



Planning Proposal
Parts of Wamboin and Bywong Zoning Amendment
to R5 Large Lot Residential

Planning proposal prepared by AQ Planning and
BIOSIS on behalf of
Queanbeyan-Palerang Regional Council

File:
PJT-0061-05-01
Doc Set Id 504691

Document History

Version	Revision	Date	Comments
Final Draft	04	29/1/2020	Final Draft for Council Report
Final Draft	05	9 April 2020	For Gateway determination - Amended in accordance with Council resolution PLA004/20
	06	November 2020	Response to DPIE request for information – delegation, inclusion of extensive agriculture in R5 zone for lots included in this planning proposal

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Introduction

Purpose

The purpose of this planning proposal is to amend the *Palerang Local Environmental Plan 2014* (PLEP 2014) under the *NSW Environmental Planning and Assessment Act 1979*, to rezone parts of the localities of Bywong and Wamboin from E4 Environmental Living zone to R5 Large Lot Residential zone, where that land has been determined to be wholly or predominantly Class 3 land (low value biodiversity). In addition, at the 12 February 2020 Planning and Strategy Committee meeting, it was resolved (Minute No. PLA004/20) in part that:

1. *Council endorse the draft planning proposal to rezone part of Bywong and Wamboin from E4 Environmental Living to R5 Large Lot Residential subject:*
 - a. *Those 15 lots proposed to be split zoned being submitted as R5 Large Lot Residential zone only.*
 - b. *The inclusion of extensive agriculture as a permitted use without consent pursuant to Schedule 1 of the PLEP 2014 as it applies to the planning proposal.*

Council is currently preparing a draft local environmental plan to bring together the existing local environmental plans including the *Palerang Local Environmental Plan 2014*. It is anticipated that the draft local environmental plan will be gazetted in 2020 or early 2021.

This planning proposal will be considered during the preparation of a new comprehensive local environmental plan for the Queanbeyan-Palerang Regional Council, and has been prepared in parallel with the new local environmental plan (comprehensive LEP) planning proposal to assist Queanbeyan-Palerang Regional Council in its consideration of future landuse zoning options for the study area.

Why is it being done?

Following concern from a number of community members regarding the application of the E4 Environmental Living land use zone, particularly in the Wamboin and Bywong localities. As a result Council agreed in February 2017 to review its application of the land use zone as part of the preparation of the draft Queanbeyan-Palerang Local Environmental Plan.

The recommendation concerning this (Minute No. 046/17 - 22 February 2017) is shown below:

- 2 *That land zoned E4 Environmental Living under the Palerang Local Environmental Plan 2014 be considered in terms of its fit for purpose and that this be part of the preparation of a new comprehensive local environmental plan for the Queanbeyan-Palerang Regional Council.*
- 3 *That Council note the advice of NSW Department of Planning and Environment on considering lands fit for purpose in land use rezoning decisions.*

On 13 December 2017 Council considered a further report in regard to this matter.

The review of the application of the E4 Environmental Living landuse zone in the localities of Wamboin and Bywong (that has led to the preparation of this planning proposal) follows Council's resolution of 13 December 2017 that states:

- "Parts of Bywong and Wamboin be assessed for consideration to R5 and RU4 zones in the draft LEP";

On 8 August 2018 Council again considered this matter and resolved that;

- "Council seek expression of interests for consultants to undertake relevant studies and a report be brought back to Council".

In accordance with the above resolutions Council engaged AQ Planning as the consultant

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landuse planner and BIOSIS as the ecologist to undertake an independent review of the application of the E4 Environmental Living landuse zone in Bywong and Wamboin.

The biodiversity and planning review undertaken in late 2018/early 2019 reconsidered the application of the E4 Environmental Living landuse zone and evaluated any appropriate alternative landuse zones that meet the Standard Instrument, Ministerial Directions, Practice Notes and other relevant requirements of the Department of Planning, Industry and Environment.

The planning report and review by AQ Planning “*Review of E4 Environmental Living Landuse Zone in the Localities of Bywong and Wamboin March 2019*” follows an assessment of the native vegetation by BIOSIS within both localities undertaken in November and December 2018 and should be read in conjunction with the BIOSIS Report “*Environmental Living (E4) Zone Review for Bywong and Wamboin NSW – Biodiversity Values Assessment March 2019*”.

Both reports form the basis of this planning proposal and are to be read in conjunction with it.

Council at its meeting on 22nd May 2019 considered a report on the Review of E4 Environmental Living Zone in Bywong and Wamboin, including an outline of both reports and resolved to:

1. *Receive the consultants’ reports.*
2. *Retain land identified in the consultants’ reports as being wholly or predominantly Class 1 or 2 as E4 Environmental Living zone.*
3. *Prepare a planning proposal to rezone land identified in the consultants’ reports as being wholly or predominantly Class 3 land as R5 Large Lot Residential zone. The planning proposal should give consideration to minimising split zonings and fragmentation and isolation of zone boundaries.*
4. *Not include amending the Palerang Local Environment Plan (PLEP) Clause 6.3 map “Terrestrial Biodiversity” to include the consultants Class X mapped lands for the following reasons:*
 - a. *the consultant’s report refers to Class X land as having “potential” to contain native grasslands and or habitat of a critically endangered species rather than establishing that the Class X mapped land contains native grasslands and or habitat of a critically endangered species*
 - b. *inclusion of Class X as incorporated in the Terrestrial Biodiversity Map and Clause 6.3 of the PLEP would apply to both land within the E4 Environmental Living zone as well to land within the R5 Large Lot residential zone*
 - c. *the existing provisions of the PLEP already require adequate consideration of the impacts on biodiversity*
 - d. *Implementation of the Class X layer would be unwieldy and unnecessary and will result in greater complexity for residents and greater cost when lodging development applications.*
5. *Reference in the Planning Proposal that it is Council’s assessment that a Local Housing Strategy can be dispensed with in this case as no change to the minimum lot size or density of development is proposed.*
6. *Prepare the Planning Proposal as a separate proposal and if finalised in time be amalgamated with the Queanbeyan-Palerang Local Environment Plan (comprehensive LEP).*

As a result this planning proposal has been prepared in accordance with the above Council resolution.

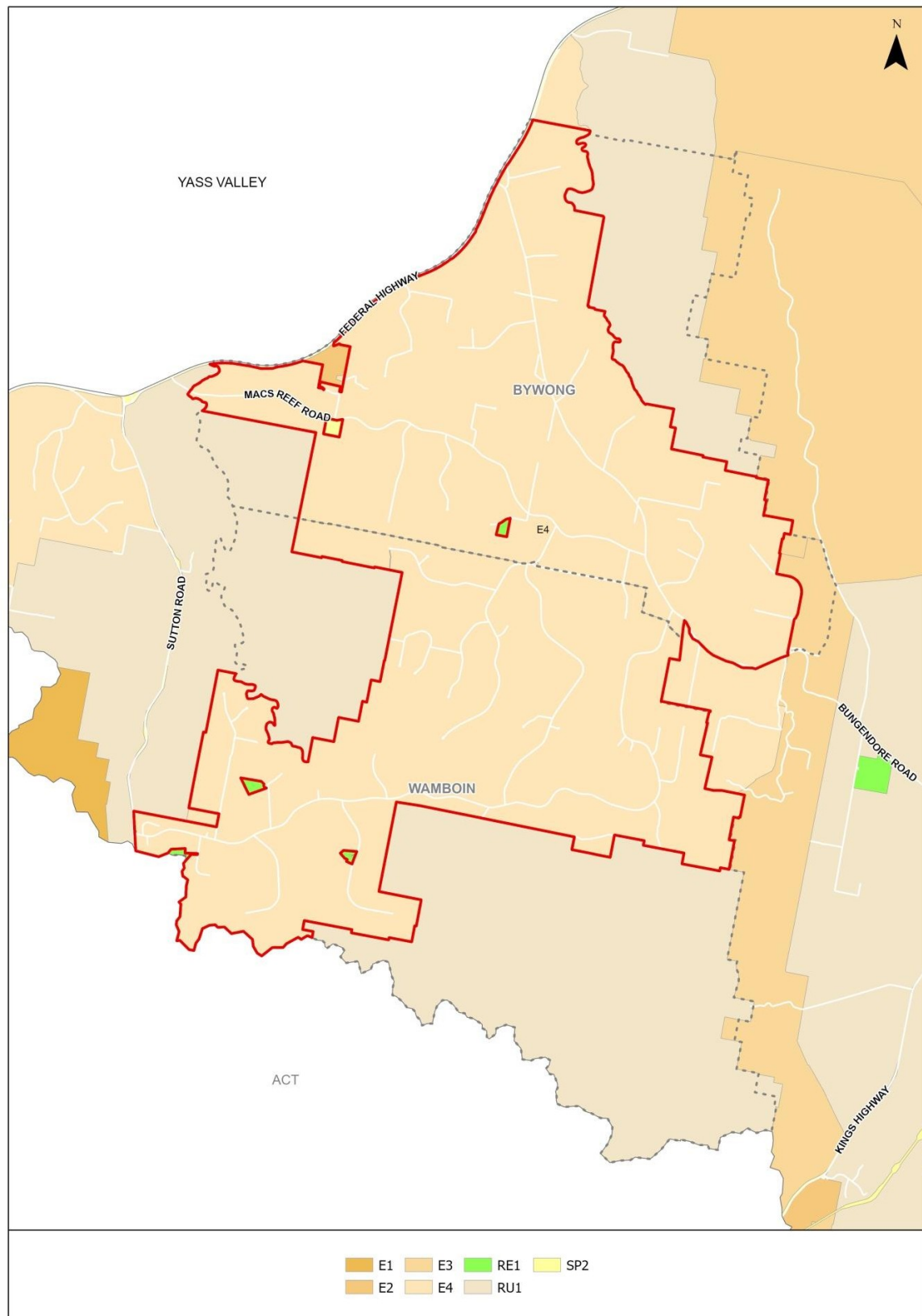
Where does it apply?

The study area is located approximately 12 kilometres north from Queanbeyan CBD, approximately 7 kilometres north-west from Bungendore, and 20 kilometres north-east of Canberra Civic Centre, and north of the boundary of New South Wales (NSW) and Australia Capital Territory (ACT).

The study area covers approximately 9,500 hectares comprising the localities of Bywong and Wamboin, NSW within the Queanbeyan-Palerang Regional Council LGA as outlined below in Figure 1.

The predominant existing landuse within the study area is residential living with dwellings located on most lots. Landuses currently being undertaken in conjunction with residential activities include landuses such as, but not limited to, bed and breakfasts, home occupations, home businesses, home industries, stables and horse riding, limited livestock grazing, limited crop growing and horticulture, and community halls and RFS sheds.

Figure 1: Map of area subject to planning proposal



Background

The review of the application of the E4 Environmental Living landuse zone in the localities of Wamboin and Bywong (resulting in the preparation of this planning proposal) follows a number of Council reports and reviews in 2017 and 2018, as outlined earlier.

In 2018 Council engaged AQ Planning as the consultant landuse planner and BIOSIS as the ecologist to undertake an independent review of the application of the E4 Environmental Living landuse zone in Bywong and Wamboin.

Council at its meeting on 22nd May 2019 considered a report on the Review of E4 Environmental Living Zone in Bywong and Wamboin, including consideration of the independent reports and resolved to:

1. *Receive the consultants' reports.*
2. *Retain land identified in the consultants' reports as being wholly or predominantly Class 1 or 2 as E4 Environmental Living zone.*
3. *Prepare a planning proposal to rezone land identified in the consultants' reports as being wholly or predominantly Class 3 land as R5 Large Lot Residential zone. The planning proposal should give consideration to minimising split zonings and fragmentation and isolation of zone boundaries.*
4. *Not include amending the Palerang Local Environment Plan (PLEP) Clause 6.3 map "Terrestrial Biodiversity" to include the consultants Class X mapped lands for the following reasons:*
 - a. *the consultant's report refers to Class X land as having "potential" to contain native grasslands and or habitat of a critically endangered species rather than establishing that the Class X mapped land contains native grasslands and or habitat of a critically endangered species*
 - b. *inclusion of Class X as incorporated in the Terrestrial Biodiversity Map and Clause 6.3 of the PLEP would apply to both land within the E4 Environmental Living zone as well to land within the R5 Large Lot residential zone*
 - c. *the existing provisions of the PLEP already require adequate consideration of the impacts on biodiversity*
 - d. *Implementation of the Class X layer would be unwieldy and unnecessary and will result in greater complexity for residents and greater cost when lodging development applications.*
5. *Reference in the Planning Proposal that it is Council's assessment that a Local Housing Strategy can be dispensed with in this case as no change to the minimum lot size or density of development is proposed.*
6. *Prepare the Planning Proposal as a separate proposal and if finalised in time be amalgamated with the Queanbeyan-Palerang Local Environment Plan (comprehensive LEP).*

Part 1 - Objectives or Intended Outcomes

The purpose of this planning proposal is to amend the *Palerang Local Environmental Plan 2014* (PLEP 2014) under the NSW *Environmental Planning and Assessment Act 1979*, to rezone parts of the localities of Bywong and Wamboin from E4 Environmental Living to R5 Large Lot Residential zone, where that land has been determined to be wholly or predominantly Class 3 land (low value biodiversity).

In addition, the planning proposal seeks ensure that the opportunities to develop the E4 Environmental Living land for uses permitted without consent (extensive agriculture) are retained on land proposed to be rezoned to R5 Large Lot Residential.

The planning proposal has regard to, and considers the findings of the biodiversity and planning review undertaken in late 2018/early 2019 which reconsidered the application of the E4 Environmental Living land use zone within the subject area and evaluated any appropriate alternative land use zones that meet the Standard Instrument, Ministerial Directions, Practice Notes and other relevant requirements of the Department of Planning, Industry and Environment.

The planning report and review by AQ Planning “Review of E4 Environmental Living Landuse Zone in the Localities of Bywong and Wamboin March 2019” follows an assessment of the native vegetation by BIOSIS within both localities undertaken in November and December 2018 and should be read in conjunction with the BIOSIS Report “Environmental Living (E4) Zone Review for Bywong and Wamboin NSW – Biodiversity Values Assessment March 2019”.

Both reports form the basis of this planning proposal and are to be read in conjunction with this proposal and are attached to it.

The studies, reports, and this planning proposal respond to concern from a number of community members regarding the application of the E4 Environmental Living land use zone, particularly in the Wamboin and Bywong localities. As a result Council agreed in February 2017 to review its application of the land use zone as part of the preparation of the draft Queanbeyan-Palerang Local Environmental Plan.

This planning proposal will be considered during the preparation of a new comprehensive local environmental plan for the Queanbeyan-Palerang Regional Council, and has been prepared in parallel with the new local environmental plan (comprehensive LEP) planning proposal to assist Queanbeyan-Palerang Regional Council in its consideration of future land use zoning options for the study area.

The planning proposal aims to rezone some E4 Environmental Living zone identified in the BIOSIS report as being wholly or predominantly Class 3 land (low biodiversity value) as R5 Large Lot Residential zone.

Land identified as being wholly or predominantly Class 1 or 2 has been retained as E4 Environmental Living zone.

Biodiversity values and classes are detailed in Table 3 of the BIOSIS report. Biodiversity values recorded within the study area include items such as state and Commonwealth listed TECs, non-threatened native vegetation and flora and fauna habitats. These biodiversity values have been grouped into classes based on a set of criteria including conservation significance (State and Commonwealth listing status), vegetation condition, habitat type and suitability, and landscape connectivity. Biodiversity values and classes have been categorised as follows:

Class 1 – High biodiversity values.

- TECs listed under BC Act or EPBC Act.
- High condition threatened species habitat listed under BC Act or EPBC Act.
- Non threatened vegetation in good condition.
- High value biodiversity connectivity corridors.

Class 2 – Moderate biodiversity values.

- Moderate to low condition habitat for threatened species under BC Act or EPBC Act.
- Non-threatened native vegetation in moderate to poor condition.
- Moderate value biodiversity connectivity corridors.

Class 3 – Low biodiversity values.

- Non-threatened native derived grassland vegetation.
- Exotic /non-indigenous vegetation including scattered trees, grassland or cropping \ agricultural land.
- Low value biodiversity connectivity corridors.

In accordance with the Council resolution of 22nd May 2019 the planning proposal has given consideration to minimising split zonings and fragmentation and isolation of zone boundaries and is reflected in condition 1a of Council's Planning and Strategy Committees resolution of 12 February for this planning proposal. The facilitation or retention of biodiversity corridors was also considered in determining appropriate R5 Large Lot Residential zoned land.

Part 2 - Explanation of Provisions

E4 Environmental Living zone land being wholly or predominantly Class 3 land proposed as R5 Large Lot Residential zone.

This planning proposal aims to rezone that part of E4 Environmental Living zone identified in the BIOSIS report as being wholly or predominantly Class 3 land (low biodiversity value) as R5 Large Lot Residential zone.

Biodiversity values and classes are detailed in Table 3 of the BIOSIS report. Biodiversity values recorded within the study area include items such as state and Commonwealth listed TECs, non-threatened native vegetation and flora and fauna habitats. These biodiversity values have been grouped into classes based on a set of criteria including conservation significance (State and Commonwealth listing status), vegetation condition, habitat type and suitability, and landscape connectivity.

Biodiversity values and classes have been categorised as follows:

Class 1 – High biodiversity values.

- TECs listed under BC Act or EPBC Act.
- High condition threatened species habitat listed under BC Act or EPBC Act.
- Non threatened vegetation in good condition.
- High value biodiversity connectivity corridors.

Class 2 – Moderate biodiversity values.

- Moderate to low condition habitat for threatened species under BC Act or EPBC Act.
- Non-threatened native vegetation in moderate to poor condition.
- Moderate value biodiversity connectivity corridors.

Class 3 – Low biodiversity values.

- Non-threatened native derived grassland vegetation.
- Exotic /non-indigenous vegetation including scattered trees, grassland or cropping \ agricultural land.
- Low value biodiversity connectivity corridors.

Land identified as being wholly or predominantly Class 1 or 2 has been retained as E4 Environmental Living zone.

The facilitation or retention of biodiversity corridors was also considered in determining appropriate R5 zoned land.

To minimise zone fragmentation and isolation of zone boundaries, in accordance with the Council resolution of 22nd May 2019, only those lots within areas of equal to or greater than 5 adjoining lots of predominantly Class 3 zoned land have been proposed as R5 Large Lot Residential zone. Under clause 2.6 of *Palerang Local Environmental Plan 2014* the minimum lot size within the study area is category AA2 - 6 hectares. A minimum of 5 adjoining lots would therefore result in an area of at least 30 hectares for R5 zoned land which is considered of sufficient size to avoid isolated R5 zoned land areas, and a suitable area for specific landuses within the R5 zone. Consideration was given to the pattern of Class 3 land within the study area to determine an appropriate size criteria.

Split zonings have been minimised and only proposed where lots adjoin a proposed R5 Large Lot Residential zone (where land is wholly or predominantly Class 3 land) and met the

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following criteria:

- a. More than 51% of the lot is Class 3 with the balance Class 2; OR
- b. More than 66% of the lot is Class 3 with the balance Class 1

In those circumstances where the lot met the above criteria, but was isolated or fragmented it has not been proposed as a split zone lot and retained as E4 Environmental Living zone.

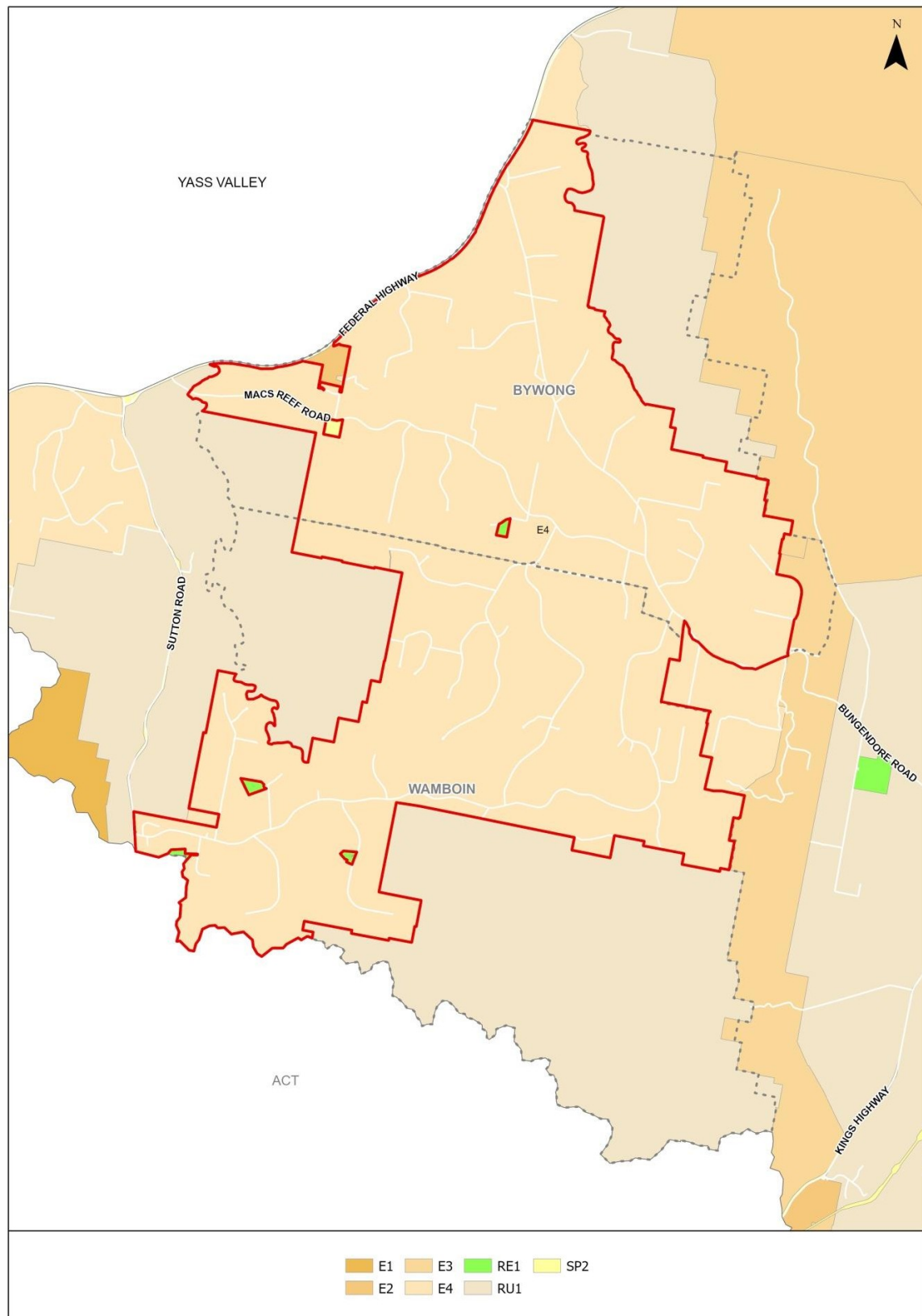
Utilizing the above criteria, 15 lots would have been zoned both R5 Large Lot Residential and E4 Environmental Living. At the 12 February 2020 Planning and Strategy Committee meeting to minimize split zoning, it was resolved (Minute No. PLA004/20) in part that:

1. *Council endorse the draft planning proposal to rezone part of Bywong and Wamboin from E4 Environmental Living to R5 Large Lot Residential subject:*
 - a. *Those 15 lots proposed to be split zoned being submitted as R5 Large Lot Residential zone only.*

The planning proposal has subsequently been amended so that the 15 lots proposed to be zoned both E4 Environmental Living and R5 Large Lot Residential are now proposed to be wholly zoned R5 Large Lot Residential.

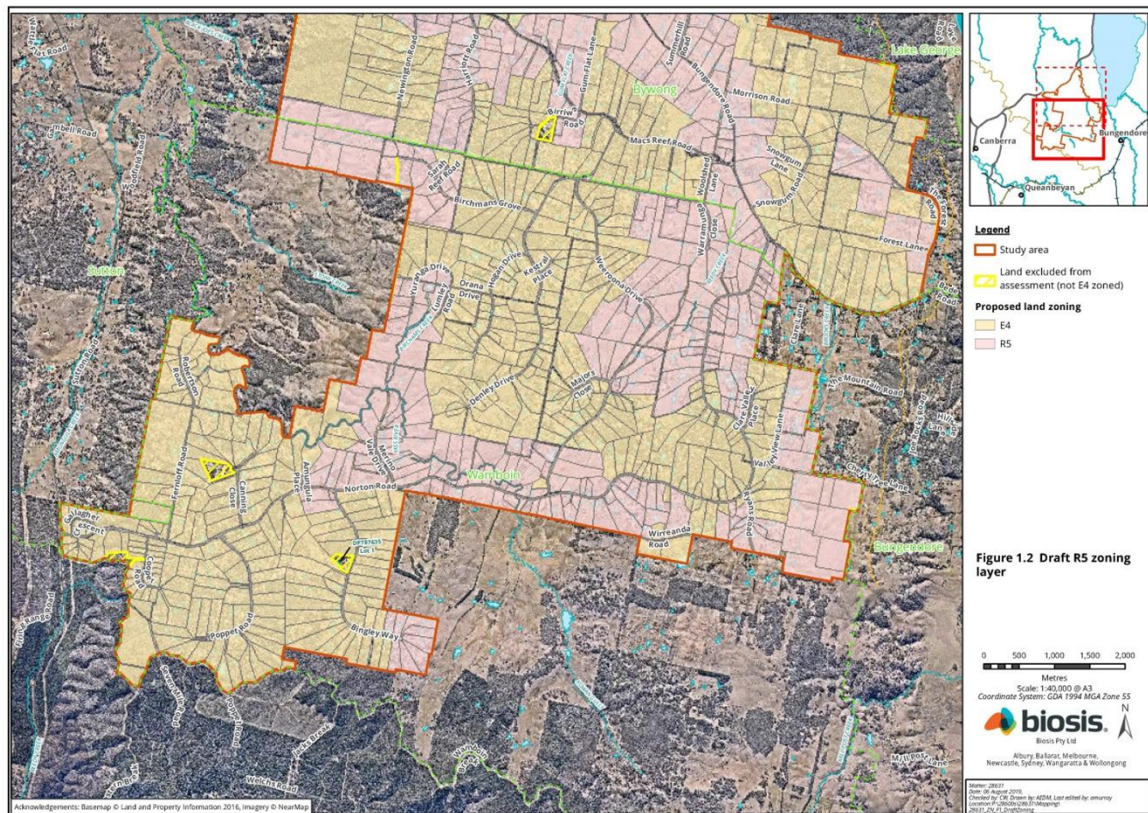
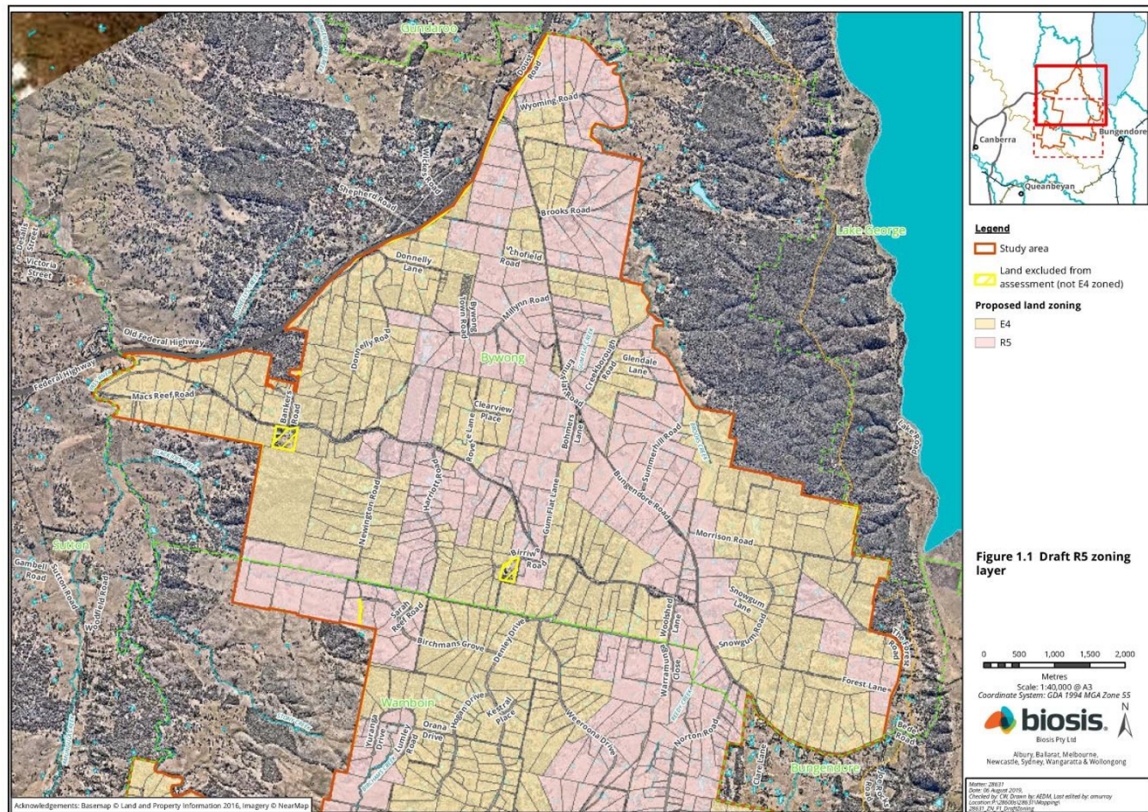
In addition, the planning proposal seeks to amend Schedule 1 of the Local Environmental Plan to include permit without consent 'extensive agriculture' for those properties proposed to be rezoned to R5 Large Lot Residential. Extensive agriculture is permitted without consent on land zoned E4 Environmental Living, amending Schedule 1 to permit without consent 'extensive agriculture' for those properties proposed to be rezoned to R5 will ensure that the opportunity to develop the land for extensive agriculture without consent is retained for those properties proposed to be rezoned R5 Large Lot Residential.

Figure 2: Existing Zones



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Figure 3 and 4: Proposed Zones



Part 3 - Justification

Section A - Need for the planning proposal

Council agreed in February 2017 to review its application of the E4 Environmental Living land use zone as part of the preparation of the draft Queanbeyan-Palerang Local Environmental Plan following concern from a number of community members regarding the application of the E4 Environmental Living land use zone in the Wamboin and Bywong localities.

The suitability of other zones was considered in detail in the planning report and review by AQ Planning “Review of E4 Environmental Living Landuse Zone in the Localities of Bywong and Wamboin March 2019”. This follows an assessment of the native vegetation by BIOSIS within both localities undertaken in November and December 2018 and should be read in conjunction with the BIOSIS Report “Environmental Living (E4) Zone Review for Bywong and Wamboin NSW – Biodiversity Values Assessment March 2019”.

The planning proposal is the only option to amend existing zones within the study area to adopt the BIOSIS study findings for land considered to have low biodiversity value.

This is to ensure that property owners of land to be rezoned to R5 Large Lot Residential, are not prohibited from practicing a land-use that they were previously entitled to. If ‘extensive agriculture’ were not included in the R5 land use table for the lots included in this planning proposal, property owners would be reliant on the existing use provision under the *Environmental Planning and Assessment Act 1979* and this would limit the development opportunities for property owners who have not yet exercised their right to develop the land for the purpose of ‘extensive agriculture’.

APPLICATION OF R5, RU4 ZONES AND OTHER ALTERNATIVE ZONES IN THE LOCALITIES OF BYWONG AND WAMBOIN

As part of preparing this planning proposal, the following were considered:

Practice Note PN011-002 Preparing LEPs using the Standard Instrument: standard zones provides an overview of the standard zones in the Standard Instrument (Local Environmental Plans) Order 2006, and the intended purpose of each zone.

The Standard Instrument (Local Environmental Plans) Order 2006 (Standard Instrument) sets out 35 standard zones for councils to use when preparing new principal local environmental plans (LEPs) for their local government areas.

For each zone, the Standard Instrument (SI) sets out ‘core’ objectives for development, and certain mandated permitted or prohibited land uses.

The intended purpose of each zone that could apply to the study area is outlined below with a comment on possible applicability.

RU1 Primary Production

This zone applies to land used for commercial primary industry production, including extensive agriculture, intensive livestock and intensive plant agriculture, aquaculture, forestry, mining and extractive industries. The zone is allocated to land where the principal function is primary production.

This zone is not considered suitable as the principal function of the land in the study area is not primary production or likely to be primary production.

This is supported by the report to Council dated 13 December 2017, which included a summary of the 2016 Census data for the statistical areas of Bywong, Wamboin and Krawaree. That table indicates that no persons considered themselves as being engaged in the Agriculture, Forestry and Fishing sector in the 2016 Census. The report noted the following in relation to the Census data for 2016:

- *The Bywong and Wamboin areas have a higher number of people in professional occupations and employed by federal and state government.*
- *It is suggested that based on the census data that there is not a high proportion of people in the Bywong and Wamboin areas who view themselves as being engaged in the Agriculture, Forestry and Fishing sector.*

In regard to a discussion on Rural land-use the 13 December 2017 report to Council noted:

- *The smaller lot sizes with dwellings, sealed public roads, opportunities for small scale agriculture, community facilities and its proximity to retail services and primary schools suggest that the localities could be described as rural living*
- *If the area was to be planned now, it would be unlikely to be located in a stressed water catchment (the Yass River catchment is recognised as being stressed) and areas containing endangered ecological communities or threatened species*
- *There is limited opportunity for agriculture in areas with high native tree cover*
- *A large part of the Bywong locality is class 3 agricultural land*
- *The land that is not predominantly native vegetation is not necessarily used for agriculture*
- *The small lot sizes and general low agricultural classifications allow for very limited agricultural enterprises. At least 1200 hectares is required in this region for a broad scale agricultural property that 'breaks even'*
- *There is limited opportunity to clear native vegetation for agriculture due to NSW legislation.*

RU2 Rural Landscape

This zone is for rural land used for commercial primary production that is compatible with ecological or scenic landscape qualities that have been conserved (often due to topography). It may apply to land that is suitable for grazing and other forms of extensive agriculture, or intensive plant agriculture (such as 'viticulture'), but where the permitted uses are usually more limited and differ from RU1 land due to landscape constraints.

This zone is not considered suitable as it is to be used for commercial primary production that is compatible with ecological or scenic landscape qualities and not to be used where the main purpose of the zone is to protect significant environmental attributes or to provide for rural residential accommodation.

The former Palerang Council chose not to use the RU2 Rural Landscape zone within *Palerang Local Environmental Plan 2014*.

RU4 Primary Production Small Lots

This zone (previously named Rural Small Holdings) is for land which is to be used for commercial primary industry production, including emerging primary industries and agricultural uses that operate on smaller rural holdings.

It is a rural zone for agricultural uses, and not considered a pseudo-residential zone. The Practice Note states that it is a zone with an agricultural industry/food production focus and not a rural residential lifestyle zone.

This zone is considered suitable where an E4 zone or R5 zone is not considered appropriate

RU5 Village

This zone is a flexible zone for centres where a mix of residential, retail, business, industrial and other compatible land uses may be provided to service the local rural community. The RU5 Village zone would typically apply to small rural villages within rural areas.

This zone is not considered suitable as the study area is not a small rural village with a mix of residential, retail, business, industrial and other compatible land uses.

RU6 Transition

The transition zone is to be used in special circumstances only in order to provide a transition between rural land uses (including intensive agriculture, landfills, mining and extractive industries) and other areas supporting more intensive settlement or environmental sensitivities.

This zone is not considered suitable as it is to be used in special circumstances only and LEP Practice Note PN 09–002 Environment Protection Zones recommends the use of an RU4 zone or R5 zone where an E4 zone is not considered appropriate.

R5 Large Lot Residential

This zone is intended to cater for development that provides for residential housing in a rural setting, often adjacent to towns or metropolitan areas.

This zone is considered suitable where an E4 or RU4 zone is not considered appropriate. LEP Practice Note PN 09–002 Environment Protection Zones recommends the use of an RU4 zone or R5 zone in those situations, and if there are few environmental considerations, the R5 may be the appropriate zone.

Practice Note PN011-002 notes that the allocation of large lot residential land should be justified by council's housing/ settlement strategy prepared in accordance with planning principles set out in regional and subregional strategies, Section 9.1 directions and relevant SEPPs.

E3 Environmental Management

This zone is generally intended to be applied to land that has special ecological, scientific, cultural or aesthetic attributes, or land highly constrained by geotechnical or other hazards.

A limited range of development including 'dwelling houses' could be permitted. This zone might also be suitable as a transition between areas of high conservation value and other more intensive land uses such as rural or residential.

This zone is considered suitable for land that has special ecological, scientific, cultural or aesthetic attributes, or land highly constrained by geotechnical or other hazards. It is noted that Council chose to apply the E4 Environmental Living zone to the study area, and the E3 zone only permits a limited range of development.

E4 Environmental Living

This zone is generally intended for land with special environmental or scenic values, and accommodates low impact residential development. This zone may be applicable to areas with existing residential development in a rural setting, which still has some special conservation values.

This is the existing zone for the study area and is considered suitable for areas where the protection of the environmental significance of the land is the primary consideration in accordance with Practice Note PN 09-002 Environment Protection Zones.

In summary, the practice note advises that the E4 Environmental Living zone is for land with special environmental or scenic values that accommodates low impact residential development and is applied where the protection of the environmental significance of the land is the primary consideration.

Therefore in determining the suitability of the E4 Environmental Living zone the environmental significance of the land shall be established as the primary consideration.

Where the environmental significance of the land is determined as not the primary consideration other zones may be considered.

Where small holdings undertake agricultural production such as viticulture or cropping such as growing berries, the RU4 Rural Small Holdings zone should be considered. If there are few environmental considerations, then R5 may be the appropriate zone.

In this regard land that has been determined to be wholly or predominantly Class 3 land (low value biodiversity) within the subject area is considered suitable for R5 Large Lot Residential.

Where environmental capabilities are the primary concern on land that may be zoned R5 Large Lot Residential, RU4 Rural Small Holdings or E4 Environmental Living, preference should be given to the E4 zone. As such the E4 zone has been retained for land where environmental capabilities are the primary concern as classified by BIOSIS.

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

The planning proposal follows the planning report and review by AQ Planning “*Review of E4 Environmental Living Landuse Zone in the Localities of Bywong and Wamboin March 2019*” and an assessment of the native vegetation by BIOSIS within both localities undertaken in November and December 2018 and should be read in conjunction with the BIOSIS Report “*Environmental Living (E4) Zone Review for Bywong and Wamboin NSW – Biodiversity Values Assessment March 2019*”.

Both reports form the basis of this planning proposal and are attached to it.

BIOSIS were engaged to review biodiversity within the study area. The BIOSIS Report “*Environmental Living (E4) Zone Review for Bywong and Wamboin NSW – Biodiversity Values Assessment February 2019*” concluded that:

Biodiversity values recorded within the study area include items such state and Commonwealth listed TECs, non-threatened native vegetation and flora and fauna habitats. These biodiversity values as have been grouped into classes based on a set of criteria including conservation significance (State and Commonwealth listing status), vegetation condition, habitat type and suitability, and landscape connectivity. Biodiversity values and classes are detailed in Table 3 and have been categorised as follows:

Class 1 – High biodiversity values.

- ☐ *TECs listed under BC Act or EPBC Act.*
- ☐ *High condition threatened species habitat listed under BC Act or EPBC Act.*
- ☐ *Non threatened vegetation in good condition.*
- ☐ *High value biodiversity connectivity corridors.*

Class 2 – Moderate biodiversity values.

- ☐ *Moderate to low condition habitat for threatened species under BC Act or EPBC Act.*
- ☐ *Non-threatened native vegetation in moderate to poor condition.*

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- ☐ *Moderate value biodiversity connectivity corridors.*

Class 3 – Low biodiversity values.

- ☐ *Non-threatened native derived grassland vegetation.*
- ☐ *Exotic /non-indigenous vegetation including scattered trees, grassland or cropping \ agricultural land.*
- ☐ *Low value biodiversity connectivity corridors.*

Biodiversity values have been grouped as such to provide context to the biodiversity present within the study area at the landscape scale, to account for variation in specific PCTs and potential TECs present that require more detailed assessment to differentiate, and to allow future planning decision to be made at a more strategic level.

Where certain biodiversity values were not able to be determined at the scale of the current assessment, i.e. detailed site based and/or seasonal surveys are required to determine presence/absence, an additional category 'Class X' has been mapped and intended for use as an overlay to provide details on areas of potential high biodiversity values. Class X mapping should either be included in an updated Terrestrial Biodiversity layer in the Palerang LEP, or applied in similar manner. Overlap exists between the mapped Class X biodiversity values and the Terrestrial Biodiversity LEP layer (clause 6.3, PLEP 2014), which is expected, and it is intended that areas mapped as Class X should consider potential impacts to biodiversity values at the re-zoning or DA stages. These Class X biodiversity values are further detailed in Table 3.

BIOSIS concluded that Class 3 lands consist of low biodiversity values including:

- ☐ *Non-threatened native derived grassland vegetation.*
- ☐ *Exotic /non-indigenous vegetation including scattered trees, grassland or cropping \ agricultural land.*
- ☐ *Low value biodiversity connectivity corridors.*

Recommendations of the report “Review of E4 Environmental Living Landuse Zone in the Localities of Bywong and Wamboin March 2019” are outlined below:

Recommendation 1:

- a) *Council consider an R5 Zone for BIOSIS Class 3 mapped land; and*
- b) *Council consider an amendment to PLEP 2014 Clause 6.3 Map “Terrestrial Biodiversity” to include BIOSIS Class X mapped lands not included as “Biodiversity” on the Terrestrial Biodiversity Map.*

The recommendation was based on the BIOSIS Assessment, Class 3 land which does not meet the guidelines for use of an E4 Zone as outlined in LEP Practice Note Environment Protection Zones PN 09–002 where protection of the environmental significance of the land is the primary consideration.

Practice Note 09–002 recommends the use of an RU4 zone or R5 zone where E4 is not considered appropriate in accordance with the Practice Note.

An R5 Zone reflects the predominant landuse of residential living with dwellings and landuses associated with residential living, and given limited commercial primary industry production landuses exist or are likely to be undertaken to meet the RU4 zone objectives and guidelines for use of zone, an RU4 zone was not considered suitable.

Both reports however considered that an amended Biodiversity layer for Class X, and R5 zone objectives relating to preserving, and minimising impacts on, environmentally sensitive

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locations and scenic quality, and to minimise the impact of any development on the natural environment, would ensure biodiversity issues are considered at development application stage. It is noted that Council did not adopt the recommendation to amend the PLEP biodiversity layer (see Resolution No. 4 a - d, 22 May 2019).

The report also considered that an R5 zone would enable agricultural activities to continue and be permitted with consent such as: Cellar door premises; Extensive agriculture; Farm buildings; Horticulture; Viticulture (as included in PLEP 2014 R5 landuse table), and the difference between E4 and R5 zone permitted landuses is not significant under the current PLEP 2014.

Under the provisions of PLEP 2014 clause 2.6 the minimum lot size within the study area is category AA2 - 6 hectares.

Any change of zone without alteration to the existing minimum allotment size is unlikely to result in any additional dwellings than would currently be possible under the existing E4 zone as dwellings and dual occupancy development are permissible with consent in both the R5 and E4 zones in PLEP 2014. This is discussed further in Section B.

Recommendation 2:

- a) *Council consider retaining the existing E4 zone for BIOSIS Class 1 and 2 mapped land; and*
- b) *Council consider an amendment to PLEP Clause 6.3 Map "Terrestrial Biodiversity" to include BIOSIS Class X mapped lands not included as "Biodiversity" on the Terrestrial Biodiversity Map.*

This recommendation was proposed as the BIOSIS Class 1 and 2 mapped land has biodiversity value as outlined in the BIOSIS report consistent with LEP Practice Note Environment Protection Zones PN 09–002 for use of the E4 zone.

BIOSIS found that generally those areas mapped as supporting Class 1 and Class 2 biodiversity values, have been assessed as most suitable to remain E4, whereas those areas mapped as Class 3 could be considered suitable for a change in zoning based on the biodiversity value.

BIOSIS have suggested that some Class 1 and 2 lands be considered for either RU4, E2 or E3 subject to meeting the criteria outlined in Table 4 of the BIOSIS report.

The use of the RU4 zone is not considered appropriate for the reasons outlined in Recommendation 1, and Class 1 and 2 mapped land has biodiversity value consistent with LEP Practice Note Environment Protection Zones PN 09–002 for use of the E4 zone.

BIOSIS also recommended that detailed biodiversity assessments are required for future landuse changes / development activities in accordance with State and Commonwealth legislation for Class 1 and 2 land. Any proposed zone change from E4 to either RU4, E2 or E3 would require further detailed biodiversity assessment.

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

The planning proposal is the only means of delivering the intended outcomes of the Council resolution dated 22nd May 2019 for this area.

Section B - Relationship to strategic planning framework

3) Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including any exhibited draft plans or strategies)?

The *South East and Tablelands Regional Plan 2036* is the relevant regional strategy.

The planning proposal is considered to be consistent with the Strategy for the reasons outlined in the comment section below.

The plan states that the Queanbeyan-Palerang Local Government Area is expected to require an additional 12,050 dwellings by the year 2036, and identifies growth areas at Googong and the proposed South Jerrabomberra which is being pursued.

The plan does not include any specific aims or controls applicable to the study area.

The plan includes the following relevant considerations for the Queanbeyan-Palerang Regional Council area:

Direction 8: Protect important agricultural land

8.2 Protect identified important agricultural land from land use conflict and fragmentation and manage the interface between important agricultural land and other land uses through local environmental plans.

Direction 14: Protect important environmental assets

14.5 Support planning authorities to undertake strategic, landscape-scale assessments of biodiversity and areas of high environmental value.

14.2 Protect the validated high environmental value lands in local environmental plans.

14.3 Minimise potential impacts arising from development on areas of high environmental value, including groundwater-dependent ecosystems and aquatic habitats, and implement the 'avoid, minimise and offset' hierarchy.

Direction 24: Deliver greater housing supply and choice

24.2 Prepare local housing strategies consistent with the Settlement Planning Principles to provide a surplus supply of residential land to meet projected housing needs.

Direction 25: Focus housing growth in locations that maximise infrastructure and services

25.1 Focus future settlement to locations that:

- maximise existing infrastructure and services and minimise the need for new services;*
- prioritise increased densities within existing urban areas; and*
- prioritise new release areas that are an extension of existing strategic and local centres.*

Direction 28: Manage rural lifestyles

28.1 Enable new rural residential development only where it has been identified in a local housing strategy prepared by council and approved by the Department of Planning and Environment.

28.2 Locate new rural residential areas:

- close to existing urban settlements to maximise the efficient use of existing infrastructure and services, including roads, water, sewer and waste services, and social and community infrastructure;*

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- *to avoid and minimise the potential for land use conflicts with productive, zoned agricultural land and natural resources; and*
- *to avoid areas of high environmental, cultural and heritage significance, important agricultural land and areas affected by natural hazards.*

28.3 Manage land use conflict that can result from cumulative impacts of successive development decisions.

Comment

As outlined in the planning report by AQ Planning, the difference between E4 and R5 zone permitted landuses is not significant under the current PLEP 2014. At the time of preparing that report a draft E4 and R5 zone to be incorporated within the comprehensive LEP had not been finalised.

Under the provisions of PLEP 2014 clause 2.6 the minimum lot size within the study area is category AA2 - 6 hectares. The proposed change of zone does not propose any alteration to the existing minimum allotment size.

Any change of zone without alteration to the existing minimum allotment size is unlikely to result in any additional dwellings than would currently be possible under the existing E4 zone as dwellings and dual occupancy development are permissible with consent in both the R5 and E4 zones in PLEP 2014.

In this regard no new rural residential development or future settlement is proposed than would otherwise be possible under the existing E4 zone, potential landuse conflict would be minimised, and no change is anticipated for housing supply and choice.

Likewise as no new rural residential development or future settlement is proposed, important agricultural land and environmental assets are protected and unlikely to be impacted by the proposal.

Any future consideration of minimum lot sizes which could result in any additional dwellings than would currently be possible under the existing E4 zone would need to be further assessed against the above relevant Directions of the *South East and Tablelands Regional Plan 2036* and local character, which will be a component of the preparation of future local strategic planning statements. This would require a further planning proposal and is not proposed or being considered by Council.

Any alteration to the minimum lot size which could potentially enable new rural-residential development would need to address Direction 28.1 of the *South East and Tablelands Regional Plan 2036*. This enables new rural residential development only where it has been identified in a local housing strategy prepared by council and approved by the Department of Planning, Industry and Environment.

In addition, the resulting R5 Large Lot Residential Zone in certain areas is unlikely to result in any additional dwellings than would currently be possible under the existing E4 zone as dwellings and dual occupancy development are permissible with consent in both the R5 and E4 zones in PLEP 2014.

Council at its meeting on 22nd May 2019 in considering both studies resolved, in part, that:

.... it is Council's assessment that a Local Housing Strategy can be dispensed with in this case as no change to the minimum lot size or density of development is proposed.

Consequently it is agreed that the preparation of a local housing strategy to support this planning proposal is not needed.

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

As the proposed change of zone does not propose any alteration to the existing minimum allotment size, the resulting R5 Large Lot Residential Zone in certain areas is unlikely to result in any additional dwellings than would currently be possible under the existing E4 zone as dwellings and dual occupancy development are permissible with consent in both the R5 and E4 zones in PLEP 2014.

In accordance with the Council resolution of 22nd May 2019 it is Council's assessment that a Local Housing Strategy can be dispensed with in this case as no change to the minimum lot size or density of development is proposed.

In this regard, and as no new housing or residential lots are proposed than would currently be possible, the draft plan is considered to be consistent with the Palerang Rural Lands Strategy.

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

The planning proposal is considered not to be inconsistent with any *State Environmental Planning Policy* (SEPP). Where applicable Council has had regard to the following SEPPs whilst preparing this planning proposal.

SEPP 21 Caravan Parks

Consistent - The planning proposal does not involve the construction of a caravan park.

SEPP 30 Intensive Agriculture

Consistent - The planning proposal does not involve intensive agriculture.

SEPP 33 Hazardous and Offensive Development

Consistent - The planning proposal does not involve hazardous and offensive development.

SEPP 36 Manufactured Home Estates

Consistent - The planning proposal does not involve manufactured home estates.

SEPP 44 Koala Habitat Protection

Currently Consistent – At the time of preparing the planning proposal SEPP 44 applied.

The planning proposal only applies to land where that land has been determined to be wholly or predominantly Class 3 land (low value biodiversity), and the SEPP is triggered at development application stage. Before a council may grant consent to an application for consent to carry out development on land to which the SEPP applies, it must satisfy itself whether or not the land is a potential koala habitat. Before a council may grant consent to an application for consent to carry out development on land to which the SEPP applies that it is satisfied is a potential koala habitat, it must satisfy itself whether or not the land is a core koala habitat. The SEPP also outlines requirements for the preparation of plans of management.

It is noted that a new Koala SEPP will commence in March 2020 and a new Guideline is being developed. The new Guideline will provide detailed information about the process and content of Koala Plans of Management, streamlined criteria for development applications on land with no approved Koala Plan of Management, and a standard, scientifically-robust surveying methodology. The Guideline will be published before the new Koala SEPP commences on 1 March 2020.

Instead of preparing an Individual Plan of Management, proponents will be required to prepare their development application in accordance with the criteria in the new Guideline, for council to consider when assessing the application.

This new Guideline (when finalised) will need to be considered as part of this planning proposal. At the time of preparation of this planning proposal the new guideline had not been finalised and as such the implications of the new SEPP are unable to be further considered at this stage.

The Department of Planning, Industry and Environment (DPIE) will again be consulted during the agency consultation stage and will provide advice regarding the new SEPP and guideline. DPIE were consulted during the preparation of this planning proposal, and representatives of the NSW Office of Environment and Heritage attended a meeting with Council staff held on 16th August 2019 and were briefed on the planning proposal. However the new SEPP was not operational at that time and no comments were provided in relation to Koala habitat.

The Department of Planning, Industry and Environment (DPIE) submission in regard to this planning proposal is included as Appendix A.

SEPP 50 Canal Estates

Consistent - The planning proposal does not involve canal estates.

SEPP 62 Sustainable Aquaculture

Consistent - The planning proposal does not involve sustainable aquaculture.

SEPP 64 Advertising and Signage

Consistent - The planning proposal does not involve advertising or signage.

SEPP (Housing for Seniors or People with a Disability) 2004

Consistent - The planning proposal does not involve housing specifically for seniors or people with a disability.

SEPP (Building Sustainability Index BASIX) 2004

Consistent - The planning proposal does not involve the design of housing.

SEPP (Major Development) 2005

Consistent - The planning proposal does not involve major development of the nature detailed in the SEPP (Major Development) 2005.

SEPP (Mining Petroleum Production and Extractive Industries

Consistent - The planning proposal does not involve mining petroleum production or extractive industries.

SEPP (Infrastructure)

Consistent - The planning proposal does not involve the development of infrastructure.

SEPP (Miscellaneous Consent Provisions) 2007

Consistent - The planning proposal does not involve the erection of temporary structures.

SEPP (Exempt and Complying Development) 2008 - Impact

Consistent - The planning proposal does not involve exempt and complying development.

SEPP (Affordable Rental Housing) 2009

Consistent - The planning proposal does not involve the specific development of affordable rental housing.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

Consistent – The policy does not impose any requirements for planning proposals.

6) Is the planning proposal consistent with applicable Ministerial Directions (Section 9.1 Directions)?

These include the following directions.

Direction 1.2 Rural Zones

Consistent - The planning proposal does not affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).

Direction 1.3 Mining, Petroleum Production and Extractive Industries

Consistent – The planning proposal does not have the effect of:

(a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or

(b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.

Direction 1.5 Rural Lands

Consistent - This direction applies when a relevant planning authority prepares a planning proposal that:

3(a) will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or

(b) changes the existing minimum lot size on land within a rural or environment protection zone.

Only clause 3(a) applies to this planning proposal as no change to existing minimum lot size is proposed.

The planning proposal is consistent with the applicable strategic plan, has had regard to agriculture and primary production, natural and physical constraints of the land, identifies and protects environmental values, does not impact on opportunities for investment in sustainable rural economic activities or impact farmers in exercising their right to farm. As a result of Resolution No. 1b of the Planning and Strategy meeting of 12 February 2020 in regard to this planning proposal it is proposed that extensive agriculture be undertaken without consent, and as such retains existing farming rights.

Direction 2.1 Environmental Protection Zones

Inconsistent. The inconsistency is justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction. That study determined that certain land currently zoned E4 has low biodiversity value (Class 3 land).

LEP Practice Note Environment Protection Zones PN 09–002 is the key consideration in determining the applicability of the E4 Environmental Living Zone. The practice note advises that the E4 Environmental Living zone is for land with special environmental or scenic values, that accommodates low impact residential development and is applied where the protection of the environmental significance of the land is the primary consideration.

Therefore in determining the suitability of the E4 Environmental Living zone the environmental significance of the land must be established as the primary consideration. Where the environmental significance of the land is determined as not the primary consideration other zones may be considered. If there are few environmental considerations, then R5 may be the appropriate zone.

BIOSIS Class 1 and 2 mapped land has biodiversity value as outlined in the BIOSIS report consistent with LEP Practice Note Environment Protection Zones PN 09–002 for use of the

E4 zone.

BIOSIS found that generally those areas mapped as supporting Class 1 and Class 2 biodiversity values, have been assessed as most suitable to remain E4 Environmental Living zone, whereas those areas mapped as Class 3 could be considered suitable for a change in zoning based on the biodiversity value.

Direction 2.3 Heritage Conservation

Consistent - The planning proposal does not affect provisions that facilitate the conservation of Aboriginal or non-Aboriginal heritage.

Direction 2.4 Recreation vehicle areas

Consistent - The planning proposal does not enable land to be developed for the purpose of a recreational vehicle area.

Direction 2.6 Remediation of Contaminated Land

Consistent – No change of residential landuse is proposed. However as the new comprehensive LEP R5 landuse table may include childcare centres and educational establishments a contaminated lands search has been undertaken by Council for all lots proposed R5 and Council as the planning authority has considered whether the land is contaminated.

Council's Potentially Contaminated Land mapping indicates that one lot proposed to be rezoned to R5 Large Lot Residential may be contaminated, however this lot (Lot 272 DP 1181419) has been developed for the purpose of a dwelling house and is unlikely to be developed further.

Direction 3.1 Residential Zones

Consistent - The planning proposal does not alter the provisions within PLEP 2014 that relate to residential zones that encourage the provision of housing that will:

- (a) broaden the choice of building types and locations available in the housing market, and*
- (b) make more efficient use of existing infrastructure and services, and*
- (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and*
- (d) be of good design.*

The planning proposal does not alter the provisions within Palerang LEP 2014 that:

- (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and does*
- (b) not contain provisions which will reduce the permissible residential density of land.*

The planning proposal is also of minor significance and not considered to result in any new dwellings than would currently be permissible, or additional persons requiring need for additional services, transport or infrastructure.

Direction 3.2 Caravan Parks and Manufactured Home Estates

Consistent - The planning proposal does not impact on provisions that permit development for the purposes of a caravan park to be carried out on land, and retains the zonings of the existing caravan parks.

Direction 3.3 Home Occupation

Consistent - The planning proposal does not impact on the ability to undertake a home occupation.

Direction 3.4 Integrating Land Use and Transport

Inconsistent - The inconsistency is justified as the planning proposal would not result in any more new dwellings than would currently be permissible, or additional persons requiring the need for additional services, transport or infrastructure and is as such of minor significance. Also the planning proposal would not alter the objectives of:

- (a) improving access to housing, jobs and services by walking, cycling and public transport, and
- (b) increasing the choice of available transport and reducing dependence on cars, and
- (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and
- (d) supporting the efficient and viable operation of public transport services, and
- (e) providing for the efficient movement of freight.

Direction 4.1 Acid Sulphate Soils

Consistent - The land is not mapped as having a probability of containing acid sulphate soils.

Direction 4.3 Flood Prone Land

Consistent - The land is not mapped as being Flood Prone Land.

Direction 4.4 Planning for Bushfire Protection

Inconsistent.

This direction applies when a planning proposal authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land. The subject area is mapped as bushfire prone land.

Although the planning proposal would not result in any new dwellings than would currently be permissible within a bushfire prone area, the planning proposal may be inconsistent with the terms of this direction only if the planning proposal authority can satisfy the Secretary of the Department of Planning, Industry and Environment (or an officer of the Department nominated by the Secretary) that the council has obtained written advice from the Commissioner of the NSW Rural Fire Service, to the effect that, notwithstanding the non-compliance, the NSW Rural Fire Service does not object to the progression of the planning proposal.

Council will consult with the Commissioner of the NSW Rural Fire Service, to determine if the NSW Rural Fire Service does not object to the progression of the planning proposal.

Direction 5.1 Implementation of Regional Strategies

Consistent with *South East and Tablelands Regional Plan 2036* (see Section B above)

Direction 6.1 Approval and Referral Requirements

Consistent - The planning proposal will not result in development that requires additional concurrence or referral requirements

Direction 6.2 Reserving Land for Public Purposes

Consistent - Reserved land will not be affected.

Direction 6.3 Site Specific Provisions

Consistent - No site specific provisions are proposed.

Section C - Environmental, social and economic impact

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?

A Biodiversity Values Assessment (BIOSIS 2019) was undertaken with scope to the review of biodiversity values of the site.

Biodiversity values were assessed and verified against the following:

- Commonwealth Department of the Environment and Energy (DEE) Protected Matters Search Tool for matters listed under the EPBC Act.
- NSW Office of Environment and Heritage (OEH) BioNet Atlas of NSW Wildlife for mapped protected under the BC Act.
- ACTmapi – a public database that holds all current flora and fauna records for the ACT. Although the study area was located fully within the boundaries of NSW, a search of ACT database was also undertaken given the proximity to the ACT.
- Native Vegetation of the Palerang Local Government Area. Palerang Rural Lands Study - BioMetric Vegetation Types and Known Threatened Species (Umwelt 2015 [version updated 2018]). This dataset is based on the original 2015 data which has since been updated (last edit in 2018, version 3) to include the Queanbeyan area and the vegetation has been converted to Plant Community Types (PCT).
- Native vegetation of southeast NSW: a revised classification and map for the coast and eastern tablelands (SCIVI) (Tozer et al. 2010).
- Field inspections and site visits.

Key biodiversity values across the study area included:

- Areas of State and Commonwealth listed threatened ecological communities in varying ecological condition states.
- Habitat for listed threatened species ranging from high condition in larger patches of intact vegetation to poor condition in areas surrounded by grazed pasture.
- Large areas of intact non-threatened native vegetation, some of which provide high value movement corridors for flora and fauna species.
- Areas where the dominant land use has historically been agricultural and occur as mixed native / exotic pasture within scattered trees, providing limited biodiversity value.

These biodiversity values have been grouped into classes based on a set of criteria including conservation significance (State and Commonwealth listing status), vegetation condition, habitat type and suitability, and landscape connectivity. Biodiversity values and classes are detailed in Table 3 of the BIOSIS Report, and have been categorised as follows:

- Class 1 – High biodiversity values.
 - TECs listed under BC Act or EPBC Act.
 - High condition threatened species habitat listed under BC Act or EPBC Act.
 - Non-threatened vegetation in good condition.
 - High value biodiversity connectivity corridors.
- Class 2 – Moderate biodiversity values.
 - Moderate to low condition habitat for threatened species under BC Act or EPBC Act.
 - Non-threatened native vegetation in moderate to poor condition.

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- Moderate value biodiversity connectivity corridors.
- Class 3 – Low biodiversity values.
 - Non-threatened native derived grassland vegetation.
 - Exotic /non-indigenous vegetation including scattered trees, grassland or cropping \ agricultural land.
 - Low value biodiversity connectivity corridors.

Based on the above listed biodiversity values, a range of recommendations have been developed with regard to the suitability of the current E4 zoning and the potential for certain areas, supporting lower levels of biodiversity, to be rezoned more appropriately for the current land use practices based on the biodiversity assessment.

Areas mapped as Class X are considered to have the potential to support biodiversity values of high conservation priority, which require detailed site-based and/or seasonal assessments to determine presence/absence. It is to be noted that at a Council meeting on 22nd May 2019 Council considered a report on the Review of E4 Environmental Living Zone in Bywong and Wamboin, and in relation to the BIOSIS Class X mapped land resolved the following:

Not include amending the Palerang Local Environment Plan (PLEP) Clause 6.3 map “Terrestrial Biodiversity” to include the consultants Class X mapped lands for the following reasons:

- a. the consultant’s report refers to Class X land as having “potential” to contain native grasslands and or habitat of a critically endangered species rather than establishing that the Class X mapped land contains native grasslands and or habitat of a critically endangered species*
- b. inclusion of Class X as incorporated in the Terrestrial Biodiversity Map and Clause 6.3 of the PLEP would apply to both land within the E4 Environmental Living zone as well to land within the R5 Large Lot residential zone*
- c. the existing provisions of the PLEP already require adequate consideration of the impacts on biodiversity*
- d. implementation of the Class X layer would be unwieldy and unnecessary and will result in greater complexity for residents and greater cost when lodging development applications.*

Table 4 of the Biodiversity Assessment (BIOSIS 2019) provides a list of recommendations with regards to the potential future zoning and how these relate to the biodiversity values recorded within the study area. Generally those areas mapped as supporting Class 1 and Class 2 biodiversity values, have been assessed as most suitable to remain E4 Environmental Living zone, whereas those areas mapped as Class 3 could be considered suitable for a change in zoning based on the biodiversity value.

Based upon the Biodiversity Values Assessment (BIOSIS 2019) and the associated allocation of proposed landuse zones, it was concluded that there is a moderate likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal.

However it is noted that any future development applications in these areas will require biodiversity surveys due to the various triggers within the PLEP 2014 and the Palerang DCP 2015. These surveys and associated reporting will ensure that the intent and requirements of the BC Act and EPBC Act are met, in any areas where landuse changes are proposed, which may support higher biodiversity values, than were able to be confirmed during the process of the current assessment.

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

The key environmental issues relate to potential biodiversity and the protection of biodiversity. This has been addressed by the background studies.

As the planning proposal is unlikely to result in any additional dwellings than would otherwise be permitted without the planning proposal, other potential environmental effects are not required to be addressed by this planning proposal.

The subject area is mapped as bushfire prone land. Council will consult with the Commissioner of the NSW Rural Fire Service, to determine if the NSW Rural Fire Service does not object to the progression of the planning proposal.

The management of the potential environmental impacts associated with this proposal will include:

- Continued application of the *Environmental Planning and Assessment Act 1979* in accordance with approved land use tables (Zone E4 Environmental Living and R5 Large Lot Residential) as provided with the current *Palerang Local Environmental Plan* (PLEP 2014), as well as Section B3 of the *Palerang Development Control Plan 2015*.
- Class 1 mapped biodiversity values are to be listed under Part 3.3 (1) of the PLEP 2014, by where “Exempt or complying development must not be carried out on any environmentally sensitive area for exempt or complying development “where under section 2 (j) “the land that is a declared area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016*.”
- The current *Palerang Local Environmental Plan* (PLEP 2014) biodiversity layer is utilised as a trigger for detailed site-based biodiversity assessment during future Development Applications (DA) or broader planning considerations.
- As a result of the Council resolution of the 12 February 2020 Planning and Strategy Committee meeting, the 15 lots proposed to be split zoned are now proposed to be wholly rezoned to R5 Large Lot Residential zone.
- Class 1 and Class 2 mapped biodiversity values are maintained as a continuous vegetated corridor to allow for the retention and protection of habitat features and allow for the movement native flora and fauna.

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

The planning proposal will not impact on the supply of housing in Queanbeyan-Palerang LGA. This is consistent with the principles of the Queanbeyan Residential and Economic Strategy and the *South East and Tablelands Regional Plan 2036*. The planning proposal will apply a more suitable zoning to the subject land following the detailed biodiversity assessment as discussed above.

Section D - State and Commonwealth interests

10) Is there adequate public infrastructure for the planning proposal?

The planning proposal will not require any further public infrastructure as the proposal is unlikely to result in any additional dwellings than would otherwise be permitted without the planning proposal.

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

Council intends to consult with the following public authorities:

- Department of Planning, Industry and Environment (DPIE)
- NSW Office of Water
- NSW Department of Primary Industries
- Transport NSW
- NSW Rural Fire Service
- ACT Government.

The Department of Planning, Industry and Environment (DPIE) were consulted during the preparation of this planning proposal. Representatives of the NSW Office of Environment and Heritage attended a meeting with Council staff held on 16th August 2019 and were briefed on the planning proposal, and invited to provide comments.

The Department of Planning, Industry and Environment (DPIE) provided comments in regard to this planning proposal on 13 November 2019 (Ref: DOC19/994085), and that submission is included as Appendix A.

In response to the submission, it is acknowledged that BIOSIS was only able to ground-truth biodiversity values on 33 lots within the study area during the current assessment, which equates to a small percentage of the overall lots. Access was requested to about half the 1200+ lots in the study area via letters sent to property owners.

Responses were received from over 150 properties granting access, of which BIOSIS were able to access 33 of these lots to undertake more detailed field validation of biodiversity values. A number of properties that granted access imposed restrictive conditions on site access that were unable to be met at the time. To address this issue, areas of potential habitat have been determined based on existing knowledge, survey work completed, drive thoughts and the known ecological niches occupied by these threatened items.

The entire study area was mapped to the finest scale possible during field investigations, which in a number of areas equated to 'over the fence' surveys, drive throughs and mapping of the dominant tree and shrub species. The Class X category of biodiversity values was developed to address this and the potential for high value biodiversity items to be present in areas where the survey effort undertaken was insufficient in scale to accurately determine presence or absence of these values.

It is also acknowledged that detailed future surveys would be required in Class X areas to demonstrate the presence or absence of biodiversity values such as Derived Native Grassland or Golden Sun Moth habitat, to the level required to support any future changes to the minimum lot sizes or changes to the land use table in land zoned R5.

However it is noted that any future development applications in these areas will require biodiversity surveys due to the various triggers within the Palarang LEP 2014 and the Palarang DCP 2015. These surveys and associated reporting will ensure that the intent and requirements of the BC Act and EPBC Act are met, in any areas where landuse changes are proposed, which may support higher biodiversity values, than were able to be confirmed during the process of the current assessment.

Part 4 – Mapping

The planning proposal will **ONLY** amend the following *Palerang LEP 2014 maps*:

- Land Zoning Map LZN - 001
- Land Zone Map LZN - 004

All maps will be prepared consistent with the Department of Planning, Industry and Environment's relevant guidelines and in consultation with the Department's GIS unit.

Part 5 - Community Consultation

It is intended to publicly exhibit the draft plan for a period of 28 days.

During that period Council also intends to consult with the following public authorities:

- The Biodiversity and Conservation Branch of Department of Planning, Industry and Environment (DPIE)
- NSW Office of Water
- NSW Department of Primary Industries
- Transport NSW
- NSW Rural Fire Service
- ACT Government.

Part 6 - Project Timeline

It is anticipated the planning proposal may take up to 12 months to finalise. An indicative project timeline is provided below.

Action	Timeframe
Report to Council	February 2020
Gateway determination	Nov/Dec 2021
Agency consultation	Jan/Feb 2021
Public exhibition	March/April 2021
Consideration of submissions and Report to Council	June 2021
Parliamentary Counsel Opinion and DPE GIS Mapping Liaison	July/Aug 2021
Plan Finalised by Minister (or delegate)	Sept 2021

Appendix A - Submission from Department of Planning, Industry and Environment (DPIE) (ECM 469736)

Appendix B - AQ Planning, Review of E4 Environmental Living Zone in the Localities of Bywong and Wamboin – March 2019

**Appendix C – BIOSIS, Environmental Living (E4) Zone Review for
Bywong and Wamboin NSW – Biodiversity Values Assessment -
March 2019**

