



**RAPID CREEK LANDCARE GROUP INC.**

**SUBMISSION TO:  
PROPOSAL TO AMEND NT PLANNING SCHEME PA2014/0168**

**REZONING SECTION 4106 HUNDRED OF BAGOT  
(1 BOULTER ROAD, BERRIMAH)**

**FROM ZONE CP (COMMUNITY PURPOSES)  
TO ZONE MD (MULTIPLE DWELLING RESIDENTIAL)**

**17 DECEMBER 2015**





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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. A very destructive wildfire burnt the site, including the wetland, in September 2015.

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 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 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.



The Environmental Defenders Office's Principal Lawyer David Morris says '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**

The RCLG calls on Minister Tollner to immediately use his powers under the *Planning Act* to prosecute all people responsible for the clearing, to the full extent of the law, and to have the area, now covered in noxious weeds, fully rehabilitated.

## **MINISTER SHOULD NOT ALLOW REZONING**

It is outrageous to contemplate that someone who has allegedly allowed such extensive illegal clearing now be allowed to rezone that same block of land. The RCLG calls on Minister Tollner to immediately withdraw this proposed planning scheme amendment.

# **3. SUBMITTED APPLICATION**

Despite our above call that the Minister immediately withdraw the proposed planning scheme amendment we consider it worthwhile providing a discussion on why the proposal to rezone 1 Boulter Road from Zone CP (Community Purposes) to Zone MD (Multiple Dwelling Residential) should be refused regardless of the clearing issue. The submitted application is included in the exhibited planning scheme amendment proposal.

## **PROPOSAL TO AMEND A PLANNING SCHEME FORM**

This form, included in the submitted application, is dated 28 February 2014. It is clearly the same form that was submitted in February 2014 and then deferred by the Minister (see timeline in Section 5). The form is followed by a letter from Concept Designs (NT) Pty Ltd dated 25 February 2014.

The Concept Designs letter refers to the 2010 Berrimah North Area Plan and includes copies of the 2010 Berrimah North Planning Principles and Berrimah North Area Plan. No attempt has been made to discuss the proposal in light of the new Berrimah North Area Plan and Planning Principles (BNAPPP) which were incorporated into the NTPS in December 2014. The new BNAPPP is included in the exhibited proposal, before the submitted application; therefore the proposal includes copies of both the 2010 and 2014 documents and maps. We provide a discussion about the proposal in context of the new BNAPPP in Section 4.

## **ADG LETTER**

A letter from ADG is included in the submitted application and is dated 10 June 2014. The ADG letter refers to the 2014 *Berrimah North Drainage Study* (BNDS) in its justification for filling 1 Boulter Road in order to provide 'development with flood immunity' (ADG wrote the BNDS as well as the letter).



The BNDS describes the stormwater drainage infrastructure needed to ensure 'proposed development will not cause any worsening of peak stormwater runoff on downstream receiving environments'. It describes extensive earthworks and drainage works needed to mitigate post-development run-off at the catchment level.

The modelling in the BNDS assumes development will be in line with the BNAPPP and the BNDS earthworks map does not show 1 Boulter Road being filled.

The BNDS states that if a catchment wide approach is not implemented then each individual development would need to provide appropriate stormwater detention on their site to ensure pre-development peak stormwater runoff.

The ADG letter states 'The drawing attached identifies the flood extents with and without the fill pad in the 1D/2D hydraulic model. The resulting change is not quantifiable and hence will not negatively affect the existing environment within the restricted development area'. In no way is this an acceptable argument that the development has mitigated its peak stormwater run-off to pre-development levels.

The ADG letter states 'the proposal to rezone this allotment to Medium Density is appropriate, within the intent of the current and future Berrimah North Area Plan'. The proposed development is clearly not in line with the BNAPPP (see Section 4).

## **EcOz ENVIRONMENTAL SERVICES LETTER**

The following quotes come from the EcOz letter included in the application. There has been no attempt to address these issues.

- Although the paperbark wetland community present on the property represents a relatively small proportion of the Marrara Swamp and Rapid Creek catchment, it is likely that it provides a significant role in buffering the effects of stormwater (e.g. sediment removal) from the property and surrounding areas during the wet season.
- Approximately 40 % of the property has soils that are classed as 'moderate to high' or 'severe' levels of seasonal waterlogging.
- ...numbers of mosquitoes at a nearby trapping site (Batten Road) have increased dramatically over the past two years, including higher numbers of the species that carry Ross River virus.
- It is recommended that flood modelling be conducted to investigate the potential risks of flooding associated with increased run-off associated with the development, both on the property itself and Amy Johnson Avenue.
- It is likely that an Erosion and Sediment Control Plan would be required by regulatory authorities prior to the commencement of construction on site, although it is recommended that appropriate measures be put in place prior to the next wet season (e.g. mulch/silt fences, sediment traps, etc), irrespective of the status of approvals for the proposed development.

## 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 rezone to MD 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 2000m<sup>2</sup> (0.2 hectares) with larger lots towards Mararra Swamp. It is ludicrous to suggest that MD zoning 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 rezoned to MD, or 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 (4000m<sup>2</sup>).
- 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 2000m<sup>2</sup> (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.

MD has a minimum lot size of 800m<sup>2</sup> (0.08 hectares) but in an 'integrated residential development' 50% of the lots can be less than 800m<sup>2</sup>; MD allows for one dwelling per 300m<sup>2</sup> (0.03 hectares).

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. The subdivision plan submitted with the rezoning application shows similar size lots (the subdivision plan has been overlaid on to the third map in Appendix B).



## 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.

Please also refer to our submission to the BNAPP ([http://www.rapidcreek.org.au/Rapid\\_Creek\\_Landcare\\_Group/Report\\_links\\_files/RCLG%20submission%20PA2014%200598.pdf](http://www.rapidcreek.org.au/Rapid_Creek_Landcare_Group/Report_links_files/RCLG%20submission%20PA2014%200598.pdf)).

## 5. TIMELINE

24 September 1993	Planning scheme amendment refused for rezoning 1 Boulter Road from CP to Residential
12 March 2002	Development application from Nick Bjelica refused for restaurant, convention centre and cluster dwellings at 1 Boulter Road
22 November 2002	Investigation/Enforcement in relation to control of clearing, filling and excavation at 1 Boulter Road
1 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
25 February 2014	Letter from Concept Designs (NT) Pty Ltd relating to proposed planning scheme amendment to rezone 1 Boulter Road from CP to MD
28 February 2014	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'
6 April 2014	RCLG observes alleged illegal clearing of the site
7 April 2014	RCLG reports alleged illegal clearing to the Department of Lands, Planning and the Environment (LPE)



17 April 2014	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'
19 April 2014	Minister Chandler advises RCLG that he has 'asked the DCA to investigate and proceed with prosecution' over alleged illegal clearing
16 May 2014	RCLG provides Statutory Declaration in relation to the alleged illegal clearing to LPE
26 May 2014	EcOz Environmental Services provides 1 Boulter Road site assesment to ADG
10 June 2014	ADG provides letter in relation to 1 Boulter Road development to Concept Designs
19 August 2014	ADG publishes BNDS
4 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
22 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'
10 December 2014	Minister Chandler includes BNAPPP into the NTPS
26 December 2014	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
19 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'
4 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'
12 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
20 November 2015	PA2014/0168 exhibited





## 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.

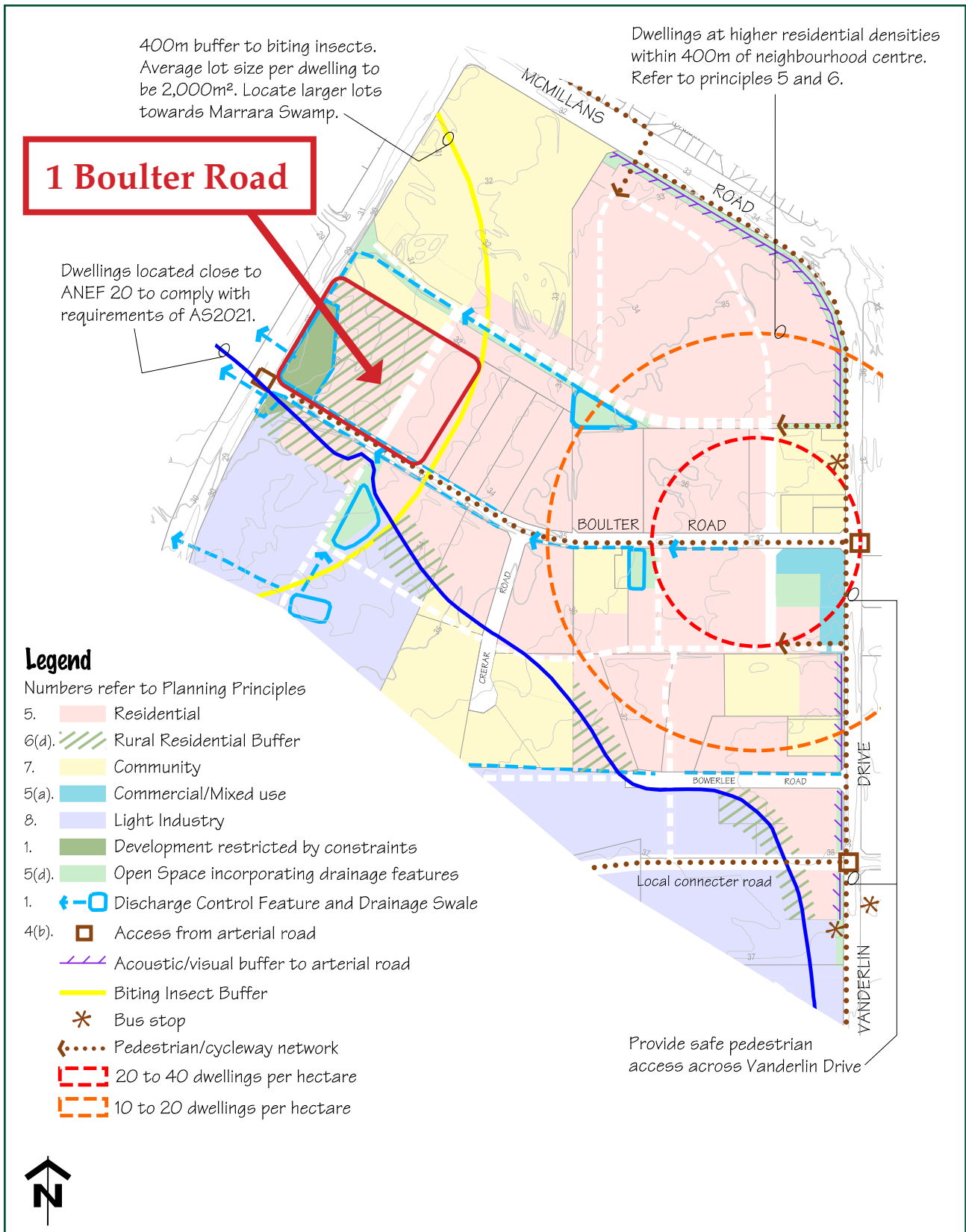
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# 8. APPENDICES

## APPENDIX A - BERRIMAH NORTH AREA PLAN 1 OF 2



# APPENDIX B - AERIAL PHOTOGRAPHS BOULTER ROAD

