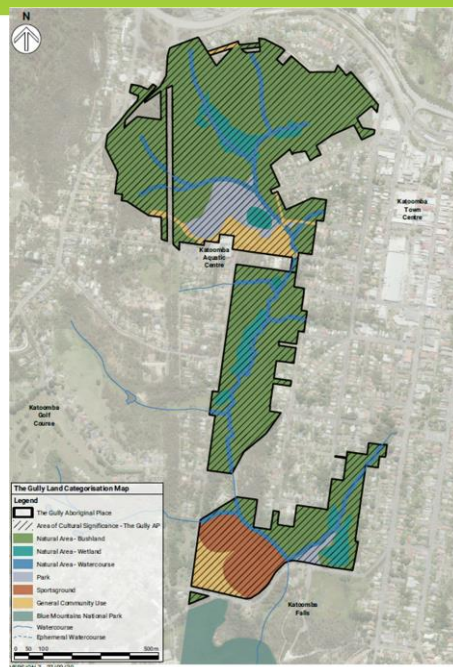


# PUBLIC HEARING FOR PROPOSED RECATEGORISATION OF COMMUNITY LAND IN THE GULLY ABORIGINAL PLACE

BACKGROUND INFORMATION

JULY 2021



BLUE MOUNTAINS CITY COUNCIL

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PUBLIC HEARING FOR  
PROPOSED RECATEGORISATION OF  
COMMUNITY LAND IN  
THE GULLY ABORIGINAL PLACE

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BACKGROUND INFORMATION

JULY 2021



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# 1 INTRODUCTION

## 1.1 Background

Blue Mountains City Council has prepared a Draft Plan of Management (PoM) for The Gully Aboriginal Place in accordance with the requirements of the *Local Government Act 1993* and the *Crown Land Management Act 2016*, and Office of Environment and Heritage (OEH) Declared Aboriginal Places Guidelines for Developing Management Plans.

The Draft Plan of Management updates the 2004 Plans of Management for Upper Kedumba River Valley, covering the Blue Mountains City Council managed community lands within The Gully including Frank Walford Park 2003, Katoomba Falls Reserve McRae's Paddock Section and Katoomba Falls Reserve Cascades Section 2003. The draft 2021 Plan of Management for The Gully includes the addition of three parcels of Crown land, covering all public land within The Gully Aboriginal Place.

Council has placed The Gully Aboriginal Place Draft Plan of Management on public exhibition for comment until Monday 26 July 2021. The Draft Plan of Management is available to view online at the Blue Mountains City Council website <https://yoursay.bmcc.nsw.gov.au/gully-plan>

The existing community land categories (as defined under Section 36 of the *Local Government Act 1993*) over Council managed land are being amended to:

- remove the Sportsground category over the race track in Frank Walford Park to be replaced by the Natural Area category
- reflect changes in boundaries between the Park and General Community Use categories in Frank Walford Park
- reflect an update to vegetation mapping within the Natural Area category in Frank Walford Park, McRae's Paddock and Katoomba Falls Reserve.

The proposed recategorisation of these parts of The Gully Aboriginal Place is set out in the Draft Plan of Management and in Section 3 of this document.

The change of categorisation requires a public hearing to be held in accordance with Section 40A of the *Local Government Act 1993*.

## 1.2 Public hearing and submissions

The public hearing about the proposed recategorisation of The Gully Aboriginal Place will be held:

**Saturday 7 August 2021  
1:00pm to 2.30pm  
Seminar Room  
Blue Mountains Cultural Centre  
30 Parke Street  
Katoomba**

**In the event of a NSW Government public health direction preventing public gatherings, the public hearing will be held online using the Zoom platform.**

**Registration with Council by 5pm on Friday 5 August 2021 will be essential to attend the online public hearing.**

Written submissions about the proposed recategorisation may be made **until Sunday 15 August 2021:**

- via the **online submission form** at <https://yoursay.bmcc.nsw.gov.au/gully-plan>
- in writing to Council** by:
  - email: [council@bmcc.nsw.gov.au](mailto:council@bmcc.nsw.gov.au)
  - post: Blue Mountains City Council, Locked Bag 1005, KATOOMBA NSW 2780  
Attention: Andrew Johnson/Soren Mortensen

**The question to address at the public hearing and/or in your written submission is:**

**Do you agree or not with the proposals to recategorise community land in The Gully Aboriginal Place:**

- **from Sportsground to Natural Area in Frank Walford Park**
- **boundary adjustment to the General Community Use and Park categories in Frank Walford Park**

**as shown on Map 5 on page 55 of The Gully Aboriginal Place Draft Plan of Management and in Figure 5 of this document?**

**Why or why not?**

### 1.3 About this background information document

This background information document sets out the legislative requirements for categorisation and recategorisation of community and Crown land in Section 2, particularly:

- categorisation and recategorisation of community and Crown land
- preparation of Plans of Management for land classified as community land and for Crown land
- public hearings regarding the categorisation and recategorisation of community and Crown land.

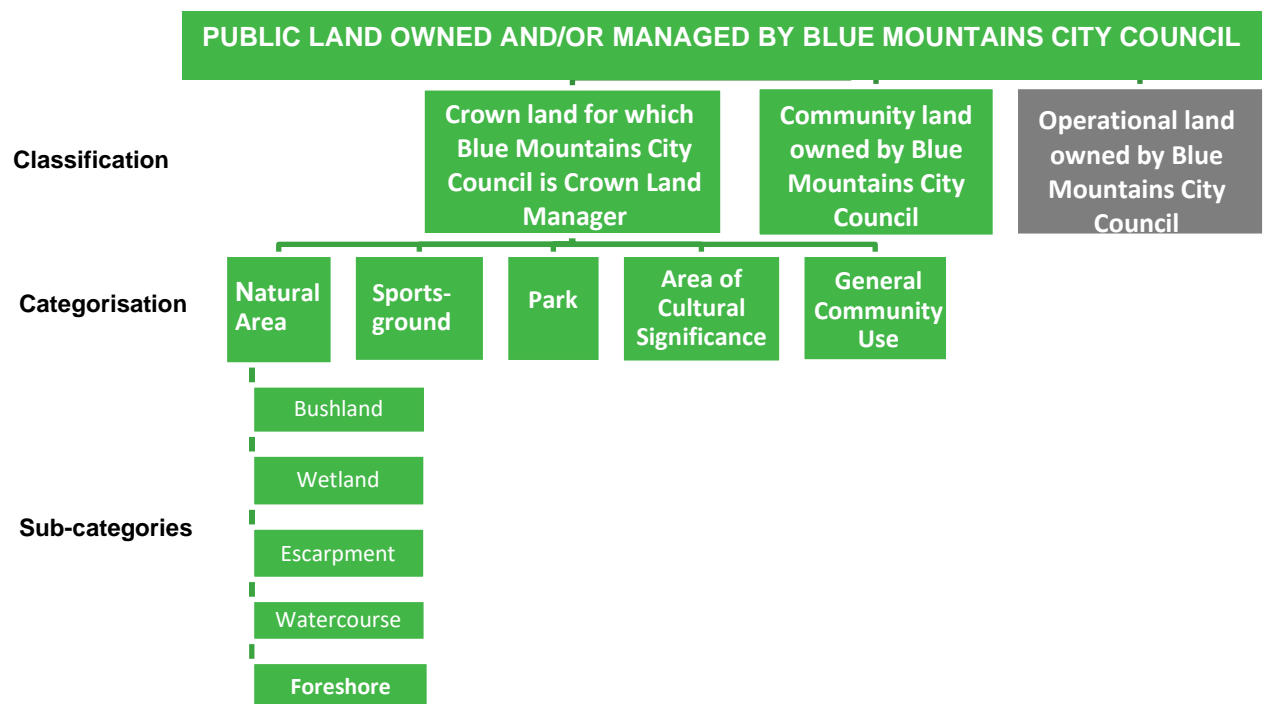
Section 3 explains the proposed recategorisation of community land in The Gully Aboriginal Place.

# 2 COMMUNITY LAND AND CROWN RESERVES

## 2.1 Community and Crown land

The *Local Government Act 1993* and *Crown Land Management Act 2016* set out a range of requirements that Blue Mountains City Council is legally bound to adhere to. These requirements include the management of public land – refer to Figure 1.

Figure 1 Classification and categorisation of community and Crown land



From 1 July 2018 the *Crown Land Management Act 2016* requires local Councils that are appointed to manage dedicated or reserved area of Crown land to manage that land as community land under the *Local Government Act 1993*, including preparing a Plan of Management and categorising the land.

The Local Government Act requires that all land owned by Council must be classified as "community" or "operational" land (Section 26).

Community land is intended to be managed for use by the community for purposes including environmental protection, recreational, cultural, social and educational activities. Community land may only be leased or licensed for up to 21 years without the Minister's consent or up to 30 years with the Minister's consent, it cannot be sold, and its use is restricted to the above purposes.

Conversely, operational land is land that can be used for any purposes deemed fit by Council, may be used for commercial purposes, be leased for a longer period, and can be sold. Examples of Council-owned land which is classified as operational land include Council works depots, carparks, and dwellings.

## 2.2 Categorisation of community land and Crown reserves

### 2.2.1 What are the categories for community land and Crown reserves?

The *Local Government Act 1993* requires that all land owned by the Council which is classified as community land be categorised. The *Crown Land Management Act 2016* provides that the same requirement for categorisation also now applies to Crown reserves such as parts of The Gully Aboriginal Place under the control of a “Council manager”.

Community land and Crown reserves may be categorised as one or more of the following under Section 36(4) of the Act:

- natural area.
- sportsground.
- park.
- area of cultural significance.
- general community use.

Community land and Crown reserves that are categorised as a natural area are to be further categorised as one or more of the following under Section 36(5) of the Act:

- bushland.
- wetland.
- escarpment.
- watercourse.
- foreshore.
- a category prescribed by the regulations.

### 2.2.2 What are the guidelines for categorising community land and Crown reserves?

Guidelines for categorising community land and Crown reserves as a particular category are in Clauses 102 to 111 of the *Local Government (General) Regulation 2005*.

The Department of Local Government’s revised Practice Note on Public Land Management (Department of Local Government, 2000) made general recommendations on the guidelines for categorising community land. The Practice Note stated:

*“Council must have regard to the guidelines in determining a category (cl.9) but are not required to adopt any category merely because the land fits the description in the guidelines. Council should look at all the circumstances of the land in making a decision as to categorisation. For example, a piece of land may seem to satisfy the guidelines for more than one category. Council has a discretion in this case to look at the land in context, taking into account all relevant material before determining a category. It is important that Council be able to justify a decision.”*

*Also, Council may have a piece of community land, parts of which may be best managed as different categories, for example a piece of land with remnant bushland in one part and children’s play equipment in another. Council is able to categorise land as part ‘Natural Area – Bushland’ and part ‘Park’. It is strongly recommended that the land in each category not overlap. Overlapping categories may cause conflict in management objectives and will create confusion in the minds of Council staff and the community.”*



## 2.2.3 Core objectives for managing community land

Each category and sub-category of community land has core objectives that apply to it under the Local Government Act. The core objectives outline the approach to the management of the land covered by the particular category. The core objectives for each category of community land are set out in Sections 36E to 36N of the *Local Government Act 1993*.

## 2.2.4 Guidelines and core objectives for proposed categories

The guidelines and core objectives for the proposed categories of community and Crown land in The Gully Aboriginal Place are set out below in Table 1.

Table 1 Guidelines and core objectives for proposed categories of The Gully Aboriginal Place

Category	Guidelines	Core objectives
Area of Cultural Significance	<p>Land should be categorised as an area of cultural significance under section 36(4) of the Act if the land is—</p> <p>(a) an area of Aboriginal significance, because the land—</p> <p>(i) has been declared an Aboriginal place under section 84 of the <i>National Parks and Wildlife Act 1974</i>, or</p> <p>(ii) whether or not in an undisturbed state, is significant to Aboriginal people in terms of their traditional or contemporary cultures, or</p> <p>(iii) is of significance or interest because of Aboriginal associations, or</p> <p>(iv) displays physical evidence of Aboriginal occupation (for example, items or artifacts such as stone tools, weapons, engraving sites, sacred trees, sharpening grooves or other deposits, and objects or materials that relate to the settlement of the land or place), or</p> <p>(v) is associated with Aboriginal stories, or</p> <p>(vi) contains heritage items dating after European settlement that help to explain the relationship between Aboriginal people and later settlers, or</p> <p>(b) an area of aesthetic significance, by virtue of—</p> <p>(i) having strong visual or sensory appeal or cohesion, or</p> <p>(ii) including a significant landmark, or</p> <p>(iii) having creative or technical qualities, such as architectural excellence, or</p> <p>(c) an area of archaeological significance, because the area contains—</p>	<p>(1) The core objectives for management of community land categorised as an area of cultural significance are to retain and enhance the cultural significance of the area (namely its Aboriginal, aesthetic, archaeological, historical, technical or research or social significance) for past, present or future generations by the active use of conservation methods.</p> <p>(2) Those conservation methods may include any or all of the following methods—</p> <p>(a) the continuous protective care and maintenance of the physical material of the land or of the context and setting of the area of cultural significance,</p> <p>(b) the restoration of the land, that is, the returning of the existing physical material of the land to a known earlier state by removing accretions or by reassembling existing components without the introduction of new material,</p> <p>(c) the reconstruction of the land, that is, the returning of the land as nearly as possible to a known earlier state,</p> <p>(d) the adaptive reuse of the land, that is, the enhancement or reinforcement of the cultural significance of the land by the introduction of sympathetic alterations or additions to allow compatible uses (that is, uses that involve no changes to the cultural significance of the physical material of the area, or uses that involve changes that are substantially reversible or changes that require a minimum impact),</p>

Category	Guidelines	Core objectives
	<p>(i) evidence of past human activity (for example, below-ground features such as building foundations, occupation deposits, features or artifacts or above-ground features such as buildings, works, industrial structures, and relics, whether intact or ruined), or</p> <p>(ii) any other deposit, object or material that relates to the settlement of the land, or</p> <p>(d) an area of historical significance, because of the importance of an association or position of the land in the evolving pattern of Australian cultural history, or</p> <p>(e) an area of technical or research significance, because of the area's contribution to an understanding of Australia's cultural history or environment, or</p> <p>(f) an area of social significance, because of the area's association with Aboriginal life after 1788 or the area's association with a contemporary community for social, spiritual or other reasons.</p>	<p>(e) the preservation of the land, that is, the maintenance of the physical material of the land in its existing state and the retardation of deterioration of the land.</p> <p>(3) A reference in subsection (2) to land includes a reference to any buildings erected on the land.</p>
Natural Area	If the land, whether or not in an undisturbed state, possesses a significant geological feature, geomorphological feature, landform, representative system or other natural feature or attribute that would be sufficient to further categorise the land as bushland, wetland, escarpment, watercourse or foreshore under section 36(5) of the Act.	<ul style="list-style-type: none"> <li>- conserve biodiversity and maintain ecosystem function in respect of the land, or the feature or habitat in respect of which the land is categorised as a natural area.</li> <li>- maintain the land, or that feature or habitat, in its natural state and setting.</li> <li>- provide for the restoration and regeneration of the land.</li> <li>- provide for community use of and access to the land in such a manner as will minimise and mitigate any disturbance caused by human intrusion.</li> <li>- assist in and facilitate the implementation of any provisions restricting the use and management of the land that are set out in a recovery plan or threat abatement plan prepared under the <i>Threatened Species Conservation Act 1995</i> or the <i>Fisheries Management Act 1994</i>.</li> </ul>
<p><b>Under Section 36(5) of the Act, Natural Areas are required to be further categorised as bushland, wetland, escarpment, watercourse or foreshore based on the dominant character of the natural area:</b></p>		

Category	Guidelines	Core objectives
Natural Area – Bushland	<p>Land that is categorised as a natural area should be further categorised as bushland under section 36(5) of the Act if the land contains primarily native vegetation and that vegetation:</p> <p>(a) is the natural vegetation or a remainder of the natural vegetation of the land, or</p> <p>(b) although not the natural vegetation of the land, is still representative of the structure or floristics, or structure and floristics, of the natural vegetation in the locality.</p>	<ul style="list-style-type: none"> <li>- ensure the ongoing ecological viability of the land by protecting the ecological biodiversity and habitat values of the land, the flora and fauna (including invertebrates, fungi and micro-organisms) of the land and other ecological values of the land.</li> <li>- protect the aesthetic, heritage, recreational, educational and scientific values of the land.</li> <li>- promote the management of the land in a manner that protects and enhances the values and quality of the land and facilitates public enjoyment of the land, and to implement measures directed to minimising or mitigating any disturbance caused by human intrusion.</li> <li>- restore degraded bushland.</li> <li>- protect existing landforms such drainage lines, watercourses and foreshores.</li> <li>- retain bushland in parcels of a size and configuration that will enable the existing plant and animal communities to survive in the long term.</li> <li>- protect bushland as a natural stabiliser of the soil surface.</li> </ul>
Natural Area – Wetland	<p>Land that is categorised as a natural area should be further categorised as wetland under section 36 (5) of the Act if the land includes marshes, mangroves, backwaters, billabongs, swamps, sedgelands, wet meadows or wet heathlands that form a water-body that is inundated cyclically, intermittently or permanently with fresh, brackish or salt water, whether slow moving or stationary.</p>	<ul style="list-style-type: none"> <li>- protect the biodiversity and ecological values of wetlands, with particular reference to their hydrological environment (including water quality and water flow), and to the flora, fauna and habitat values of the wetlands, and</li> <li>- restore and regenerate degraded wetlands.</li> <li>- facilitate community education in relation to wetlands, and the community use of wetlands, without compromising the ecological values of wetlands.</li> </ul>

Category	Guidelines	Core objectives
Natural Area – Water-course	Land that is categorised as a natural area should be further categorised as a watercourse if the land includes: (a) any stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel that has been artificially improved, or in an artificial channel that has changed the course of the stream of water, and any other stream of water into or from which the stream of water flows, and (b) associated riparian land or vegetation, including land that is protected land for the purposes of the <i>Rivers and Foreshores Improvement Act 1948</i> or State protected land identified in an order under section 7 of the <i>Native Vegetation Conservation Act 1997</i> .	<ul style="list-style-type: none"> <li>- manage watercourses so as to protect the biodiversity and ecological values of the in stream environment, particularly in relation to water quality and water flows</li> <li>- manage watercourses so as to protect the riparian environment, particularly in relation to riparian vegetation and habitats and bank stability</li> <li>- restore degraded watercourses</li> <li>- promote community education, and community access to and use of the watercourse, without compromising the other core objectives of the category.</li> </ul>
Park	Land that is, or is proposed to be, improved by landscaping, gardens or the provision of non- sporting equipment and facilities, for use mainly for passive or active recreational, social, educational and cultural pursuits that do not unduly intrude on the peaceful enjoyment of the land by others.	<ul style="list-style-type: none"> <li>- encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities, and</li> <li>- provide for passive recreational activities or pastimes and for the casual playing of games, and</li> <li>- improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.</li> </ul>
Sportsground	If the land is used or proposed to be used primarily for active recreation involving organised sports or the playing of outdoor games.	<ul style="list-style-type: none"> <li>- encourage, promote and facilitate recreational pursuits in the community involving active recreation involving organised sports and informal sporting activities and games, and</li> <li>- ensure that such activities are managed having regard to any adverse impact on nearby residences.</li> </ul>
General Community Use	Land that may be made available for use for any purpose for which community land may be used, whether by the public at large or by specific sections of the public.	<ul style="list-style-type: none"> <li>- promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public in relation to: <ul style="list-style-type: none"> <li>- public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public.</li> <li>- purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).</li> </ul> </li> </ul>

## 2.3 Plans of Management for community land and Crown reserves

Council must prepare a Plan of Management for community land (Section 36(1)) and for Crown reserves for which it is the Crown Land Manager. Community land and Crown reserves are required to be used and managed according to a Plan of Management applying to the land.

Requirements of the Local Government Act for the contents of a Plan of Management include categorisation of the land.

## 2.4 Public hearings for categorisation of community land and Crown reserves

### 2.4.1 Why hold a public hearing to categorise community land and Crown reserves?

A public hearing is required under Section 40A of the *Local Government Act 1993* and Section 3.23(7)(d) of the *Crown Land Management Act 2016* if:

- a Plan of Management proposes to categorise (that is, the Plan has not been previously been prepared and adopted by Council, or has not categorised community land) the public land covered by the Plan of Management
- a Plan of Management proposes to re-categorise (changing the adopted category) the public land covered by the Plan of Management
- multiple categorisations are assigned to Crown land after the initial categorisation has been submitted to the Department of Planning, Industry and Environment.

*Note: Public hearings regarding categorisation or re-categorisation of community land are not related to reclassification. Reclassification is when community land is re-classified as operational land that can then be managed differently and has the ability to be sold by Council. Community land is protected under the Local Government Act and cannot be sold.*

### 2.4.2 Who conducts a public hearing?

An independent chairperson will conduct the public hearing, and provide a report to Council with recommendations on the proposed recategorisation of community land.

Under Section 47G of the Act, the person presiding at a public hearing must not be:

- a) A Councillor or employee of the Council holding the public hearing.
- b) A person who has been a Councillor or employee of that Council at any time during the 5 years before the date of his or her appointment.

### 2.4.3 What happens after the public hearing?

Council must make a copy of the report regarding the outcomes of the public hearing available for inspection by the public at a location within the area of Council no later than 4 days after it has received the final report from the person presiding at the public hearing.

The public hearing report will be presented to Council for their information when it considers adopting The Gully Aboriginal Place Plan of Management.

If Council decides to amend a Draft Plan of Management after public notice of the Draft Plan, Council is required to again refer the plan to the relevant land owner.



# 3 PROPOSED RECATEGORISATION OF THE GULLY ABORIGINAL PLACE

## 3.1 Features of The Gully Aboriginal Place

Features of The Gully Aboriginal Place are shown below.



View of race track within the Gully



Section of interpretive walk in the central section of the Gully

## 3.2 Tenure of The Gully Aboriginal Place

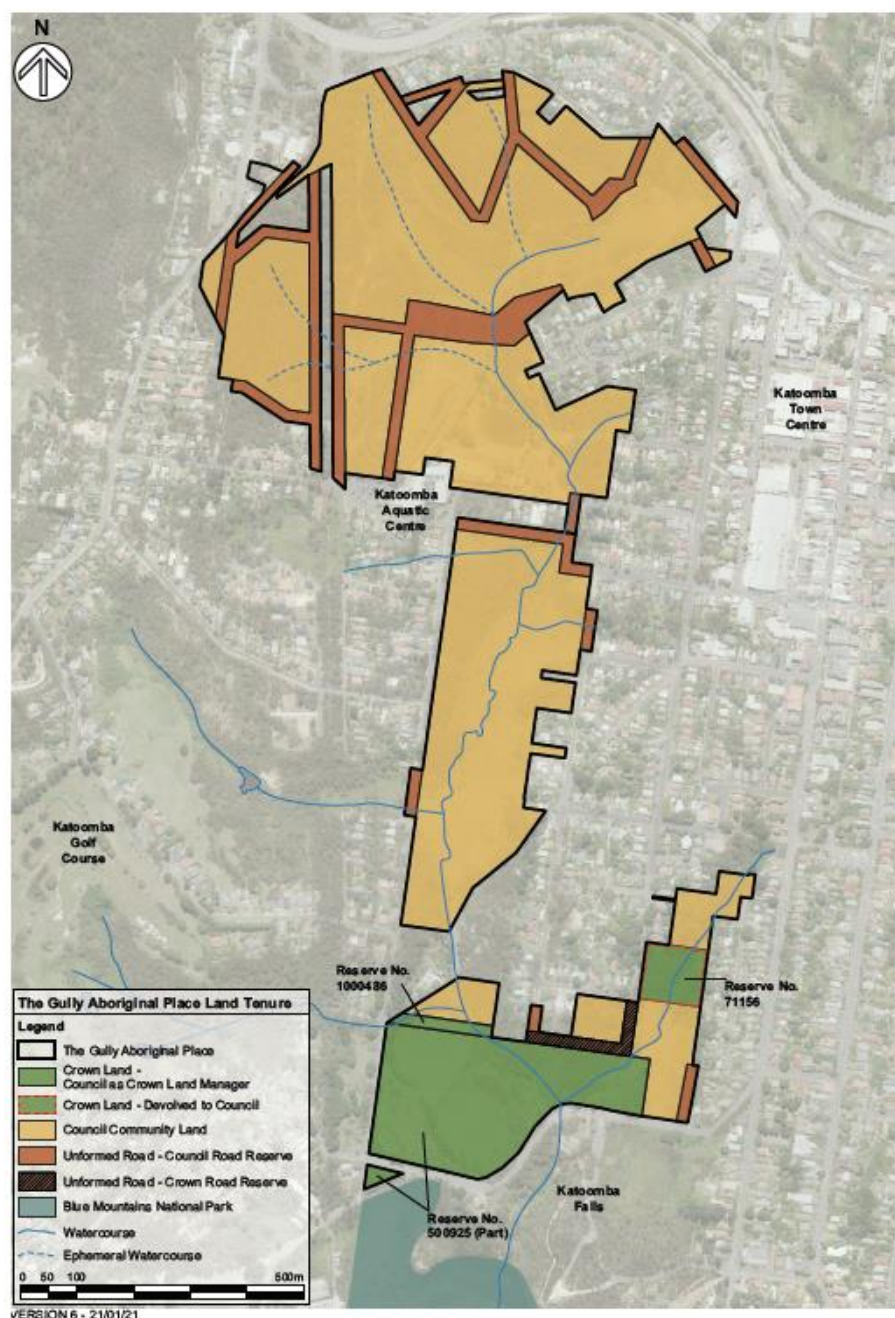
The tenure and management of land in The Gully Aboriginal Place is shown in Figure 2. Land within The Gully Aboriginal Place is owned by Blue Mountains City Council, or is Crown land with Council as Crown Land Manager or Crown land devolved to Council.

The public hearing covers only Council-owned community land because the proposed recategorisations apply only to the Council-owned community land.

The land categories for Crown land within the Gully are consistent with the categories nominated by Council to the Department of Planning, Industry and Environment (DPIE) - Crown Lands. DPIE-Crown Lands has confirmed acceptance of these land categories.

No changes have been made or are proposed to the land categories for Crown land, so a public hearing is not required for the categorisation of Crown land.

Figure 2 Land tenure of The Gully Aboriginal Place



Source: The Gully Aboriginal Place Draft Plan of Management (Blue Mountains City Council, May 2021) Map 2



## 3.3 Categorisation of The Gully Aboriginal Place

### 3.3.1 Scope of community land categorisation addressed by the public hearing

The scope of the public hearing is to address the proposed:

- removal of the Sportsground category over the race track in Frank Walford Park to be recategorised as Natural Area
- boundary adjustment to the General Community Use and Park categories in Frank Walford Park.

A public hearing is not required for changes to the Natural Area category if the change is to the sub-categories within the Natural Area category ie. Bushland, Wetland, Escarpment, Watercourse and Foreshore (refer to Sections 40A(2) and 36(5) of the *Local Government Act 1993*). However, the boundary adjustment to the Natural Area categories in the northern, central and southern sections of The Gully Aboriginal Place are being included as part of the public hearing to document the entirety of the community land category changes from the 2004 Plans of Management for Upper Kedumba River Valley to the 2021 Draft Plan of Management for The Gully Aboriginal Place.

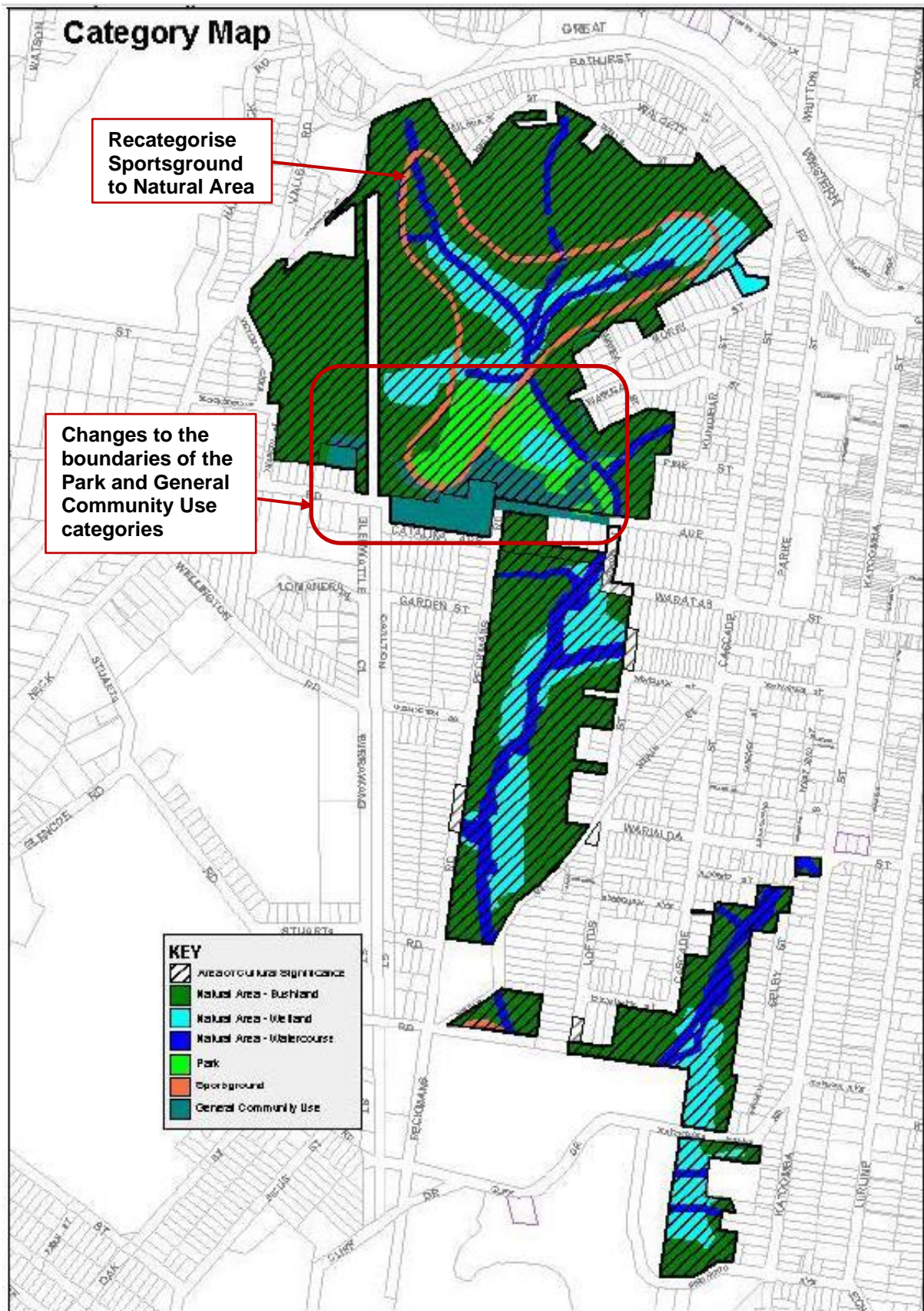
### 3.3.2 Existing and proposed categorisation of The Gully Aboriginal Place

The existing categorisation and proposed recategorisation of The Gully Aboriginal Place is outlined and explained in Table 2, and in the maps in Figures 4 and 5 below.

Table 2 Existing and proposed land categories for Council-owned community land

Community land Address/ Parcel	Existing Categories	Proposed Categories	Amendment notes	Reason for proposed recategorisation
Northern Section of the Gully (Frank Walford Park)	Area of Cultural Significance	Area of Cultural Significance	No change	No change
	Natural Area - Bushland	Natural Area - Bushland	Boundary adjustment to Natural Area categories including bushland, wetland and watercourse	Update to vegetation mapping
	Natural Area - Wetland	Natural Area - Wetland		
	Natural Area - Watercourse	Natural Area - Watercourse		
	Park	Park	Boundary adjustment to Park	New map production. Area used as overflow parking, and to reflect current use of the area.
Sportsground	-	Removal of Sportsground category over race track	The race track established in 1961 and ceased being used as racetrack by mid 1990s. As an Aboriginal Place the focus of site use is on cultural practice and passive recreation. Removal of the Sportsground category is consistent with the strong natural and cultural values of the Gully identified by stakeholders.	
	General Community Use	General Community Use	Boundary adjustment to General Community Use	New map production. Boundary change to reflect more accurately the existing carpark and access roads associated with the Katoomba Aquatic Centre.
Central Section of the Gully (McRae's Paddock)	Area of Cultural Significance	Area of Cultural Significance	No change	No change
	Natural Area - Bushland	Natural Area - Bushland	Boundary adjustment to Natural Area categories including bushland, wetland and watercourse	Update to vegetation mapping
	Natural Area - Wetland	Natural Area - Wetland		
Natural Area - Watercourse	Natural Area - Watercourse			
Southern Section of the Gully (Katoomba Falls Reserve)	Area of Cultural Significance	Area of Cultural Significance	No change	No change
	Natural Area - Bushland	Natural Area - Bushland	Boundary adjustment to Natural Area categories including bushland, wetland and watercourse	Update to vegetation mapping
	Natural Area - Wetland	Natural Area - Wetland		
	Natural Area - Watercourse	Natural Area - Watercourse		
Sportsground	Sportsground	No change	No change	

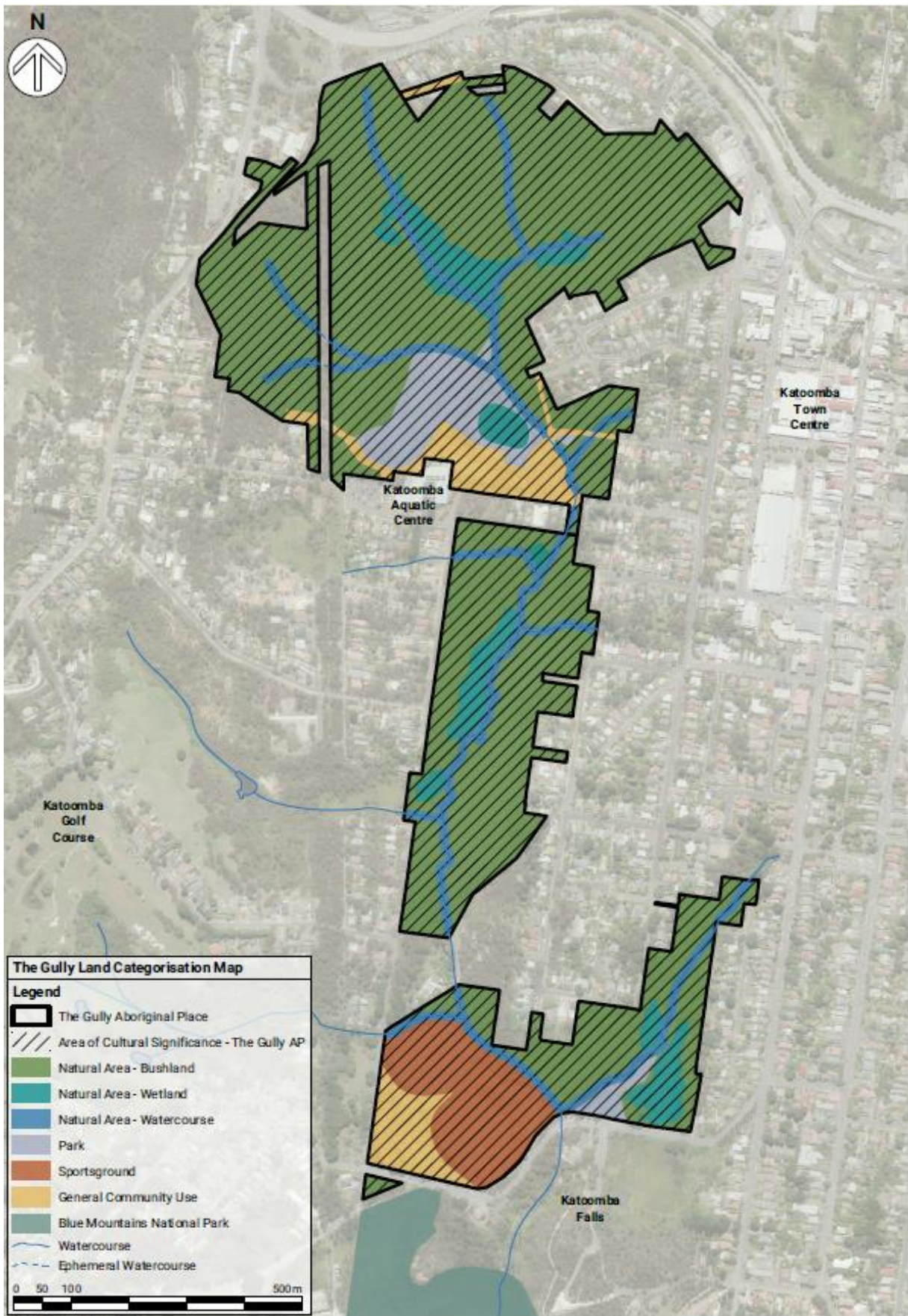
Figure 3 Current categorisation of community land in The Gully Aboriginal Place



Source: Upper Kedumba River Valley Precinct Plans of Management (2004)



Figure 4 Proposed recategorisation of community land in The Gully Aboriginal Place



Source: The Gully Aboriginal Place Draft Plan of Management (Blue Mountains City Council, May 2021)