

Planning Proposal

Amend *Palerang Local Environmental Plan 2014* to allow the subdivision of Lot 3 DP 1074706

(revised July 2020)



Ref:

ECM – PROJ0035/11/6
PP_2016_QPREG_002

Revision No.	Description of amendment	Date of amendment
1	For Gateway determination	October 2014
2	Government agency submissions	October 2019
3	Outcome of negotiation to protect native vegetation – rezone to E2 Environmental Conservation	July 2020

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Introduction

The planning proposal seeks to amend Schedule 1 of the *Palerang Local Environmental Plan 2014* to allow a development application for the subdivision of Lot 3 DP 1074706 into no more than six residential lots, one of which will include the existing tourist/disused golf course/convention centre complex and a large area of native vegetation (approximately 27 hectares). The planning proposal also seeks to protect areas of native vegetation identified by the Department of Planning, Industry and Environment – Biodiversity and Conservation (BC) as 'conservation areas' and as identified as containing threatened ecological communities in the supporting 2018 Fauna and Flora Study by Ecological Australia.

Reports for a non-potable water supply, on-site effluent disposal, flora and fauna, bushfire and Aboriginal cultural heritage were prepared for an earlier proposal for subdivision and these were included with the original planning proposal as relevant information, notwithstanding the difference in the proposed lot numbers between these reports and the planning proposal. Updated Bushfire, Aboriginal Cultural Heritage and Flora and Fauna assessments, were subsequently prepared to meet the initial comments provided by Biodiversity and Conservation branch (formerly OEH) of the Department of Planning, Industry and Environment and the NSW Rural Fire Service.

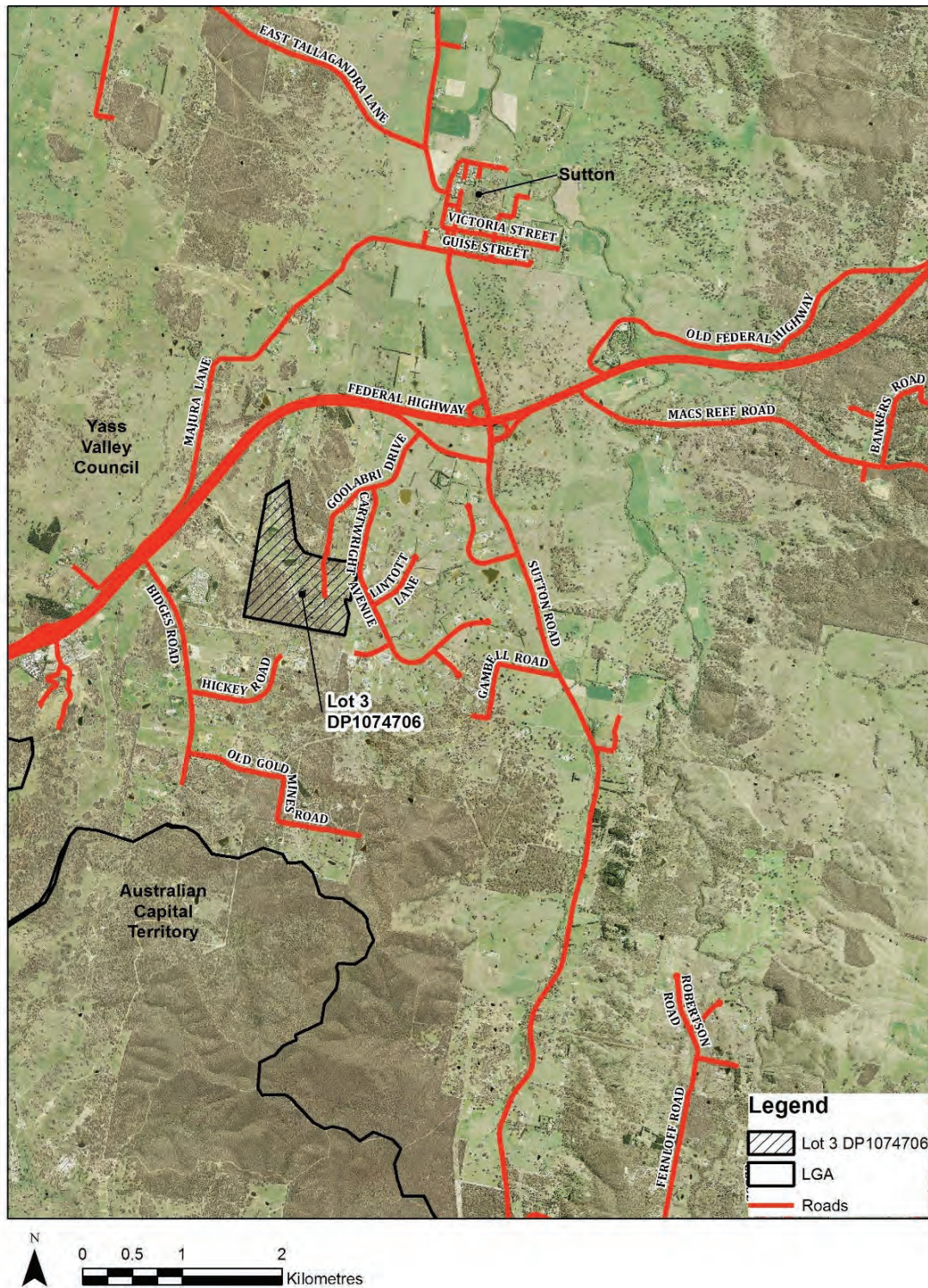
If the planning proposal is gazetted (amending the *Palerang Local Environmental Plan 2014*), an application for the subdivision of the lot will need to be submitted to Council for consideration. The final number of lots and layout will be determined as part of the subdivision application having considered matters such as road and entrance design, the management of native vegetation, Aboriginal cultural heritage and the on-site disposal of effluent.

Description of the land

Lot 3 DP 1074706 is 94.51 hectares and is located in the locality of Sutton. It is accessed from Goolabri Drive and Cartwright Avenue which connect via a service road to the Federal Highway and Sutton Road and is approximately fifteen minutes from Canberra and Queanbeyan. The lot is zoned E4 Environmental Living under the *Palerang Local Environmental Plan 2014*.

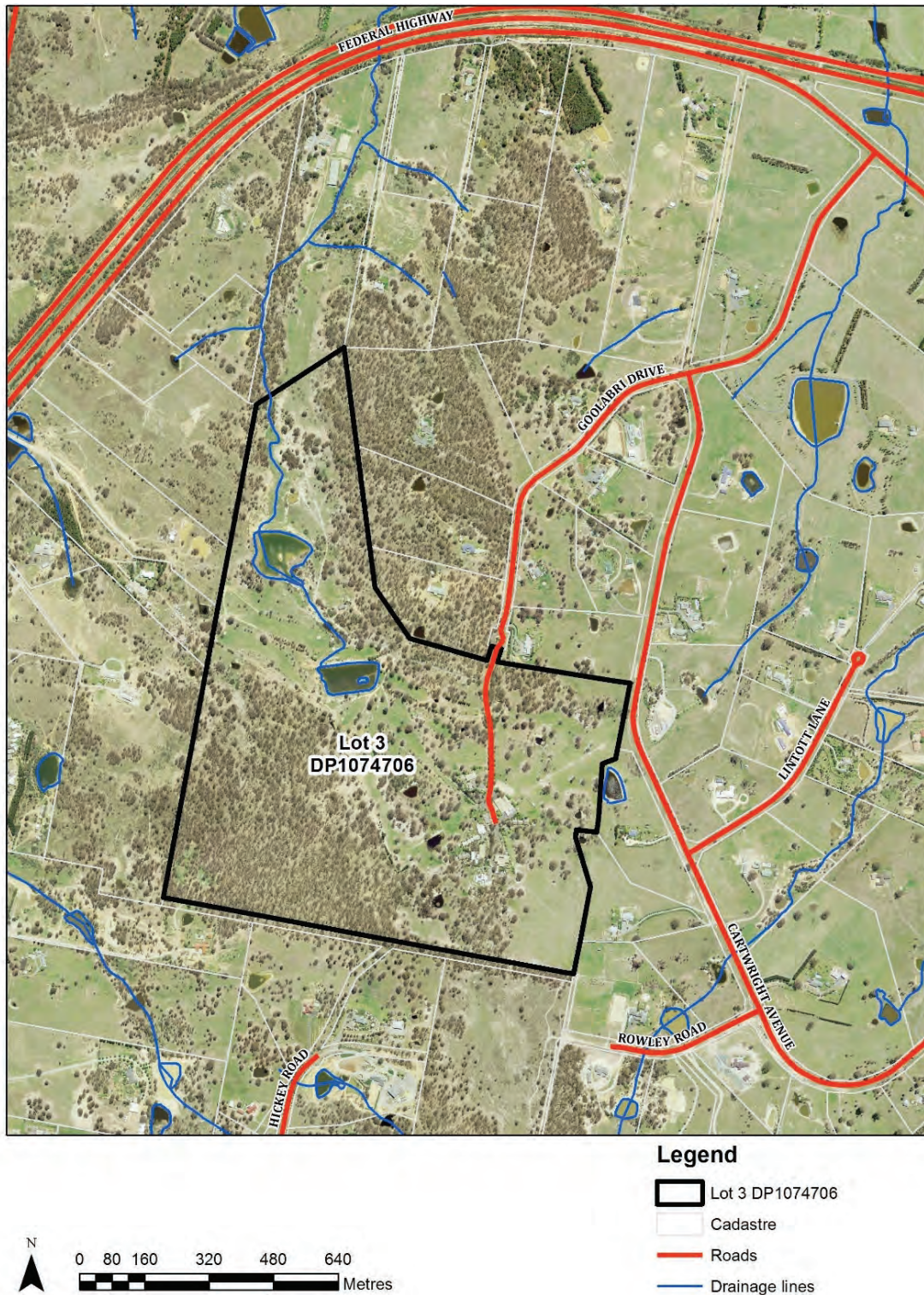
The lot currently contains a convention centre complex, disused golf course, several dwellings, several small dams and a large area of Native vegetation. The land surrounding the lot is rural residential having been created as part of a subdivision in 2002 (an outline of this is provided below).

The land is gently undulating class 4 agricultural land (NSW Department of Primary Industries). Areas of native vegetation have been previously cleared except for an area in the south-western corner of the lot (approximately 56 hectares, proposed to form part of the residual lot as shown in map 3 below). There are no reticulated water or sewer services to Lot 3 DP 1074706 or the adjacent residential lots. The maps below show the location of Lot 3 DP 1074706 and the proposed subdivision layout (refer to the above note).



Map 1 The location of Lot 3 DP 1074706, (regional view)

Source Queanbeyan-Palerang Regional Council and NSW Land and Property Information



Map 2 The location of Lot 3 DP 1074706

Source Queanbeyan-Palerang Regional Council and NSW Land and Property Information

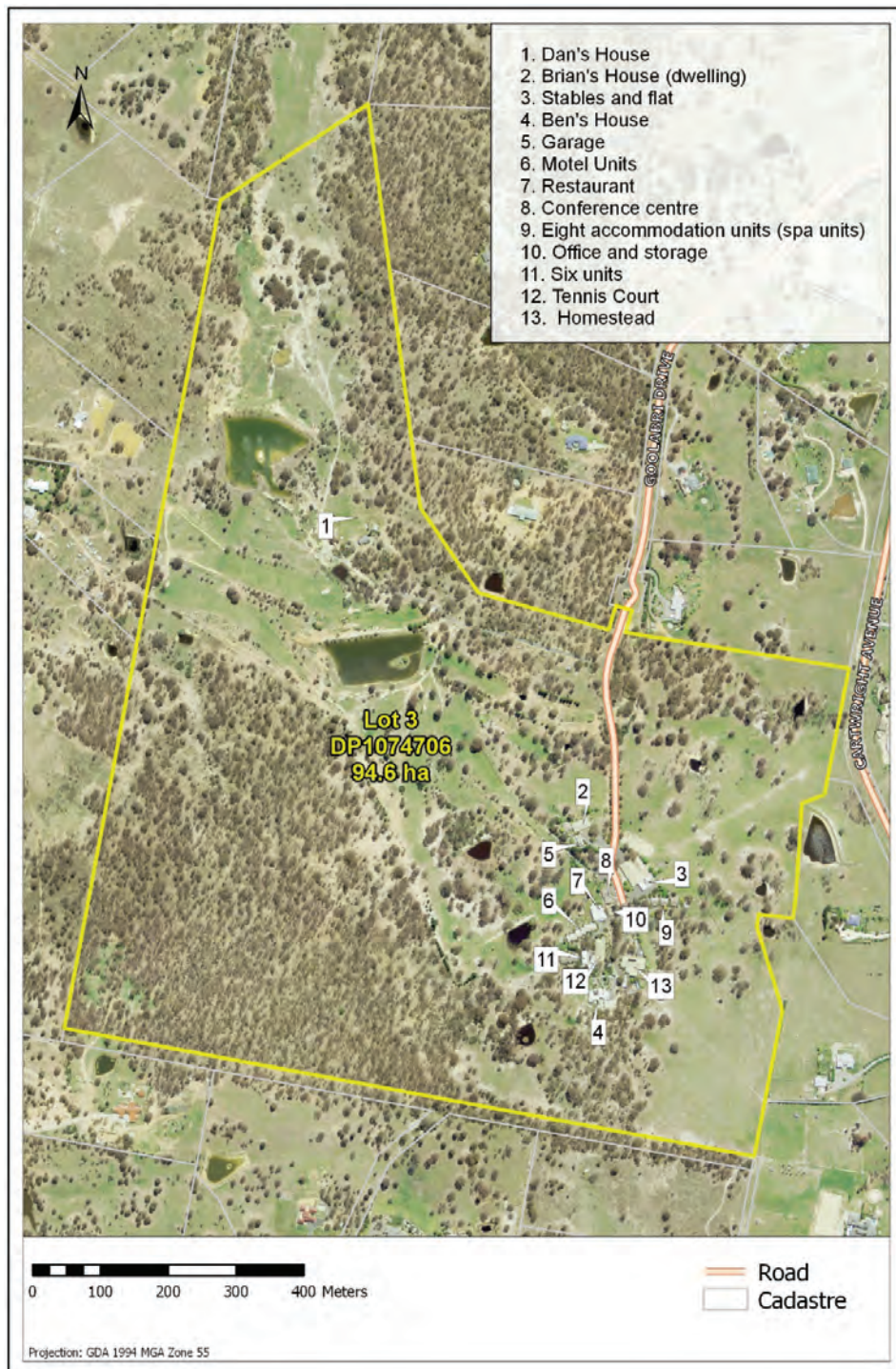
The map below indicates areas of potential future building envelopes and access roads. The map also indicates the areas identified by the Biodiversity and Conservation branch of the Department of Planning, Industry and Environment as areas of native vegetation that should be conserved.



Map 3 Potential access and building envelop location

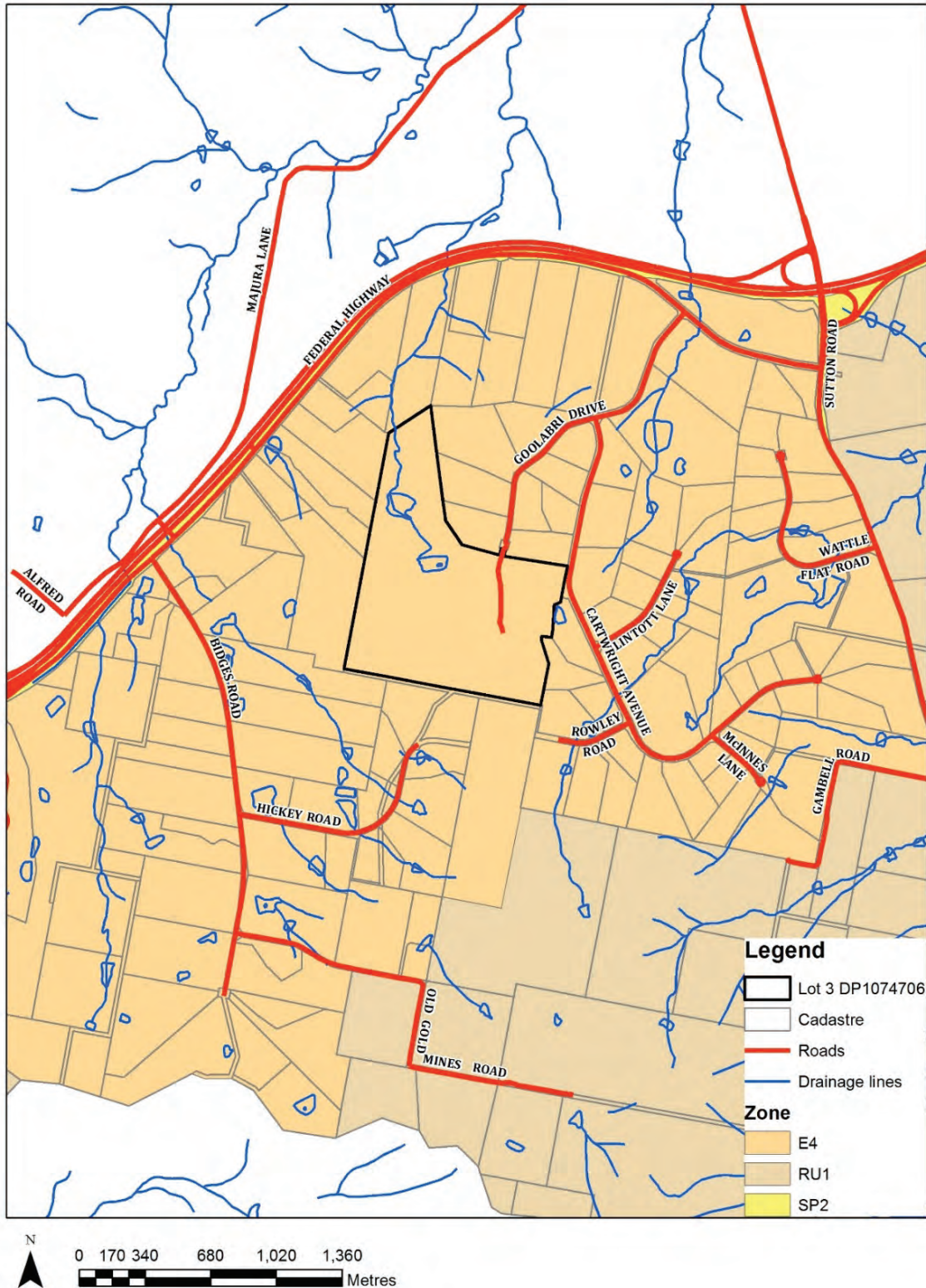
Source Based on maps provided by the Biodiversity and Conservation Branch and RFS

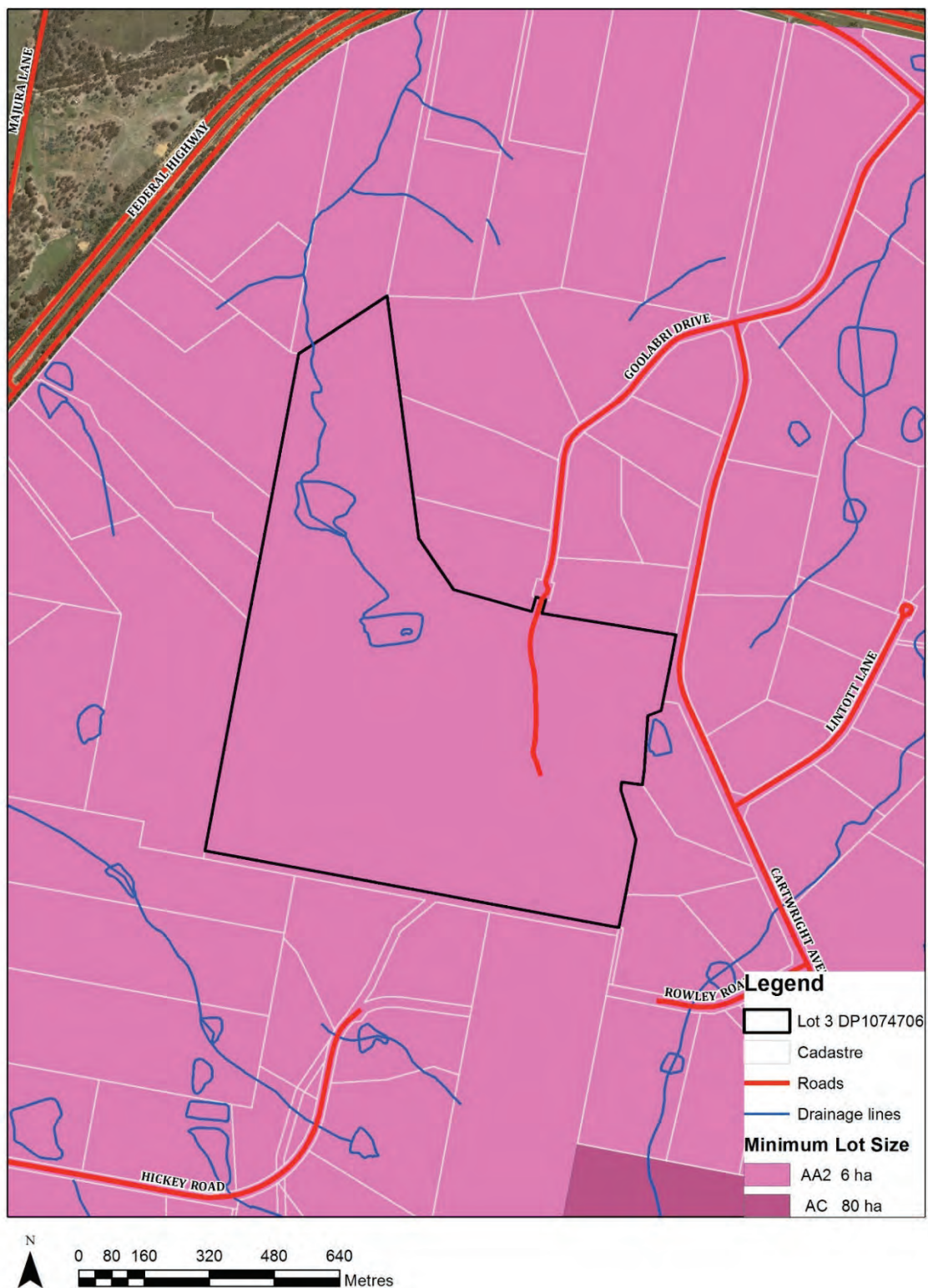
The maps below illustrate the current land uses on Lot 3 DP 1074706, its land use zone and minimum lot size under the *Palerang Local Environmental Plan 2014*.



Map 4 Lot 3 DP 1074706 and its current landuses

Source Queanbeyan-Palerang Regional Council





Map 6 Lot 3 DP 1074706 and the minimum lot size

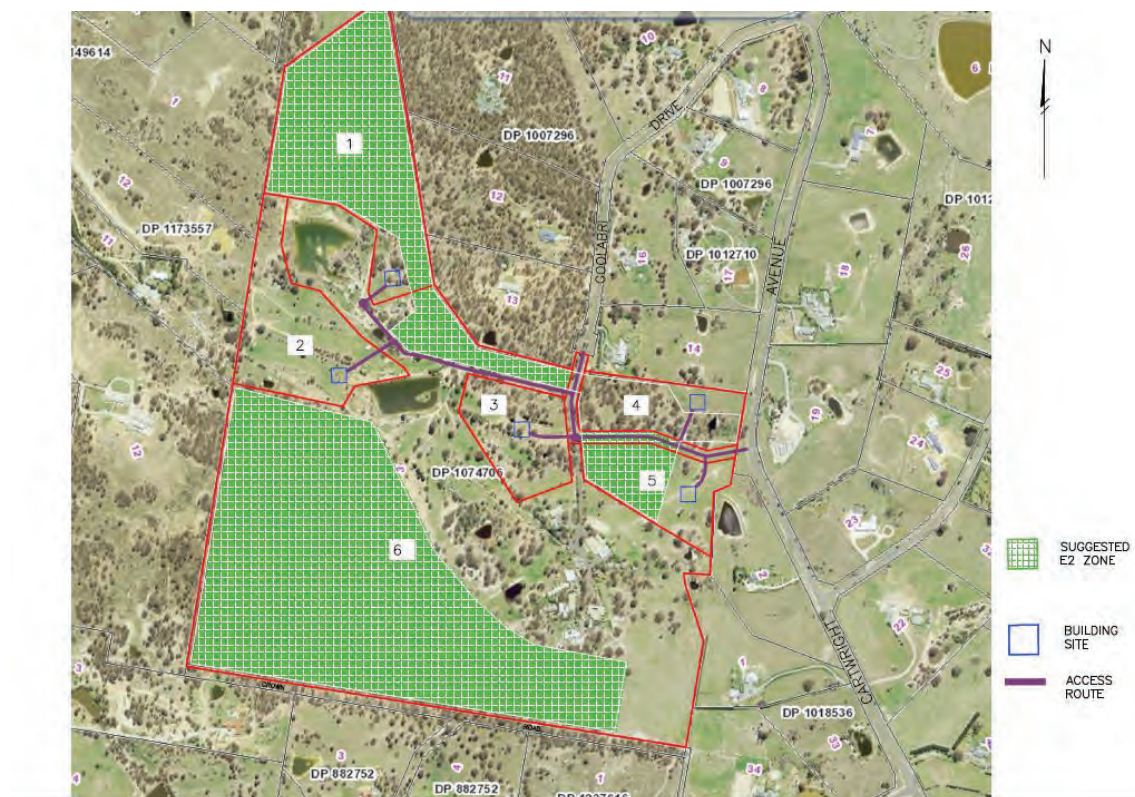
Source *Palerang Local Environmental Plan 2014*, Lot Size Map

Part 1 Intended outcome

Schedule 1 of the *Palerang Local Environmental Plan 2014* will allow the subdivision, with development consent, of Lot 3 DP 1074706 into no more than six lots which will include the existing tourist/convention centre complex.

Following the Gateway determination and consultation, the addition of formally protecting the important native vegetation on the site through an E2 Environment conservation zone was included to address the requirements of the Office of Environment and Heritage (subsequently known as the Biodiversity and Conservation branch of Department of Planning, Industry and Environment) and achieve an acceptable outcome for the property owner. It is proposed to apply E2 Environmental Conservation over part of the site as indicated in the map below.

The existing E4 Environmental Living subdivision provisions will apply to the subdivision of the land, together with those that relate to E2 Environmental Conservation.



The application of the E2 Environmental Conservation zone across part of the site will not impact the intended outcome to allow the subdivision of the Lot 3 DP 1074706 into no more than six lots as the map above demonstrates.

Part 2 Explanation of provisions

The amendment of Schedule 1 of the *Palerang Local Environmental Plan 2014* will allow the subdivision, with development consent of Lot 3 DP 1074706 to create no more than six lots.

The application of the E2 Environmental Conservation zone across part of the site, is a result of the Gateway determination requirement to consult with BC and is intended to protect the native vegetation on the site identified within the supporting background studies and by BC.

Part 3 Justification

Section A Need for the planning proposal

Question 1 Is the planning proposal a result of any strategic study or report

The planning proposal is not part of a strategic study or a report however, the subject lot is part of an existing rural residential area. The Rural Lands Study Report (p139) suggests that based on the uptake of rural residential lots in the western part of the former Palerang local government area that there is a need to plan for the creation of residential lots in the E4 land use zone in similar numbers to the past decade.

The planning proposal has been amended following consultation with government agencies to rezone part of the site from E4 Environmental Living to E2 Environmental Conservation. The proposed application of the E2 Environmental Conservation zone is a result of negotiations between council, the property owner and BC to protect areas of the site confirmed as containing Endangered Ecological Communities (EEC's).

Question 2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way

A planning proposal to amend Schedule 1 of the *Palerang Local Environmental Plan 2014* is the only means of achieving the intended outcome. The following paragraphs provide the background to the reason for the planning proposal:

Lot 3 DP 1074706 is zoned E4 Environmental Living under the *Palerang Local Environmental Plan 2014* and was created as part of the "Sutton Acres" subdivision of Lot 2 and 3 DP 827113 and Lot 6 DP 234480 which was approved in 1998. Over a number of stages 60 lots were created.

The subject land was developed for the purposes of accommodation and a golf course in the late 1980s/early 1990s. The land was zoned 1(a) General Rural under the Yarrowlumla Local Environmental Plan 1986 and the Yarrowlumla Local Environmental Plan 1993 until the gazettal of the Yarrowlumla Local Environmental Plan (Amendment No.8) in March 1998. This amendment created a new rural residential zone 1(d1) Rural Residential Zone and applied the zone to land in the Sutton area that had been identified as suitable for rural residential development in Yarrowlumla Council's 1994 Rural Residential Local Environmental Study. The zone was later applied to the Royalla area by the Yarrowlumla Local Environmental Plan 1993 (Amendment No. 14).

Following the gazettal of Amendment No. 8 in March 1998, Council became aware that a number of planning controls that applied in the 1(d) Rural Residential Zone had inadvertently been omitted under the new 1(d1) zone. One of these was a control on further subdivision of large lots created under the averaging provision. Council resolved to prepare an amendment to address this in July 1998, exhibited the draft plan during August and

Yarrowlumla Local Environmental Plan 1993 (Amendment No. 29) was gazetted on 18 December 1998.

The 1(d1) subdivision controls applied a simple 6 hectare average lot size which was later applied to all residential land in Yarrowlumla under the Yarrowlumla Local Environmental Plan 2002. A feature of these controls was that there was only one opportunity for subdivision. Large lots created under the 1(d1) controls could not be further subdivided, even, if the first subdivision did not create the maximum number of lots that was permissible. The simpler (compared to those that applied in the 1(d) zone subdivision controls did not allow for staged subdivision approval).

In the case of the subject land, at the time of the subdivision of the rural properties 'Sutton Acres' and 'Goolabri Park' for rural residential development in 1998, the applicant wished to continue to operate the golf course and resort development on Goolabri Park and as a result a large (95 ha) lot was created to include the commercial development.

As Lot 3 DP 1074706 is within an existing rural residential area, the number of lots to be created is small, the existing road infrastructure will be utilised and the lots will be used for residential purposes and are primarily in areas that have previously been disturbed, the subdivision of this lot is unlikely to have a detrimental impact on the environment or create an undesirable precedent provided that the indicative lot layout is amended to address the access to the proposed lot 1 and identified listed native vegetation.

The planning proposal has been amended to include rezoning part of the site from E4 Environmental Living to E2 Environmental Conservation. This has been done in response to the feedback from the Department of Planning, Industry and Environment – Biodiversity and Conservation (BC) (formerly OEH). Although a number of options to protect the identified vegetation were considered, rezoning part of the site to E2 Environmental Conservation was the one option which provided a satisfactory outcome for both the property owner and BC.

Section B Relationship to strategic planning framework

Question 3 Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy and exhibited draft strategies

The *South East and Tablelands Regional Plan 2036* was released in July 2017 and applies to nine local government areas including Yass Valley, Snowy Monaro, Upper Lachlan, Wingecarribee and Queanbeyan-Palerang. One of the directions of the Plan are to provide a greater supply of housing supply and choice. Page 63 of the Plan states that the "Queanbeyan-Palerang Local Government Area is expected to require an additional 12,050 dwellings to accommodate 25,050 by 2036." The planning proposal is consistent with the applicable regional strategy.

The 2018 Fauna and Flora Study by Ecological Australia noted that the subject land is mapped in the *South East and Tablelands Regional Plan 2036* (NSW Government 2017) as containing approximately 15.40 ha of High Environmental Value lands, and 86.19 ha of Conservation Corridor land. Rezoning part of the site to E2 Environmental Conservation is consistent with Goal 2 of *South East and Tablelands Regional Plan 2036* which supports "a diverse environment interconnected by biodiversity corridors". Rezoning of part of the site to

E2 Environmental Conservation is consistent with the applicable regional strategy.

Question 4 Is the planning proposal consistent with a council's local strategy or other local strategic plan

The Rural Lands Strategy developed a 20 year strategic direction for rural, rural residential and environmental land in the former Palerang local government area and was the principle output of the Rural Lands Study completed in early 2017. The strategy does not include the identification of future rural residential areas. However, it should be noted that Lot 3 DP 1074706 is currently zoned E4 Environmental Living. Following consultation with BC, the planning proposal has been amended to protect native vegetation on the site by rezoning part of the subject lot to E2 Environmental Conservation. The proposed rezoning of part of the site to E2 Environmental Conservation does not conflict with the objectives of the Rural Lands Strategy.

The proposed lots will be within an established rural residential area.

The planning proposal is consistent with the draft *Queanbeyan-Palerang Community Strategic Plan 2018-28*, Strategic Pillar 3 – Character, Key Goal 3.5 which requires that future planning of the region is well coordinated and provides for sustainable management.

Question 5 Is the planning proposal consistent with the applicable State Environmental Planning Policies

Name of State Environmental Planning Policy		Consistency with the State Environmental Planning Policy
44	Koala Habitat Protection	Applicable. A flora and fauna report has been prepared for the subdivision (as stated above). The report did not identify the site as containing koalas. Consistent
55	Remediation of land	The proponent has stated that a "contaminated lands assessment has not been undertaken however based on land ownership knowledge there are no known contaminated sites on the land holding". Based on this statement it is not considered necessary to undertake a contaminated land assessment.
	SEPP (Rural Lands) 2008	Not applicable. The land is currently zoned E4 Environmental Living and this planning proposal will not amend the land use zoning.
	SEPP (Vegetation in Non-Rural Areas) 2017	Applicable. The land is currently zoned E4 Environmental Living. The planning proposal seeks to permit with consent subdivision of the subject lot. Clearing of vegetation is not required for the planning proposal.

Question 6 Is the planning proposal consistent with applicable Ministerial Directions

	Name of direction	Applicability and consistency with the direction
1.1	Business and Industrial Zones	Not applicable
1.2	Rural Zones	Not applicable
1.3	Mining, Petroleum Production and Extractive Industries	Not applicable
1.4	Oyster Aquaculture	Not applicable
1.5	Rural Lands	Not applicable
2.1	Environment Protection Zones	Applicable and consistent
2.2	Coastal Protection	Not applicable
2.3	Heritage Conservation	Applicable. Refer to the section below regarding the heritage assessment of the site.
2.4	Recreation Vehicle Areas	Applicable and consistent
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Not applicable
3.1	Residential Zones	Applicable and consistent. The proposal is allowing a provision that was contained in a previous local environmental plan
3.2	Caravan Parks and Manufactured Home Estates	Applicable and consistent. The proposal does not alter permissibility of caravan parks/manufactured home estate on the land. The planning proposal does not impact on any existing caravan park/manufactured home estate.
3.3	Home Occupations	Applicable and consistent.
3.4	Integrating Land Use and Transport	Not applicable
3.5	Development near Licensed Aerodromes	Not applicable

	Name of direction	Applicability and consistency with the direction
4.1	Acid Sulfate Soils	Not applicable
4.2	Mine Subsidence and Unstable Land	Not applicable
4.3	Flood Prone Land	Not applicable
4.4	Planning for Bushfire Protection	Applicable and consistent. Refer to the section below.
5.1	Implementation of Regional Strategies	Applicable and consistent.
5.2	Sydney Drinking Water Catchments	Not applicable
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable
5.8	Second Sydney Airport: Badgerys Creek	Not applicable
5.9	North West Rail Link Corridor Strategy	Not applicable
5.10	Implementation of Regional Plans	Applicable and consistent.
6.1	Approval and Referral Requirements	Applicable and consistent.
6.2	Reserving Land for Public Purposes	Applicable and consistent.
6.3	Site Specific Provisions	Not applicable
7.1	Implementation of the Metropolitan Plan for the Sydney 2036	Not applicable
7.2	Implementation of Greater Macarthur Land Release Investigation	Not applicable
7.3	Parramatta Road Corridor Urban Transformation Strategy	Not applicable
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Not applicable
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use	Not applicable

	Name of direction	Applicability and consistency with the direction
	and Infrastructure Implementation Plan	
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	Not applicable

Section C Environmental, social and economic impact

Question 7 Is there any likelihood that critical habitat or threatened species populations or ecological communities or their habitats will be adversely affected as a result of the proposal

Good Environmental Systems prepared a Fauna and Flora Survey and Assessment Report in 2014 which considered the environmental impact of a 4 lot subdivision (3 new lots with 1 residual lot). This report along with the other supporting studies and the original Planning Proposal, for a subdivision consisting of 6 new lots and 1 residual lot was forwarded to the Office of Environment and Heritage (OEH) and the Rural Fire Services (RFS) for comment, as required by the Gateway Determination. In November 2016, the OEH responded with a requirement that an updated flora and fauna report be prepared to address the additional information required including a map of the vegetation community types onsite and location any hollow bearing trees.

In 2018, Ecological Australia prepared a Flora and Fauna Study on Lot 3 DP 1074706 with the purpose of identifying the ecological values present on the site and to provide recommendations to minimize or mitigate impacts associated with the proposed 7 lot subdivision (6 new lots plus one residual lot). The report also noted that the site is mapped in the *South East and Tablelands Regional Plan 2036* as containing land of High Environmental Value and Conservation Corridor Land.

The report by Ecological Australia, identified and mapped 6 vegetation zones. These vegetation zones comprise of three vegetation communities:

- Plant Community Type (PCT) 1330 Yellow Box – Blakely's Red Gum grassy woodland;
- PCT1093 Red Stringybark – Brittle Gum – Inland Scribbly Gum dry open forest; and
- Exotic pasture and Native/Exotic plantings which does not correspond to a PCT.

The report identified that the two native vegetation communities PCT 1330 and PCT 1093, are present in various degrees of condition and were therefore mapped as separate zones. The report (p9) notes that "One of the vegetation communities located within the subject land qualified as a Threatened Ecological Community under the *Environment Protection and Biodiversity Conservation Act* and/or *Biodiversity Conservation Act*" and that "All areas mapped as PCT1330 were considered of sufficient quality to meet the requirements for assessment as the *Biodiversity Conservation Act* listed EEC White Box Yellow Box Blakely's Red Gum Woodland". In addition, the report notes (p28) "the majority of this vegetation community met the condition requirements of the *Environment Protection and Biodiversity Conservation Act* listed community White Box – Yellow Box – Blakely's Red Gum Grassy Woodland and DNG."

The report summarises the status of the vegetation on the site as follows "The patches of the community in *Environment Protection and Biodiversity Conservation Act* are considered to represent a very high ecological constraint due to being a Critically Endangered Ecological Community (CEEC)". The definition of Critically Endangered Ecological Community is provided in Note 1 below. Any direct impacts to this CEEC would require referral to the Commonwealth Department of the Environment and Energy. The areas mapped as meeting only the BC Act listed EEC pose a high constraint, and offer opportunities for improvement

through appropriate management. These areas of EEC shown in Figure 4 are considered to be validated boundaries and extent of High Environmental Value lands. Managing and enhancing these areas of EEC (both good condition and DNG), as well as the large remnant patch of PCT1093 within the remnant lot, for biodiversity outcomes, will contribute to the aim and actions outlined in the South East and Tableland Regional Plan 2017, Direction 15: Enhance biodiversity connections.” (p28)

Note 1: Under the NSW *Biodiversity Conservation Act 2016*, an ecological community maybe listed as vulnerable, endangered or critically endangered. Clause 4.4 (1) of the *Biodiversity Conservation Act 2016* states that “A species is eligible to be listed as a critically endangered species if, in the opinion of the Scientific Committee, it is facing an extremely high risk of extinction in Australia in the immediate future, as determined in accordance with criteria prescribed by the regulations.”

The map below provides a summary of the ecological values of the site and includes the location of the threatened ecological communities (as per the *Environmental Protection and Biodiversity Conservation Act* and the *Biodiversity Conservation Act 2016*) in relation to the indicative subdivision design. The map also indicates the location of hollow bearing trees, bird nests, termite mounds and large woody debris as requested by the Office of Environment and Heritage.



Map 7 Summary of Ecological Values

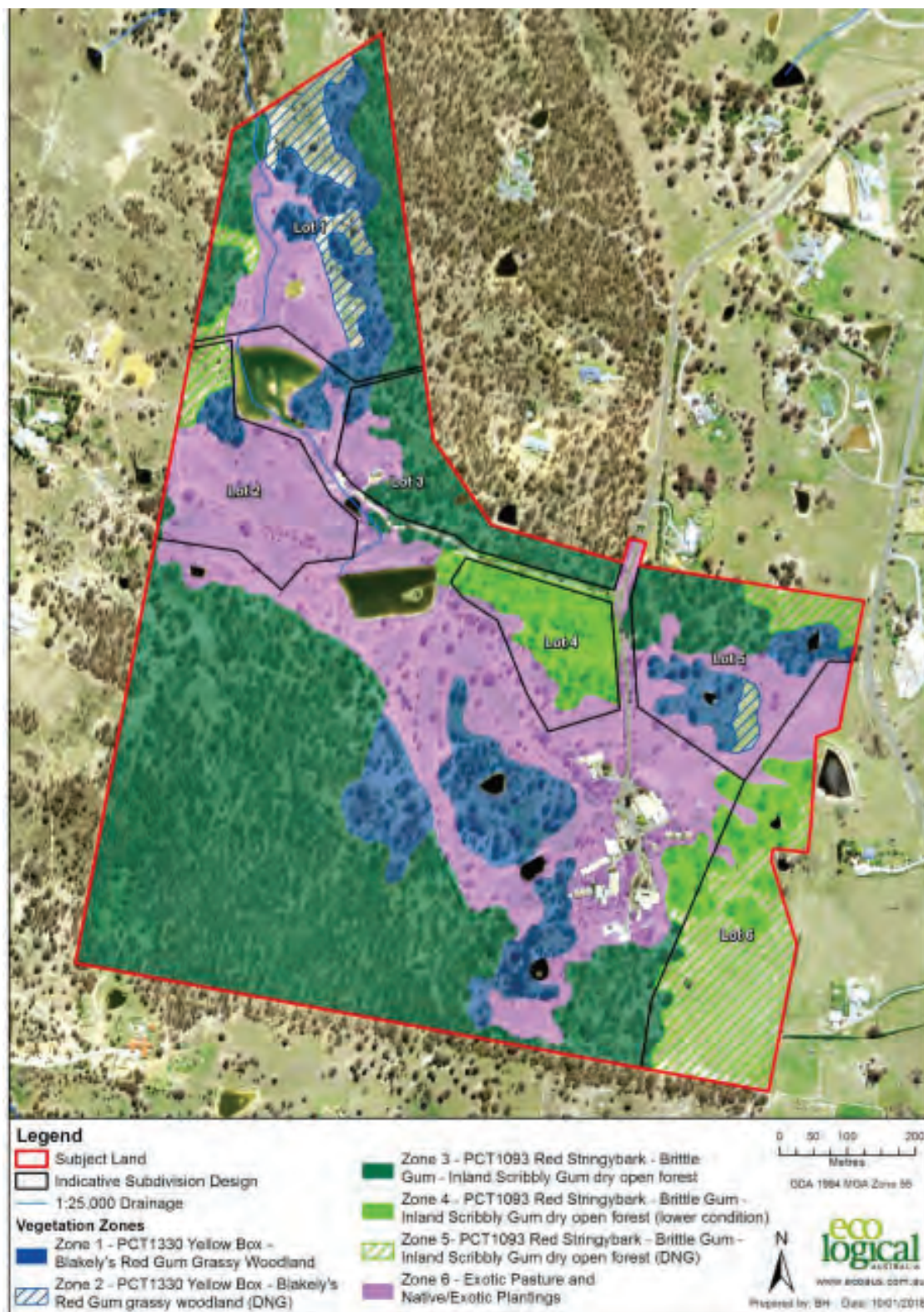
Source Sutton Planning Proposal Flora and Fauna Study (Figure 4; p30) by Eco Logical Australia

The report also mapped key fauna habitat components on the subject land including “26 hollow-bearing trees (HBTs), 8 termite mounds, large woody debris, *Amyema* sp. (mistletoe), bird nests, and farm dams and ephemeral creek lines.” However, the report noted (p21) that “no threatened fauna species listed under either the *Biodiversity Conservation Act* or *Environment Protection and Biodiversity Conservation Act* were observed.”

In order to mitigate or minimize the potential impact of the proposal on native fauna or flora the report (p33) recommends the following:

- “Design the proposal to avoid any impacts to hollow-bearing trees and the *Environment Protection and Biodiversity Conservation Act* listed Critically Endangered Ecological Community.
- Confine all impact areas (building envelopes, infrastructure footprints) to lands mapped as Vegetation Zone 6 Exotic Pasture and Native/Exotic Plantings. (refer map below)
- Waterway crossings should be designed and constructed in accordance with the national guidelines.
- Updating and finalising the Vegetation Management Plan for the subject land, with a particular emphasis on managing and restoring the areas of TEC, establishing the vegetated riparian zone and retaining remnant mature trees.
- Develop a Construction Environmental Management Plan to address potential pollution and contamination issues, which could arise during construction, and to incorporate Unexpected Find and Pre-clearing and Clearing Supervision procedures (particularly focused on avoiding impacts to hollow-dependent fauna).”

The map below indicates the areas of vegetation zones across the site inconjection with the indicative subdivision layout.



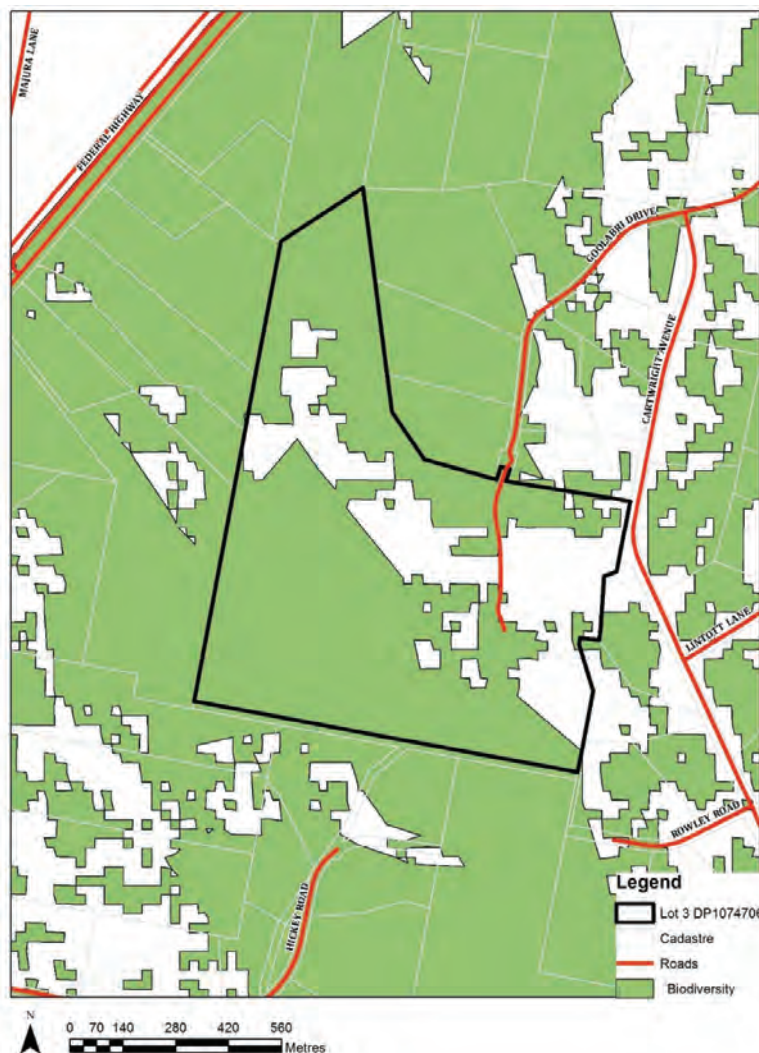
Map 8 Vegetation zones

Source Sutton Planning Proposal Flora and Fauna Study (Figure 2; p12) by Eco Logical Australia

In summary, while the current informal road network within the site provides access to each of the proposed lots, the most likely access to Lot 1 is through Critically Threatened Ecological Communities. As any requirement to upgrade this access is likely to cause fragmentation of this patch of Threatened Ecological Community the current indicative layout for lot 6 is not supported.

While the indicative subdivision layout (particularly Lot 1) is not supported, an indicative lot layout has been provided which demonstrates that sufficient building envelopes and impact areas, infrastructure footprints) can be provided for up to 6 additional lots plus the residual Lot on land mapped as vegetation zone 6.

The *Palerang Local Environmental Plan 2014*, Terrestrial Biodiversity Map below shows the areas that contain native vegetation. The map is relatively consistent with the flora and fauna report. There is no need to amend this map.



Map 9 Terrestrial Biodiversity

Source Palerang Local Environmental Plan 2014, Terrestrial Biodiversity Map

Question 8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed

Reports for the site have been prepared for Aboriginal cultural heritage, water supply and effluent disposal in relation to the subdivision, these are outlined below.

Aboriginal cultural and European heritage

While an Aboriginal cultural heritage assessment was undertaken in February 2014 and submitted with the Planning proposal for a proposed subdivision, the Office of Heritage and Environment have required that a new archaeological survey be undertaken and that the report includes information about the length and placement of survey transects.

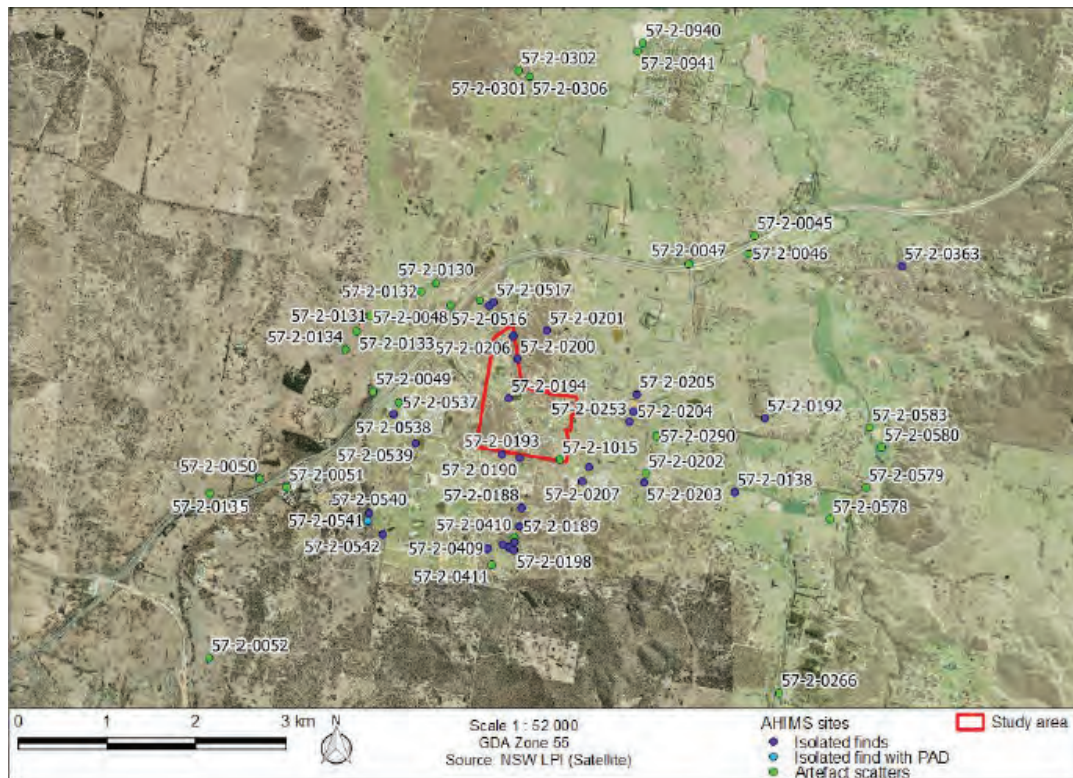
A final Aboriginal Cultural Heritage Impact Assessment report was submitted by OzArk EHM in May 2018. This report (p iv) notes that a “desktop assessment found that four Aboriginal site recordings previously registered with AHIMS were located within the study area. These sites are an artefact scatter Goolabri 1 (57-2-1015) and three isolated finds, IA9 (57-2-0206), IA10 (57-2-0200), and IA3 (57-2-0194)”. However, field investigations have now established that AHIMS IA3 (57-2-0194) is not located within the study area.

A visual inspection of the study area was undertaken by OzArk Principal Archaeologist, Ben Churcher, on 15 March 2018 to ground-truth the findings of the desktop assessment. The report (p iv) states that “artefact scatter Goolabri 1 (#57-2-1015) was located and found to still be visible in the landscape. No evidence of IA9 (#57-2-0206) or IA10 (#57-2-0200) could be found, however, the AHIMS locations match the site description in the report and it must be assumed that the artefacts are obscured and that the sites remain valid.”

The report (piv) advises that “No new Aboriginal sites were identified during this assessment and no landforms of archaeological potential were assessed as being present.”

The report concluded (piv) that “all Aboriginal objects present in the study area could be avoided” and that “works associated with the proposal are not expected to harm Aboriginal cultural heritage items or places.” However, to ensure the highest level of protection for the area’s Aboriginal cultural heritage values, the report made a number of recommendations that are relevant to the works being conducted onsite and should be applied to any development consent.

The map below indicates the Aboriginal site recordings previously registered with AHIMS.



Map 10 Aboriginal sites registered with AHIMS

Source Aboriginal Cultural Heritage Impact Assessment (Figure 4-1; p15) by OzArk

Non-potable water supply

A report concerning the supply of non-potable water was prepared in February 2014 as part of the subdivision application. At the time of the preparation of the subdivision application and associated reports, the Yarrowlumla Local Environmental Plan 2002 (clause 18(1)(f)(1)) and Yarrowlumla Development Control Plan Rural Zones were in force and both required a non-potable water supply for each lot. Neither the *Palerang Local Environmental Plan 2014* nor the *Palerang Development Control Plan 2015* have this requirement. It is recommended that this report is reviewed as part of the application for subdivision.

Effluent disposal

As there is no reticulated sewer scheme, on-site effluent disposal schemes are required for each dwelling. An assessment for on-site effluent disposal was prepared as part of the subdivision application for two lots (the other lots being the residual and already having a dwelling). The report states “the sites are well suited to irrigation of secondary treated effluent from a NSW Health accredited treatment system. Other forms of effluent treatment and disposal may be suitable at particular locations, but should be addressed at the time of

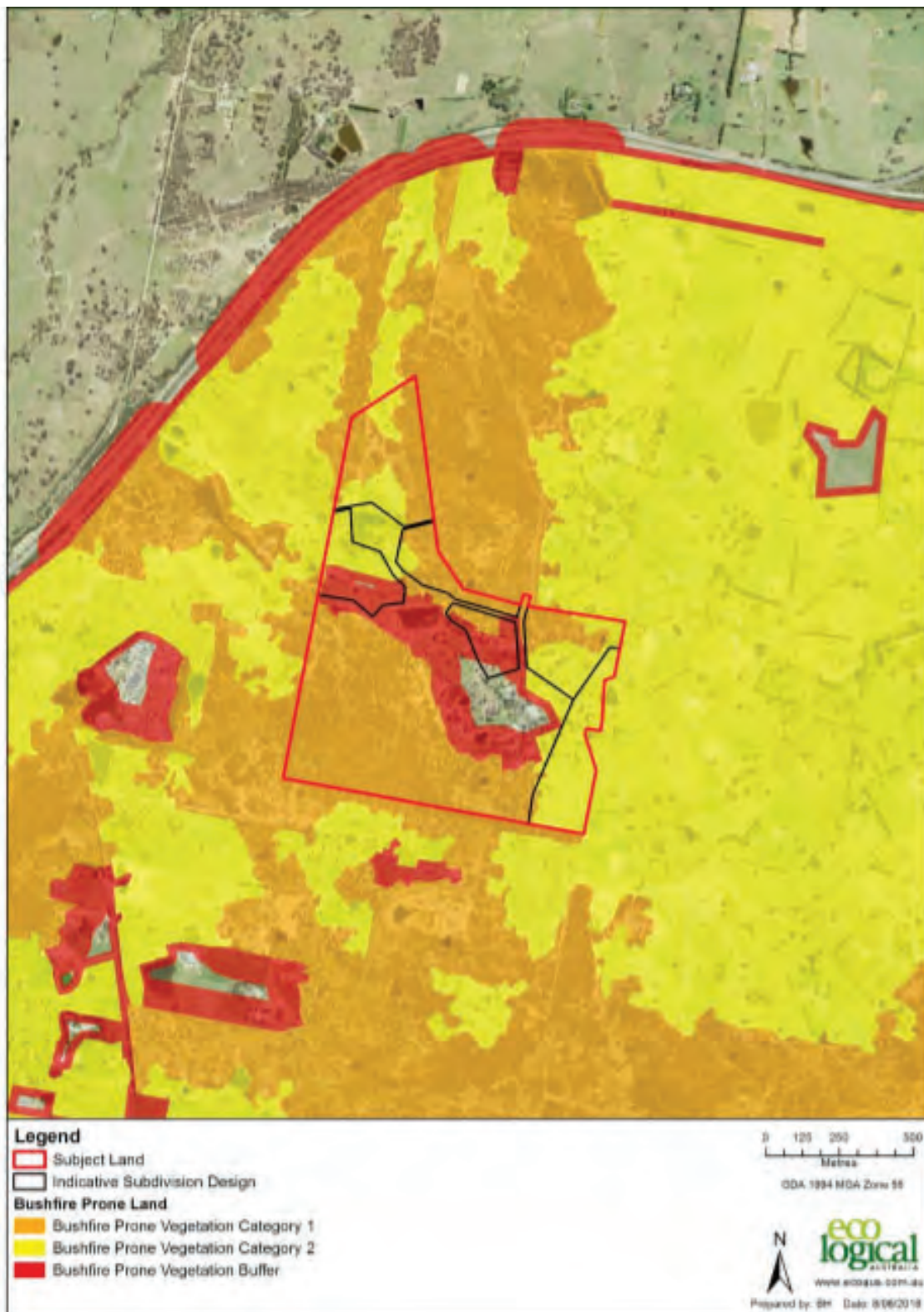
submitting building plans.” (p1). It is recommended that this report is reviewed as part of the application for subdivision.

Bushfire

The bushfire map for the former Palerang local government is shown below. The majority of the lot is bushfire prone. A bushfire report was prepared for a subdivision application of the subject lot as discussed in the introduction of this document. The report states “Based on the above information it is considered that this development can comply with clause 44 of the Rural Fires Act, all aspects of building in fire prone area, and planning for bushfire protection” (p10). It is recommended that the planning proposal is referred to the NSW Rural Fire Service.

The planning proposal and bushfire report was submitted to the Rural Fire Services (RFS) for comment in October 2016. The RFS advised that, on the basis of the information provided, they were not in a position to properly assess the application and requested that additional information be provided.

In June 2018, Ecological Australia prepared a Bushfire Protection assessment based on the subdivision of Lot3 DP 1074706 into 6 residential lots and 1 residual lot (refer Appendix C). As requested by the Rural Fire Services the assessment was calculated from the “Planning for Bushfire Protection 2006” (RFS2006). The report concluded that the planning proposal can comply with the acceptable solutions within ‘*Planning for Bush Fire Protection 2006*’. The need for a second access road will need to be considered at the subdivision stage.



Map 11 Bushfire prone map

Source Bushfire Protection Assessment June 2018 (Figure 2 on p 4) by Eco Logical Australia.

Question 9 Has the planning proposal adequately addressed any social and economic effects

The planning proposal will allow residential subdivision in an existing rural residential area. It is considered that the social and economic impacts would be minor.

Section D State and Commonwealth interests

Question 10 Is there adequate public infrastructure for the planning proposal

As the planning proposal relates to an existing rural residential area there are roads in place in the vicinity of the site of the planning proposal. The requirements for additional roads will be addressed as part of the subdivision application. The site does not have a water or sewer scheme managed by Council. The potable water and effluent disposal studies have been outlined above.

There is a primary school under ten kilometres from the rural residential area and buses to high schools in Queanbeyan and Canberra, fifteen minutes away. There are existing health facilities in Queanbeyan and Canberra.

Question 11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination

The Gateway determination requires consultation with the following government agencies:

- NSW Rural Fire Services (RFS)
- Office of Environment and Heritage (subsequently renamed Biodiversity and Conservation)

Both agencies have been consulted and have requested revised reports with additional information. Council has received these revised reports and forwarded them to the relevant agencies.

Biodiversity and Conservation Feedback

In March 2019, the Biodiversity and Conservation Branch (BC) provided a comprehensive response to the amended planning proposal dated February 2019 and the accompanying draft subdivision layout and amended studies. The response included comments relating to the following three areas:

- Biodiversity;
- Flood Risk Management; and
- Aboriginal Cultural Heritage.

These matters are discussed in detail below.

Biodiversity

BC conducted a desk top analysis of the site constraints including the flooding constraints and the biodiversity values of the site, then based on this analysis, prepared a draft subdivision layout plan as per Figure 1 below:

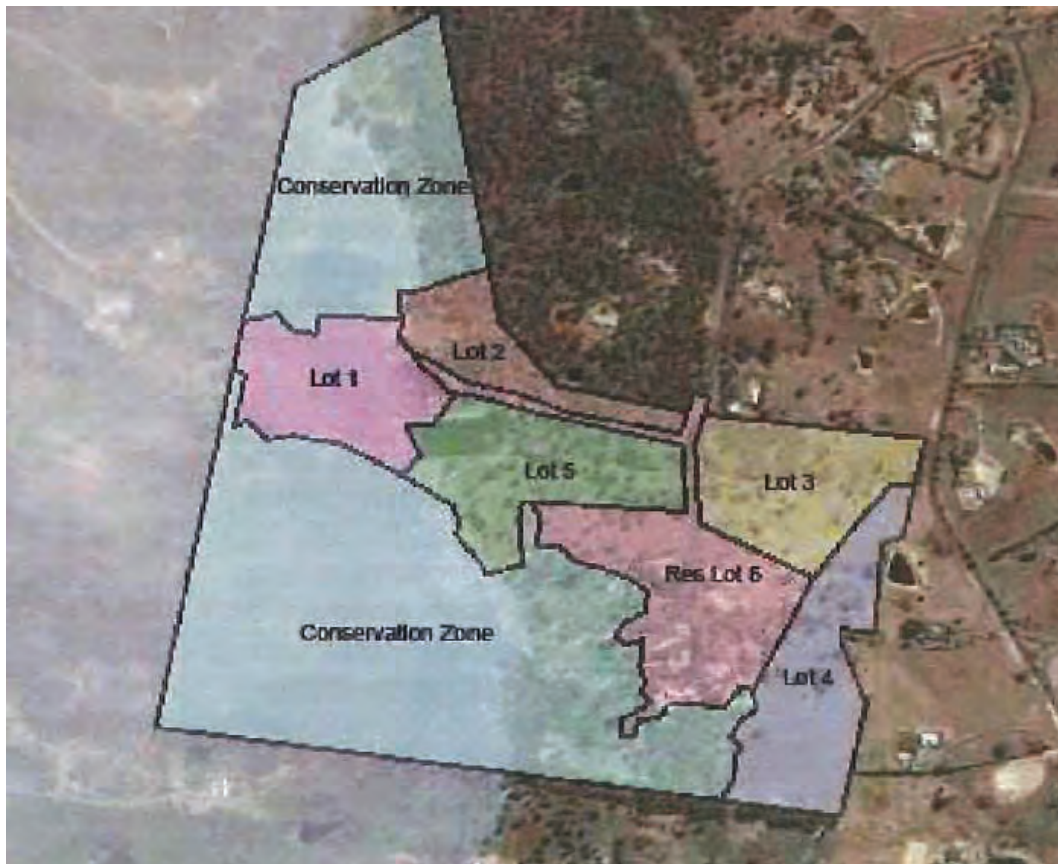


Figure 1 – Potential Lot layout prepared by BC

As a result of their analysis, BC recommended that the planning proposal “reduce the number of lots to six, including the residual lot, and redesign them to be in line with the biodiversity limitations of the site”. Furthermore, BC noted that “The proposed Lot 1 is highly constrained from a biodiversity and flooding perspective and we recommend it be included in a conservation lot or protected in perpetuity.” In addition, it was advised that:

- “As per previous feedback, vegetation in south west corner be protected as this vegetation has the potential to be used as an offset for future development.
- Support the Fauna and Flora recommendations made in the Flora and Fauna Report by EcoLogical, dated Jan 2018, as follows:
 - Design the proposal to avoid any impacts to hollow-bearing trees and the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) listed Critically Endangered Ecological Community (CEEC)
 - Confine all impact areas (building envelopes, infrastructure footprints) to lands mapped as Vegetation Zone 6 Exotic Pasture and Native/Exotic Plantings, to the greatest extent possible to minimise impacts, but also to minimise likely offset obligations.
 - Waterway crossings should be designed and constructed in accordance with the national guidelines entitled ‘Why do Fish Need to Cross the Road? Fish Passage Requirements for Waterway Crossings’ (Fairfull and Witheridge 2003).
 - Preparation of a Vegetation Management Plan, that:
 - restores Threatened Ecological Communities;
 - revegetates the riparian zone; and

- *retains remnant mature trees.*
- *Preparation of a Construction Environmental Management Plan to:*
 - *address pollution, silt control and pre-clearing procedures.”*

Following the Gateway determination and consultation, the addition of formally protecting the important native vegetation on the site through an E2 Environment conservation zone was included to address the requirements of BC and achieve an acceptable outcome for the property owner. It is proposed to apply E2 Environmental Conservation over part of the site as indicated in the map below.

BC branch advised that the subject site is mapped as High Environmental Value (HEV) land in the South East and Tableland Regional Plan 2036 and recommended that the areas containing Endangered Ecological Communities (EEC's) be protected at the local level. At the 8 April 2020 Planning and Strategy meeting Council resolved (Minute No. PLA029/20) in part to:

progress the planning proposal for Lot 3 DP 1074706, Goolabri Drive, Sutton by negotiating a solution with the property owner to identify and protect the vegetated areas included in the conservation areas identified by the Department of Planning, Industry and Environment – Biodiversity and Conservation.

A number of options were considered, however the solution that was ultimately agreed upon by both the property owner and BC, is to rezone that part of the site containing the identified native vegetation to E2 Environmental Conservation.

As noted above the planning proposal was amended following consultation with the state agencies listed in the Gateway determination. Prior to public consultation the agencies were advised of the public exhibition dates of the amended plan and BC subsequently raised further advice in relation to the amended plan. This further advice also related to flooding and is discussed below.

Flood Risk Management

In relation to Flood Risk Management, the agency recommends that a suitable flood risk assessment be obtained and that consideration be given to a number of matters as follows:

- *“The extent of flood prone land, which is the area inundated by the Probable Maximum Flood.*
 - *This identifies how much of the site is subject to the application of section 9.1 Planning Direction 4.3 Flood Prone Land*
 - *It also provides the basis of assessment of the flood range above the 1% AEP flood level and hazard in areas outside the FPA where dwellings will be sited*
- *The peak levels depths and velocities across the site in the 1%AEP flood which allows identification of*
 - *The flood planning area*
 - *Floodways*
 - *High hazard areas*
- *The Flood Planning Levels across the site and the Flood Planning Area*
- *The impact of flooding on the proposed development;*

- *The impact of the proposed development on flood behaviour (particularly any offsite flood impacts because of the potential encroachment, land use and land form changes);*
- *The impact of flooding on the safety of the people for the full range of floods including issues linked with isolation and accessibility for emergency services; and*
- *The implications of climate change (particularly increased rainfall intensity) on estimated flood planning levels.*
- *Flood hazard across the site and adjoining residential area over the full range of potential floods;*
- *Suitability and ongoing ownership and management implication of the various dams on flooding and whether Dam Safety Committee requirements are met;*
- *Strategies to facilitate flood access and evacuation of residents and other visitors, if there is potential for isolation;*
- *Trafficability of the proposed flood road network both on and off site and any culvert structures across watercourses;*
- *Afflux associated with proposed road and culvert structures over watercourses, including potential implications for proposed lots upstream of structures.”*

Council Response

The planning proposal seeks only to allow subdivision of the lot. Any subdivision layout is indicative only and is intended to demonstrate that the number of lots proposed can be supported. The feedback provided are matters that may be addressed during the development application stage.

Furthermore, as a result of the additional feedback provided by BC, the planning proposal has been amended to allow a subdivision on the subject site of no more than six total lots (previously seven lots).

During the exhibition of the amended plan BC further advised that the amended plan did not address the flooding issues previously raised. Council's Development engineers were subsequently consulted and provided the following advice:

Council considers that the full lot yield can be achieved if at development application stage a flood study is presented by the applicant. The study should adopt a scope of minimal outcomes for the consultant to use as a reference in the study. The flood study will provide a number of options and recommendations to ensure the full lot yield is achieved. The study and the recommendations will assist Council and the Department of Climate Science and Energy are satisfied that the best outcomes are being achieved for the viability of the development site while providing some positive outcomes for the local waterway management.

The implementation of the flood study recommendations once deemed satisfactory by Council can be conditioned as a part of the conditions of consent. The proposed site works can be designed and submitted for final approval during the subdivision works certificate process.

Aboriginal Cultural Heritage

The BC branch dispute the findings of the amended Aboriginal Cultural Heritage Impact Assessment (dated May 2018) that site 57-2-0194 is a duplicate of site 57-2-0203 and require an revised Aboriginal Cultural Heritage Impact Assessment *“with the original (correct) coordinates for site 57-2-0194”*. The rationale for disputing the assessment are provided in detail on page 7 of Attachment 1.

The amended report is also to include a recommendation that *“future purchasers of lots containing Aboriginal objects be advised of the requirement to obtain an Aboriginal Heritage Impact Permit (AHIP) if they wish to undertake ground disturbing activities in the vicinity of the recorded sites.”*

Council response

The property owner will be required to submit an amended Aboriginal Cultural Heritage Impact Assessment as discussed above, as part of any development application for a subdivision of the lot.

During the development assessment process an Aboriginal Heritage Information Management System (AHIMS) search is conducted and it would be identified at that point whether an Aboriginal Heritage Impact Permit (AHIP) is required under section 90 of the NSW *National Parks and Wildlife Act 1974*. This can be accommodated in a number of ways and will be considered in the subdivision application and will be conditioned as part of the development application process.

RFS Feedback

On the 24 May 2019 the RFS advised that the *“proposal may facilitate future development within the site that is unable to comply with the acceptable solutions outlined in Planning for Bushfire Protection 2006 (PBP). As per our previous response dated 4 November 2016, where the acceptable solutions of PBP 2006 are not satisfied at Planning Proposal stage, the applicant is required to demonstrate how an alternate solution can meet the relevant intent of the bush fire protection measure as defined in PBP 2006.”* In addition the RFS advised that *“In acknowledgement that the final number of lots and lot layout will be determined as part of a future subdivision application, the RFS does not provide an in-principle support for the indicative subdivision plan submitted with the proposal.”*

Further discussions between the applicant and the RFS resulted in an amended draft subdivision plan being prepared by the applicant based on previous discussions with the RFS. That amended subdivision plan (Figure 2 below) provided for a total of seven lots with a road connection between Goolabri Drive and Cartwright Avenue and access for one lot from an extension to Rowley Road.



- *“The proposed connection road between Goolabri Drive and Cartwright Avenue should be designed and constructed to public road standards;*
- *The property access road to proposed Lots 1 and 2 should incorporate road side vegetation management and, if the road provides access to more than three dwellings, the access is formalised by dedication of a road and not by right of way;*
- *Any consent required to facilitate the access arrangements into proposed Lot 6 from Rowley Road should be obtained prior to lodgement; and*
- *All bush fire protection measures, in particular, asset protection zones, should be contained within the individual lots.”*

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Introduction

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- Land Zoning Map - Sheet LZN_001

Part 5 Community consultation

The Planning Proposal has been exhibited for 28 days. The following reports were exhibited and reviewed (as outlined above).

- Flora and fauna
- Aboriginal cultural heritage
- Bushfire

The reports concerning on-site effluent disposal and non-potable water supply will be considered as part of the application for subdivision.

Part 6 Project timeline

Stage	Completion date
Date of Gateway determination	4 August 2016
Initial government agency consultation	Completed end of September 2016
Revised consultant reports	Completed June 2018
Report to Council with amended planning proposal	27 February 2019
Government agency consultation	March 2019
public exhibition period	22 January - 24 February 2020
Timeframe for consideration of submissions	March 2020
Report to Council review of submissions	8 April 2020
Negotiate a solution with the property owner to identify and protect the vegetated areas included in the conservation areas identified by the Department of Planning, Industry and Environment – Biodiversity and Conservation	April 2020 – July 2020
Request to Parliamentary Counsel to draft the LEP	August 2020
Amended local environmental plan gazetted	September 2020

Appendices

Appendix A Aboriginal Cultural Heritage, May 2018

Appendix B Flora and Fauna, January 2018

Appendix C Bushfire, June 2018