

## APPENDIX 3

### *Practice Note PN 16-001- Classification and Reclassification of Public Land through a Local Environmental Plan and Reclassification Checklist*

<b>Ref No.</b>	PN 16-001
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<b>Related</b>	Supersedes PN 09-003

## Classification and reclassification of public land through a local environmental plan

The purpose of this practice note is to update guidance on classifying and reclassifying public land through a local environmental plan (LEP). This practice note emphasises the need for councils to demonstrate strategic and site specific merit, includes a comprehensive information checklist and clarifies issues arising for public reserves and interests in land. It should be read in conjunction with *A guide to preparing local environmental plans* and *A guide to preparing planning proposals*.

### Classification of public land

Public land is managed under the *Local Government Act 1993* (LG Act) based on its classification. All public land must be classified as either community land or operational land (LG Act ss.25, 26).

- **Community land** – is land council makes available for use by the general public, for example, parks, reserves or sports grounds.
- **Operational land** – is land which facilitates the functions of council, and may not be open to the general public, for example, a works depot or council garage.

#### What is public land?

*Public land* is defined in the LG Act as any land (including a *public reserve*) vested in, or under council control. Exceptions include a public road, land to which the *Crown Lands Act 1989* applies, a common, land subject to the *Trustees of Schools of Arts Enabling Act 1902* or a regional park under the *National Parks and Wildlife Act 1974*.

### Why classify public land?

The purpose of classification is to identify clearly that land made available for use by the general public (community) and that land which need not (operational). How public land is classified determines the ease or difficulty a council can have dealings in public land, including its sale, leasing or licensing. It also provides for transparency in council's strategic asset management or disposal of public land.

Community land must not be sold, exchanged or otherwise disposed of by a council. It can be leased,

but there are restrictions on the grant of leases and licences, and also on the way community land can be used. A plan of management (PoM), adopted by council, is required for all community land, and details the specific uses and management of the land.

There are no special restrictions on council powers to manage, develop, dispose, or change the nature and use of operational land.

### How is public land classified or reclassified?

Depending on circumstances, this is undertaken by either:

- council resolution under ss.31, 32, or 33 (through LG Act s.27(2)), or
- an LEP under the *Environmental Planning and Assessment Act* (through LG Act s.27(1)).

Councils are encouraged to classify or reclassify land by council resolution where suitable.

**Classification** of public land occurs when it is first acquired by a council and classified as either community or operational.

**Reclassification** of public land occurs when its classification is changed from community to operational, or from operational to community.

## Reclassification through an LEP

Classification and reclassification of public land through an LEP is subject to both the local plan-making process in the EP&A Act and the public land management requirements of the LG Act.

A planning proposal to classify or reclassify public land, will need to be prepared in accordance with this practice note and the additional matters specified in Attachment 1 to this practice note.

Reclassification through an LEP is the mechanism with which council can remove any public reserve status applying to land, as well as any interests affecting all or part of public land (LG Act s.30).

It is critical that all interests are identified upfront as part of any planning proposal. If public land is reclassified from community to operational, without relevant interests being identified and discharged, then the land will need to be reclassified back to community (usually by council resolution under LG Act s.33<sup>1</sup>) before being reclassified in a new planning proposal to operational, to explicitly discharge any interests.

While a reclassification proposal to remove the public reserve status of land and/or discharge interests may not necessarily result in the immediate sale or disposal of the land, the community should be aware the public land in question is no longer protected under the LG Act from potential future sale once it has been reclassified to operational.

Councils should obtain their own advice when proposing to discharge any interests and be aware that this may attract a claim for compensation under the *Land Acquisition (Just Terms Compensation) Act 1991*.

Where land has been dedicated to council by a State agency for a particular purpose and a trust exists, it is advisable for council to seek the views of that agency prior to council commencing any planning proposal affecting the land.

**Public reserve** is defined in the LG Act and includes a public park and land declared or dedicated as a public reserve.

Land can be dedicated as a public reserve by either:

- registering a deposited plan with a statement creating a lot(s) as 'public reserve', or
- publishing a notification in the Government Gazette for an existing parcel.

**Interests in land** refers to property ownership as well as rights and privileges affecting land, such as leasehold, easements, covenants and mortgages.

For the purpose of reclassification through an LEP, 'interests' means trusts, estates, dedications, conditions, restrictions and covenants affecting the land.

A legal owner of land may not be the only person with an interest in the land. For example, one person may have the benefit of an easement for services, such as water, electricity or sewerage over someone else's land.

Certain interests are registered on title to ensure they are on record and cannot be disregarded if sold to a new owner. An electronic title search is generally conducted to determine the land owner, correct land description and the type of interests which may affect the land.

## Standard Instrument LEP requirements

Clause 5.2—Classification and reclassification of public land in Standard Instrument LEPs enables councils to classify or reclassify public land as operational land or community land in accordance with the LG Act. The land to be reclassified or classified is described in Schedule 4 of the LEP.

Schedule 4 is not to refer to any land already classified or reclassified.

Where there is no public land to be classified, or reclassified, through a principal LEP (i.e. the LEP applies to the whole of a local government area), Schedule 4 will appear blank.

Note: At a later stage council may lodge a planning proposal to remove previous listings in Schedule 4. This will not affect the classification status of these parcels of land.

## Department assessment

A proposal to classify or reclassify public land through an LEP must have planning merit. The Department will undertake an assessment to determine whether the proposal demonstrates strategic and site specific merit.

## Community consultation

Planning proposals to reclassify public land are to be publicly exhibited for at least 28 days.

A copy of this practice note is to be included in the public exhibition materials.

<sup>1</sup> Note: Council is required to give public notice of the proposed resolution and provide a period of at least 28 days during which submissions may be made (LG Act s.34).

## Public hearings

Councils must hold a public hearing when reclassifying public land from community to operational (EP&A Act s.57 & LG Act s.29). This gives the community an opportunity to expand on written submissions and discuss issues with an independent person in a public forum.

After the exhibition period has ended, at least 21 days public notice is to be given before the hearing. This allows the person chairing the hearing sufficient time to consider written submissions and all issues raised.

There are specific requirements for the independence of the person chairing the hearing, their preparation of a public hearing report and council making the report publicly available (LG Act s.47G).

## Governor's approval

The Governor's approval is required when a reclassification proposal seeks to remove any public reserve status and/or discharge any interests affecting public land (s.30).

When a council reports back to the Department on the community consultation undertaken and requests the Department make the LEP, the Department will arrange legal drafting of the LEP, including recommending the Governor approve the provisions before the LEP can be legally made.

Where the Governor's approval is required, the council's report accompanying the final planning proposal must address:

- council's interests in the land;
- whether the land is a 'public reserve';
- the effect of the reclassification, including loss of open space, any discharge of interests, and/or removal of public reserve status;
- the strategic and site specific merits of the reclassification and evidence to support this;
- any current use of the land, and whether uses are authorised or unauthorised;
- how funds obtained from any future sale of the land will be used;
- the dates the planning proposal was publicly exhibited and when the public hearing was held;
- issues raised in any relevant submissions made by public authorities and the community;
- an explanation of how written and verbal submissions were addressed or resolved; and
- the public hearing report and council resolution.

## Authorisation of delegation

Local plan making functions are now largely delegated to councils.

A Written Authorisation to Exercise Delegation is issued to a council as part of the Gateway determination. However, where an LEP requires the Governor's approval, this council delegation cannot be issued. In this instance, the council must request the Department make the LEP.

A decision to classify or reclassify public land cannot be sub-delegated by council to the general manager or any other person or body (LG Act s.377(1)(l)).

## Background

On July 1, 1993 when the LG Act commenced, the following land under council ownership or control, was automatically classified as *community* land:

- land comprising a public reserve,
- land subject to a trust for a public purpose,
- land dedicated as a condition of consent under s.94 of the EP&A Act,
- land reserved, zoned or otherwise designated for use under an environmental planning instrument as open space,
- land controlled by council and vested in Corporation Sole - Minister administering the EP&A Act.

Councils must keep a register of land under their ownership or control (LG Act s.53) and anybody can apply to a council to obtain a certificate of classification (LG Act s.54).

## Further information

A copy of this practice note, *A guide to preparing planning proposals* and *A guide to preparing local environmental plans* is available at:

<http://www.planning.nsw.gov.au>

For further information, please contact the Department of Planning and Environment's Information Centre by one of the following:

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**Authorised by:**  
**Carolyn McNally**  
**Secretary**

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**Important note:** This practice note does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this practice note.

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## ATTACHMENT 1 – INFORMATION CHECKLIST FOR PROPOSALS TO CLASSIFY OR RECLASSIFY PUBLIC LAND THROUGH AN LEP

The process for plan-making under the EP&A Act is detailed in *A guide to preparing planning proposals* and *A guide to preparing local environmental plans*.

Importantly, *A guide to preparing local environmental plans* contains the Secretary's requirements for matters that must be addressed in the justification of all planning proposals to reclassify public land. Councils must ensure the Secretary's requirements are addressed.

Councils must also comply with any obligations under the LG Act when classifying or reclassifying public land. More information on this can be found in *Practice Note No. 1 - Public Land Management* (Department of Local Government, 2000).

All planning proposals classifying or reclassifying public land must address the following matters for Gateway consideration. These are in addition to the requirements for all planning proposals under section 55(a) – (e) of the EP&A Act (and further explained in *A guide to preparing planning proposals* and *A guide to preparing local environmental plans*).

- ☐ the current and proposed classification of the land;
- ☐ whether the land is a 'public reserve' (defined in the LG Act);
- ☐ the strategic and site specific merits of the reclassification and evidence to support this;
- ☐ whether the planning proposal is the result of a strategic study or report;
- ☐ whether the planning proposal is consistent with council's community plan or other local strategic plan;
- ☐ a summary of council's interests in the land, including:
  - how and when the land was first acquired (e.g. was it dedicated, donated, provided as part of a subdivision for public open space or other purpose, or a developer contribution)
  - if council does not own the land, the land owner's consent;
  - the nature of any trusts, dedications etc;
- ☐ whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why;
- ☐ the effect of the reclassification (including, the loss of public open space, the land ceases to be a public reserve or particular interests will be discharged);
- ☐ evidence of public reserve status or relevant interests, or lack thereof applying to the land (e.g. electronic title searches, notice in a Government Gazette, trust documents);
- ☐ current use(s) of the land, and whether uses are authorised or unauthorised;
- ☐ current or proposed lease or agreements applying to the land, together with their duration, terms and controls;
- ☐ current or proposed business dealings (e.g. agreement for the sale or lease of the land, the basic details of any such agreement and if relevant, when council intends to realise its asset, either immediately after rezoning/reclassification or at a later time);
- ☐ any rezoning associated with the reclassification (if yes, need to demonstrate consistency with an endorsed Plan of Management or strategy);
- ☐ how council may or will benefit financially, and how these funds will be used;
- ☐ how council will ensure funds remain available to fund proposed open space sites or improvements referred to in justifying the reclassification, if relevant to the proposal;
- ☐ a Land Reclassification (part lots) Map, in accordance with any standard technical requirements for spatial datasets and maps, if land to be reclassified does not apply to the whole lot; and
- ☐ preliminary comments by a relevant government agency, including an agency that dedicated the land to council, if applicable.

**Practice Note PN 16-001- Classification and Reclassification of Public Land through a Local Environmental Plan**

## Practice Note PN 16-001- Classification and Reclassification of Public Land through a Local Environmental Plan - Checklist

The NSW Department of Planning, Industry and Environment *Practice Note PN16-001*

'Classification and reclassification of public land through a local environmental plan' includes an information checklist of matters to be addressed for Gateway consideration, for all proposals to classify or reclassify public land through an LEP. The following checklist addresses the matters and identifies where relevant matters are addressed in the Planning Proposal:

No.	Matter to be Addressed	Response
1	Current & proposed classification of the land.	The subject land (made up of 7 individual parcels) is currently classified as 'community land'. The Planning Proposal proposes to reclassify the subject land to 'operational'.
2	Whether the land is a 'public reserve'.	The subject site is not a 'public reserve'.
3	Strategic and site merits of the reclassification and evidence to support this.	<p>The Planning Proposal would correct an administrative anomaly and enable the subject site to be used for the purpose for which Hawkesbury City Council acquired it, which was to provide a buffer zone for the Hawkesbury City Council's Waste Management Facility. The Hawkesbury City Council's Waste Management Facility is located on the northern side of The Driftway, which is the boundary between Penrith LGA and Hawkesbury LGA. This will enable Hawkesbury City Council to utilise, lease and manage the subject site whilst HCC's Waste Management Facility is in operation and as the facility evolves in the future. In this context, the current community classification is inappropriate.</p> <p>This is evidenced by the Planning Proposal:</p> <ul style="list-style-type: none"> <li>• being consistent with the purpose for which HCC acquired the subject land, being the provision of a buffer for the Waste Facility whilst also providing an opportunity for Hawkesbury City Council to effectively manage the land asset;</li> <li>• being consistent with regional and local strategies applying to both Hawkesbury City Council and Penrith City Council;</li> <li>• enabling the management of the Waste Facility and surrounds to create improved amenity for neighbours and the local community;</li> <li>• providing an opportunity to appropriately lease the underutilised sites and therefore improve economic vitality; and,</li> <li>• enabling positive social and economic outcomes for the area including through</li> </ul>

No.	Matter to be Addressed	Response
		improved management of the subject site.
4	Whether the Planning Proposal is the result of a strategic study or report.	<p>Yes, at its meeting of 11 March 2008, Hawkesbury City Council resolved to reclassify the subject land to optimise its use in accordance with s. 27(2) of the <i>Local Government Act 1993</i>.</p> <p>This was following a Review of HCC Records which indicated that at the time of acquisition, no action was taken to have the properties classified as 'Operational' land (to enable their effective use as a buffer around the Waste Facility, resulting in them automatically being classified as 'Community' land.</p> <p>The Planning Proposal implements the HCC resolution.</p>
5	Whether the Planning Proposal is consistent with Council's community plan or other strategic plan.	<p><u>Hawkesbury Strategic Community Plan - The Hawkesbury 2036.... It's Our Future</u></p> <p>The Hawkesbury Community Strategic Plan (CSP) includes the following key strategies that this Planning Proposal is consistent with:</p> <ul style="list-style-type: none"> <li>• <i>4.2.1 – Our communities current and future utility infrastructure needs (including waste) are identified and delivered</i> – this Planning Proposal helps to ensure the ongoing operation of the Waste Facility and may provide for related industries to be co-located as waste technology continues to change over time.</li> <li>• <i>5.15 - The needs of our community will be reflected in Local, State and Regional Plans</i> – this Planning Proposal is the result of landowner/ community request to ensure HCC purchased properties (in Penrith LGA) that were being impacted by the operation of the Waste Facility.</li> <li>• <i>5.7 &amp; 5.8 – Economic Development &amp; Increase the range of local industry opportunities and provide effective support to continued growth</i> – this Planning Proposal will result in the potential lease of the subject lands to ensure economic return on the land to HCC and opportunity for appropriate local businesses to use/ operate from the site (subject to the environmental constraints of the</li> </ul>



No.	Matter to be Addressed	Response
		<p>lands and any necessary approvals processes).</p> <p><u>Penrith Community Plan 2017</u> The Penrith Community Plan (CP) includes the following key strategies that this Planning Proposal is consistent with:</p> <ul style="list-style-type: none"> <li>• <i>1.1 - Attract investment to grow the economy and increase the range of businesses operating in the region</i> – this Planning Proposal helps Hawkesbury City Council ensure land they own in Penrith City Council continues to be used as a buffer to the Waste Facility and can be leased and used for compatible purposes, including those that may be envisaged by local businesses.</li> <li>• <i>2.1 Facilitate development in the City that considers the current and future needs of our community</i> - this Planning Proposal helps Hawkesbury City Council ensure land they own in Penrith City Council continues to be used as a buffer to the Waste Facility and can be leased and used for purposes to meet the needs of residents in both LGAs.</li> </ul>
6	<p>A summary of Council's interests in the land, including:</p> <ul style="list-style-type: none"> <li>- How &amp; when the land was first acquired.</li> <li>- If Council does not own the land, owner's consent.</li> <li>- The nature of any trusts etc.</li> </ul>	<p>The use of the HCC Waste Management Facility site for landfill was approved in 1951.</p> <p>It was determined that the purchase of the properties as a buffer to the waste facility was necessary in mid-1996</p> <p>The purchase of the properties was resolved by HCC at the meeting on 8 April 1997 and 27 May 1997.</p> <p>HCC acquired the 7 parcels of land that make up the subject site between 1997 and 2001 to establish a buffer zone for the Hawkesbury City Council's Waste Management Facility.</p> <p>The subject land was then classified as 'community' land under the <i>Local Government Act, 1993</i>, noting it was not resolved to classify the land within three months of acquisition.</p> <p>It is noted Lot 1 DP 25981 is partly affected by an 'easement for transmission line' (W168632).</p>

No.	Matter to be Addressed	Response
		A History of Dealings is provided as Appendix 4 of this Planning Proposal.
7	Whether an interest in the land is proposed to be discharged, and if so, an explanation of the reasons why.	No interests in the land are proposed to be discharged.
8	The effect of the reclassification (including loss of open space/ public reserve).	The reclassification will not result in the loss of any open space/ public reserve as although the land is 'community land' it has never been accessible to the community.
9	Evidence of public reserve status or relevant interests or lack thereof applying to the land.	The individual Certificates of Title include schedules to indicate there are no relevant interests applying to each parcel of land, with the exception of the 'easement for transmission line' noted in No. 6 above.
10	Current uses of the land and whether uses are authorised or unauthorised.	The current authorised use of the land is vacant, rural land.
11	Current or proposed lease or agreements applying to the land, together with their duration, terms and controls.	Nil. The subject lands were previously leased for residential purposes by Hawkesbury City Council, however all leases have ended and there are no known proposed leases or agreements applying to the subject lands at this stage.
12	Current or proposed business dealings (eg. agreement for the sale or lease of the land).	Nil. The subject lands were previously leased for residential purposes by Hawkesbury City Council, however all leases have ended and there are no known proposed business dealings relating to the subject lands at this stage.
13	Any rezoning associated with the reclassification.	The Planning Proposal does not propose to rezone the subject lands.
14	How Council may or will benefit financially, and how these funds will be used.	<p>Hawkesbury City Council will benefit should the subject lands be disposed of after this Planning Proposal is completed, and the future use of the Waste Management Facility is known. Any proceeds received from the sale of the land, should this occur, would be reinvested consistent with Hawkesbury City Council's relevant adopted policies at that time.</p> <p>HCC's Community Strategic Plan identifies at strategy 4.2.1 that:            "Our community's current and future utility infrastructure needs (water, sewer, waste, stormwater, gas, electricity and telecommunications) are identified and delivered."</p> <p>The subject lands form part of these needs; any income generated from the reclassification will be used on matters that</p>

No.	Matter to be Addressed	Response
		<p>will directly contribute to infrastructure needs, or will be re-invested to generate an ongoing income stream for this purpose.</p> <p>In the short term, should any of the subject sites be divested or developed, all proceeds will be retained in the HCC domestic waste reserve, which funded the initial purchase of the properties.</p>
15	How Council will ensure funds remain available to fund proposed open space sites or improvements referred to in justifying the reclassification, if relevant.	HCC would separately consider the possible sale of the land to be reclassified, and have not resolved to sell the land at this stage. Further, the justification for the reclassification does not relate to funding other HCC sites or projects.
16	A Land Reclassification (part lots) Map in accordance with any standard technical requirements.	N/A.
17	Preliminary comments by a relevant government agency, including an agency that dedicated the land to Council, if applicable.	Nil.