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Our ref: JN:130847  
Your ref:

NSW Department of Planning & Infrastructure  
Proposed Planning Policy – Canberra Airport  
PO Box 5474  
WOLLONGONG NSW 2520

**By e-mail: [martin.brown@planning.nsw.gov.au](mailto:martin.brown@planning.nsw.gov.au)**

Attention: Martin Brown

24 May 2013

Dear Mr Brown

## **SUBMISSION REGARDING PROPOSED ANEF 20 CONTOUR PROPOSAL AROUND CANBERRA AIRPORT**

We act on behalf of Mr Dominic Palombi, and the other registered owners of property located at 131 Mckeahnie Lane, Sutton NSW, whose some 213 acres of land will be affected by the NSW Department of Planning and Infrastructure's proposed ANEF 20 Contour Proposal around Canberra Airport ("**the Proposal**").

Our client, like a number of owners of property in the region, wishes to make a submission in objection to the proposal to be considered by the Minister. We are authorised on our client's behalf to make the following submissions and recommendations in relation to the Proposal.

### **EXECUTIVE SUMMARY**

1. The ANEF 20 Proposal process has caused significant unfairness to affected individuals. This unfairness is twofold: firstly, the timeframe for response was grossly inadequate and secondly, the process for determination of the ANEF 20 Contour is highly insufficient and does not reflect actual or anticipated Aircraft noise.
2. Consideration should be given by the Minister as to the applicability of the *Land Acquisition (Just Terms) Compensation Act 1991* (NSW). Given the significant diminution of the value of affected persons land, and the restriction of rights with respect to that land, the Minister must consider appropriate compensation to be paid to affected persons.

3. *Recommendation 1:* The Minister should re-open the exhibition for the Proposal and give a timeframe of 6 months for submissions to be entered.
4. *Recommendation 2:* The Minister should review the current process in place for the determination of the ANEF 20 Contour. In particular, the Minister should seek independent assessment to evaluate the accuracy and reasonableness of the areas currently under the proposed ANEF 20 Contour, and the land restrictions to which the affected land will be under. Such assessments and its results should be readily accessible to the public.
5. *Recommendation 3:* The Minister should review the current proposal and seek to implement a compensation mechanism for affected individuals. Compensation must be based on market value, and include any loss attributable to disturbance.

### **Fairness of the ANEF Proposal process**

The issue of fairness in relation to the Department's Proposal is twofold: firstly, fairness in relation to the timing and ability of affected individuals to respond and seek advice about the impacts on their land by the Proposal, and secondly, fairness in relation to the determination of the determination of areas affected by the ANEF 20 Contour.

#### **1. Timeframe to respond to the Proposal**

Our client was provided with a document from the Department titled "Future Development around Canberra Airport: Have your say", on the 26<sup>th</sup> of April 2013. This document was the first indication that our client received that his land would be affected by the Proposal. This document vaguely outlined what the Proposal entailed, and gave until the 10<sup>th</sup> of May 2013 for affected individuals to make a submission; some 10 days after our client received this document. After this 10 day period, the ability to make submissions ceased, unless an extension was granted.

Whilst the Department graciously provided our client with a two week extension so as to make a submission, the timeframe in which the Department has given affected individuals to make submissions in relation to the Proposal, is, with respect, highly inadequate and has caused significant unfairness to both our client, and other affected individuals.

This Proposal has a significant effect upon the value and use of our client's and other individuals land. Owners of parcels of land that fall within the ANEF 20 Contour will have their rights with respect to the use of that land significantly restricted, namely, the ability to undertake further residential development such as rezoning land from a rural to residential use.

With such an impact, clearly more than a 10 day period was required for individuals to respond to the Proposal. For the Minister to adequately consider the Proposal and its likely impact upon affected NSW residents, a longer response period was required to enable affected individuals, such as our client, to obtain advice, and substantive reports and assessments detailing the likely impacts of the Proposal on their land. For example, a longer response period would have allowed individuals to obtain valuation appraisals of the land as it currently stands, and a value comparison once that land is affected by the Proposal. It is inconceivable that that a Proposal such as the ANEF Contour could be readily implemented without a detailed and thorough investigation of the financial impact upon affected individuals.

As part of our representative democracy, public submissions are called for in order for the Government to make decisions that reflect the considered interests of its constituents. The ANEF 20 Proposal falls considerably short of such democratic values as it has not allowed for NSW constituents to adequately participate in this democratic process.

*Recommendation 1:*

*The Minister should re-open the exhibition for the Proposal and give a timeframe of 6 months for submissions to be entered. This time frame is more appropriate for affected individuals to obtain adequate evidence to provide the Minister with detailed submissions. This would allow the Minister to make a reasonable and informed determination about the Proposal and its impact upon NSW residents.*

2. Process for determination of ANEF 20 Contour

The process for the determination of what land will be subject to the ANEF 20 Contour has been less than adequate. Affected individuals such as our client were merely given a map containing a topographic image of the land affected by the ANEF 20 Contour. As agitated in other submissions by residents, the maps provided are highly misleading as they do not contain any adequate description of the property, nor do they contain grid references.

Further, the information provided to affected individuals did not contain any information about how, or why, certain areas fall within the ANEF 20 Contour. There was no disclosure of the process on how the NSW Department of Planning and Infrastructure came to the determination that the areas identified on the supplied maps would be affected by aircraft noise and disturbances. The Department has not supplied results (if any) of independent assessments or evaluations undertaken by experts who have deemed that the affected areas must be subject to ANEF 20. Certainly, our client has instructed us that he has never been approached nor contacted by anyone from the Department or otherwise to have such an assessment or evaluation undertaken. We believe this fact is reflective of other property owner's in our client's area.

Similarly, there has been no disclosure of any results from an independent assessment or evaluation with respect to the necessity of the restrictions placed on residents with respect to their land subject to the ANEF 20 Contour. There has been no evidence provided that, as a result of the ANEF 20 Contour, the restrictions referred to above are reasonable or necessary. For example, the possibility that Canberra Airport will become a 24-hour operating international airport, is just that, a possibility. The Department has not given any reason or justification why it is necessary for such stringent restrictions upon my client's land given that the presence of aircraft noise and disturbance may only be a temporary occurrence during the day. It is difficult to conceive that the Department can aptly justify the restrictions it proposes to make on the rights of affected individuals to develop their land, without providing affected individuals with the data upon which those restrictions are based.

As we understand it, ANEF contours determine the allowable land uses and noise attenuation measures required for buildings in the vicinity of airports. The ANEF contours, when constructed appropriately and rigorously, are robust and a scientific tool for informing land use around airports, based on extensive research and acoustic science. However, the current way for determining ANEF contours lacks accountability and transparency as airport owners, such as the Canberra Airport, can make their own determinations and make submissions in relation to the determination of the ANEF contour. Certainly submissions

provided by airport owners, who have the biggest interest in the proposal, can be subject to exaggeration, and without independent review, such manipulation goes without scrutiny.

The current ANEF process is highly arbitrary. There is currently no independent review of the accuracy of the projections given by the airport owners, let alone disclosure of the data relied upon, or assessments undertaken upon which determinations were made. Given the significant impact upon individuals that the Proposal has, an independent assessment and evaluation of the proposed ANEF 20 Contour should be undertaken, and the results of such an evaluation disclosed to affected individuals. Similarly, disclosure of the data relied upon to justify the restrictions must occur. Whether or not such an assessment has occurred, the Department should undertake further assessment or evaluation should be in-conjunction with affected individuals so that any resulting restrictions upon land use are reflective of a collaborative agreement between the Department and affected individuals.

The apparent lack of an independent assessment process to determine the accuracy and reasonableness of the ANEF 20 Contour determination is a fundamental flaw in the Proposal and has resulted in significant unfairness to affected individuals. The Department should be accountable for all of its determinations and should be forthcoming to the public with the data upon which it relies to make such determinations. If there does in deed exist such data which details the assessments and evaluations upon which the ANEF 20 Contour was determined, and the land restrictions that go with this Contour, then this should be disclosed to the public for scrutiny and review.

Recommendation 2:

*The Minister should review the current process in place for determination of the ANEF Contour. In particular, the Minister should seek independent assessment to evaluate the accuracy and reasonableness of the areas currently under the proposed ANEF and the restrictions upon which the affected land will be under. Such assessments and its results should be readily accessible to the public for review. Further, the Minister should create an independent body, separate from both the Government and the Canberra Airport designed to undertake assessments of the ANEF 20 Contour. Such a body will bring accountability and partiality to the Proposal, and will thus make any determination of land restrictions more acceptable to those affected.*

### **Compulsory acquisition of land on just terms**

Before proceeding with the Proposal, the Minister should consider whether the Proposal constitutes a compulsory acquisition of an interest in land within the meaning of terms of the *Land Acquisition (Just Terms) Compensation Act 1991* (NSW).

As the Proposal will effectively place a ban on the rights of my client, and other land owners affected by the proposal, to rezone their land, subdivide their land or otherwise develop their land, the NSW Department of Planning and Infrastructure's Proposal, is arguably acquiring an interest in connection with the land from those individuals; namely, the right to develop, rezone, or subdivide their land. Further, as discussed above, the Proposal, by banning these rights will significantly decrease the value of the land.

To this effect, I would draw the Minister's attention to s 3 of the *Land Acquisition (Just Terms) Compensation Act 1991* (NSW) which set out the objects of the Act. These include:

- (a) To guarantee that, when land affected by a proposal for acquisition by an authority of the state is eventually acquired, the amount of compensation will not be less than the market value at the date of acquisition;
- (b) To ensure that compensation on just terms for the owners of land that is acquired by an authority of the state when the land is not available for public sale;
- (c) To encourage the acquisition of land by agreement instead of compulsory process.

As discussed above, the Proposal has a significant adverse effect upon the land use of affected individuals. In our client's case, over half of his 213 acres will be impacted by the ANEF 20 Contour, thus significantly restricting him from developing majority of his land.<sup>1</sup> The diminution of value of our client's land is obvious. As the Proposal stands, there is no compensation mechanism for affected individuals, nor has the Department sort to offer compensation to affected individuals. This is a significant injustice as affected individuals are left to bear the burden of the diminution of value of their land, whilst the Department and Airport owners are not required to compensate for this loss. The loss is particularly poignant in our client's case, as we are instructed that our client was seeking to subdivide his property so that each of his family members could build a home on their land.

In our submission, the Department is acquiring an interest in land – namely, the right to develop, rezone or subdivide land which is arguably compensable. So far, the Proposal has remained quiet on any compensation available or offered to affected individuals. The Minister should review the current Proposal and amend to provide for the payment of compensation to affected individuals should be offered with the following matters taken into account:

- (a) The market value of the land;
- (b) Any special value of the land to the affected individuals;
- (c) Any loss attributable to severance;
- (d) Any loss attributable to disturbance – including, legal costs reasonably incurred by affected individuals, valuation fees incurred and any other financial costs incurred;
- (e) Any compensation for a person resulting from the necessity to relocate their principle place of resident as a result of having their land affected by the ANEF 20 Contour.

Recommendation 3:

*The Minister should review the current proposal and seek to implement a compensation mechanism for affected individuals. Compensation must be based on market value, and include any loss attributable to disturbance.*

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<sup>1</sup> See attached map, highlighted in Red, is our client's land located near Eaglehawk in NSW.

## CONCLUSION

We strongly urge the Minister to take consideration of the submissions, not only of Mr Palombi, but of other affected individuals, and also consider implementing the recommendations referred to above. The Proposal has a significant impact upon NSW residents, and so far, the Government's approach to the implementation of this Proposal has been less than adequate. To this end, the NSW Government in making proposals that impact upon its residents, should be advocating for the interests of NSW Residents, not seek to propagate the interests of an ACT based company.

Thank you for your assistance in facilitating this submission being put forward for consideration by the Minister in his decision in relation to this Proposal.

Yours sincerely  
**Nicholl & Co**



John Nicholl  
Email: [john@nicholl.com.au](mailto:john@nicholl.com.au)

# Land Zoning Map with Canberra Airport Air Noise Exposure Forecast

## Air Noise Exposure Forecast

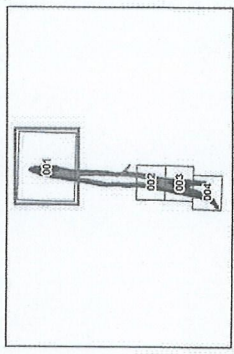
- ANEF 20
- ANEF 25

### Zone

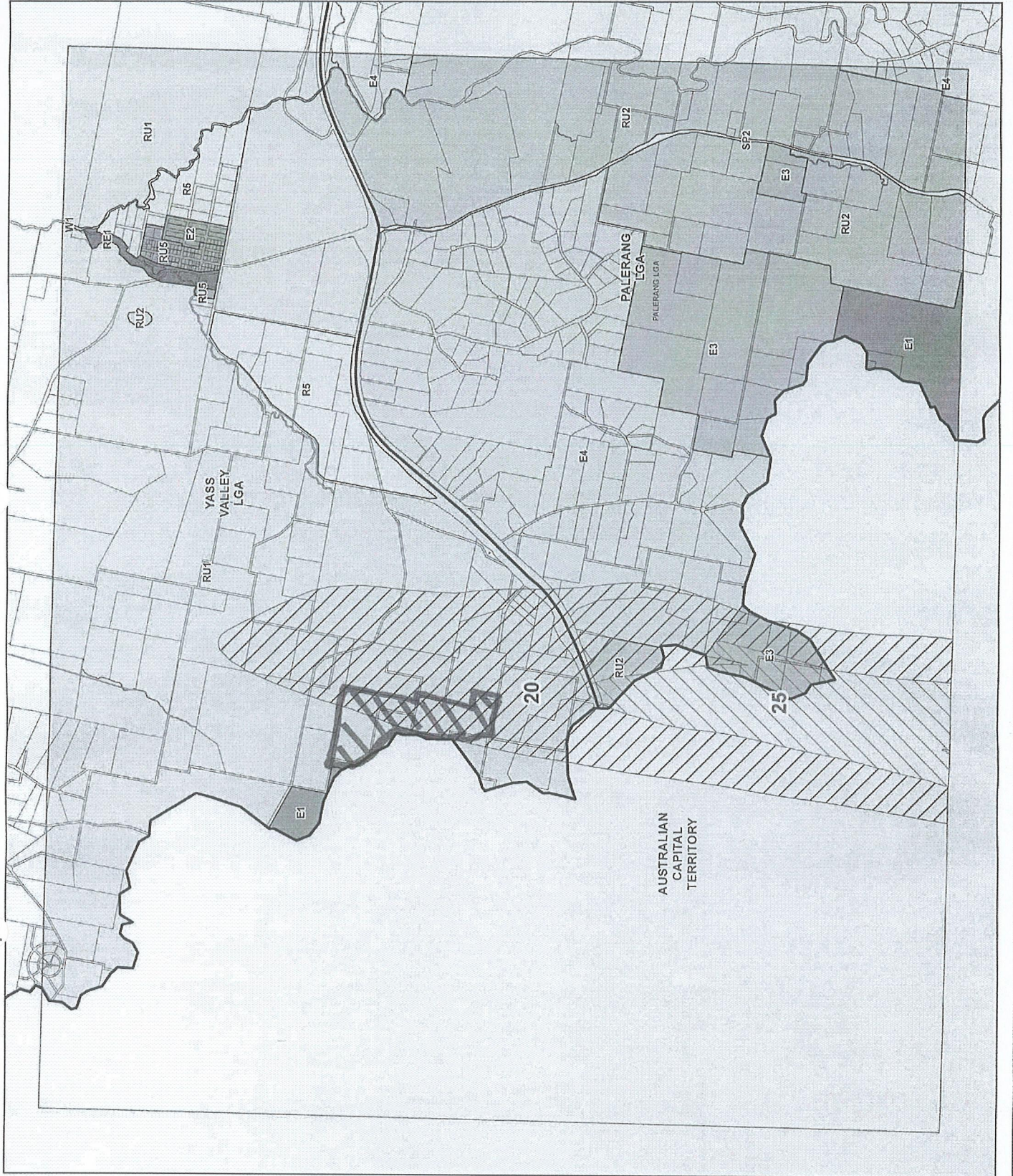
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- E2 Local Centre
- E3 Commercial Core
- E4 Mixed Use
- E5 Business Development
- E6 National Parks and Nature Reserves
- E7 Environmental Conservation
- E8 Environmental Management
- E9 Environmental Living
- IN1 General Industrial
- IN2 Light Industrial
- R1 General Residential
- R2 Low Density Residential
- R3 Medium Density Residential
- R4 High Density Residential
- R5 Large Lot Residential
- PR Public Recreation
- IR Private Recreation
- RL Rural Landscape
- SP1 Special Activities
- SP2 Infrastructure
- WI Natural Waterways
- DM Deferred Matter
- CA Conservation Areas
- FI Future Investigation
- RA Residential Areas
- BO Buffer/OpenSpace
- LC Local Centres
- EA Employment Areas
- S Schools
- CR Community/Recreation Area

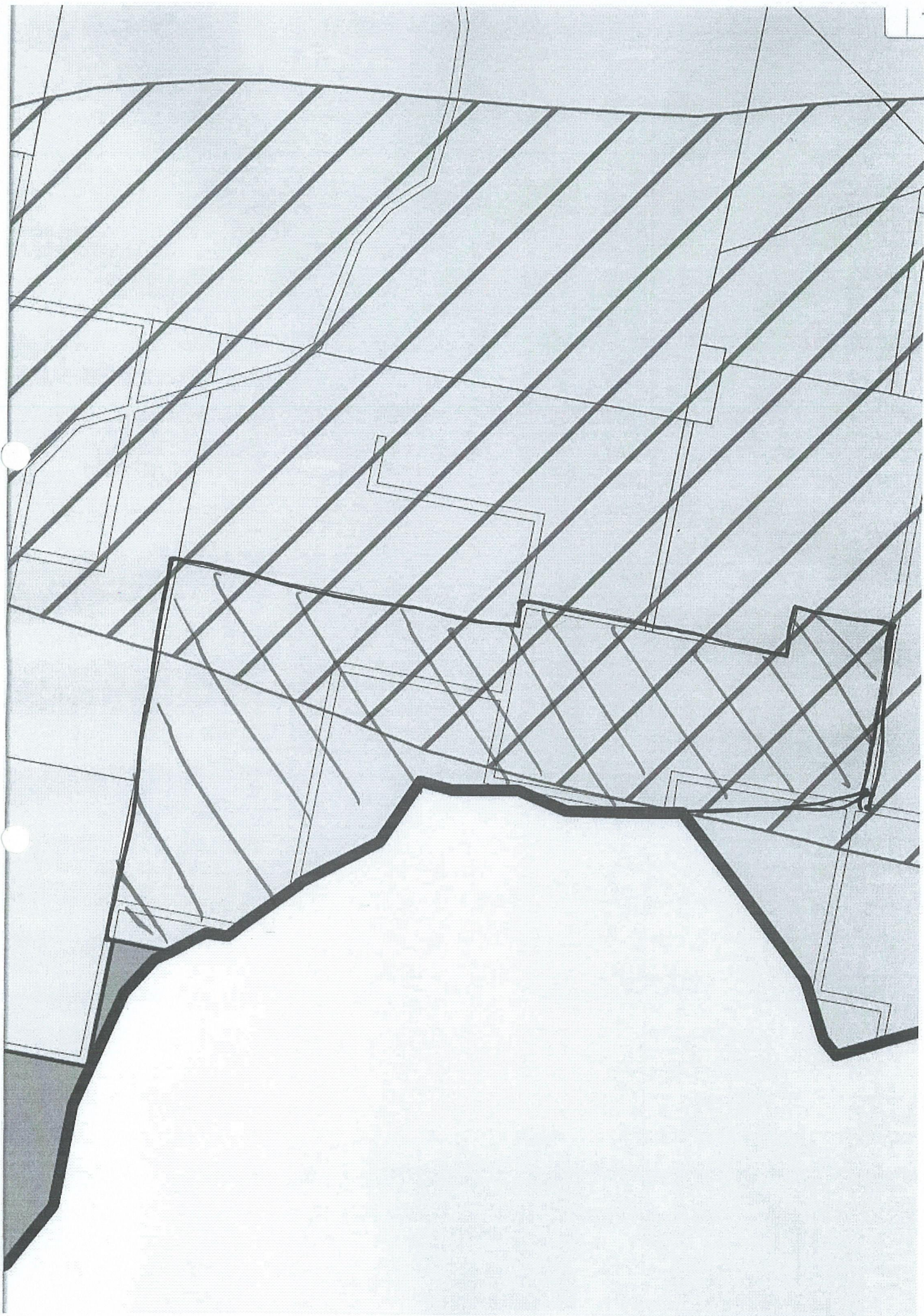
### Cadastre

- Cadastre 03/12/2012 © Land and Property Information (LPI)



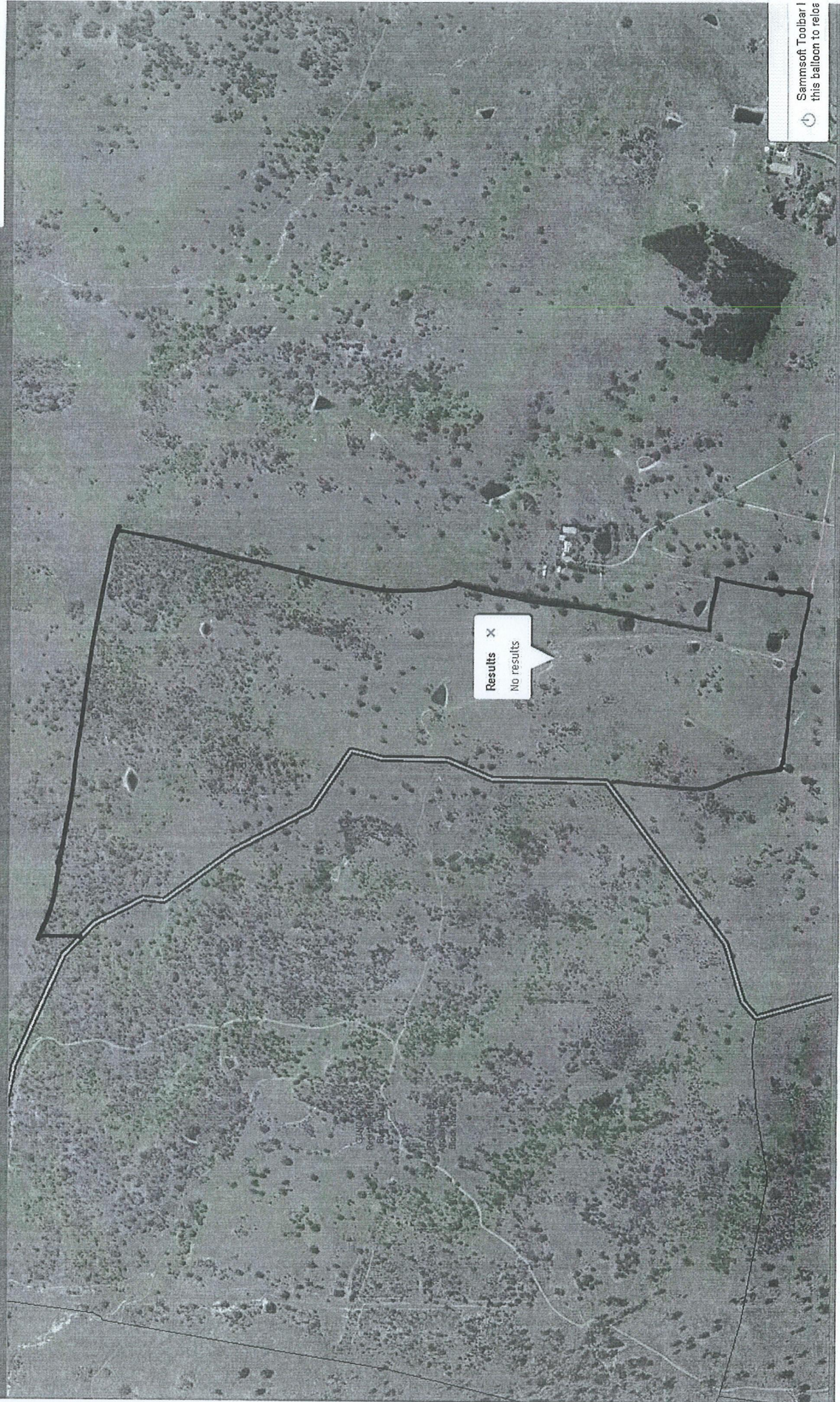
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Scale: 1:40,000 @ A3  
Profession: GDA 1994  
Map Zone: 28







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