

Report of Planning and Economy to the Ordinary Meeting of Council held on Monday 18 July 2016

PE6 – Cross Street Planning Proposal – Bargo River Gorge Buffer and Biodiversity Certification Application

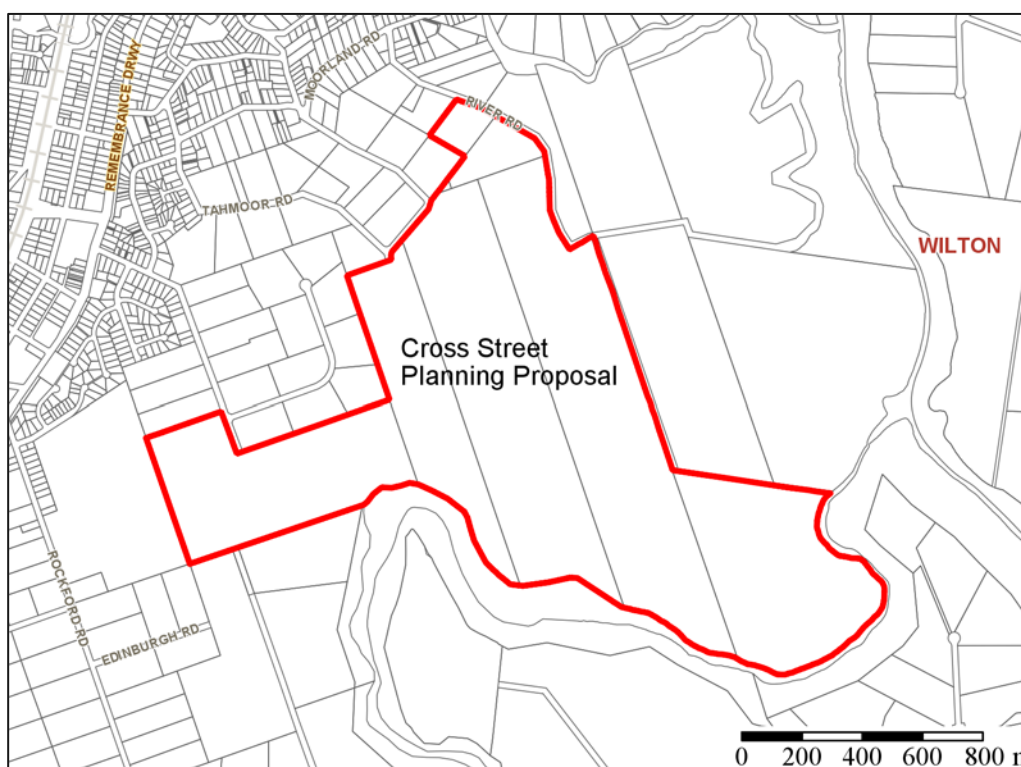
PE6 **Cross Street Planning Proposal – Bargo River Gorge Buffer and Biodiversity Certification Application**

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TRIM 7884

Proponent: Urbis
Owner: Ingham Property Development Pty Ltd

Planning & Economy



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LOCATION MAP

| Stage | Completed |
|--|------------------|
| Preliminary notification | 12 March 2014 |
| Gateway Determination | 17 July 2014 |
| Consultation with Public Agencies | July/August 2014 |
| Specialist Studies | Ongoing |
| Public exhibition/community consultation | Not yet complete |
| Referred to Minister for Publication | Not yet complete |

PE6 – Cross Street Planning Proposal – Bargo River Gorge Buffer and Biodiversity Certification Application

EXECUTIVE SUMMARY

- The purpose of this report is to seek Council support for submission of a Biodiversity Certification Application and exhibition of a proposed buffer from the Bargo River Gorge to facilitate continued assessment of the Cross Street Planning Proposal.
- At its Ordinary Meeting held April 2014, Council resolved to forward the Planning Proposal to the Department of Planning for Gateway Determination. At this meeting, Council requested further detail on the buffer between proposed residential land and the Bargo River Gorge.
- The proposed Biodiversity Certification Application seeks to ensure the site's biodiversity values are 'improved or maintained' whilst providing a mechanism to offset the land proposed for development.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extend to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application.
- It is recommended that:
 - Council support the proposed buffer to the Bargo River Gorge and the submission of a Biodiversity certification application by the Council; and;
 - Council request the proponent to provide a Biocertification Strategy that would result in permanently funded and managed conservation measures for the land propose to be conserved.
 - Council delegate authority to the General Manager to sign the Biocertification Application; and
 - The Bargo River Gorge buffer proposal, Biodiversity Certification application and supporting documents be placed on public exhibition.

REPORT

1.1 BACKGROUND TO PLANNING PROPOSAL

The Cross Street Planning Proposal aims to rezone rural land at East Tahmoor for the purpose of low density and large lot residential, environmental conservation and management purposes.

The rezoning would enable creation of approximately 240 lots with access from Cross Street and River Road and the residential land would include minimum lot sizes of 700, 975, 1500 and 4,000 square metres with the majority being 1500 square metres.

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The proposed residential component of the Planning Proposal is in accordance with the Structure Plan for Tahmoor which forms part of the Wollondilly Growth Management Strategy 2011.

At the April 2014 Ordinary Meeting, Council resolved to forward the Cross Street Planning Proposal to the Department of Planning for Gateway Determination. It was also resolved (in part):

2. *That the future development of the land within the Cross Street Planning Proposal incorporate a buffer of at least 100 metres from the top of the bank of the Bargo River Gorge to any residential building. That the applicant be advised that the studies prepared and submitted during the rezoning process will need to demonstrate how this will be achieved and what mechanisms (eg zoning, restrictions on title) will be used to provide certainty of this outcome. To enable the public to understand what is proposed in respect of this buffer the proponent shall also submit a typical cross section drawn to an appropriate scale showing the gorge, the proposed E2 zone, the asset protection zone required for bushfire protection, the area required for waste water disposal (if the lots are not connected to a reticulated sewerage system) and the location of residential buildings.*

Additionally a management plan shall be prepared to outline how the buffer area will be maintained and managed. Both the cross section and the management plan shall be placed on exhibition with the proposal should it receive a positive gateway determination.

This issue was addressed in a report to the November 2014 Ordinary Meeting. It was resolved at that meeting to defer the matter for a further report once additional environmental studies into bushfire and biodiversity were completed. These studies have now been completed and submitted to Council.

1.2 BARGO RIVER GORGE BUFFER

The proponent has provided a report which details the proposed buffer arrangements to the Bargo River Gorge.

The submitted report illustrates, by way of a cross section, the proposed setbacks for the E2 Environmental Conservation land use zone, residential land use zones, the lot boundary, asset protection zone, internal roads and future dwellings.

The area required for waste water disposal has not been detailed in the cross section as Sydney Water has indicated that there is capacity for lots to be connected to their reticulated sewerage system.

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A plan of the proposed Bargo River Gorge Buffer is provided at Attachment 1 and cross section plan of the buffer is provided at Attachment 2 to this report.

The key features of the proposed buffer and concept subdivision layout are as follows:

- All residential lots will be located (at minimum) 100 metres from the top of bank to the nearest property boundary. Any future residential dwelling will be located greater than 100 metres from the top of bank.
- A perimeter road is proposed to be located within the 100 metre buffer referred to above and will be zoned for residential purposes. This effectively means that at its narrowest, the E2 Environmental Conservation zoned land will be 84 metres in width measured from the top of bank to the road. According to the site's ecologist, this width is sufficient to provide connectivity and enable threatened fauna to continue to traverse along the Gorge and into adjacent areas. The vegetation along the top of the Gorge is generally in good condition and provides potential habitat for a variety of fauna and certain threatened species.
- The perimeter road will form part of the Asset Protection Zone which is in accordance with the requirements outlined in the NSW Rural Fire Service guidelines for bushfire hazard management, *Planning for Bushfire Protection (PFBP)*. Asset Protection Zones will not encroach on the proposed E2 Environmental Conservation land use zones.
- The perimeter road would also provide effective vehicular access for fire fighting purposes, in accordance with PFBP and provide opportunity for general access and casual surveillance of the future Bargo River Gorge conservation area.
- The E2 Environmental Conservation zoned land alongside the Gorge and throughout the site protects the most consolidated stands of vegetation and will form a connected corridor. This land will be managed for its conservation values in perpetuity as discussed elsewhere in this report. Any biocertification strategy developed for the site will include strategies for management of weeds, recreational impacts, edge effects and access.

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BARGO RIVER GORGE LANDSCAPE CONSERVATION AREA

In March 2015, the National Trust listed a corridor on either side of the Bargo River Gorge as Landscape Conservation Area. The National Trust is a community based non-government organisation hence the listing has no legal force. However it does highlight the Trust's opinion in terms of the scenic and ecological value of the land. The Trust promotes the use of development controls to permit land uses which respect the character of the place.

JR STUD BUFFER COMPARISON

The JR Stud E2 Environmental Conservation Zoned land (E2 land) will adjoin the Cross Street E2 land in the south eastern corner of the site. On the JR Stud site the E2 land at this point is approximately 85m from the top of the Gorge. The Cross Street E2 land including a road will be a minimum of 100m from the top of the Gorge.

Council has required the dwellings within the JR Stud site to be setback a minimum of 150m from the lip of the Gorge, as per its resolution from the February 2013 Ordinary Meeting.

To maintain consistency in terms of any future buffer, the same provision requiring dwellings to be setback a minimum of 150m from the top of the Gorge should be applied to the Cross Street Planning Proposal. This can be a requirement of any future development control plan for the site. In doing so however the current concept plan may require amendment to accommodate dwellings in the south western corner of the site.

1.3 BIODIVERSITY CERTIFICATION

LEGISLATIVE FRAMEWORK

Legislation for biodiversity certification is provided under Part 7AA of the *Threatened Species Conservation Act 1995* (TSC Act).

Biodiversity certification is a process which aims to ensure that biodiversity values are 'improved or maintained', so that losses from clearing are offset by achieving real gains in the condition and habitat value of vegetation.

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There are a number of benefits to biodiversity certification, including;

- Better environmental outcomes from urban development, at lower cost
- By ensuring that conservation issues are considered early in the planning process, new urban areas will 'improve or maintain' biodiversity values
- Areas of high conservation value are identified and protected, and, any clearing or loss of other habitat is offset
- Where certification is conferred for development areas, it 'switches off' the requirement for Development Applications to address biodiversity issues. This can save time and money for landowners and local government. It speeds up land release, and improves housing affordability.

The legislation stipulates that only planning authorities can apply to the Minister for the Environment to have biodiversity certification conferred over an area of land.

If the Council agrees to apply to have biodiversity certification, it would be responsible for duties associated with being the applicant. These include facilitating a public exhibition and preparing a post exhibition submissions report and then submitting the final signed biodiversity certification application, biodiversity certification strategy, supporting documentation and post-exhibition submission report to the Minister.

The proponent, is also required to sign the biodiversity certification application form and will be responsible for the preparation of studies for the biodiversity certification application and, if biocertification is conferred on the land, for the preparation, implementation, monitoring, reporting and review of the management plan.

If biocertification is conferred on the land, the ongoing reporting and review obligations and enforcement will be the responsibility of the Office of Environment and Heritage.

BIODIVERSITY CERTIFICATION PROPOSAL

Approximately 78.24 ha of the 166.52 ha site is proposed for residential related development.

The site contains approximately 114.94 ha of native vegetation and the proposed residential development would involve the removal of 35.88 ha of native vegetation. This includes 9.15 ha of Cumberland Plain Woodland (CPW) and Shale Sandstone Transition Forest (SSTF) vegetation which are critically endangered ecological communities (CEECs) and listed as having high conservation value.

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In addition, some of the vegetation within the site along the Bargo River is within an area mapped as Priority Conservation Lands (PCL) within the Cumberland Plain Recovery Plan (2011).

PCL's are land identified as the best remaining opportunity to secure long-term biodiversity benefits for the recovery of threatened species, populations and ecological communities on the Cumberland Plain.

To address this issue the proponent, would like to pursue a biodiversity certification application and to this end have engaged consultants to prepare the required studies and documentation to support such an application.

In this regard Council has received a Biocertification Inventory Report which details a biocertification assessment for the site and options for achieving conservation measures. The Report considers the loss of biodiversity values associated with vegetation clearance on the Planning Proposal site and the biodiversity gains that would be achieved as a result of offsets and mitigation measures on land within the Planning Proposal site. A copy of the Plan of Biodiversity Certification proposal is provided at Attachment 3 to this report.

It is proposed to permanently protect and manage 88.28 ha of land located within the site including 45.27 ha of moderate to good condition SSTF and 2.18 ha of moderate to good condition CPW. Approximately 78.24 ha of land within the Planning Proposal site is proposed for development including 9.15 ha of SSTF and CPW.

The biodiversity inventory report details two options for permanent conservation being:

1. A permanently managed and funded conservation measure such as registration of a Biobank site under Part 7A of the *Threatened Species Act 1995*, or
2. A permanently managed conservation measure such as classification of land as Community Land under the Local Government Act 1993 which is managed as a 'natural area'.

Funding for permanent protection and management of the land could be achieved either through:

- biobanking the areas to be conserved which would provide funding to manage the land and then its management by either the proponent, a third party or Council or
- by dedication of the land to Council with a funding arrangement as detailed in the Dedication of Lands Policy and management of Community Land as a 'natural area'.

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CONSULTATION

**2.1 FORMAL CONSULTATION WITH COUNCIL STAFF THAT PROVIDE SPECIALIST
COMMENT**

The Strategic Planning team has been working closely with Environmental Services to progress biodiversity certification opportunities associated with the site.

Environmental Services have reviewed the draft Biodiversity Certification Assessment Report & Biocertification Strategy and are largely in support of its direction.

2.2 CONSULTATION WITH PUBLIC AGENCIES

The Office of Environment & Heritage (OEH) have been consulted regarding the proposal for Biocertification and have advised that early liaison with them is recommended to discuss key points. They have provided details as to the preparation of the documentation and formal lodgement of the application.

2.3 COMMUNITY CONSULTATION

As part of the Biodiversity Certification application process the application and supporting documentation will be publicly exhibited with the planning proposal during the community consultation period.

RELEVANT POLICIES & LEGISLATION

- *Environmental Planning and Assessment Act, 1979 (EP&A Act, 1979)*
- *Environmental Planning and Assessment Regulation, 2000 (EP&A Regs, 2000)*
- *Local Government Act, 1993*
- *Threatened Species Conservation Act 1995 (TSC Act).*

FINANCIAL IMPLICATIONS

There is no application fee associated with submitting a Biodiversity certification application. Staff time costs are covered within the existing budget. The Biocertification application will be exhibited during the community consultation undertaken for the planning proposal.

The proponent will be responsible for costs associated with the preparation, implementation, monitoring, reporting and review of the management plan and all associated costs.

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CONCLUSION

The proposed buffer area to the Bargo River Gorge and environmentally significant land will provide an important future environmental asset while also being available for passive recreational use by the wider community. It is considered that Biocertification is the most pragmatic approach to achieving land for future residential growth while also conserving land with high biodiversity value.

It is recommended that a Biodiversity certification application be submitted to the Minister for the Environment.

ATTACHMENTS

1. Bargo River Gorge Buffer
2. Cross Section Plan of Buffer
3. Plan of Biodiversity Certification Proposal

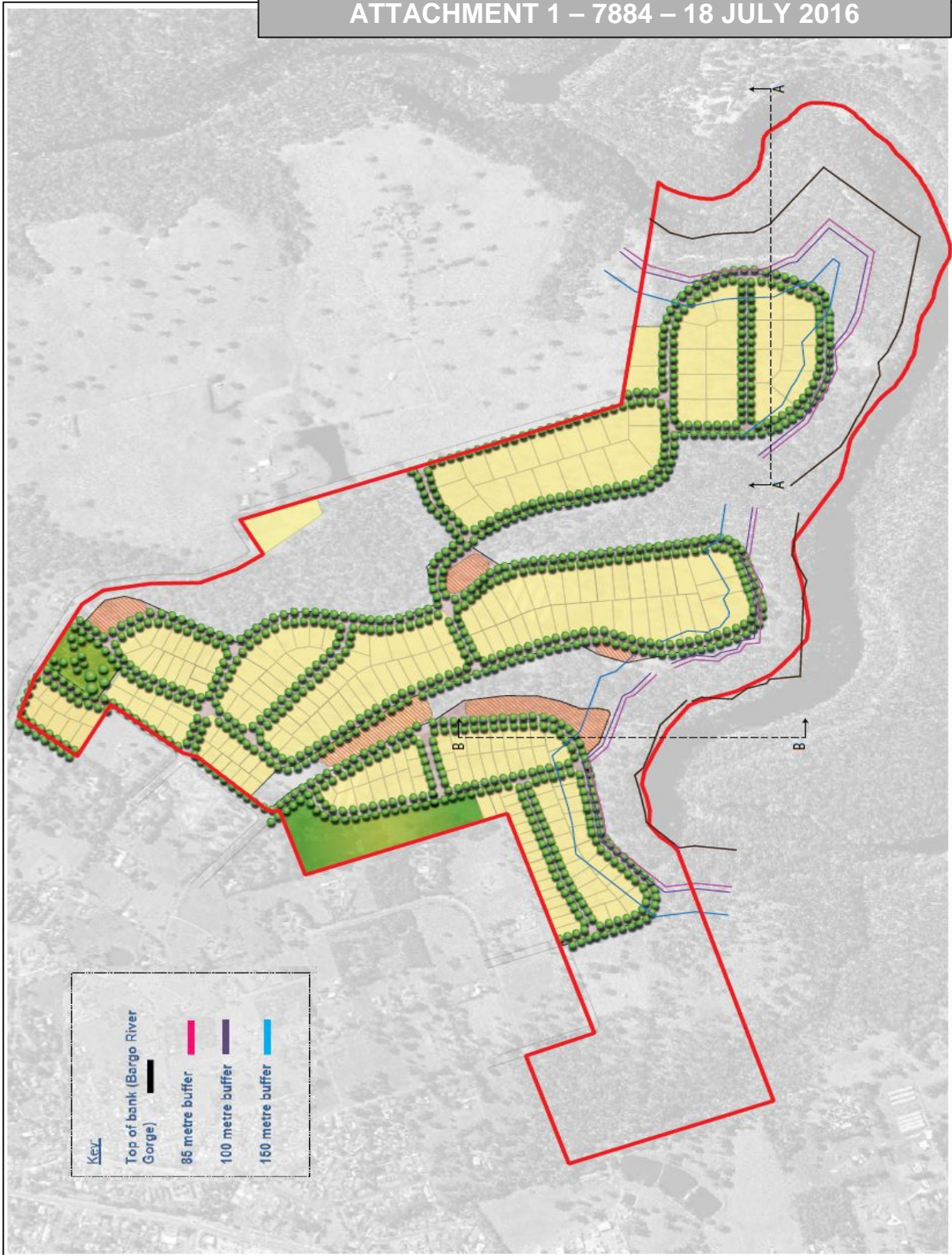
RECOMMENDATION

1. That Council support the proposed buffer to the Bargo River Gorge for exhibition purposes and submission of a Biodiversity certification application to the Minister for the Environment.
2. That Council request the proponent to provide a Biocertification Strategy that would result in permanently funded and managed conservation measures for the land propose to be conserved.
3. That Council delegate the General Manager to sign the Biodiversity Certification Application.
4. That the proposed buffer to the Bargo River Gorge and Biodiversity Certification Application with supporting document be placed on public exhibition during community consultation for the Planning Proposal.

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ATTACHMENT 1 – 7884 – 18 JULY 2016

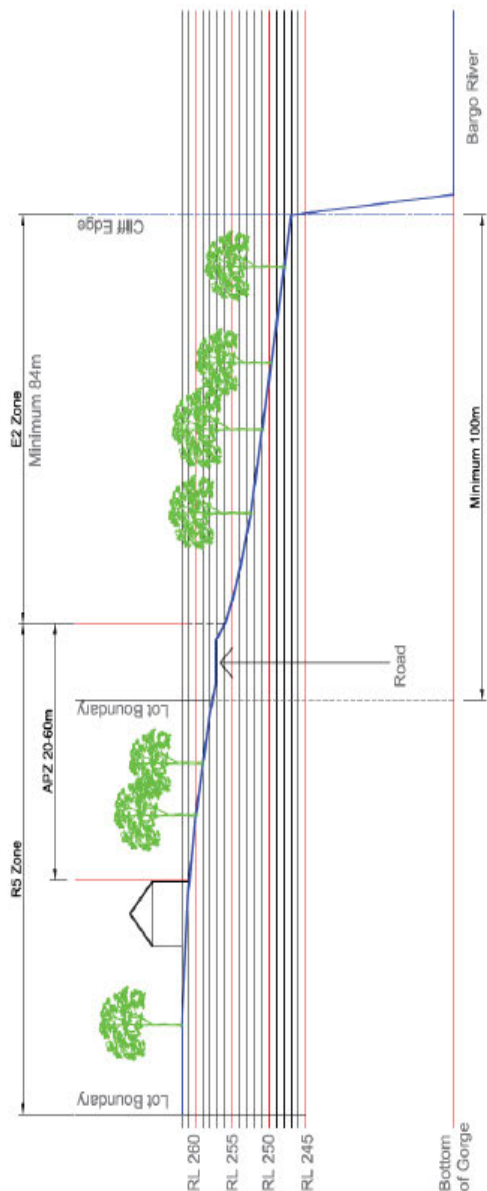


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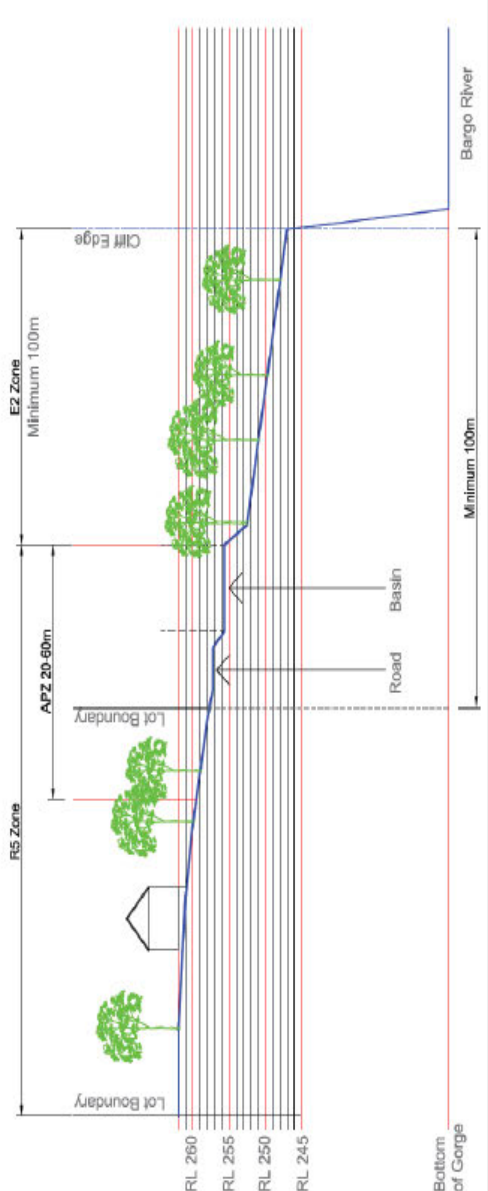
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ATTACHMENT 2 – 7884 – 18 JULY 2016

FIGURE 3 – TYPICAL SECTIONS FOR BARGO RIVER GORGE BUFFER (SOURCE, AE DESIGN PARTNERSHIP)



PICTURE 1 – SECTION AA



PICTURE 2 – SECTION BB

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ATTACHMENT 3 – 7884 – 18 JULY 2016

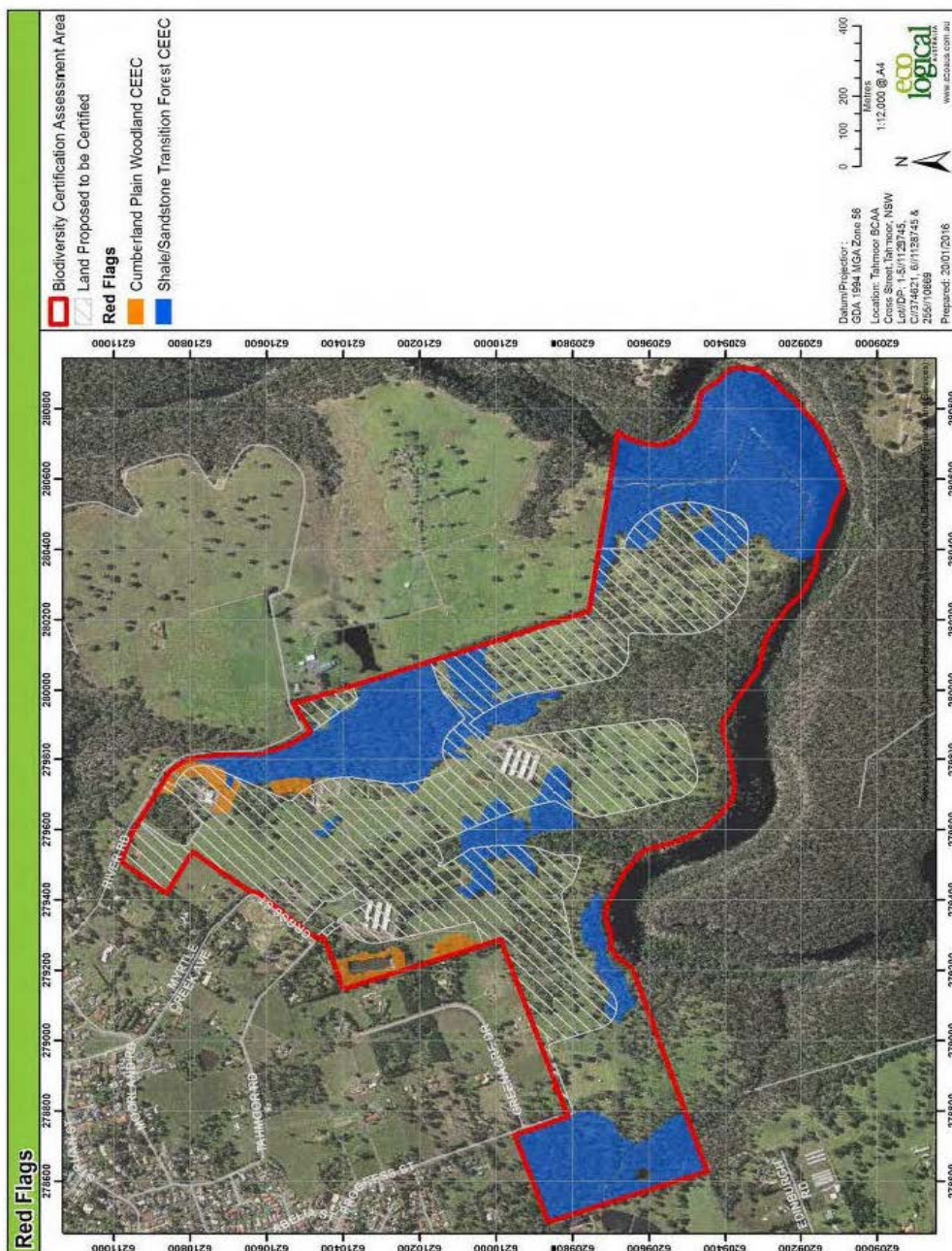


Figure 10: Red-flagged Vegetation

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