

COUNCIL RESOLUTION EXTRACT FROM MINUTES 25 AUGUST 2014

ITEM 6 - DRAFT PLANNING PROPOSAL - LOT 5 DP 1132746 NORTH MARSHALL MOUNT ROAD, MARSHALL MOUNT

The following staff recommendation was adopted as part of the Block Adoption of Items (refer Minute Number 150).

COUNCIL'S RESOLUTION –

- 1 A draft Planning Proposal be prepared for Lot 5 DP 1132746 North Marshall Mount Road, Marshall Mount and submitted to NSW Planning and Environment for a Gateway determination, proposing to reduce the minimum lot size of Wollongong Local Environmental Plan 2009 to permit subdivision of the site to create two additional lots, with a dwelling house on each lot, and requesting authority for the General Manager to exercise plan making delegations in accordance with Council's resolution of 26 November 2012.
- 2 Should the Gateway determination result in progression of the Planning Proposal, consultation be undertaken with NSW Rural Fire Service and NSW Environment and Heritage.
- 3 The draft Planning Agreement be exhibited with the draft Planning Proposal, with regard to the transfer of Lots 3 and 4 DP 216373 at Dombarton to public ownership.

ITEM 6

DRAFT PLANNING PROPOSAL - LOT 5 DP 1132746 NORTH
MARSHALL MOUNT ROAD, MARSHALL MOUNT

Council is in receipt of a Planning Proposal request for Lot 5 DP 1132746 North Marshall Mount Road, Marshall Mount, to reduce the minimum lot size to enable an additional two dwelling lots to be created. This report considers the site history and current proposal including an historic land exchange proposal under the "Fair trading" policy.

It is recommended that a draft Planning Proposal be prepared and exhibited.

RECOMMENDATION

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- 2 Should the Gateway determination result in progression of the Planning Proposal, consultation be undertaken with NSW Rural Fire Service and NSW Environment and Heritage.
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ATTACHMENTS

- 1 Subject Site and Zoning Map
- 2 Escarpment Site and Zoning Map
- 3 Aerial Photo of subject site
- 4 Concept Subdivision Plan
- 5 Escarpment Values

REPORT AUTHORISATIONS

Report of: Renee Campbell, Manager Environmental Strategy and Planning
Authorised by: Andrew Carfield, Director Planning and Environment – Future, City and Neighbourhoods

BACKGROUND

A Planning Proposal request has been submitted by JBA Urban Planning Consultants Pty Ltd on behalf of Lexosu Pty Ltd. The Planning Proposal request relates to Lot 5 DP 1132746 North Marshall Mount Road, Marshall Mount (Attachment 1). The Planning Proposal seeks to amend Wollongong Local Environmental Plan 2009 to reduce the minimum lot size applying to the site, to enable subdivision into three lots (two additional) and the erection of dwelling houses.

Lot 5 has an area of 40 hectares, and is part of a subdivision of Lot 70 DP 543194 into five existing lots. The Planning Proposal seeks to enact a 1997 Council resolution to agree in-principle to a subdivision of the former Lot 70 into a total of eight lots, with the additional two lots sought being permitted in exchange for dedication of 14.8 hectares of escarpment land.

The site has a long history, with discussions between the landholder and Council in the 1980s and 1990s as to the site's potential under Small Rural Holdings policy and 'Fair Trading' policy. In 1991 and 1996, Council resolved to prepare draft Local Environmental Plans to enable subdivision of the site. In 1996, the owners arranged to purchase an additional (non-contiguous) 14.8 hectares of land from Avondale Colliery at Dombarton/Wongawilli as requested by Council as part of a "fair trade" agreement for the additional two (2) lots. In May 1997, Council resolved to issue a letter to the owners, via delegation to the General Manager, to agree in-principle, to two additional dwelling entitlements, subject to the transfer of 14.8 hectares of Escarpment Core Area. Council issued a letter to Lexosu Pty Ltd in June 1997, outlining the in-principle agreement for two additional dwelling entitlements, allowing a total of eight lots to be subdivided from Lot 70 DP 543194. The letter indicated that the two lots were in exchange for 14.8 hectares of Escarpment Core Area, and subject to a rezoning application demonstrating that the land is capable of accommodating the proposed lots.

Lot 70 DP 543194 has subsequently been subdivided into six (6) lots via two (2) subdivisions – one of three (3) lots registered in October 2008, with a second subdivision creating the current allotments registered in December 2008. This subdivision created the current Lot 5 DP 1132746. Lot 5 is divided into two parts by the access handle/driveway that serves Lot 4 DP 1132746.

The applicant lodged a Planning Proposal in April 2010 for the additional two lots which are the subject of the in-principle agreement. This Planning Proposal was intended to be considered as part of a wider 'West Marshall Mount' precinct plan in conjunction with interest from other landholders for consideration of rural-residential development opportunities. This project did not generate much interest amongst landholders and did not proceed, leaving the Planning Proposal undetermined. This current Planning Proposal has been reviewed internally by Council staff and is the subject of this report.

PROPOSAL

The submitted proposal seeks to reduce the minimum lot size (39.99 ha) applying to the site to allow for subdivision of Lot 5 DP 1132746 to create an additional two lots. The applicant seeks to have this achieved via a site specific clause under Schedule 1 of the Wollongong Local Environmental Plan 2009. Alternatively, the Minimum Lot Size Map could be amended. Lot 5 DP 1132746 is zoned E3 Environmental Management on the higher slopes, with RU2 Rural Landscape on the lower level land, close to Marshall Mount Road, under Wollongong Local Environmental Plan 2009. The concept subdivision plan is at Attachment 4.

The applicant also proposes to dedicate 14.8 hectares of land within the Illawarra Escarpment as part of a proposed planning agreement, in accordance with the in-principle agreement. The land to be dedicated is Lots 3 and 4 DP 216373. This land is zoned E2 Environmental Conservation under Wollongong Local Environmental Plan 2009. This site is located within the Illawarra Escarpment at Dombarton/Wongawilli adjacent to the Moss Vale – Unanderra Railway (Attachment 2). The proposed planning agreement would require the land to be transferred to Council at no cost and have a rehabilitation plan prepared prior to transfer. The transfer would happen prior to subdivision of the site. The proposed planning agreement also proposes that no trees are to be removed to permit development of dwellings on the resulting lots.

CONSULTATION AND COMMUNICATION

The proposal was scheduled to be considered by the Escarpment Planning Reference Group at its meeting on 21 May 2014. The meeting was cancelled due to a lack of quorum. However the proposal has been circulated to the Reference Group members and comments have been received from some group members (these comments have not been formally adopted by the group).

Comments from members include that the location of the two proposed dwellings is not supported and that the land to be dedicated is good forest under little threat.

Should the Planning Proposal proceed, then Council would undertake public consultation in accordance with the requirements of a Gateway determination.

The proposal seeks to create the ability to provide additional dwellings within a bushfire risk area. A bushfire report has been provided with the application, which has been assessed by Council. Should the Planning Proposal proceed, Council would need to consult with the NSW Rural Fire Service regarding bushfire risk and suitable access to the site.

Council would also consult with NSW Environment and Heritage regarding the proposed dedication of land and its potential suitability to be included within the Escarpment Conservation Area.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2022 under the objective '*The sustainability of our urban environment is improved*' and the Community Goal '*We value and protect our environment*'.

It specifically addresses the Annual Plan 2014-15 Key Deliverables '*Assess rezoning submissions on a priority basis and progress supported Planning Proposals*' which forms part of the Five Year Action 5.1.5.1 '*Continue to undertake social land use and environmental planning activities that assists in service planning*' contained within the Revised Delivery Program 2012-17.

Illawarra Lowlands Grassy Woodland and Illawarra Subtropical rainforest vegetation communities occupy the steep slopes in the south-eastern end of Lot 5 DP 1132746. The vegetation is not impacted by the proposal.

The Illawarra Regional Strategy identifies this area as being within a rural area with biodiversity values. The strategy aims to ensure development respects these natural values while ensuring that future residents are not put at risk from hazards.

Council's internal pre-assessment of the application has raised no objection to the rezoning on geotechnical or stormwater issues. The bushfire protection assessment gives a good overview of the bushfire constraints, though it is noted that access to the lots may require additional consideration by NSW Rural Fire Service for compliance with Planning for Bushfire Protection 2006. Recently the State Government implemented the '10/50' rule to provide for vegetation clearing work to be carried out in certain areas near residential accommodation or high-risk facilities to reduce the risk of bushfire. The subject land falls within the '10/50' area designated by the NSW Rural Fire Service. The proposed dwelling locations are within cleared areas onsite, which allow for a 10 metre buffer from existing trees. The subject site is currently grazed, with the understorey already cleared in the areas proposed for the two dwellings. It is therefore anticipated that the 10/50 rule will not result in the clearing of any additional vegetation, should the Planning Proposal be progressed.

There is an existing private concrete access road to the area of the proposed subdivision that currently serves six lots. Should the Planning Proposal proceed, then it would ultimately result in eight lots accessing via this private driveway. The existing driveway also provides for a potential emergency access route for a rural-residential subdivision off Avondale Colliery Road, which would be a beneficial outcome.

The area is identified as being within the Illawarra Escarpment area under the Wollongong Local Environmental Plan 2009. Council prepared the Illawarra Escarpment Land Use Review Strategy Plan in 2007 to guide the long term planning and management of escarpment lands. The management plan considers that limited development could be considered within the escarpment, subject to protection of the environmental attributes. The land is identified as Core and Biophysical Support for Core (Attachment 5).

The proposal seeks to utilise existing clearings within the property to accommodate the two potential additional dwellings, with minimal impact on the landscape. It is noted that some of the cleared land is mapped as Core Escarpment. The proposal would also result in 14.8 hectares of land being dedicated to the Escarpment, with a rehabilitation plan.

Wollongong Development Control Plan 2009, Chapter B6 – Development in the Illawarra Escarpment contains controls to mitigate potential visual impacts of development within the escarpment. It is not proposed to change any controls within the Development Control Plan.

The land proposed to be dedicated is steep escarpment land on the boundary between Wongawilli and Dombarton, near the Moss Vale – Unanderra Railway. This land is identified as core escarpment. This land is being acquired by the current owner as part of the 'Fair Trading' agreement to dedicate to the escarpment. The site is considered to be suitable for inclusion into the Escarpment Conservation Area however it is considered that the site would be better managed by NSW Environment and Heritage, as it would provide a connecting site between the Escarpment Conservation Area land to the south of the site and north of the railway line.

FINANCIAL IMPLICATIONS

The proposed Planning Agreement seeks to dedicate the 14.8 hectare escarpment site at no cost to Council, with a rehabilitation plan prepared for the site. Should the site be dedicated to Council, as per the in-principle agreement, then Council would inherit the cost associated with maintenance of the site – unless agreement could be reached with NSW Office of Environment and Heritage to own or manage the site. The dedication site does adjoin the Illawarra Escarpment State Conservation Area.

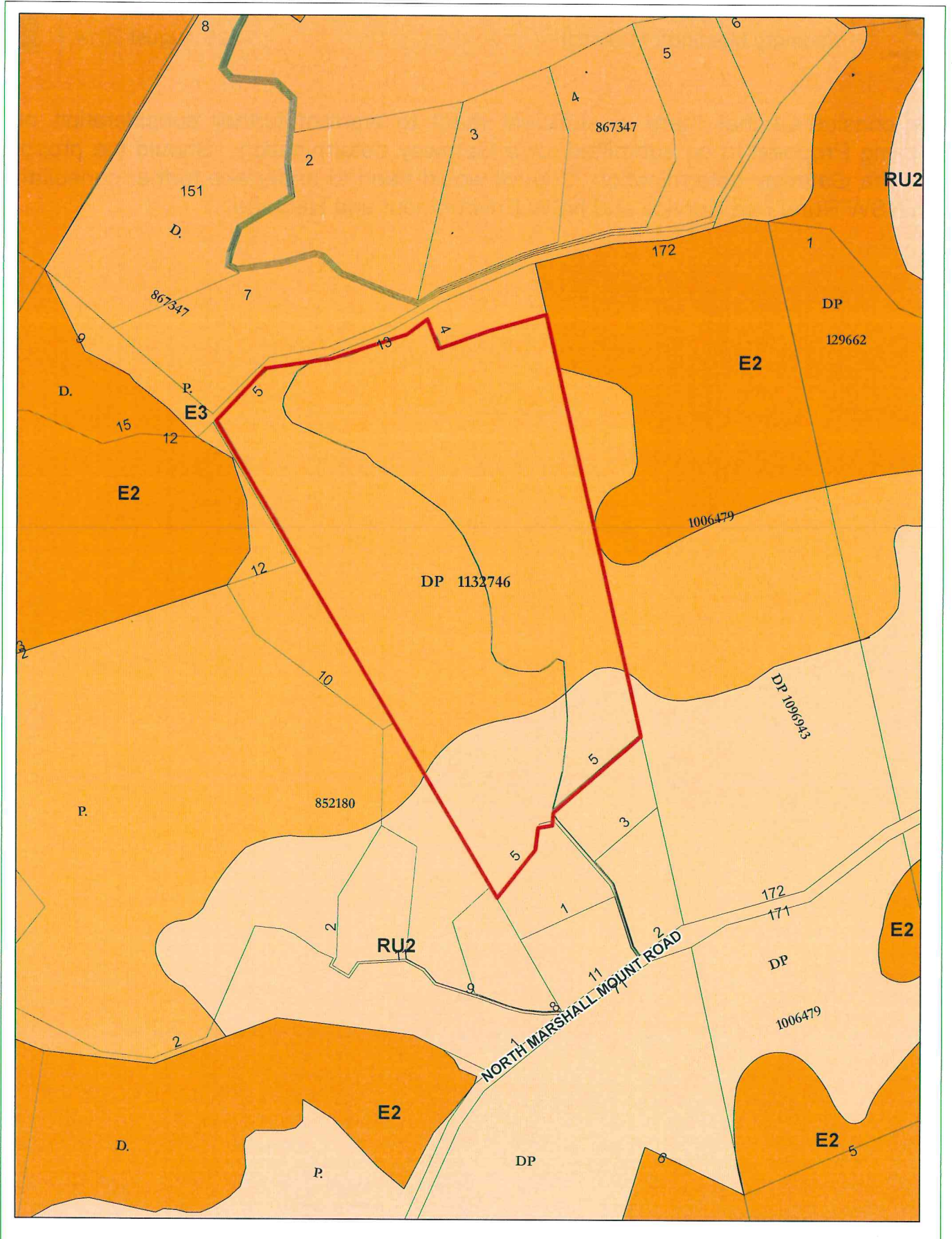
It is also possible that NSW Rural Fire Service would require the current access driveway to Lot 5 be dedicated as a public road. Should this happen, Council would also incur an additional road which it would be responsible to maintain and upgrade. It is not considered desirable for the access road to be in public ownership.

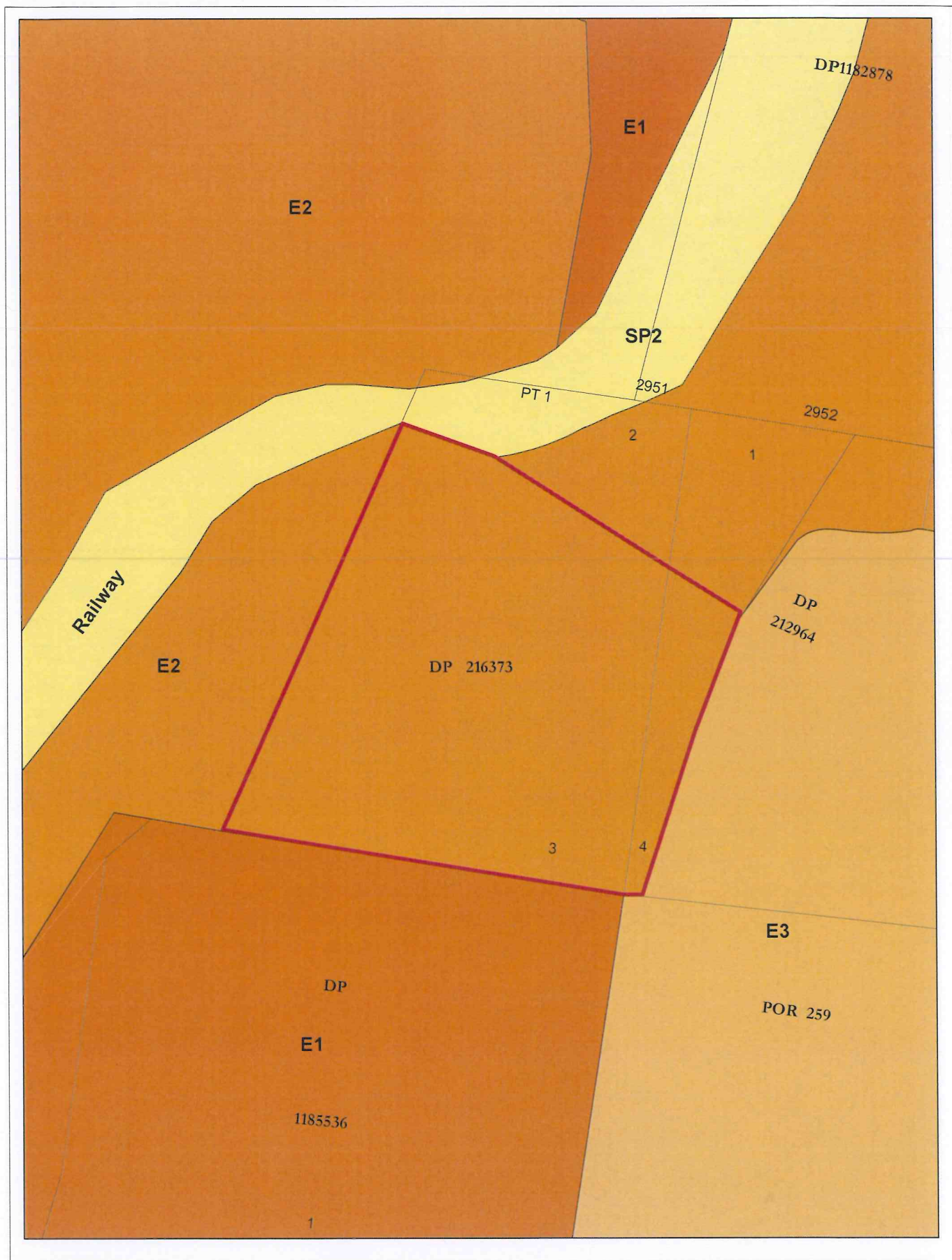
There may be a risk of potential legal action against Council should the proposal not proceed, though this is not considered a planning argument in favour of the proposal.

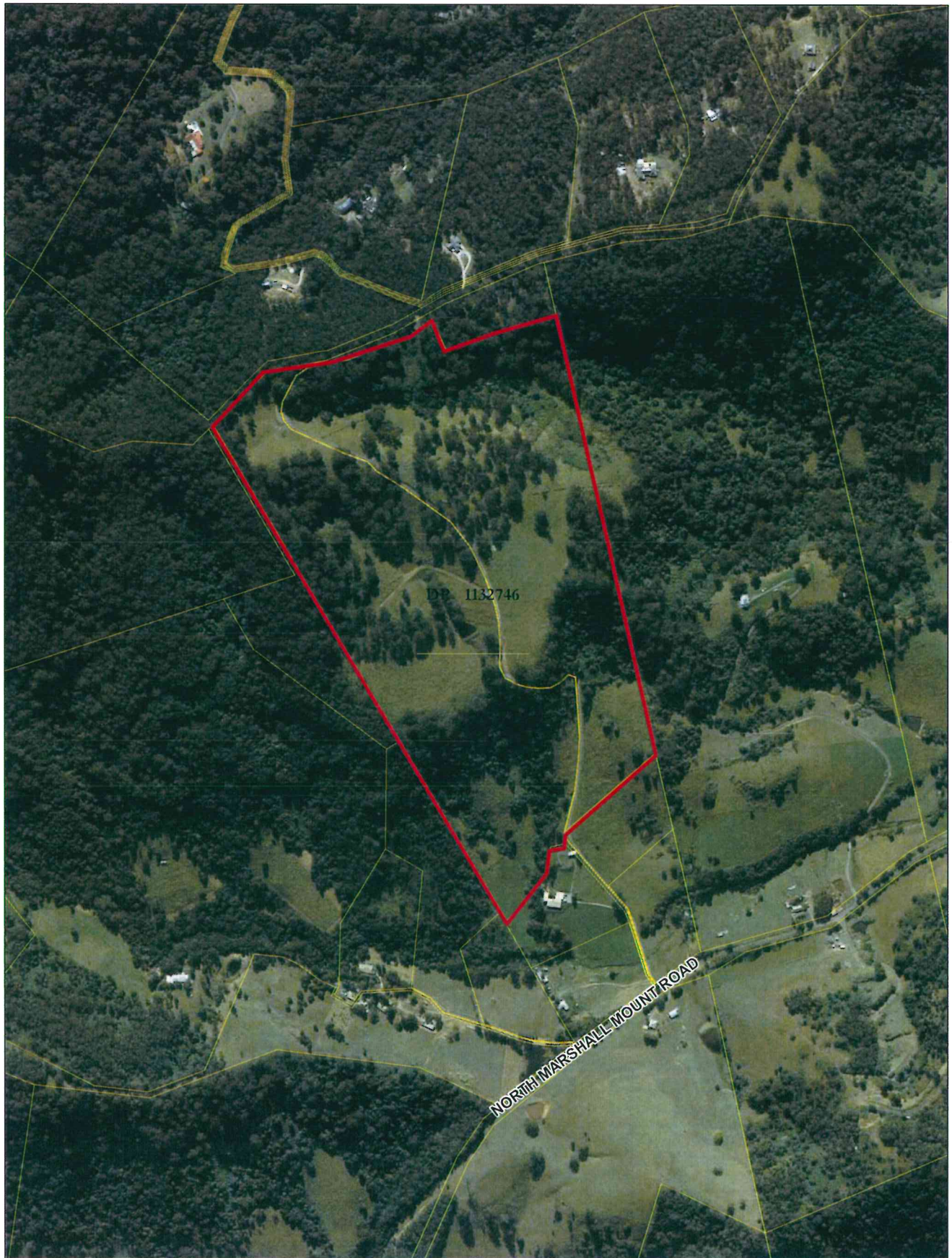
CONCLUSION

This Planning Proposal has a long history, dating back to Council's previous 'Fair Trading' policy. The proposal seeks to utilise existing clearings on the site to accommodate the proposed dwelling sites. The Planning Proposal seeks to provide for a conservation outcome for the escarpment by dedicating land suitable for conservation purposes to the escarpment in accordance with a previous agreement. It is recommended that Council consider amending the minimum lot size map to enable the proposal to progress.

It is considered that there is sufficient merit to warrant further consideration of a Planning Proposal to be submitted for a Gateway determination. Should the proposal pass the Gateway determination, Council would need to undertake further consultation with NSW Rural Fire Service and NSW Environment and Heritage.







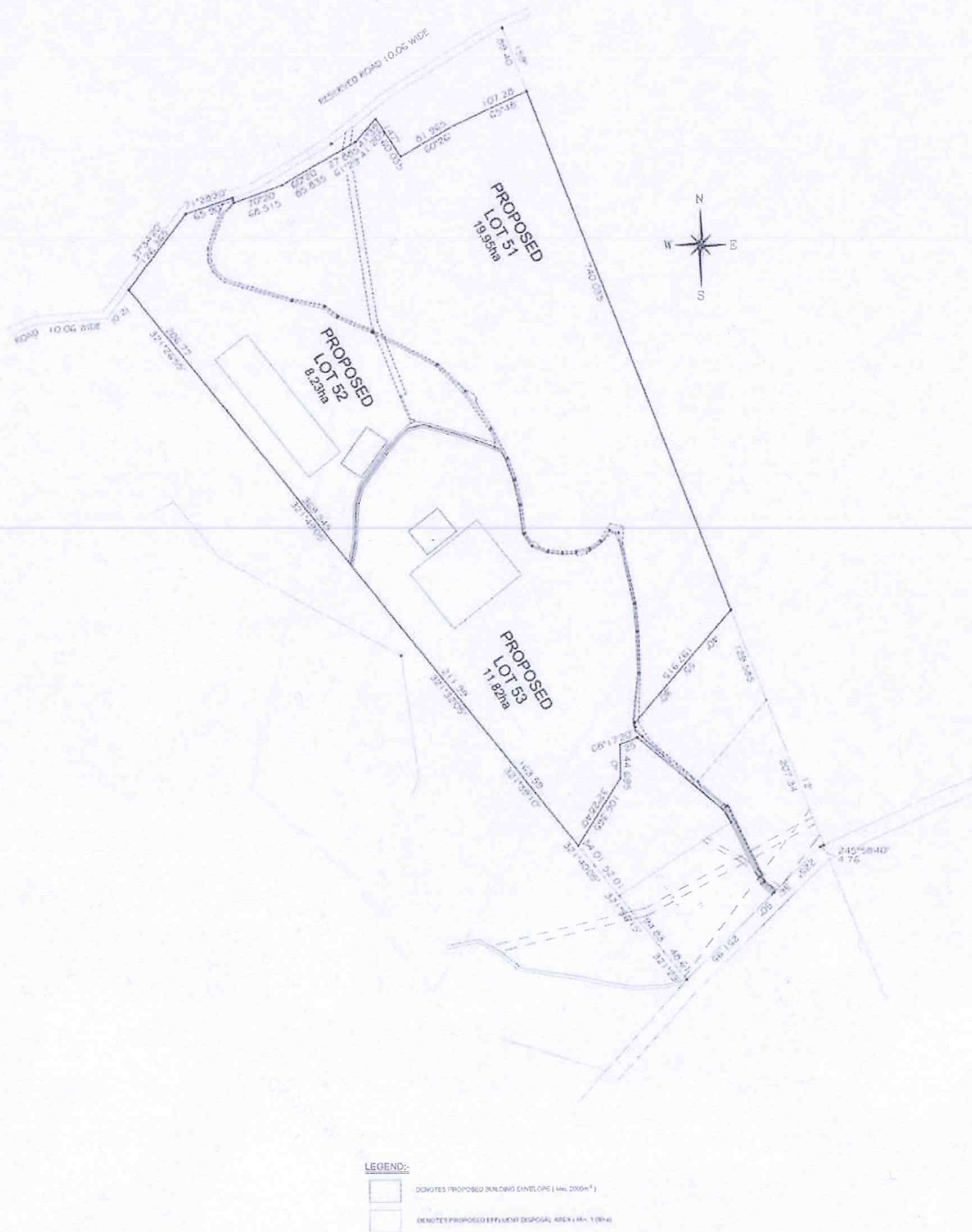


Figure 7 – Draft plan of subdivision of the site



