges.

RELATED COUNCIL POLICY

There are no related Council Policies other than those already considered.

OPTIONS

Two (2) options are available to Council:

Option 1

Resolve to not proceed with the Planning Proposal to subdivide the subject site as outlined in the report.

Comment: This option is not recommended as it does not address the anomaly between the restrictions of clause 4.6 of WLEP 2010 and the potential development of the site afforded under the zoning and minimum lot size controls applicable to the site.

Option 2

Resolve to proceed with a Planning Proposal to subdivide the subject site as outlined in the report.

Comment: This option is recommended as it allows future development of the site as permitted under the zoning and minimum lot size provisions of WLEP 2010.

CONCLUSION

There is no intention to develop the E3 portion of the site, or to obtain more than 9 new lots from the land. The proposed 16.8 hectare lot will be potentially sub divisible into 8 lots with the proposed 8.6 hectare lot providing the 9th.

The need for a Planning Proposal arises from the fact that the split zone lot will include an E3 portion with an area of only 6.7 hectares, but because the minimum lot size for this E3 land is 40 hectares, the new lot will be an 'undersized allotment' under clause 4.6 of WLEP 2010.

To ensure there is no further subdivision potential in the new lot containing the E3 zoned land, it is proposed to place a minimum lot size of 4 hectares over that 6.7 hectare lot.

It is noted that Council has a number of properties with split zones across the Shire and there may be merit in considering, through the Local Planning Strategy Steering Committee Sunset Working Group, a draft clause to allow the subdivision of such lots without the need for a Planning Proposal.

ATTACHMENTS

There is one (1) attachment to this report (as follows):

1. Request for Review of Planning Provisions Applicable to Lot 100 DP 751271, 15 Wattle Ridge Road, Hill Top.

RECOMMENDATION

1. THAT the Planning Proposal to subdivide Lot 100 DP 751271, 15 Wattle Ridge Road, Hill Top into one (1) lot of 16.6 hectares zoned RU4 Primary production Small Lots with a minimum lot size of 2 hectares, and one (1) lot of 8.6 hectares zoned part RU4 Primary Production Small Lots and part E3 Environmental Management with a minimum lot size of 4 hectares, be prepared and forwarded to the NSW Department of Planning and Infrastructure for a Gateway Determination under section 55 of the Environmental Planning and Assessment Act 1979.
2. THAT the applicant be advised of Council's decision made in 1. above.
3. THAT consideration of inserting a new clause into Wingecarribee Local Environmental Plan 2010 to permit subdivision of split lot zones without the need for a Planning Proposal be brought before the Local Planning Strategy Steering Committee Sunset Working Group.

(Voting on the Motion)

ATTACHMENT 1

**REQUEST FOR
REVIEW OF PLANNING PROVISIONS
APPLICABLE**

**To
EXISTING SITE**

**At
“MELALEUCA”**

Lot 103 DP751271 15 Wattle Ridge Rd, HILL TOP

For

Mr & Mrs V. Orchard

March 2013

JOB NO: 13-957

Prepared by

Allman Johnston Architects

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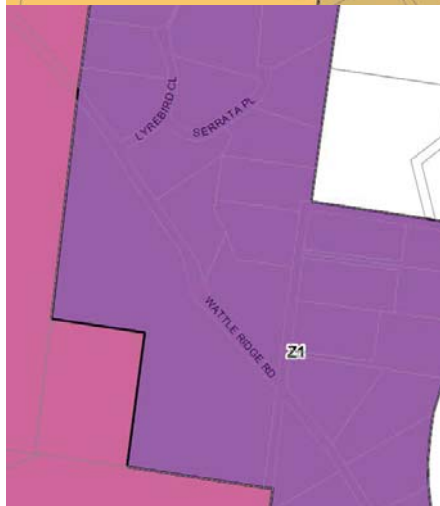
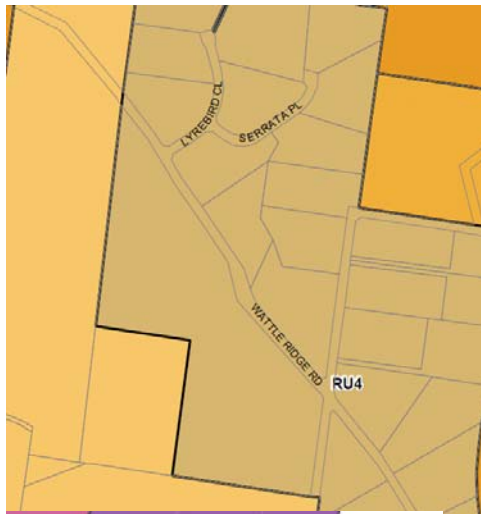
View to Wattle Ridge Road Frontage adjacent to proposed subdivision

1.0 INTRODUCTION

- The owners of the above site have engaged Allman Johnston Architects (AJA) to prepare a 'request for review' of the planning provisions applicable to the site, which currently limit the options for subdivision.
- The intention of this report is to outline the relevant issues and to show that in allowing a variation of the planning provisions, the proposed development will be in the public interest and consistent with the objectives of the standards applicable to the zone in which the development is proposed.
- The report also considers the Section 117 (2) directions of the Environmental Planning and Assessment Act 1979 issued by the Minister for Planning for consistency with the State Environmental Planning Policy (Rural Lands) 2008 relevant to planning proposals to provide evidence that they maintain the objectives of the land use zones relevant to the site.

2.0 THE ISSUE

- The land in question (Lot 103 DP751271 Wattle Ridge Road, Hill Top) is a single parcel with a site area of approximately 25.2 hectares lying to the west of Wattle Ridge Road and currently a rural residential use.
- The site contains two zones listed under Wingecarribee Local Environmental Plan 2001. Roughly 18.6 hectares is currently zoned RU4 Rural Small Holdings with a rectangular portion in the south western corner having an area of approximately 6.8 hectares zoned E3 Environmental Management.
- The minimum sub divisible area of the RU4 zoned portion of the site is 20,000m² (two hectares) meaning that this area of the site has the potential for up to nine allotments. However the minimum sub divisible area for the portion zoned E3 is 400,000 (40 hectares) and the current area of E3 zoned land is substantially below this at approximately 6.7 hectares.
- Under the provisions of Wingecarribee Shire Council's Local Environmental Plan (LEP) 2010, because the site contains two zones, it is effectively incubated from subdivision potential by the presence of the undersized portion zoned E3. As a result, a parcel of land which would normally be sub-divisible is prevented from being so due to a small portion (less than 25%) being of a different zone with a much higher minimum sub-divisible area than the remainder.
- The anomaly in this instance is caused because a single parcel of land contains two different zonings, with the environmental management portion (the smaller of the two) accommodating a water course indicated on Wingecarribee Shire Council's Natural Resources Sensitivity Map, which shows a Category 2 Water Course (Aquatic and Terrestrial Habitat).



Land Zoning Map - Sheet LZN_006A

E3 Environmental Management
RU4 Rural Small Holdings

Lot Size Map - Sheet LSZ_006A

Z1 20000 (2 ha)
AB2 400000 (40 ha)

Natural Resources
Sensitivity Map - Sheet NRS_006

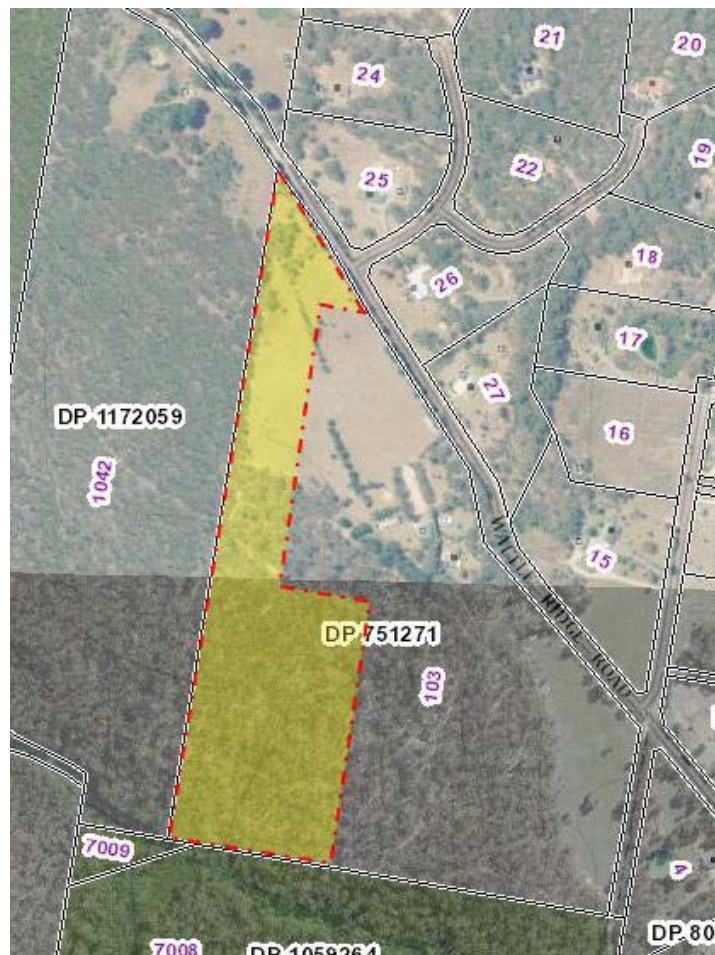


Riparian Land

Category 2 - Aquatic & Terrestrial Habitat
(within 30 metres from the top of stream bank on each side)

3.0 PROPOSAL

- This submission proposes a modification to Council's LEP 2010 to allow the site to be subdivided into two portions, the first portion containing the land currently zoned E3 and a broad strip of land running to the north up to Wattle Ridge Road, with a further two hectares giving a total sub lot size of 8.6 hectares approximately with the remaining portion (16.6 hectares) consisting entirely of land currently zoned RU4 and containing the existing residence and associated buildings used by the current occupants.
- The subdivided portion of 8.6 hectares meets the development standard for the RU4 portion, having an area of land currently zoned RU4 of two hectares with the existing E3 zoned portion attached to it.
- In this way, the E3 portion of the site will be linked with an area of RU4 land which corresponds with the required minimum lot size outlined in the LEP and freeing up the remnant 16.6 hectares approximately for future subdivision in accordance with the minimum allotment sizes (two hectares) relevant to RU4 land under the LEP.



**Future proposed Subdivision incorporating E3 zoned land with 2
Ha of RU4 zoned land
(Total shaded area 8.6 Ha approx).**

4.0 SUGGESTED MODIFICATION TO ALLOW PROPOSAL TO PROCEED

- Council's approval in principle is requested in a review of the current planning for this case. Should Council support this review, a formal development application could then be lodged examining the other relevant environmental matters.
- Until Council's approval in principle is obtained as outlined above, a Development Application cannot be lodged for subdivision. Therefore, this is a necessary step in the process to allow an otherwise legal subdivision to proceed.
- Any future Development Application would of course be subject to Council's assessment and the approval of any State Government authorities (for example The Rural Fire Service and The Sydney Catchment Authority).
- This review is not a formal planning proposal requiring the approval of the Department of Planning and Council have the authority to vary the LEP under the provisions of the EP&A Act, provided the review can be justified under planning principles. It is understood that the Department of Planning has delegated some degree of autonomy to local Council's in assessing these enquiries however; the constraints of that authority are not clearly outlined.
- This conflict arises in the LEP under Zone 3 Environmental Management Part 4.1 Minimum subdivision lot size (Paragraph 3) where the following is listed ***"the size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the lot size map in relation to that land"***.
- As this example shows, that clause of the LEP prevents a subdivision of the land which would otherwise be fully supported by it, in other words the small portion which is already less than the minimum sub divisible area and zoned E3 effectively incubates the remaining 75% of the site which could otherwise be legitimately subdivided with development consent.
- Because this issue may occur on other sites around the Wingecarribee Shire in the future, Council may consider a possible modification to the wording of this clause of the LEP, which recognises and addresses this anomaly, as follows:
"single parcels of land on which two different zones are indicated on Council's land zoning map where the portion relating to one zone is less than the minimum lot size normally sub divisible are able to have that portion excised under subdivision, with Council approval, noting that all of the other provisions of the LEP in relation to permissible uses and limitations applicable to those uses will apply" (in other words, where the minimum sub divisible area is not met in an existing holding, that portion cannot be developed as would otherwise apply to an 'existing holding').
- The alternative to this wording would require a portion of the otherwise sub divisible land to be attached to the non-sub divisible portion allowing development to occur on the former portion. In other words and in this instance, for example, an area of RU4 zoned land not less than two hectares in area would need to be joined to the E3 portion to create a single parcel with development possible on the RU4 portion but not the E3 portion. This would need to be considered by Council as a separate issue to this review.
- There is no necessity for Council to modify the wording of the LEP but it is probable that this issue applies to other sites around the Shire.

5.0 Justification of Proposal under planning constraints

- Clause 4.6 under Zone E3 Environmental Management outlines exceptions to development standards. Under Paragraph 3, Council as the consent authority must consider a written request before allowing development consent to be granted for development which contravenes a development standard. In this instance the development standard which is contravened does not recognise the anomaly of a single parcel of land on which two zones exist. It should be noted that the

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

held in the Council Chamber, Civic Centre, Elizabeth Street, Moss Vale
on Wednesday, 10 July 2013

REPORT - DEPUTY GENERAL MANAGER CORPORATE & STRATEGY



parcel has existed for many decades in its current form and certainly prior to the gazettal of LEP 2010 when the zoning boundaries were established.

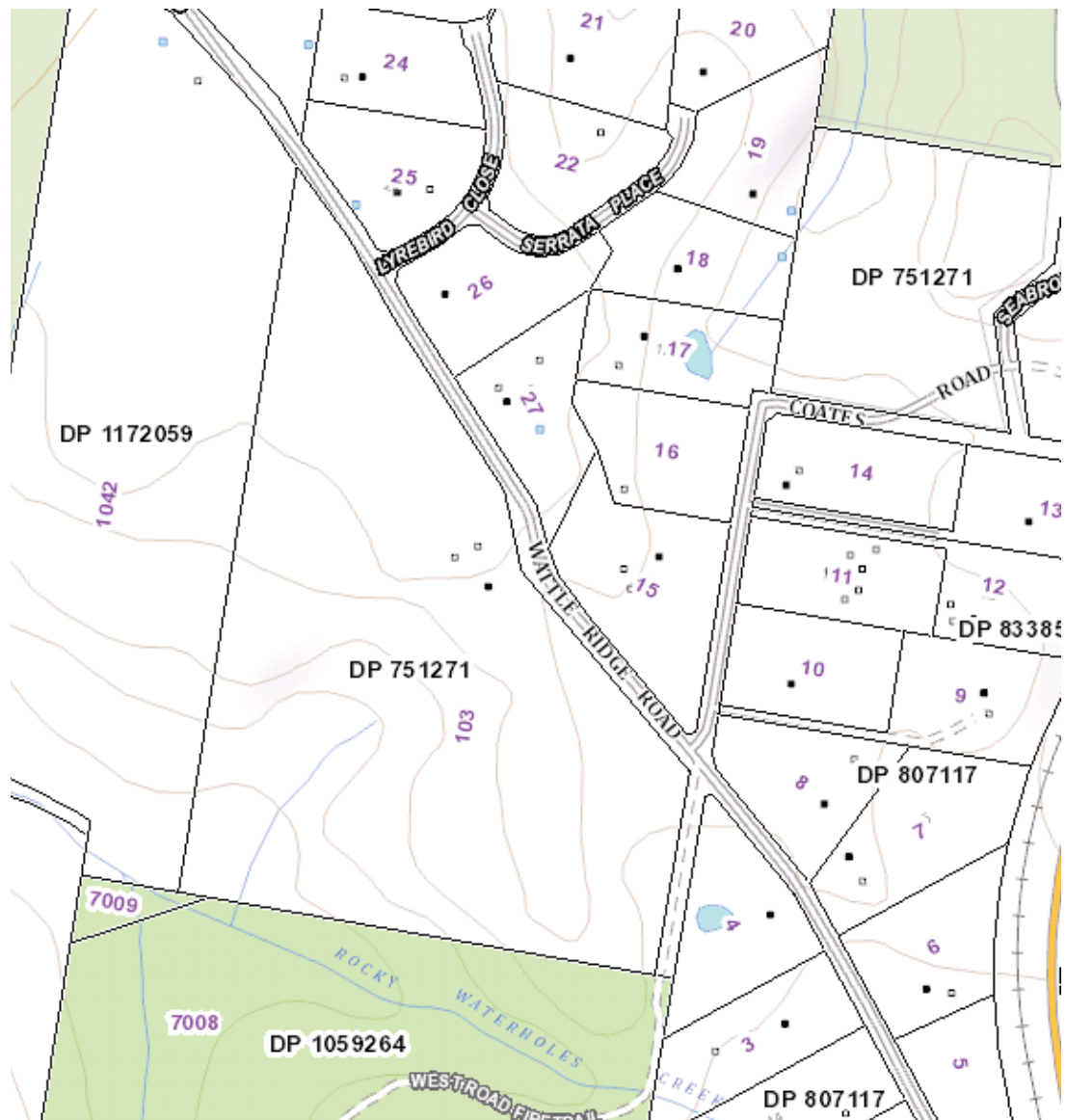
- We understand that cases such as this are rare and should have been avoided in the drafting of the zoning boundaries at the time of the gazettal of the LEP.
- In accordance with Paragraph 3 (a) of Clause 4.6, we argue that compliance with the development standard is unreasonable in these circumstances as the resultant subdivision on the land would not contradict the requirements of the RU4 zoning provisions in any way nor the provisions of the E3 zone, provided limitations to the development potential of the remnant E3 zoned land are enforceable. Including a new clause (as outlined above) to the LEP would ensure that this remains the case. Therefore the prevention of subdivision of the existing allotment is unreasonable and unnecessary in the circumstances.
- In relation to Paragraph 3 (b) there is a need to justify the contravention of the development standard on environmental planning grounds. In this instance and as mentioned above, allowing the subdivision of the land in accordance with the existing provisions of both the E3 and RU4 zoned land ensures that a precedent will not be set and the anticipated development of the RU4 land will be totally compatible with other RU4 zoned lands and specifically adjacent parcels similarly zoned.
- The pattern of development possible by allowing this subdivision will be totally compatible under environmental planning grounds with development which would otherwise have been anticipated had the land been wholly zoned RU4. Also, the E3 zoned land which was created as a result of a water course will maintain the restrictions applicable to it and, being less than the minimum sub divisible area, that portion will be incubated from future development.
- Attaching a portion of RU4 zoned land to the E3 zoned portion as a single allotment enables the RU4 portion of the newly created lot to be developed legally and totally in accordance with the LEP with Council's consent, but effectively prohibits development of the E3 portion as currently applies. Therefore the proposed development will be in the public interest because it maintains consistency with the objectives of the standards applicable to the two zones. This also ensures that the Section 117 (2) directives of the Minister for Planning are satisfied.

6.0 Request to review planning provisions

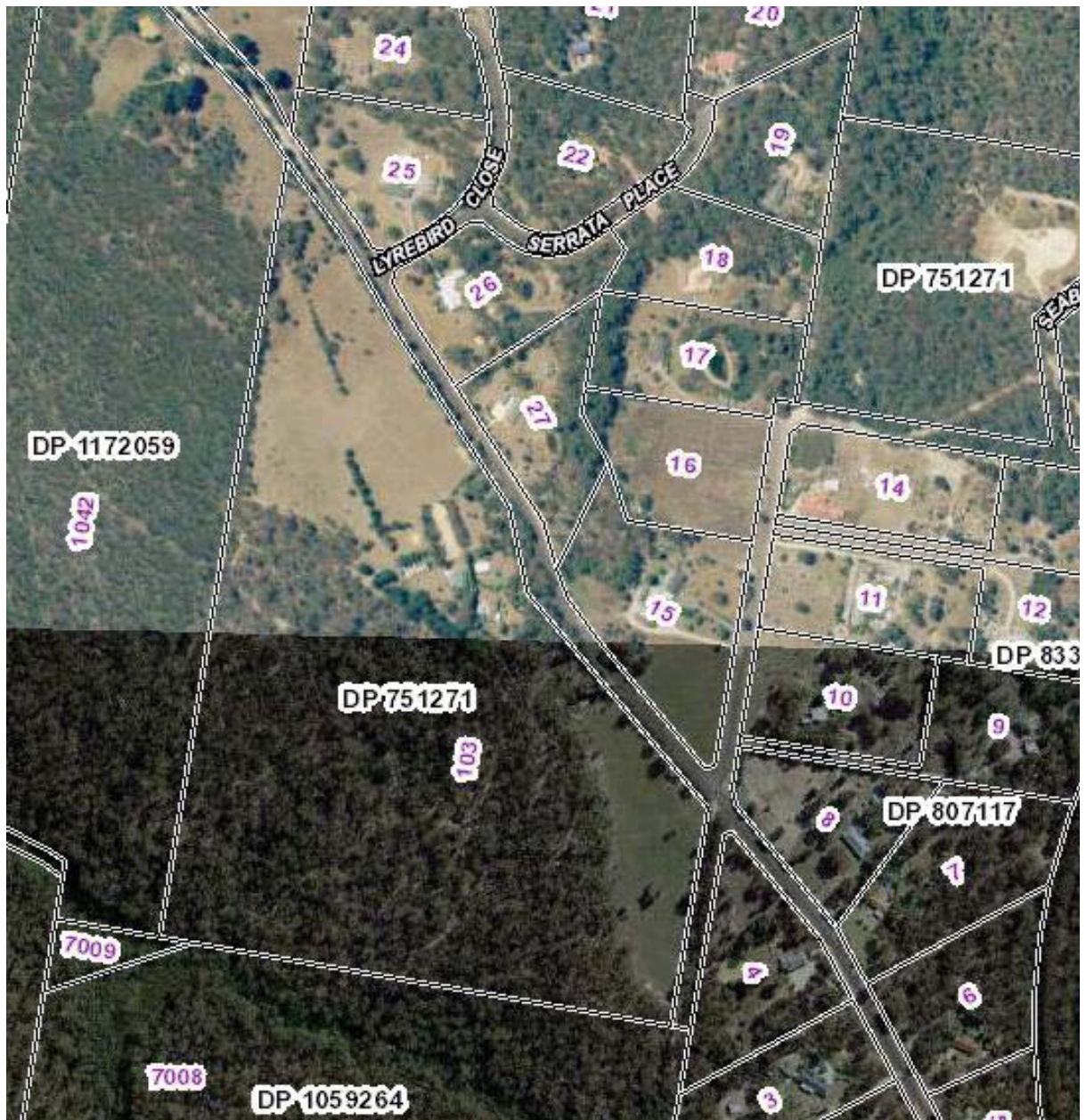
- On behalf of our clients, we therefore request Council to review the planning provisions applicable to this particular site with a view to allowing in principle a future subdivision to excise the E3 portion of land, together with a portion of RU4 zoned land to the minimum sub divisible area (two hectares) thereby creating a parcel of 8.6 hectares containing both the RU4 and E3 zone, with the remaining 16.6 hectares approx. being solely RU4 zoned and able to be subdivided in the usual way. (Subject to development consent).
- It should be noted in this proposal that the newly created allotment will be a combination of undeveloped farming land adjacent to Wattle Ridge Road, and native bushland (the existing E3 portion)
- .

7.0 Appendices

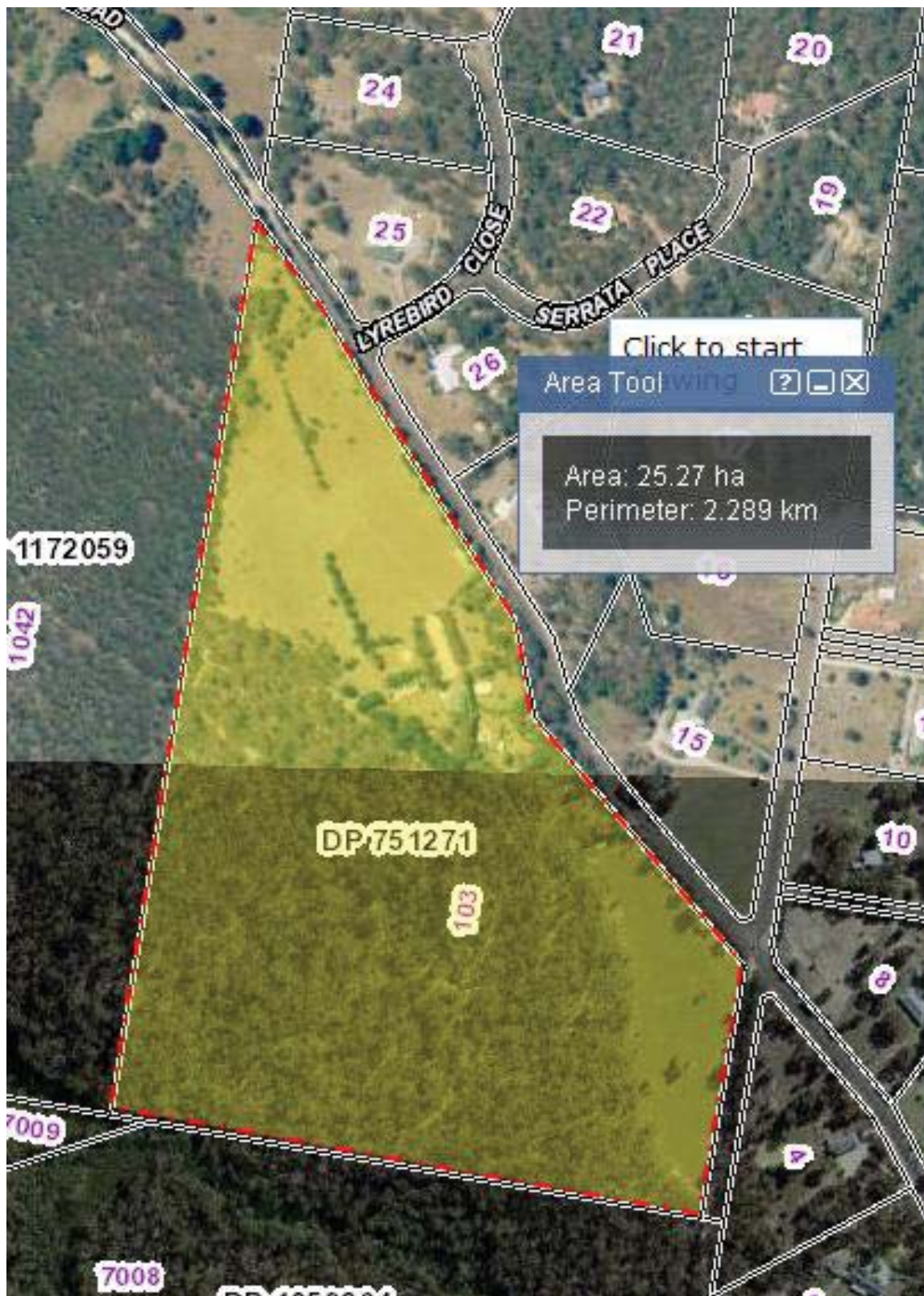
LEP constraints and Cadastral Information for subdivision potential at 'Melaleuca' (Lot 103 DP 751271 Wattle Ridge Road Hill Top)



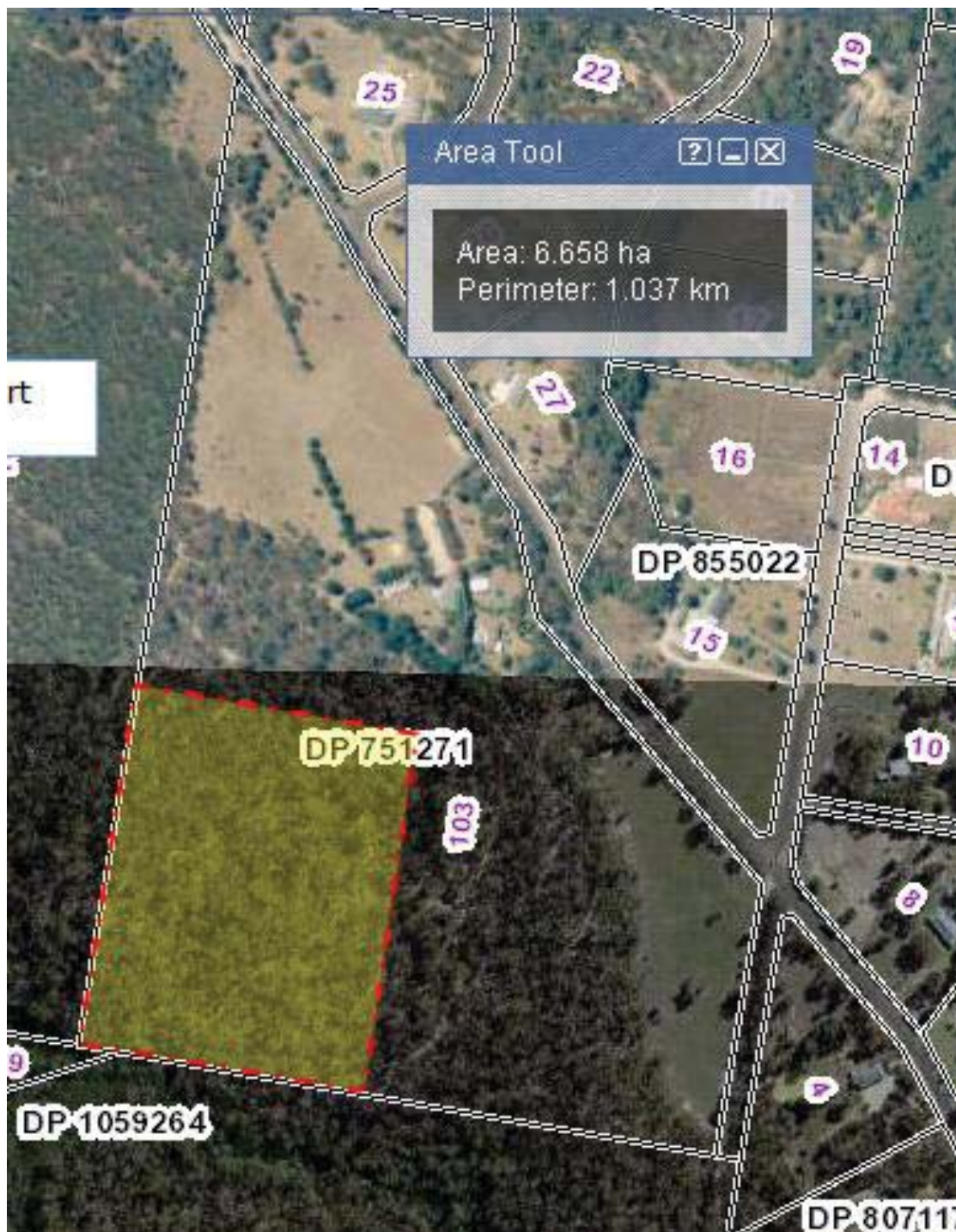
Cadastral Map of subject site



Aerial View of site



**Subject Site Aerial View
(Showing approximate area of site)**



**Existing portion of site currently zoned E3
(Showing approximate area shaded with remnant portion
zoned RU4)**