



RAPID CREEK LANDCARE GROUP INC.

**SUBMISSION TO:
2020/0397 SUBDIVISION**

**SECTION 04106 HUNDRED OF BAGOT
1 BOULTER ROAD, BERRIMAH**

**SUBDIVISION TO CREATE 37 LOTS,
INCLUDING ONE PUBLIC OPEN SPACE LOT**

REVISED: 2 DECEMBER 2020





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1. 1 BOULTER ROAD

1 Boulter Road encompasses a paperbark wetland (which is part of the wider Marrara wetlands), transitional vegetation communities and eucalypt woodland. Prior to the alleged illegal clearing in early 2014 (see Section 2) of most of the eucalypt woodland and transitional communities, 1 Boulter Road was completely covered with healthy native vegetation. Since the clearing it has become heavily infested with weeds, in particular the declared weed gamba grass which poses a serious fire risk. Very destructive wildfires have burnt the site, including the wetland, on several occasions over the past 10 years or more.

The Boulter Road part of the Berrimah North area is the subject of increasing development which is encroaching on the important wetland communities in the upper Rapid Creek catchment. It is essential to ensure any further development does not compromise the environmental values or hydrology of the area.

The *Rapid Creek Management Plan* states ‘... maintenance of the swamps is critical in providing flood attenuation downstream, and also to recharge ground water and maintain stream flows until late in the dry season’ and the Plan has a high priority strategy for ‘maintaining wetlands and slow flow areas in the upper catchment in the present undeveloped state’.

The Northern Territory Government’s *Land Clearing Guidelines* require buffers of 200 metres from the edge of a wetland. This means all of 1 Boulter Road should be encompassed in a buffer. The Rapid Creek Landcare Group (RCLG) has long called for the whole of 1 Boulter Road to be rezoned to Conservation. This call remains.

2. ALLEGED ILLEGAL CLEARING UNRESOLVED

In April 2014 the RCLG was devastated to find over four hectares of native vegetation allegedly illegally cleared at 1 Boulter Road. The regrowth was then cleared again in 2020. The prosecution of the people responsible for the clearing has yet to occur. The timeline in Section 5 of this document lists key events relating to the issue.

LEGAL BACKGROUND

In relation to clearing native vegetation the *Planning Act* states ‘Any one or more of the following persons may be prosecuted ... an owner of the land ... a person apparently in charge of the clearing of native vegetation’ and ‘In a prosecution of a person ... it is not a defence that the person had no knowledge of the requirements of a planning scheme ... relating to the clearing of native vegetation on the land.’



There is evidence identifying the company that carried out the clearing and the company responsible has admitted to carrying out the work. Further, the regrowth on this property was once again illegally cleared during the 2020 dry season. Clearing of regrowth without a permit is also illegal, however it appears that once again NO action has been taken in regard to this illegal activity!

At the time the Environmental Defenders Office's Principal Lawyer David Morris said 'Based on the evidence I have seen I can't see any reason why the government would choose not to prosecute.'

MINISTER NEEDS TO PROSECUTE ALLEGED ILLEGAL CLEARING; NOT REWARD THE OWNERS BY APPROVING THIS SUBDIVISION

It is outrageous to contemplate that someone who has allegedly allowed such extensive illegal clearing now be allowed to subdivide that same block of land. The RCLG calls on Minister Lawler to immediately prosecute the owners of this land.

3. SUBMITTED APPLICATION

Despite our above call that the Minister immediately prosecute the land owners for illegal clearing, we consider it worthwhile providing a discussion on why the proposal to subdivide should be refused regardless of the clearing issue.

The Rapid Creek Landcare Group is calling for this application to be **refused outright**, and if the area is to be developed at all, the planning should be taken back to the drawing board and re-done with a plan that concentrates on the protection and enhancement of the environment in that area, not the intended ongoing destruction of valuable environmental assets.

TROPICS PLANNING REPORT

Section 1. Executive Summary

Paragraph 3 tries to convince the reader that clearing of native vegetation within a conservation zone will... *"result in an enhancement to the conservation values through improved weed management"*. This is a ridiculous, misleading and false statement, and without any identified future landholder for the conservation zone it would be expected that the exact opposite would occur, i.e. the clearing of any of the native vegetation will only result in a serious degradation of, or in fact total removal of any conservation values present and will no doubt result in an increase in weeds in the area.

The final paragraph in this section states that: *"Overall, the proposed subdivision is LARGELY compliant with the requirements of the scheme..."* surely in this highly sensitive area any development application should not only be **totally** compliant but go over and above the requirements of the scheme. The applicant has even ignored its own consultants in regard to enhancing environmental values (see EcOz report's section below).



Section 5. Proposed Subdivision

Stormwater Management. In paragraph 2 the document discusses a “reshaped basin” however there appears to be NO detail regarding where, how or why the wetland in the conservation zone is to be “reshaped”. The author goes on to say that: this *“storage will also act as an ephemeral wetland”*. This is a highly disturbing statement in that the document has reversed the priority of the conservation zone from being a highly valued wetland into a “storage which will also act as an ephemeral wetland to satisfy the CoD and NTG’s stormwater management requirements”. It then also goes on to say that the maintenance of the wetland will then be transferred to the relevant landowners, without saying who they might be. Do they envisage that this will also be handed over to the CoD along with all of the stormwater infrastructure?

Roads and Access. As with the ADG report, the intent is to use some future property owner’s driveway as a stormwater easement which will carry surface water flows? Surely this is unacceptable?

Earthworks. This refers to the engineering report, which does not in turn seem to describe the final detail of the bulk earthworks, e.g. how much are the lots being proposed to be lifted to avoid the 1%AEP flood levels?

Land Suitability Assessment. This states “the LSA concludes that the zone RR land is considered unconstrained...” how can this be when the lower portions of lots 33 to 36 extend into the melaleuca wetland CN zone; that is NOT the definition of unconstrained!

Vegetation Clearing. In this section the applicant discusses even further clearing of native vegetation within the CN zone! The removal of ANY native vegetation requires a Land Clearing Permit! This application seems to be assuming that even more clearing of native vegetation will be allowed within the melaleuca wetland which has been zoned CN! **This application should be refused!** The document states that the clearing of native vegetation for boundary fences in the CN Portions of Lots 32-36 *“is viewed as an effective tool to enable weed management”*, by whom, how is it an “effective tool” - land clearing is well known to encourage weeds not manage them. The document goes on to say that *“stormwater mitigation works will also be undertaken in the CN Zone which may result in the removal of a few individual trees”*, what stormwater works, where and which trees will be removed? To quote the minister is astounding when the quote talks about protection of environmental values and this proposal talks about the destruction of environmental values. Further, the primary ecological function of this melaleuca wetland is NOT, and was never intended to be for the regulation of stormwater flows, it is arguable that the regulation of stormwater flows is NOT even an “ecological function” and is certainly NOT the primary function!



Section 6. Statutory Considerations

Re: Part 2 - Strategic Framework

1. Demonstrate designed response to landform, land units and natural drainage
 - a. Stormwater management – DOES NOT COMPLY! Uses someone's driveway as a drainage easement!
 - b. Stormwater Runoff, quantity and quality - DOES NOT COMPLY! Suggestion that the use of the existing melaleuca wetland as a stormwater retention basin and a pollution trap is totally unacceptable.
 - c. Maintaining over land flow - DOES NOT COMPLY! The document asserts that the existing CN zoned melaleuca wetland is "...to be provided within the conservation Zone..." this is a totally false and outrageous statement that seems to suggest that the developer is providing the wetland, rather than just using it as an excuse NOT to provide for a proper retention basin and for this environmental asset to be used as a pollutant trap.
2. Minimise offsite impacts
 - a. Manage the magnitude and duration of sediment-transporting stormwater - DOES NOT COMPLY! Nowhere in any of these documents has either of these aspects been demonstrated. There is NO ESCP and the flood modelling is questionable at best, WRONG and unbelievable at worst.
 - b. Prepare and Erosion and Sediment Control Plan - DOES NOT COMPLY! There is NO ESCP!
 - c. Post-development flows no greater than pre-development flows - DOES NOT COMPLY! The only thing that appears to have been or intended to be done is some very questionable modelling. See comments below regarding the stormwater report.

Re: Part 3 – Overlays

Purpose – Identify areas with limits to clearing of native vegetation and ensure that clearing in these areas DOES NOT OCCUR! DOES NOT COMPLY

The document clearly states that there is every intention to clear native vegetation inside the CN zoned area, not only for fence lines but also for the so called retention basin (read melaleuca wetland).

They even go on in response to b. that: "The areas proposed for cleaning (sic) do not unreasonably contribute to the degradation of the locality but will IMPROVE the conditions of the locality"!!! This is an outrageous and unsubstantiated statement.

Page 18 – Zone CN Conservation. Again this documents asserts that removal of native vegetation in a conservation zone will "enhance the condition of the flora". This patently untrue and misleading, how can the removal of vegetation enhance its condition?



The document has many more examples of the above issues which are incorrect, misleading and untrue, it even goes on in regard to: d. minimise excavation and fill and other changes to landform, to say that: "excavation and filling is minimised IN THE CONSERVATION ZONE"! There should be NO disturbance at all within any conservation zone, especially not excavation and fill, let alone the intended land clearing within that zone.

They also emphasize the fact that the cleared land is weed infested and degraded, but this is a result of the previous illegal activities by the land owner and should not be used as an excuse for this development. **This subdivision application should be refused.**

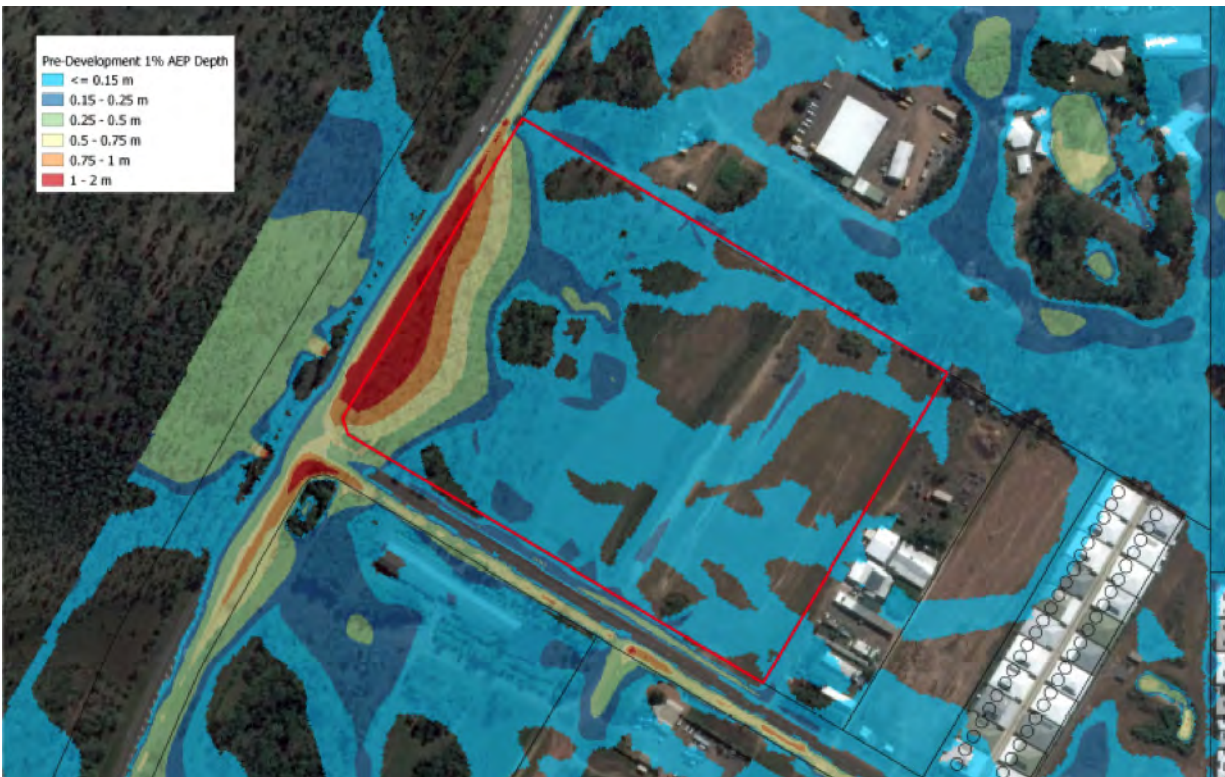
ADG STORMWATER MANAGEMENT PLAN

Section 3.3.1 states that the driveway access for Lot 32 will be nominated as a drainage easement and water "will be conveyed via a combination of overland flow contained within the driveway width and adequately sized underground infrastructure to ensure the function of the driveway will not be inhibited by the stormwater management function." A Statement that appears to be counter-intuitive, **how can a driveway be used to convert surface water flows and retain function as a driveway?** To propose a subdivision that uses a future lot owner's driveway as a floodway is incomprehensible and reprehensible.

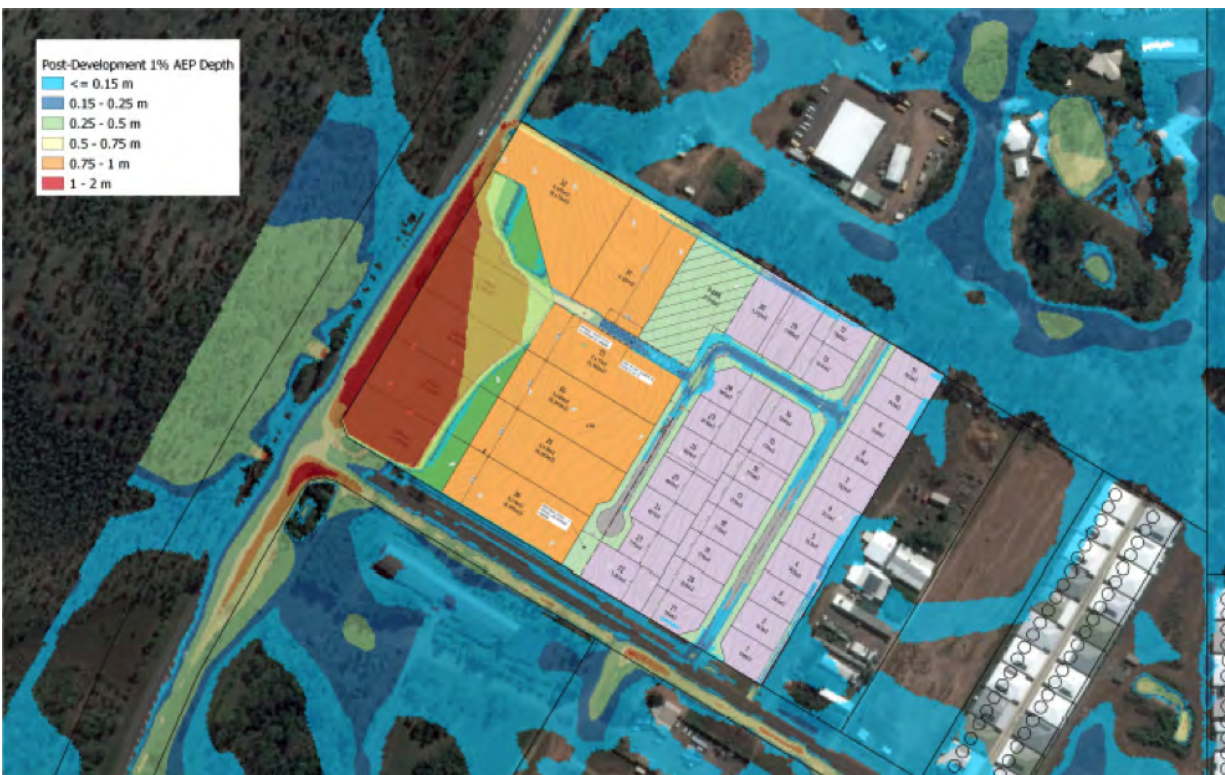
Section 3.4 Impact Assessment, attempts to convince the discerning public and the DCA that a considerable increase in impervious surfaces in the catchment will actually lead to a decrease in flows? Once again, this statement is considered counter intuitive and verging upon being ridiculous. At this point it is worth considering the quote from George Box, first recorded in 1976 in the paper "Science and Statistics," as it is relevant to these outrageous assertions, i.e. "Essentially, all models are wrong, but some models are useful." In this case we would suggest that the modelling being presented here is **WRONG** and at the very least should be peer reviewed!

Further, the maps provided in this document on pages 32 to 35 show that the area of the subdivision is subject to flooding from the 1% AEP in the pre-development modelling scenario, but is then miraculously flood free post development, presumably by raising the ground level of the lots, and that has been achieved with a net **decrease** in modelled flood flows. To say that this is totally unbelievable is putting it mildly!

Pre-development 1% AEP – abstracted from page 32 of the ADG Report



Post Development 1% AEP Flood Depths – Abstracted from page 33 of the ADG Report





Section 4 Stormwater Quality Assessment, could be summarised by saying, “we’ll just run the polluted water coming off the subdivision through the existing wetland and that will result in a decrease in pollutants”, however some of these pollutants are residual, e.g. hydrocarbons and lead based materials, and will no doubt lead to a significant degradation of the native vegetation in the wetland over time, potentially resulting in the complete decline of that vegetation. This is simply, and totally unacceptable in this day and age! The section even talks about gross pollutants, e.g. rubbish such as plastics being “filtered” by the natural wetland! Is it being proposed that this rubbish and other pollutants will then be managed by the *“relevant landowner to maintain their portion of the ephemeral wetland”*, the question to be asked is who is going to buy the wetland which can never be used? This also raises the question of why do the drawings show the wetland being subdivided into 5 separate lots, albeit unnumbered? Surely this land should remain as a single lot and an indication of who the intended ultimate land manager will be?

Section 4.3 Construction Phase states that there is a higher risk of sedimentation (sic) transport due to the large areas of disturbed land, and goes on to say that a Sediment and Erosion Control plan is to be prepared; surely this should be part of the application. This is a vital part of any land development, and particularly within the highly sensitive environment in which this development is being proposed. This sort of planning should be done **PRIOR TO** any approvals so that they can be considered along with all of the information. **This application should be refused** on this basis alone, and definitely NOT made a condition of the Development Permit!

This section also discusses the need for a temporary sediment basin, however none of the drawings show the size or location of such! The document also seems to suggest that the small area of wetland to be retained in the “conservation zone” will be used as a floodwater retention facility! Once again this is totally unacceptable, and would have NO IMPACT on post-development flows as it is a pre-development feature and post development flows can only increase due to the amount of hard surfaces being proposed.

Section 4.4 Operational phase, this section talks about “the Stormwater Quality Improvements Devices (SQIDs)” it can only be assumed that this is referring to, at least in part, the CN zoned melaleuca wetland. The proposed use of the Natural Wetland as a SQID and a stormwater retention basin is totally unacceptable, and another reason why **this application should be refused**.

Section 4.5 Water Quality Monitoring, to use the fact that no water quality monitoring is currently being undertaken in a natural environment, as an excuse to do the same in a built environment is inexcusable, and again reprehensible.

ECOZ LAND SUITABILITY ASSESSMENT

It is noted that in Section 3.2 of this report EcOz recommends that: *“water-sensitive urban design principles be considered in designing the stormwater management system for the proposed development”*, a recommendation that has clearly been ignored! In section 3.4 they also say

that: *“The NT Clearing Guidelines suggest controls for minimising impacts to sensitive habitat and threatened species (DENR 2019). In addition to maintaining recommended buffers, ...”*

Once again this has clearly been ignored, in fact the application states that not only are buffers NOT being retained but the intention is to undertake further land clearing of the melaleuca wetland within the conservation zone!

ECOZ LAND CLEARING CAPABILITY ASSESSMENT

The main issue noted with this document is that the classification of the melaleuca wetland area, covered with land Unit 8a, has been assessed with an overall land capability class of Class 1 – High capability? See table 3.1 Overall land capability classes.

It can only be assumed that this has been classified as such in an attempt to give some credibility to the intention to clear the rear boundary fence lines for Lots 32-36 which have been located within the CN zone, however this is patently incorrect, this area should NEVER be cleared for any purpose!

4. BERRIMAH NORTH AREA PLAN AND PLANNING PRINCIPLES

Appendix A shows the Berrimah North Area Plan 1 of 2 (the Plan) from the BNAPPP which was included into the NTPS in December 2014. The proposal to subdivide is clearly not in line with this plan. A discussion about this follows.

LOT SIZE

The Plan shows the whole of 1 Boulter Road being within the 400m buffer to biting insects which requires the average lot size per dwelling to be 2000m² (0.2 hectares) with larger lots towards Mararra Swamp. It is ludicrous to suggest the proposed development is appropriate here.

The Plan shows 1 Boulter Road covering 3 ‘zones’:

- The western portion of the block is green and listed as ‘Development restricted by constraints’, this is the wetland. Clearly this land can not be developed in any way.
- The central portion, and the majority of the block, is hatched green and listed as a ‘Rural Residential Buffer’. The NTPS states that the minimum lot size for Rural Residential zoning is 0.4 ha (4000m²).
- The eastern portion is pink and listed as ‘Residential’. Other parts of the Berrimah North area shown in pink are gradually being rezoned to MD – but NOT within the 400m buffer to biting insects. Any development on the eastern portion needs to be at least 2000m² (0.2 hectares) to comply with the BNAPPP.



The BNAPPP states a principle to 'Facilitate housing choice in appropriate locations by: (a) creating a mix of lot sizes ... (b) locating the higher density housing ... close to the neighbourhood centre ... (d) reducing residential density where land is affected by constraints such as biting insects'.

The Plan shows housing density decreasing in concentric circles away from the neighbourhood centre. The outside of the circle showing a density of 10 to 20 dwellings per hectare is about half a kilometre east of the proposed 1 Boulter Road development.

Appendix B shows one of the earlier MD blocks on Boulter Road (number 69) and the density of development being allowed under MD. The planning scheme is being pushed to its upper limits, and would appear to not be following the BNAPPP.

AIRCRAFT NOISE

The Plan shows an Australian Noise Exposure Forecast (ANEF) contour with a value of 20 passing alongside 1 Boulter Road. The BNAPPP states that dwellings located closed to ANEF 20 are to comply with the requirements of of AS2021, there is no evidence in the application of this issue being addressed.

The ANEF map for Darwin says houses and home units are only conditionally accepted within 20 to 25 ANEF and are unacceptable over 25 ANEF. It notes that that within the 20 to 25 ANEF some people may find that the land is not compatible with residential uses. The ANEF for Darwin is currently being reviewed and it is possible that the contours will be changed; a precautionary approach should be used for planning until this review is complete.

5. TIMELINE

September 1993	Planning scheme amendment refused for rezoning 1 Boulter Road from CP to Residential.
March 2002	Development application from Nick Bjelica refused for restaurant, convention centre and cluster dwellings at 1 Boulter Road.
November 2002	Investigation/Enforcement in relation to control of clearing, filling and excavation at 1 Boulter Road.
February 2014	NT News advertises 1 Boulter Road for sale, diagram implies that the block had already been subdivided into 5 lots (it has not been subdivided) - contact number is Nick Bjelica's business. Letter from Concept Designs (NT) Pty Ltd relating to proposed planning scheme amendment to rezone 1 Boulter Road from CP to MD. Application from Nick Bjelica for planning scheme amendment to rezone 1 Boulter Road from CP to MD, application deferred by Minister Chandler.



March 2014	Planit Consulting provides subdivision drawing for site, drawing comment notes 'footprints shown are standard Halikos issued single storey duplex configuration'.
April 2014	<p>RCLG observes alleged illegal clearing of the site. RCLG reports alleged illegal clearing to the Department of Lands, Planning and the Environment (LPE).</p> <p>NT News states Minister Chandler has confirmed the Development Consent Authority (DCA) would pursue a legal case against the landowner. The Minister stated 'I cannot ask the public to have faith in the government's planning processes if they're not enforced'.</p> <p>Minister Chandler advises RCLG that he has 'asked the DCA to investigate and proceed with prosecution' over alleged illegal clearing.</p>
May 2014	<p>RCLG provides Statutory Declaration in relation to the alleged illegal clearing to LPE.</p> <p>EcOz Environmental Services provides 1 Boulter Road site assesement to ADG.</p>
June 2014	ADG provides letter in relation to 1 Boulter Road development to Concept Designs.
August 2014	ADG publishes BNDS.
September 2014	Minister Chandler advises RCLG that he 'is progressing with the investigation with a view to prosecuting the parties responsible for the illegal clearing' at 1 Boulter Road.
October 2014	Minister Chandler quoted in Hansard 'Development Assessment Services has concluded its investigation into the matter and has compiled all relevant information into a brief of evidence ... Rules were clearly broken and now the evidence has been gathered and we determine whether or not there could be a successful prosecution'.
December 2014	<p>Minister Chandler includes BNAPPP into the NTPS.</p> <p>Exhibition of proposal to amend the NTPS by rezoning 1 Boulter Road from CP to MD, proposal withdrawn hours after media release on the issue published by RCLG.</p>
May 2015	NT News publishes statement from Minister Tollner that 'The DCA will decide in the next few weeks whether to prosecute over illegal clearing in the Rapid Creek catchment'.



September 2015	ABC TV News quotes Litchfield Green Waste Recyclers (the company who carried out the clearing at 1 Boulter Road) 'It would be best for you to speak with Halikos ... as this is where our instruction came from for this project' and a spokesperson from LPE who confirmed they 'forwarded the matter on to police for further investigation in February this year'.
November 2015	Minister Tollner signs PA2014/0168, notice of exhibition of proposal to amend the NTPS by rezoning 1 Boulter Road from CP to MD. PA2014/0168 exhibited to rezone the land from Community Purposes to Multiple Dwelling Residential.
December 2015	Minister Tollner decides not to prosecute over the alleged illegal clearing. RCLG makes a submission opposing the rezoning. City of Darwin makes comprehensive submission strongly opposing the rezoning.
August 2016	RCLG is appalled when Minister Tollner approves the rezoning application.

6. ACRONYMS

ADG	ADG Engineers (Australia) Pty Ltd
ANEF	Australian Noise Exposure Forecast
BNAPPP	Berrimah North Area Plan and Planning Principles
BNDS	<i>Berrimah North Drainage Study</i>
CP	Community Purposes zoning
DCA	Development Consent Authority
LPE	Department of Lands, Planning and the Environment
MD	Multiple Dwelling Residential zoning
NTPS	<i>NT Planning Scheme</i>
RCLG	Rapid Creek Landcare Group



7. CONTACT DETAILS

Rapid Creek Landcare Group Inc.

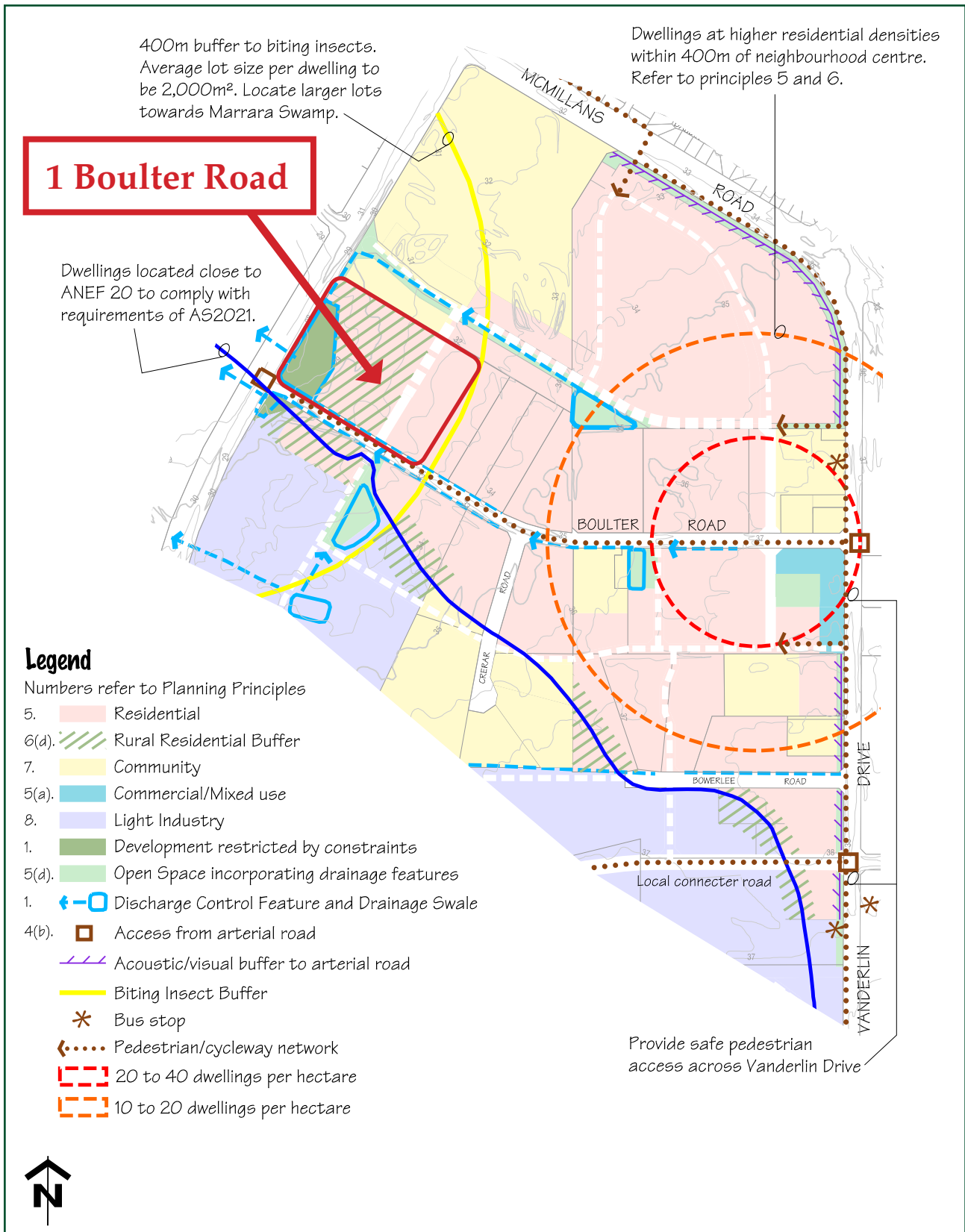
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8. APPENDICES

APPENDIX A - BERRIMAH NORTH AREA PLAN 1 OF 2



APPENDIX B - AERIAL PHOTOGRAPHS BOULTER ROAD

