

# PLANNING SCHEME AMENDMENT REQUEST

## ADDRESS

Part CA 14L, Section C  
Parish of Bright

## PREPARED FOR

Department of Treasury

## DATE

29 March 2017



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## Revision Table

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## 1.0 Introduction

This planning report has been prepared on behalf of the Department of Treasury and Finance (DTF) who intend on disposing surplus Crown land located off Tyntynder Lane, Bright on behalf of the Department of Environment Land Water and Planning (DELWP). The land, the subject of this planning scheme amendment request, is located between Tyntynder Lane and the north west abutting pine plantation which is Crown Land licenced to Hancock Victoria Plantations (HVP). The subject land is currently zoned Public Conservation and Resource (PCRZ) under the provisions of the Alpine Planning Scheme.

The land is presently poorly managed and a transfer to private ownership would see an increase in management which will reduce the bushfire risk to the area and create further community resilience. It is proposed to sell parts of the land to existing adjoining landowners, to create contiguous parcels, and auction part of the land (the flat cleared land adjoining Tyntynder Lane). The area to be auctioned has been deemed suitable for residential use and is proposed to be zoned General Residential. The balance of the land is not suitable for residential development due to the bushfire risk and issues associated with drainage and flooding; therefore, it is proposed to rezone this land Farming. It is also proposed to apply a Section 173 Agreement on the lower land to be rezoned to protect the drainage line and flood function of the land. The agreement will also make future landowners aware that the surrounding land is used as a pine plantation and as such adverse amenity impacts may be expected through noise, hours of operation, dust and light emissions. The agreement will also impose vegetation management obligations on the landowner to create defendable space for the area proposed to be rezoned General Residential.

It is necessary to rezone the subject land prior to the disposal for private ownership pursuant to the Victorian Government Land Transactions Policy and Guidelines 2016 which states that “an agency must not offer land for sale to a private purchaser that is zoned for a public purpose under a planning scheme unless an exemption is obtained under section 2(d) of the Policy.” It is submitted that this rezoning application will ensure compliance with the policy and guidelines.

Negotiations have been occurring for a number of years with adjoining landowners for the disposal and transfer of this land. Part of the land will be transferred to the owner of 111 Delany Avenue, Bright, part of the land will be transferred to 113 Delany Avenue, Bright and part of the land (the flat land adjoining Tyntynder Lane, Bright) will be publicly auctioned. Details of the land disposal are provided in Figure 1.1 below.

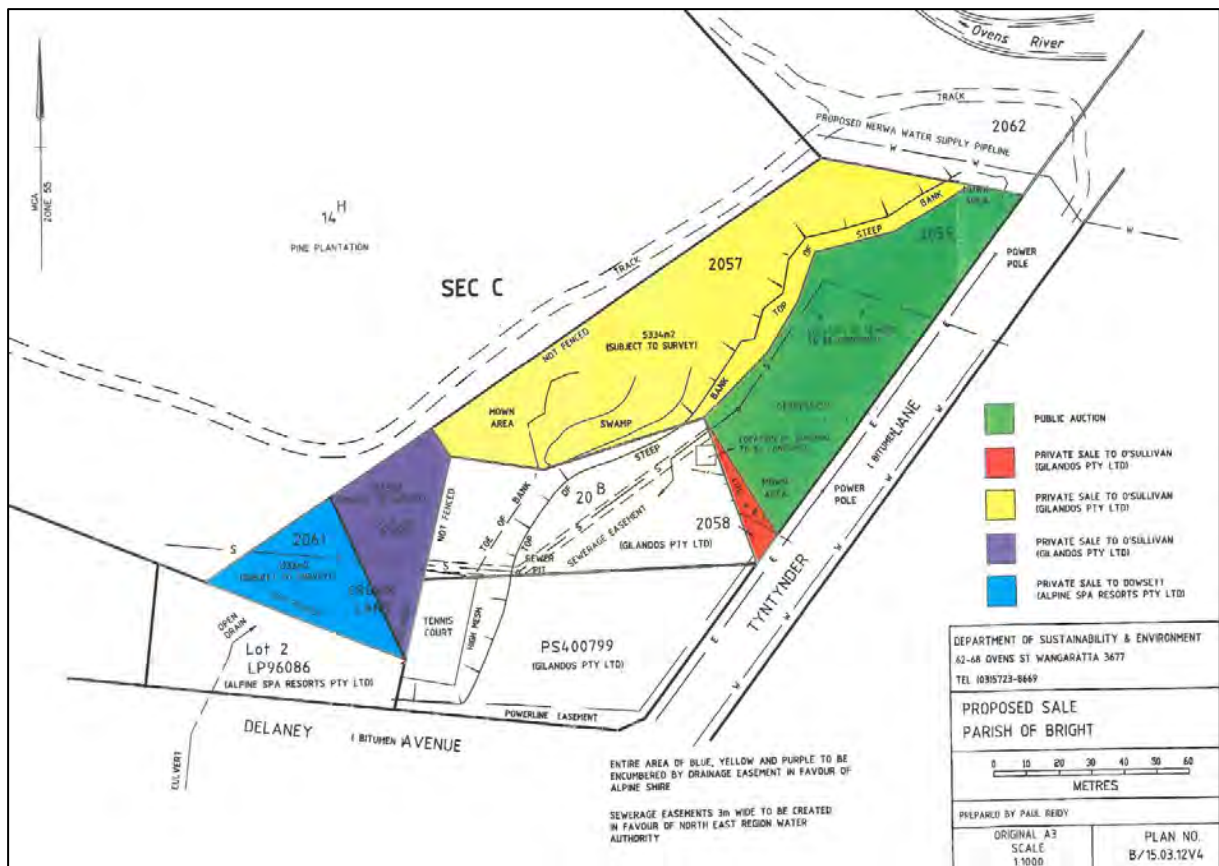


Figure 1.1: Proposed Land Transfer Details

In preparing this planning scheme amendment request Oxley+Co has had regard to the subject site and surrounding context, the history of the site and previous negotiations and consulted with the Alpine Shire Council and the CFA.

## 2.0 The Subject Land and Context

### 2.1 The Subject Site

The subject land comprises of the land shown in Figure 2.1 below. The formal details of the land are:

- Part Crown Allotment 14L, Section C, Parish of Bright.

The land comprises of two distinct landforms: an upper tier adjacent to Tyntynder Lane on the northern side of the Bright Chalet; and, a lower tier on the north west side of the Bright Chalet and north of the dwelling at 111 Delany Avenue, Bright. Overall the subject land comprises approximately 1.4 hectares and has a frontage to Tyntynder Lane of approximately 145m. The subject land is shown in Figure 2.1 below.



Figure 2.1: Subject Land

Part of the subject land is being informally managed by the adjoining owners (111 Delany Avenue and 113 Delany Avenue) and this occupation has assisted in keeping some of the regrowth and weeds to a minimum. Figures 2.2 and 2.3 show the area behind 111 Delany Avenue, Bright.



Figure 2.2: Land behind 111 Delany Avenue, Brighton



*Figure 2.3: Land behind 111 Delany Avenue, Bright (note the two shipping containers placed on the subject land)*

The land to the north of 111 Delany Avenue, Bright is relatively flat and comprises of maintained grasses and scattered trees; this part of the land also contains two shipping containers. Adjoining this part of the land to the north west is a pine plantation which is surrounded by a dirt road which can be accessed from Tyntynder Lane. 111 Delany Avenue, Bright runs at a similar grade to the road level and then drops significantly down to the lower tier at the property boundary (this can be seen in Figure 2.2 above). As a consequence of this topographical feature vehicle access to the land at the rear of 111 Delany Ave, Bright is not possible from the road. Vehicular access would only be obtainable by accessing the dirt road running around the perimeter of the pine plantation. It should be noted that this access provides practical access and not legal access as there is no road reserve covering the dirt road and the road is part of the HVP plantation licence.

The land at the rear of 111 Delany Avenue, Bright partly comprises a drainage outfall area which collects stormwater from the road and discharges to the lower land, partly the subject of this amendment, and into the Ovens River which is located approximately 200m north of this part of the land. It is important that this drainage outfall area is protected from development and kept free of obstacles to allow the uninterrupted flow of stormwater. Consequently, a Section 173 agreement has been prepared to protect this part of the land from development that would obstruct the drainage outfall area.

The remainder of the land can be described as two parts: the land to be transferred to the 113 Delany Avenue, Bright; and, the land to be auctioned privately.

The land to be transferred to the 113 Delany Avenue, Bright is partly occupied by the Bright Chalet as can be seen in Figure 2.4 below.





*Figure 2.4: Land behind the Bright Chalet partly developed into an adventure course*

The area to the north of the land shown in Figure 2.4 comprises of a small dam and dense weeds. It appears that some restoration works are occurring in this area to remove the weeds to a more manageable state. Figure 2.5 and 2.6 details the remaining area proposed to be transferred to 113 Delany Avenue, Bright.

The subject land is fully serviced with access to reticulated water, sewerage, telecommunications and existing roads.

A site context plan is provided as **Attachment A** to this report.



*Figure 2.5: Land proposed to be transferred to 113 Delany Avenue, Bright*



*Figure 2.6: Land Proposed to be Transferred to 113 Delany Avenue, Bright*

## 2.2 The Surrounding Context

The surrounding land comprises a mix of residential development, at a range of densities, pine plantation and public land.

### 2.2.1 North

To the north of the subject land is the Ovens River. Alongside both banks of the river, in this location, is the popular Cherry Walk trail. The Cherry Walk trail is a 3km loop that commences from Centenary Park in the centre of town. This section of river is also popular for kayaking and fishing.

### 2.2.1 South

Immediately south of the subject land is 111 Delany Ave, Bright and 113 Delany Ave, Bright. The owners of both of these properties seek to acquire part of the Crown land offered for sale and the subject of this rezoning application.

Located on 111 Delany Ave, Bright is a small brick veneer dwelling on a 2,042m<sup>2</sup> allotment – Figure 2.7 details the dwelling at 111 Delany Ave, Bright. The western part of the land, where the existing dwelling is located, is relatively flat and at the same level as the road. The remainder of the land falls to the north and comprises a large escarpment.



*Figure 2.7: 111 Delany Ave, Bright*

Located on 113 Delany Ave, Bright is the Bright Chalet (Figure 2.8). The chalet is located on approximately 3,977m<sup>2</sup> of land and comprises a number of lots (the rooms of the chalet are privately owned and managed by an owners corporation). The chalet also owns Crown Allotment 20B, Section C, Parish of Bright.



Figure 2.8: Bright Chalet

Further south, beyond Delany Ave, is a series of elongated Low Density Residential zoned allotments that extend up the hillside.

#### 2.2.1 East

East of the subject land on the other side of Tyntynder Lane is General Residential zoned land that comprises a mix of residential development at a range of densities. This includes two developments that are managed by an owners corporation with small lots and attached, smaller, dwellings.

#### 2.2.1 East

To the east of the subject land is a pine plantation which is managed by Hancock Victoria Plantations (HVP). Separating the subject land and the pine plantation is an 8m wide gravel road – see Figure 2.9 below.



*Figure 2.9: Pine Plantation and Road to the West*

### 3.0 Existing Planning Controls

#### 3.1 Zone

The subject land is currently zoned Public Conservation and Resource (PCRZ) under the Alpine Planning Scheme.

The purpose of the PCRZ is:

*To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

*To protect and conserve the natural environment and natural processes for their historic, scientific, landscape, habitat or cultural values.*

*To provide facilities which assist in public education and interpretation of the natural environment with minimal degradation of the natural environment or natural processes.*

*To provide for appropriate resource based uses.*

A zoning plan of the subject site and surrounds is provided in Figure 3.1 below.



Figure 3.1: Zoning Plan

The surrounding zoning consists of General Residential Zone to the east and extends to Racecourse Road. On the east side of Racecourse Road is a pine plantation which is zoned Farming. To the south of the subject land are the two lots which will acquire part of the land to be disposed; this land is zoned General Residential. Crown Allotment 20B, Section C, Parish of Bright sits between 113 Delany Avenue, Bright and the subject land. This land is owned by Gilandos Pty Ltd, however, it is zoned Public Conservation and Resource. The zoning of this parcel should be amended as privately owned land should not be affected by a public zone. We have discussed this issue with Council who advised that they are aware of this anomaly and it will be rectified in a future planning scheme amendment.

Further south, Delany Avenue is zoned Road Zone Category 1 and the land to the south of the road is zoned Low Density Residential.

The land to the north is zoned Public Conservation and Resource and this zoning follows the Ovens River and Crown land, that is not under pine plantation.

The land to the west, the pine plantation, is zoned Farming consistent with other pine plantations within the Alpine Shire.

### 3.2 Overlays

The subject land, and indeed the whole of Bright, is covered by the Bushfire Management Overlay (BMO). The purpose of the BMO is:

*To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

*To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.*

*To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.*

*To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.*

The BMO triggers a planning permit for the subdivision of land and the development of the land for a dwelling, amongst other things. An application to develop or subdivide the land must meet the requirements of Clause 52.47. Clause 52.47, *Planning for Bushfire*,



## 4.0 The Proposed Amendment

The application proposes to amend the Alpine Planning Scheme by:

- Rezoning part of the subject land from the Public Conservation and Resource Zone (PCRZ) to a Farming Zone (FZ); and,
- Rezoning part of the subject land from the PCRZ to a General Residential Zone (GRZ).

### 4.1 Why is the Amendment Required?

The proposed amendment is necessary to facilitate the sale of the land for private ownership as the land has been deemed surplus by DELWP. Two of the adjoining landowners (111 Delany Avenue, Bright and 113 Delany Avenue, Bright) have expressed interest to the DTF for the acquisition of part of the subject land. Part of the land, the land that fronts Tyntynder Lane, has been identified as being suitable for residential purposes and will be offered for public sale by auction.

The land to be sold to the two adjoining landowners has limited use due to its environmental characteristics and part use for draining purposes and therefore its best and highest use is open space used in conjunction with the adjoining uses; this part of the land is not suitable for buildings or residential use and hence the reason why the Farming Zone is proposed. The proposed Farming Zone is also consistent with the west abutting land which is also zoned Farming.

The *Victorian Government Land Transactions Policy and Guidelines 2016* sets out the requirements that the DTF must follow when disposing of land. The relevant provisions are:

- (i) *must not sell (grant a lease or an interest in) any land at a price which is less than the current market (or rental) value of the land as determined by Valuer-General Victoria (VGV);*
- (ii) *must not purchase (acquire a lease or an interest in land) any land at a price which is greater than the current market (or rental) value of the land as determined by VGV;*
- (iii) *must not sell any land without a public process (except through the first right of refusal process outlined in the Victorian Government Landholding Policy and Guidelines);*
- (iv) *prior to offering land for sale by a public process, must have in place the most appropriate zoning (and other relevant planning provisions) so that the land can be sold on the basis of its highest and best use;*
- (v) *must not grant a lease of land (except to a government agency) which contains an option to purchase ...*

In accordance with the policy stated at (iv) the subject land is required to be rezoned so that the land can be sold on the basis of its highest and best use.

## 4.2 Proposed Planning Scheme Amendment

### 4.2.1 Zoning

The land has two distinct landforms: the land on the lower tier which forms part of the Ovens River floodplain; and, the upper tier which is located to the north east of the 113 Delany Avenue, Bright and on the north western side of Tyntynder Lane. The lower tier is not suitable for residential development given the flood characteristics and its close proximity to the adjoining pine plantation (it has an insufficient area for defensible space required by the Bushfire Management Overlay). Therefore, this part of the land is proposed to be rezoned Farming to limit its future use.

The upper tier is relatively cleared and flat and is not subject to inundation. The land is setback sufficiently from the adjoining pine plantation to the north west and defensible space can be accommodated between the upper tier and the pine plantation. It is considered that residential development is suitable on this part of the land and therefore the GRZ is considered the most appropriate zone for this part of the land.

Figure 4.1 shows the area of land proposed to be rezoned FZ and GRZ.

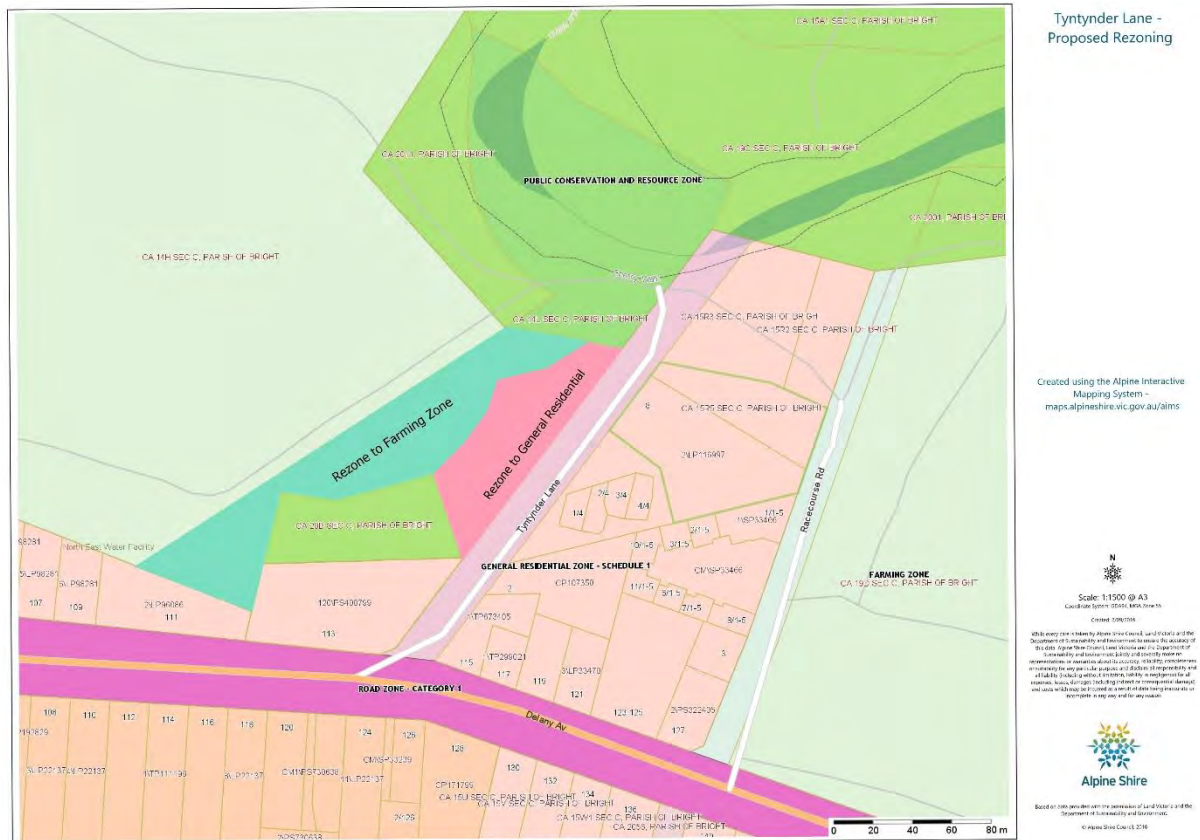


Figure 4.1: Proposed Zoning Plan

The purpose of the Farming Zone is:

*To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

*To provide for the use of land for agriculture.*

*To encourage the retention of productive agricultural land.*

*To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.*

*To encourage the retention of employment and population to support rural communities.*

*To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*

Under the provisions of the Farming Zone a dwelling is permitted as-of-right only where the land is greater than 40 hectares. In this instance the subject land to be rezoned will be less than 40 hectares and therefore a planning permit will be required for a dwelling. The Farming Zone would discourage a dwelling in this location as it would be extremely difficult meet the purpose and decision guidelines of the Farming Zone. Further, Council's local policy at Clause 22.03-2 strongly discourages a dwelling where it is not associated with agriculture. It is important that a dwelling(s) be discouraged on the lower tier due to its proximity to the pine plantation and as it is subject to inundation. It is important to select a zone for the lower tier that discourages dwellings due to its environmental issues. Therefore, it is submitted that the Farming Zone is the appropriate zone for the subject land and this zone is also consistent with the zoning of the adjoining pine plantation.

The upper tier is proposed to be rezoned General Residential, the purpose of the zone is:

*To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

*To encourage development that respects the neighbourhood character of the area.*

*To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.*

*To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.*

The purpose of the zone is suitable to the upper tier of the subject land as it is suitable for residential development. Under the provisions of the zone a single dwelling is as-of-right and the construction of two or more dwellings requires a planning permit. The subdivision of land also requires a planning permit and there is no minimum lot size. Having regard to the site constraints and opportunities we submit that there is a potential for two to three lots to be created on the upper tier to be rezoned General Residential. The General Residential Zone is the appropriate zone to be implemented to encourage future development that responds to the site constraints and respects the character of the area.

#### 4.2.2 Bushfire Management Overlay

The subject land is covered by the BMO, as is the whole of the Bright township. It is not proposed to alter the BMO; however, it is important to consider the BMO especially for the land proposed to be rezoned GRZ to ensure that residential development is possible in the future.

Clause 44.06-1 of the BMO states that a planning permit is required to subdivide the land. An application to subdivide land must meet the requirements of Clause 52.47, *Planning for Bushfire*. Clause 52.47-2.4 is applicable to the subdivision of land.

Approved Measure 5.2 states that each proposed lot be provided with a building envelope that complies with Approved Measure 2.2 and provides defensible space in accordance with Columns A, B or C of Table 2 to Clause 52.47-3. The defensible space must be provided wholly within the boundaries of the proposed subdivision. It is important to note that the provision requires defensible space within the boundaries of the proposed subdivision; it is not necessary for each lot to contain the defensible space. As such, it is proposed to utilise part of the land on the lower tier as the defensible space for the land to be rezoned GRZ adjoining Tyntynder Lane.

The defensible space required, based on the pine plantation containing Forest vegetation and the land consisting of a downslope of 0-5 degrees, would be 32m for a BAL 29. The land to be rezoned GRZ has the potential to be subdivided into two or three allotments and therefore a BAL 12.5 or BAL 19 construction standard could be applied to the land. However, in our experience it is best to construct buildings to a BAL 29 on the edge of the Bright township where there is an interface with vegetation.

Figure 4.2 shows the area required for defensible space.



Figure 4.2: Defensible Space Requirement

#### 4.2.3 Section 173 Agreement

It is proposed to enter into a Section 173 Agreement to:

- Protect the drainage function of the land at the rear of 111 Delany Ave, Bright;
- To prohibit the construction of buildings on the lower tier of the subject land;
- To require the establishment and maintenance of the 32m defendable space as shown in Figure 4.2; and,
- Inform future owners of the adjoining forestry operations.

The Section 173 Agreement has been discussed with Council and the CFA and the restrictions proposed satisfy the requirements of both parties.

#### 4.3 Consultation

During the preparation of this rezoning proposal there has been consultation with both the Alpine Shire Council and the CFA. The Alpine Shire Council provided advice that the land at the rear of 111 Delany Avenue, Bright is a drainage outfall point for a drainage infrastructure that exists under Delany Ave and directs water, via an underground drain, to the east of the house at 111 Delany Ave, Bright to the land at the rear of 111 Delany Ave, Bright. The Alpine Shire Council highlighted the importance of this function of the land and need to protect it into the future. The most appropriate way to protect drainage is through an easement and a Section 173 Agreement. The easement will be created once the land has been subdivided to facilitate the transfer of land to the adjoining landowners.

The CFA were also consulted during the process to ensure that the defendable space proposal was acceptable and that the land adjoining Tyntynder Lane could be developed once rezoned to GRZ. The CFA response was prepared by Darren Viney, Manger Community Safety – North East Region, and was received on 24 October 2016, the advice stated:

- The standard conditions for defendable space would be appropriate as part as a Section 173 Agreement;
- The vegetation management must be undertaken prior to development occurring on any lots;
- The vegetation management must be undertaken regularly and specifically before the start of and during the Declared Fire Danger Period; and,
- A vegetation management plan must be prepared to identify the vegetation required to be removed and retained – the plan should also specify the canopy vegetation to be retained.

These requirements will be provided for within the Section 173 Agreement and shall be circulated to the CFA prior to entering into the agreement.

## 5.0 Is the Proposed Amendment Appropriate?

The guidelines for the sale of Crown Land require that, before the land is sold, that it is appropriately zoned for future use. The current PCRZ is not an appropriate zone as its purpose is for the protection and conservation of the environment. Further, the PCRZ indicates that the land is publicly owned and with the proposal to sell the land for private ownership it is necessary to rezone the land.

As discussed, there are two distinct landforms within the subject land and these landforms require the application of different zones to protect environmental characteristics, assets and guide future development.

The subject land is located within the township of Bright approximately 1.5kms east of the Central Business District (CBD). The subject land is surrounded by existing residential development to the west, east and south. The land to the north and north west is used as a pine plantation and is part of the Ovens River riparian environment. The residential development surrounding the subject land is varied in character and density. The land to the south is a lower density due to the slope of the land whereas the land to the east and west comprise of more traditional residential development with lots vary in size from 220m<sup>2</sup> to 2,200m<sup>2</sup>. The site is well located within an existing urban settlement within close proximity to social and physical infrastructure and is therefore suitable for residential development on the upper tier of the subject land. The lower tier is not suitable for residential development due to the extent of flooding from the Ovens River, the bushfire risk and the drainage function of part of the land; this land is proposed to be rezoned to FZ and is suitable for use in conjunction with the adjoining land uses.

### 5.1 Drainage

The land at the rear of 111 Delany Avenue, Bright is used for drainage as an outfall to drainage infrastructure which captures water from Delany Avenue and passes it underneath the road, to the east of the house on 111 Delany Avenue and discharges it to the area at the rear of 111 Delany Avenue. The water then dissipates overland to the Ovens River or is permeated through the river gravel into the groundwater system.

Council has indicated that there are no plans to change this drainage system and therefore it must be protected from inappropriate development that could impact on the drainage function or development which could be impacted by drainage.

Due to the drainage function, and flood impacts, the lower tier of the subject land is not suitable for development. Therefore, it is proposed to rezone this part of the land to FZ and impose a Section 173 Agreement to prevent development, to maintain the drainage function and to ensure that the land is maintained for bushfire prevention.

## 5.2 Bushfire Risk

The subject land is located to the east of an existing pine plantation. The pine plantation is classified as Forest vegetation and presents a bushfire risk to the subject land. In assessing whether the subject land is suitable for future development it was firstly necessary to consider the bushfire risk and the provisions of the BMO and Clause 52.47 in consultation with the CFA.

Due to the location of the land at the periphery of the Bright township with an interface to forest vegetation it was considered necessary to apply a precautionary approach and impose a higher BAL construction standard. As such, we have reviewed development on similarly located land with the Bright township and identified that these new dwellings are being constructed to a BAL 29. Despite the land being able to provide defendable space for a BAL 19 (43m) it was considered more appropriate to apply a BAL 29 (32m).

The defendable space required to achieve a BAL 29 construction standard for future dwellings on the land proposed to be rezoned to GRZ would be located on the land proposed to be rezoned to FZ and transferred to 113 Delany Avenue, Bright. The BMO and Clause 52.47 have provision for this scenario as that land would be part of the subdivision that creates the lots to be transferred and auctioned. It was then necessary to discuss the appropriate tool for the implementation of the establishment and maintenance of the defendable space. In these circumstances where the land is to be transferred to adjoining landowners it was considered appropriate that a Section 173 Agreement be imposed to, amongst other things, establish and maintain the defendable space. It was thought that this would suit the needs of the Bright Chalet as they would like to clean-up the lower tier of weeds and vermin to establish open parklands for the chalet guests. The lower tier comprises largely of woody weeds, with scattered native vegetation canopy trees, and the removal of the woody weeds would largely create the defendable space required. Once these weeds are removed, and the land is smoothed, grass is able to be established and then maintained with a ride-on mower. It is also worth noting that if the lower tier was not flood prone or did not provide a drainage function then this land would still be unsuitable for residential development as it does not have sufficient area to provide defendable space onsite. The proposed 32m defendable space is the minimum allowable in these circumstances.

In practical sense, the land identified for the defendable space is able to be established and maintained for bushfire protection. The removal of the woody weeds will remove an existing bushfire hazard that presents to the land to the east of the lower tier. The creation, and maintenance, of defendable space will enhance community resilience to bushfire in this area. With the establishment, and maintenance, of defendable space the upper tier of the subject land is suitable for residential development and with the addition of access and water requirements for the future dwellings the bushfire risk will be minimised for future occupants.

Overall, the bushfire risk has been considered in the rezoning of the subject land and the upper tier of the subject land is suitable for residential development with bushfire risks minimised through the establishment of 32m of defendable space to the west of the land to be rezoned GRZ.

## 6.0 Strategic Considerations

Minister's Direction No. 11 Strategic Assessment Guidelines require a planning authority to evaluate and discuss how an amendment addresses a number of strategic considerations.

Under Planning Practice Note No. 46 (DTPLI, July 2014), the proposed amendment requires a full assessment against the Strategic Assessment Guidelines.

The full assessment is provided in this Section of the report.

### 6.1 Why is an Amendment Required?

The subject land is Crown land and the DTF has determined that the land is surplus to its needs. The land is located between and existing pine plantation (west) and residential area (east). The land is part low lying, forming part of the Ovens River floodplain, and part high ground. The low-lying area is best used and managed as part of the adjoining properties. Therefore, the DTF has negotiated the sale of the low-lying land to 111 and 113 Delany Avenue, Bright. The low-lying land is not suitable for development and its best and highest use is in conjunction with the adjoining uses. The higher part of the subject land, the part that fronts Tyntynder Lane, will be offered for sale by public auction – this land is suitable for residential development.

As required by the Victorian Government Land Transactions Policy and Guidelines 2016, the most appropriate zoning of the land must be established and put in place before the sale of the land, as it is inappropriate to retain the land within a Public Conservation and Resource Zone. To comply with this requirement, an amendment to the Alpine Planning Scheme is required.

Having regard to the future use of the land it is proposed to rezone the low-lying land to Farming Zone and the higher part of the land to General Residential Zone.

To ensure that appropriate development outcomes are achieved on the subject land it is proposed to enter into a Section 173 Agreement to protect the drainage function of the low-lying land, to establish and maintain bushfire defendable space and to prevent the construction of buildings on the low-lying land.

Overall, the proposed planning scheme amendment is an acceptable outcome that will ensure that a currently underutilised and unmanaged parcel of land is managed into the future. The management of the land will reduce the bushfire risk to the community and the development of part of the land for residential development will add to the diversity of housing in Bright which has a limited amount of residential land available. The residential use of the land is appropriate having regard to the land being located on the edge of the Bright township and having good access to social and physical infrastructure.



## 6.2 Does the Amendment Implement the Objectives of Planning and Address any Environmental, Social and Economic Effects?

### 6.2.1 Environmental Effects

The subject land contains extensive thick weeds which are especially prevalent on the lower tier. The land does contain some scattered mature eucalypts providing canopy cover across parts of the land. The proposed amendment will facilitate the removal of the weeds through the implementation of the defensible space required for the proposed General Residential Zone land. The mature eucalypts will not be impacted through the establishment of the defensible space; the advice sought by the CFA is that these trees can remain providing the weedy understorey is removed.

The lower tier of the subject land is part of the Ovens River floodplain. Therefore, it is proposed to provide a restriction on the title, in the form of a Section 173 Agreement, to prevent the development of buildings on this land to ensure that there are no impacts on the flood capacity and flows in this area.

Overall, it is submitted that the proposed planning scheme amendment will not impact on the environment.

### 6.2.2 Social Effects

The proposed amendment will have positive social effects on the community of Bright. Firstly, the amendment will facilitate the removal of a bushfire risk and will require this land to be managed in perpetuity. The removal of the bushfire risk and maintenance of the defensible space will create community resilience.

The proposed amendment will also create additional residential land which is at a critical shortage in Bright. The rezoning of part of the land to General Residential Zone will create additional housing opportunities which are needed in the Bright township.

### 6.2.3 Economic Effects

The proposed amendment will have positive economic effects. The rezoning will support appropriate infill development consistent with both State and local policy. Both sites are located within an established residential area and will maximise the use of existing infrastructure.

### 6.3 Does the Amendment Address Relevant Bushfire Risk?

The bushfire risk has been discussed in Section 5.2 of this report. In summary, the following is submitted in regards to bushfire risk:

- The bushfire risk is located to the north west of the subject land. A pine plantation (forest category vegetation) is located downslope of the subject land in a north westerly direction.
- The present state of the land poses an unacceptable risk to human life and property as a result of the extent of woody weeds located with the subject land proposed to be rezoned.
- In rezoning part of the land to General Residential Zone we have assessed whether buildings could be constructed on this land in accordance with the requirements of the BMO and Clause 52.47. Further, we have sought the advice from the CFA.
- With the establishment, and maintenance, of 32m of defendable space, between the pine plantation and the land to be rezoned to General Residential, development could be permitted on the land to be rezoned for residential purposes.
- The defendable space would, largely, be located on the land to be transferred to 113 Delany Avenue, Bright and therefore a Section 173 Agreement would be entered into to protect the defendable space and provide an ongoing obligation to the owner(s) of 113 Delany Avenue, Bright for the maintenance of the defendable space.

Overall, the proposed amendment is acceptable from a bushfire risk point of view as it removes an existing bushfire risk, imposes obligations for the establishment and maintenance of defendable space and future dwellings would need to be constructed to a BAL 29 construction standard. This high BAL and defendable space will minimise the risk to human life and property as a result of bushfire. The CFA has considered the proposal and provided written consent subject to the Section 173 Agreement.

### 6.4 Does the Amendment Comply with the Requirements of any Minister's Direction Applicable to the Amendment?

Ministerial Direction No.11 (Strategic Assessment of Amendments) is the relevant Minister's Direction with regard to the proposed amendment. This section of the report outlines the proposed amendment's compliance with the Strategic Assessment Guidelines. The amendment documents also comply with the Ministerial Direction on the Form and Content of Planning Schemes.

## 6.5 Does the Amendment Support or Implement the State Planning Policy Framework?

The following provisions of the State Planning Policy Framework (SPPF) are relevant in consideration of this planning scheme amendment:

- Clause 10, Operation of the State Planning Policy Framework;
- Clause 11, Settlement;
- Clause 12, Environmental and Landscape Values;
- Clause 13, Environmental Risks; and,
- Clause 16, Housing.

Clause 10 of the Alpine Planning Scheme sets out the objectives of planning in Victoria as stated in Section 4 of the Planning and Environment Act 1987. The proposed amendment facilitates the objectives of planning through the orderly development of the land and the facilitation of development in accordance with the objectives. Clause 10 also states that the SPPF must be taken into consideration when preparing amendments to the scheme.

Clause 11 of the Alpine Planning Scheme states that planning is to respond to the needs of existing communities through the provision of zoned and serviced land for housing. The proposed development will facilitate this outcome by providing additional land for residential purposes where residential land is in short supply. Clause 11 also states that in planning for urban growth, natural hazards and environmental quality must be considered. In this instance, it is proposed to rezone part of the land to Farming to protect the floodplain and to create a defendable space area for the land proposed to be rezoned General Residential.

Clause 11.05-4, Regional planning strategies and principles, directs growth to locations with existing infrastructure and requires that a sufficient supply of residential land is available. The proposed rezoning is consistent with these strategies as the land is well serviced by existing infrastructure and the township of Bright requires additional residential land.

The Hume Regional Growth Plan is referenced at Clause 11.10 of the State Planning Policy Framework. Clause 11.10 identifies the township of Bright as an existing urban settlement where growth a development is to be supported (Clause 11.10-3). The Hume Regional Growth Plan (Map 6 of Clause 11) also identifies this strategic outcome. Figure 6.1 is an extract of the Hume Regional Growth Plan.



**SETTLEMENT NETWORK**

- Major growth location
- Medium to high growth location
- Significant change location
- Designated identified growth centre in Plan Melbourne 2017
- Locations identified as 'Regional Cities' in a statewide context

**OTHER KEY URBAN SETTLEMENTS**

Plan Melbourne (Chapter 5 – State of Cities) identifies Broadford, Kilmore and Gaymer as potential towns with potential to attract housing and population growth out of Melbourne.

- Cross-border settlements
- Support growth in these urban locations, and lifestyle opportunities
- Towns and areas in the Hume Region within Melbourne's Urban Growth Boundary
- Settlements external to the region

**URBAN GROWTH AND HINTERLAND INFLUENCE**

- Hinterland influence
- Areas within 100 km of central Melbourne

**CONNECTIVITY**

- National transport corridor (road and rail)
- Other major transport link
- Improved future transport link
- Freight and logistics precinct
- Melbourne metropolitan growth into the Hume Region

**ECONOMIC DEVELOPMENT**

- Strategic agricultural land

**ENVIRONMENT**

- Alpine resort
- Areas containing high value terrestrial habitat
- Public land
- Key water and tourism assets
- Murray River corridor

Figure 6.1: Hume Regional Growth Plan

The lower tier of the subject land is located within the Ovens River floodplain and therefore Clause 12.05, Rivers, and Clause 13.02, Floodplains, are relevant in consideration of this amendment. The State policy seeks to ensure that development does not compromise the river's natural capacity to manage flood flow. We propose to impose a restriction on the lower tier of the land to prevent the construction of buildings to protect the flood capacity and function of this part of the land. Further, the requirement to manage part of the land for defensible space will open up the land improving flood flows across the land.

Clause 13.05 is the State policy for bushfire and its objective is to assist strengthen community resilience to bushfire. This amendment has considered the bushfire risks and proposes a strategy to minimise the risk to the land proposed to be rezoned General Residential and increase community resilience. The creation of a defensible space between the existing pine plantation to the north west and the land proposed to be rezoned General Residential will achieve two outcomes:

1. It removes an existing bushfire risk from the edge of the Bright township. Part of the lower tier and embankment contains extensive woody weeds which could be ignited from a bushfire which is travelling in a south east direction through the existing pine plantation to the north west. The management of this vegetation will provide some protection from a bushfire emanating, or travelling, through the pine plantation. The advice of the CFA is that the native trees can be retained, however, the understorey will be required to be removed.
2. The defensible space will provide a level of protection to the land proposed to be rezoned General Residential. The defensible space required is based on adjoining Forest vegetation with a downslope of 0-5 degrees and a BAL 29 construction standard for future buildings. The CFA has reviewed this approach and agreed that the implementation of these measures will reduce the bushfire risk to future occupants and buildings of the land proposed on the General Residential land.

Clause 16, Housing, requires that new housing should have access to services and have access to activity centres, public transport, schools and open space. The subject land is well located on the edge of the Bright township within close proximity to services. The following services are located within close proximity to the subject land:

- The Bright CBD is located approximately 1.5kms east where limited public transport options are available;
- The Bright P12 College is located approximately 2kms south west;
- The Bright hospital is located approximately 1.5kms south west;
- The Bright CFA and SES are located approximately 1.2kms south west; and,
- Public open space is located immediately adjoining the land to the north west and north.

## 6.6 Does the Amendment Support or Implement the Local Planning Policy Framework?

Within the Municipal Strategic Statement (MSS) at Clause 21.03-1 it identifies the critical shortage of residential land available in Bright with only 3 years of supply remaining. Orderly planning requires that there is a sufficient supply of land available for residential growth. Indeed, a specific strategy within the MSS is that there is a 15 year supply of residential land available in Bright. This pressure has somewhat been relieved through the rezoning of 40 hectares of land from Farming Zone to General Residential on the western side of the township, however, additional land is required to meet the demands. The proposal will only rezone a very small piece of land to General Residential, yielding two to three lots, however, every little bit assists in providing additional residential land for Bright.

The MSS highlights the bushfire risk that exists across the municipality. The amendment has demonstrated that an appropriate response to the bushfire risk can be implemented, to the satisfaction of the CFA. This response is consistent with the strategies of the MSS.

The MSS also highlights the significant flood impacts that the municipality is confronted with. The strategies of Clause 21.04-4 seek to prevent inappropriate development in areas subject to flooding. The Section 173 Agreement preventing development on the lower tier will be consistent with this strategy.

The proposed amendment is consistent with the strategies for Bright as stated at Clause 21.07-1. The relevant strategies require that development does not obstruct flood waters, that future development takes into account bushfire risk and that the CFA is consulted to ensure future development mitigates bushfire risk.

Overall, it is considered that the proposed amendment is consistent with both the SPPF and the Local Planning Policy Framework including the MSS.

## 6.7 Does the Amendment Make Proper Use of the Victoria Planning Provisions?

The land comprises of two distinct land forms: a lower tier within the Ovens River floodplain; and, an upper tier. Given the differences in the landform the two parts need to be managed differently into the future. The lower tier needs protection from inappropriate development and the vegetation requires management to minimise bushfire risk and the upper tier is suitable for residential use. Therefore, two zones are proposed to be applied to reflect the different land management regimes required. The lower tier is not suitable for development and is required to be kept free of obstructions to minimise impacts on the floodplain, therefore, the Farming Zone has been deemed the most suitable zone for this area. The purpose of the Farming Zone is:

*To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

*To provide for the use of land for agriculture.*

*To encourage the retention of productive agricultural land.*

*To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.*

*To encourage the retention of employment and population to support rural communities.*

*To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*

The purposes of the Farming Zone are deemed appropriate for the lower tier of the land as it allows the grazing of animals and the encourages sustainable land management practices. The Section 1 uses of the zone are also deemed suitable for the subject land, these include:

- Animal keeping;
- Agriculture; and,
- Informal outdoor recreation.

To provide further protection on the lower tier it is necessary to impose a Section 173 Agreement to prevent development on this land and require the establishment and maintenance of defensible space – there are no tools within the Victoria Planning Provisions that would achieve these outcomes.

The General Residential Zone is deemed appropriate for the upper tier of the land as it is consistent with the surrounding residential zoning and facilitates the development of the land for residential purposes. The purpose of the General Residential Zone is:

*To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

*To encourage development that respects the neighbourhood character of the area.*

*To implement neighbourhood character policy and adopted neighbourhood character guidelines.*

*To provide a diversity of housing types and moderate housing growth in locations offering good access to services and transport.*

*To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.*

The General Residential Zone is the most appropriate zone to facilitate residential development of the upper tier of the land. The provisions of the LPPF, MSS, BMO and Clause 56 will then provide guidance on the design of future development.

#### 6.8 How does the Amendment Address the Views of Relevant Agencies?

As previously detailed in this report the views of the CFA have been considered in the preparation of this amendment. The consideration of the bushfire risk is fundamental to the proposed rezoning of the upper tier to General Residential Zone. The mitigation measures proposed have been discussed with the CFA and they have agreed that these measures are appropriate for the site having regard to the local bushfire risk and the future development outcomes likely.

The proposed amendment has also been discussed with the Alpine Shire Council (Clare Cowdrey, Strategic Planner). The initial concerns of Council were that the land proposed to be rezoned General Residential may not be able to developed in the future due to the provisions of the BMO. These concerns have been addressed through the consultation with the CFA and demonstration that appropriate mitigation measures can be implemented to mitigate the bushfire risks.

Council also highlighted the need to prevent buildings on the lower tier and therefore support the use of a Section 173 Agreement to implement this control.

Overall, Council is supportive of the amendment now that bushfire issues have been addressed that the lower tier will be protected from development.

#### 6.9 Does the Amendment Address the Requirements of the Transport Integration Act 2010?

This amendment will not create an impact on the existing transport system as defined by Section 3 of the *Transport Integration Act 2010*.

#### 6.10 What Impact will the New Amendment Have on the Resource Administrative Costs of the Responsible Authority?

It is expected that the new planning scheme provisions will have a limited impact on the resource and administrative costs of the Alpine Shire Council as the amendment will be undertaken under the Fast Track Government Land Service.



## 7.0 Conclusion

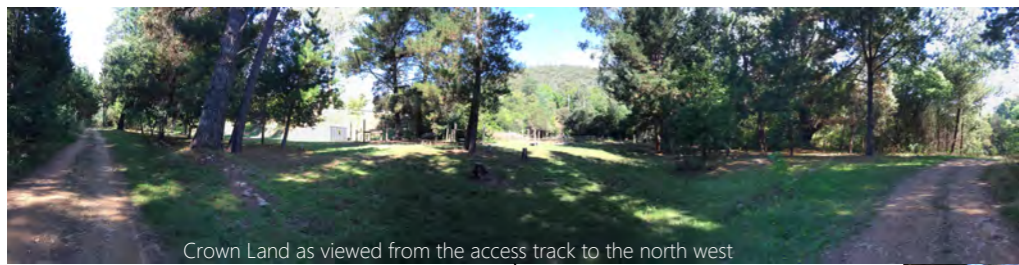
The DTF have engaged Oxley+Co to prepare a planning scheme amendment to support the rezoning of Crown land (part Crown Allotment 14L, Section C, Parish of Bright) from Public Conservation and Resource Zone to Farming Zone and General Residential Zone.

Oxley+Co have undertaken an assessment of the subject site and surrounds, reviewed the provisions of the Alpine Planning Scheme and consulted with the CFA and the Alpine Shire Council. Having considered the proposed amendment, we conclude:

- The subject land is located on north eastern fringe of the Bright township. It is located within close proximity to social and physical infrastructure and has excellent access to the Bright CBD.
- The subject land comprises of two distinct landforms: a lower tier which is located in the Ovens River floodplain; and, an upper tier adjoining Tyntynder Lane. The different environmental characteristics of the land will require different land management regimes into the future.
- The subject land is poorly managed at present and comprises, in areas, dense woody weeds.
- The current state of the land presents a bushfire risk to the adjoining residential area.
- The lower tier of the land is not suitable for residential development as it is located within the floodplain and part of the land is an outfall of a drain that goes under Delany Avenue and runs along the eastern side of 111 Delany Avenue, Bright.
- To protect the flood and drainage functions of the lower tier a Section 173 Agreement will be placed on the land to prevent further development.
- The upper tier of the land is suitable for residential development providing suitable bushfire risk mitigation measures can be implemented. The CFA have been consulted and it has been agreed that an appropriate amount of defendable space can be provided on the site, however, it is required to be protected through a Section 173 Agreement as the defendable space will be located, in part, on land not in the same ownership, however, it will be within the land being subdivided.
- Given the environmental characteristics of the lower tier the Farming Zone is deemed the most appropriate zone for the land in conjunction with a Section 173 Agreement.
- The upper tier is suitable for residential development and the General Residential Zone is deemed the most appropriate zone for this part of the land.
- The amendment implements the relevant provisions of the SPPF and LPPF by considering the environmental characteristics of the land and providing additional land for residential development for the Bright township.
- The amendment provides for the orderly, future, development and management of the land.

Overall, the amendment is well supported by the Alpine Planning Scheme and the amendment respects the environmental characteristics of the land. As such, it is respectfully requested that the Minister considers this proposed amendment and rezones the land to Farming Zone and General Residential Zone.

## ATTACHMENT A – SITE CONTEXT PLAN



Crown Land as viewed from the access track to the north west



Rear of the Bright Chalet with escarpment visible

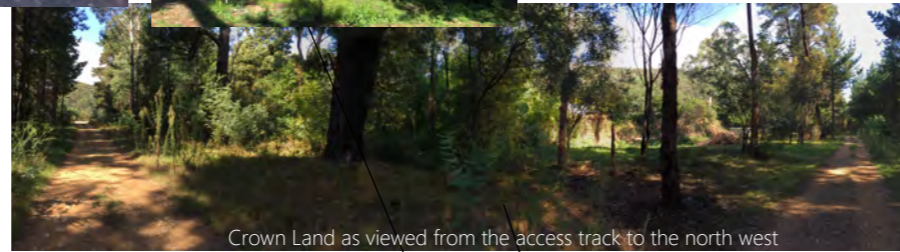
Top of bank



Subject Crown Land to the left of access road



Subject Crown Land with pine trees visible



Crown Land as viewed from the access track to the north west

Lower tier comprising of weeds and pine trees



Flat land looking north east



Rear of the Bright Chalet with escarpment visible behind containers



Flat land looking south west



Crown Land rear of 111 Delany Avenue looking south

Top of bank

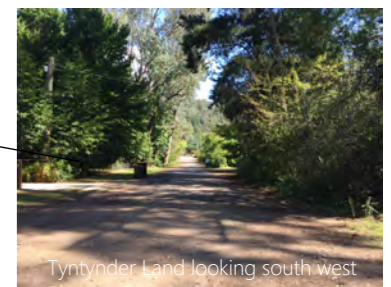


Flat, relatively cleared, area

Lower tier, relatively open under native canopy trees



Delany Avenue looking east



Tyntynder Land looking south west



111 Delany Avenue Frontage



Crown Land behind 111 Delany Avenue looking west



Freehold/Crown Land interface



Delany Avenue Frontage



Existing Ski Hire



**OXLEY + CO**

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### Tyntynder Lane Context Plan

Reference: S7212  
Drawn by: Nick V  
Date: 28 March 2017