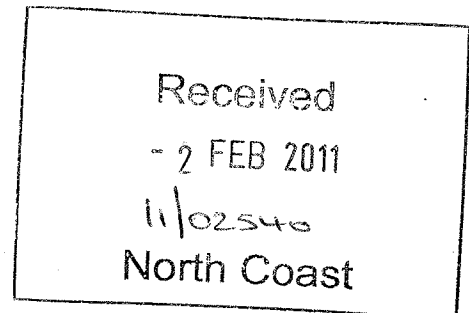




BSC File No: PLN560055 #1051576
Contact: Julie Francombe

2 February 2011

Mr Jim Clark
Department of Planning
Locked Bag 9022
GRAFTON NSW 2460



Dear Jim

Planning Proposal to Reclassify Land from Community to Operational in the Byron LEP 1988

Council at its meeting of 16 December 2010 resolved (10-1026) that an area of land occupied by the Byron Bay Swimming Pool be reclassified from community land to operational land.
The Council resolution is as follows:

10-1026

1. *That Council support an amendment to Schedule 11, Part 1, of the Byron LEP 1988 to reclassify part Lot 4 DP 827049, Bay Street, Byron Bay, comprising 551.5m², from community to operational.*
2. *That the Planning Proposal be submitted to the Department of Planning for a Gateway Determination.*

Also, Council at its meeting of 11 November 2010 resolved that land occupied by car park in Jonson Street, Byron Bay be reclassified from community land to operational land.
The Council resolution is as follows:

10-894 (relevant extract only)

1. *That Council prepare a planning proposal to reclassify part of Lot 3 DP 827049 as Operational Land with the objective of providing car parking as well as access to the 3(a) Zone Business premises fronting Jonson Street.*

In accordance with Section 56 of the *Environmental Planning and Assessment Act 1979*, Council submits the attached proposals to amend Schedule 11, Part 1, of the Byron LEP 1988 to reclassify land, as described above, from community land to operational land. As both proposals seek to reclassify land in Byron Bay from community to operational it is intended that they proceed as one planning proposal with one gateway determination so that public exhibition and public hearing can occur concurrently.

Should you have any enquiries please contact Julie Francombe on 02 6626 8117.

Yours sincerely

Julie Francombe
Planner – Strategic Land Planning

Attachments:

1. Planning Proposal Reclassification of Land from Community to Operational, Byron Bay Swimming Pool, part of Lot 4 DP 827049, Bay Street , Byron Bay #1053434
2. Planning Proposal Reclassification of Land from Community to Operational, Part Lot 3 DP 827049, Jonson Street, Byron Bay #1053433

PLANNING PROPOSAL

RECLASSIFICATION OF LAND FROM COMMUNITY TO OPERATIONAL

PART LOT 3 DP 827049, JONSON STREET, BYRON BAY

Prepared for Byron Shire Council

January 2011

Table of Contents

Introduction	Page 3
Part 1 – Proposal Objective	Page 3
Part 2 – Explanation of Provisions	Page 3
Part 3 – Justification	Page 3
Part 4 – Community Consultation	Page 13
Conclusion	Page 13

INTRODUCTION

Kate Singleton Pty Ltd has been engaged by Byron Shire Council to prepare a planning proposal for the reclassification of Part Lot 3 DP 827049 Jonson Street, Byron Bay from community to operational.

The site presently contains a car park and provides rear access to a number of premises fronting Jonson Street.

The total area of Lot 3 DP 827049 is 3936m² and the area of the land proposed to be reclassified is 3915m². The area proposed to be reclassified is illustrated in the following plan.



Figure 1 identifies the subject site and the area proposed for reclassification to operational land.

Council resolved as follows in relation to the subject land at its Ordinary Meeting of 11 November 2011:

10-894 Resolved:

1. That Council prepare a planning proposal to reclassify part of Lot 3, DP 827049 as Operational Land with the objective of providing car parking as well as access to the 3(a) Zone Business premises fronting Jonson Street.
2. That Council advise the owner of the site at 58 Jonson Street that Council is unable to grant owners consent for rear access from Lot 3 DP 827049 until the land is reclassified operational.
3. That Council make a submission to the Department of Local Government to amend the provisions relating to Community Land to allow for roadways, within such land, where the public interest is fulfilled by such roadway.

PART 1 PROPOSAL OBJECTIVE

To reclassify Part Lot 3 DP 827049, comprising approximately 3915m², from community land to operational land.

PART 2 EXPLANATION OF PROVISIONS

Amend Schedule 11 of Byron Local Environmental Plan 1988 by inserting the following in Part 1 of schedule:

Part Lot 3 DP 827049 as shown edged heavy black on the map marked "Byron Local Environmental Plan 1988 (Amendment No. XX)" is reclassified as operational land.

PART 3 JUSTIFICATION

Section A Need for Planning Proposal

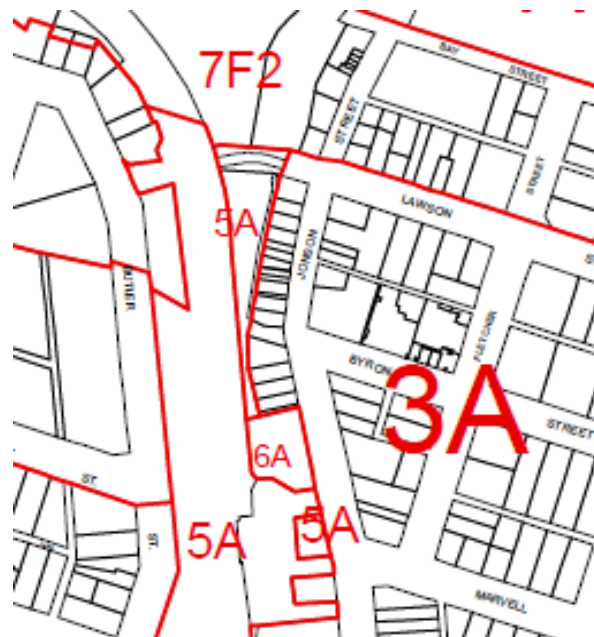
1. *Is the planning proposal a result of any strategic study or report?*

The Planning Proposal is the result of Council's detailed consideration of the issue of access to the rear of existing commercial premises fronting Jonson Street, and a report to Council's Ordinary Meeting of 11 November 2010. The consideration of a development application for 58 Jonson Street has highlighted the need to resolve the issue by reclassifying the land from community to operational.

It is evident that the land was identified in Council's land register as operational up until 2000. In 2000 it was reclassified as community land on the basis of advice that as Section 94 funds were used to acquire the land it should be classified as community land.

Following detailed discussions with the proponent in relation to a proposed development at 58 Jonson Street, Council has now received legal advice that access to the site is not available while the land is classified as "Community Land".

The subject land is currently zoned part 5(a)(Special Uses Zone) and part 3(a)(Business Zone) as illustrated in the following extract from Byron Local Environmental Plan 1988 (BLEP 1988):



The following uses are nominated as permissible with development consent in the 5(a)(Special Uses Zone):

Drainage; markets; roads; the particular purpose indicated by black lettering on the map, utility installations; any other public purpose.

Roads and car parking are permissible with development consent in the 3(a)(Business Zone).

2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

Amending BLEP 1988 to reclassify the subject land from community to operational is the best means of achieving the objectives of the planning proposal. As noted above, Council has received legal advice that the provision of access to a site fronting Jonson Street is not legally available while the land is classified as community land.

Given that a development application is pending in relation to a property fronting Jonson Street that presently has access from this area, it is considered that it is preferable to deal with this matter as a separate planning proposal, rather than as part of the Comprehensive Shire-wide LEP process.

3. *Is there a community benefit?*

The benefit to the broader community resulting from this planning proposal relates to the provision of vehicular access to the rear of the commercial premises fronting Jonson, and Railway Park to the south. A number of the properties fronting Jonson Street are presently accessed via this site resulting in a streetscape in Jonson Street that is not dominated by vehicles. The restriction of access to the rear of these properties will result in the potential for access driveways and service vehicle areas being provided along this pedestrian dominated street as sites are redeveloped. This is not a desirable planning outcome and can be resolved via the subject planning proposal.

Section B Relationship to Strategic Planning Framework

4. *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or subregional strategy?*

The planning proposal is consistent with the Far North Coast Regional Strategy.

5. *Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?*

The proposed reclassification of the land is consistent with Council's Community Strategic Plan. The current Plan of Management for the land does not address issues of access.

6. *Is the planning proposal consistent with applicable State Environmental Planning Policies?*

The planning proposal is considered to be consistent with relevant State Environmental Planning Policies (SEPPs), including the following:

- State Environmental Planning Policy No. 14 – Coastal Wetlands (SEPP No. 14)

The subject land is not identified as containing SEPP No. 14 coastal wetlands.

- State Environmental Planning Policy No. 44 – Koala Habitat Protection (SEPP No. 44)

The subject land does not contain potential koala habitat as identified in accordance with SEPP No. 44.

- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP No. 55)

The planning proposal does not have implications in terms of the provisions of SEPP No. 55.

- State Environmental Planning Policy No. 71 – Coastal Protection (SEPP No. 71)

The proposed reclassification of the land is consistent with the relevant aims and provisions of SEPP No. 71.

- State Environmental Planning Policy (North Coast Regional Environmental Plan) (NCREP SEPP)

The planning proposal is consistent with the provisions of the NCREP SEPP.

7. *Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?*

The following provides a summary of the Section 117 Directions issued on 1 July 2009 in accordance with the provisions of the Environmental Planning and Assessment Act, 1979, relevant to the subject planning proposal.

Direction No.	Provisions	Consideration
No. 2.2 – Coastal Protection	When this direction applies (1) This direction applies when a relevant planning authority prepares a planning proposal that applies to land in the coastal zone. What a relevant planning authority must do if this direction applies (2) A planning proposal must include provisions that give effect to and are consistent with: (a) the <i>NSW Coastal Policy: A Sustainable Future for the New South Wales Coast</i>	The site is currently zoned part 5(a)(Special Uses) and part 3(a)(Business Zone) in accordance with the provisions of BLEP 1988. The existing provisions of BLEP 1988 regarding coastal land uses address the requirements of the Section 117 Direction. No additional provisions are considered to be required for the subject planning proposal.

Direction No.	Provisions	Consideration
	1997, and (b) the <i>Coastal Design Guidelines 2003</i>, and (c) the manual relating to the management of the coastline for the purposes of section 733 of the <i>Local Government Act 1993</i> (the <i>NSW Coastline Management Manual 1990</i>).	
No. 5.1 – Implementation of Regional Strategies	What a relevant planning authority must do if this direction applies (3) Planning proposals must be consistent with a regional strategy released by the Minister for Planning.	The planning proposal is consistent with the provisions of the Far North Coast Regional Strategy.
No. 6.2 – Reserving Land for Public Purposes	Objectives (1) The objectives of this direction are: (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition. Where this direction applies (2) This direction applies to all relevant planning authorities. When this direction applies (3) This direction applies when a relevant planning authority prepares a planning proposal. What a relevant planning authority	The subject proposal to reclassify the land is consistent with the provisions of this Section 117 Direction.

Direction No.	Provisions	Consideration
	must do if this direction applies (4) A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General). (5) When a Minister or public authority requests a relevant planning authority to reserve land for a public purpose in a planning proposal and the land would be required to be acquired under Division 3 of Part 2 of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i>, the relevant planning authority must: (a) reserve the land in accordance with the request, and (b) include the land in a zone appropriate to its intended future use or a zone advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), and (c) identify the relevant acquiring authority for the land. (6) When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal relating to the use of any land reserved for a public purpose before that land is acquired, the relevant planning	

Direction No.	Provisions	Consideration
	authority must: (a) include the requested provisions, or (b) take such other action as advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) with respect to the use of the land before it is acquired. (7) When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal to rezone and/or remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the relevant planning authority must rezone and/or remove the relevant reservation in accordance with the request. Consistency (8) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that: (c) with respect to a request referred to in paragraph (7), that further information is required before appropriate planning controls for the land can be determined, or	

Direction No.	Provisions	Consideration
	(d) the provisions of the planning proposal that are inconsistent with the terms of this direction are of minor significance.	

In addition to the Section 117 Directions nominated above, the NSW Department of Planning issued a Practice Note (PN 09-003) titled "Classification and reclassification of public land through a local environmental plan" on 12 June 2009.

The Practice Note contains general requirements for classification or reclassification of land, including the provision of a written statement addressing the following matters:

Requirement	Response
Reason why the planning proposal is being prepared.	The planning proposal is being prepared so that the land can be reclassified from community to operational land.
Current and proposed classification.	The land is currently classified as Community Land and it is proposed that the land be classified as Operational Land.
Reason for the reclassification.	The reclassification of the land from community to operational is proposed to resolve issues regarding access to properties fronting Jonson Street, a number of which have accessed their premises from the rear, via this site, for many years. The area proposed for reclassification currently contains public car parking and access.
Council's ownership of the land.	The subject site is owned by Council.
How and when the interest was acquired.	The subject site was purchased by Council via Section 94 Contributions in June 1993.
The reason Council acquired an interest in the land.	Council acquired the interest in the land in order to make provision for public car parking.
Any agreements over the land.	No
An indication of any financial loss or gain from	The reclassification of the land may result in

Requirement	Response
the reclassification.	an increase in the value of the land and revenue-generating opportunities for Council via annual licence fees. As previously noted it is understood that the site was identified in Council's Land Register as Operational Land until 2000, at which time it was reclassified as Community Land on the basis of advice that as it had been purchased via Section 94 Contributions. The primary objective of the reclassification is to allow access to numerous commercial properties fronting Jonson Street.
The asset management objectives being pursued.	The reclassification of the land will better reflect the current use of the site and enable access to be legally provided to the rear of the existing commercial premises fronting Jonson Street. These properties currently take vehicular and pedestrian access, and garbage services from the rear.
Whether there has been an agreement for the sale or lease of the land.	There are no agreements for the lease or the sale of the land.
Relevant matters required in plan making under the EP & A Act.	The reclassification is proposed to be carried out in accordance with: S55 Relevant Authority to prepare a planning proposal S56 Gateway Determination S57 Community Consultation
A copy of the Practice Note.	Attached

Section C Environmental, Social and Economic Impact

- 8. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?***

The proposal is unlikely to adversely affect critical habitat or threatened species, populations or ecological communities, or their habitats.

9. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

The site contains existing car parking facilities and associated access and the proposed reclassification of the land is unlikely to result in adverse environmental effects.

10. *How has the planning proposal adequately addressed any social and economic effects?*

The planning proposal is considered unlikely to result in adverse social or economic impacts.

Section D State and Commonwealth Interests

11. *Is there adequate public infrastructure for the planning proposal?*

Existing public infrastructure is adequate for the site.

12. *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?*

The issues raised by State and Commonwealth public authorities will be addressed following consultation with them.

PART 4 COMMUNITY CONSULTATION

It is anticipated that the community consultation requirements of the Local Government Act in relation to the reclassification of community land to operational land, including the requirement to conduct a Public Hearing, will provide sufficient opportunity for consultation with the local community.

CONCLUSION

The proposed reclassification of the land from community to operational is considered to be consistent with relevant statutory and policy provisions. The area proposed for reclassification currently contains car parking and provides access to a number of premises fronting Jonson Street. The classification of the land as operational land will provide for improved access and management of the land and better reflects the existing use of the site.



Note	PN 09–003
Date	12 June 2009
Related	Supersedes (re)classification advice in Best Practice Guideline (1997)

Classification and reclassification of public land through a local environmental plan

The purpose of this practice note is to update (and supersede) previous guidance on the process to classify or reclassify public land through a local environmental plan including a principal plan in accordance with the Standard Instrument.

Introduction

‘Public land’ is any land (including a public reserve) vested in, or under the control of, council. Exceptions include roads, land to which the *Crown Lands Act 1989* applies, a common, or land to which the *Trustees of Schools of Arts Enabling Act 1902* applies.

‘Community’ land is generally open to the public, for example, parks, reserves or sports grounds.

‘Operational’ land may be used for other purposes, for example, as works depots or garages, or held by council as a temporary asset.

‘Classification’ of public land refers to the process when this land is first acquired and first classified as either ‘operational’ land or ‘community’ land.

‘Reclassification’ of public land refers to the process of changing the classification of ‘operational’ land to ‘community’ land or from ‘community’ land to ‘operational’ land.

How is public land classified or reclassified?

Depending on circumstances, this is undertaken by either:

- resolution of council under section 31, 32 or 33 of the *Local Government Act 1993* (LG Act) [through section 27(2)], or
- a local environmental plan (LEP) under the *Environmental Planning and Assessment Act 1979* (EP&A Act) [through section 27(1) of the LG Act].

In both cases, it is not possible for councils to delegate their decision to classify or reclassify public land [section 377(1) of the LG Act]. Councils are encouraged to classify or reclassify land through the LG Act wherever circumstances conform to sections 31, 32 or 33 of the LG Act.

The remaining parts of this practice note identify the key areas councils must consider when proposing to classify or reclassify public land by means of a local environmental plan (LEP) under the second option.

This practice note supersedes the sections relating to classification and reclassification in *LEPs and council land*, Best Practice Guideline (Department of Urban Affairs and Planning 1997).

Procedure under the EP&A Act

Where classification or reclassification is proposed through an LEP, council is advised to include the proposal as early as possible in the draft LEP or planning proposal. If the public land to be classified or reclassified is not owned by council, landowner’s consent is required prior to either section 54 or section 56 of the EP&A Act (when the Part 3 amendment to the EP&A Act applies).¹

The proposal would then form part of the material presented through either section 54 or section 56 of the EP&A Act (when the Part 3 amendment to the EP&A Act applies).

¹ In relation to the Part 3 amendment, council should also check the changes to the EP&A Act and Regulation once these commence.

To assist councils, the steps in preparing material either as a draft LEP or planning proposal are summarised in Attachment 1. Column 1 of Attachment 1 sets out the requirements in accordance with the EP&A Act **prior to** the Part 3 amendment commencing. Column 2 of the attachment sets out the requirements **after** the Part 3 amendment commences. In relation to the Part 3 amendment, council should also check the savings and transitional arrangements under the EP&A Act, once these commence.

Where land is proposed to be reserved for a public purpose such as provision of public services and facilities, section 117 Direction 6.2—Reserving Land for Public Purposes applies. The Direction also sets out requirements when a reservation of public land for such purposes is no longer required.

A summary of relevant matters that need to be available at the time the planning proposal is first forwarded are listed in Attachment 2 under 'Exhibition'. Other matters for exhibition and later stages are listed separately in that attachment.

Provisions in the Standard Instrument

The following Standard Instrument provisions are relevant to the classification and reclassification of public land.

Clause 5.2—Classification and reclassification of public land

The purpose of this clause is to enable councils to classify or reclassify public land identified in Schedule 4 of the Standard Instrument. Only public land to be classified or reclassified by publication on the NSW legislation website of that principal LEP is to be identified in the schedule. Schedule 4 must not contain a reference to any land already classified or reclassified.

Part 1 Schedule 4—change to 'operational' land, no interest changes

Land is identified in Part 1 of Schedule 4 where the trusts, estates, interests, dedications, conditions, restrictions or covenants over the land are to remain after reclassification to 'operational land', i.e. where **no** interests will change.

Part 2 Schedule 4—change to 'operational' land and an interest will change

Land is identified in Part 2 of Schedule 4 where the land is to be classified or reclassified as 'operational land' and some of the trusts, estates, interests, dedications, conditions, restrictions, or covenants over the land remain. The interests to remain are identified in column 3 of this part of the schedule.

Part 3 Schedule 4—change to 'community' land

Land proposed to be classified or reclassified as 'community land' through the LEP is identified in Part 3 of the schedule.

Where there is no land to be classified or reclassified through the LEP, the clause remains with the schedule empty.

General requirements for exhibition

Public exhibition of the LEP occurs after certification of the LEP (in accordance with section 66 of the EP&A Act). Public exhibition of a planning proposal may occur in accordance with section 57(2) (when the Part 3 amendment to the EP&A Act commences). To assist the public in understanding an exhibited draft LEP or planning proposal to classify or reclassify land, requirements are summarised in Attachment 2.

A copy of council's response to these requirements together with a copy of this practice note is to be part of material displayed during public exhibition of an LEP or planning proposal to reclassify or classify public land.

Public hearing

A public hearing must be held when 'community land' is proposed to be reclassified as 'operational land'.

To ensure council and the community have sufficient time to consider relevant matters associated with the proposed change, the public hearing is held **after** the close of the exhibition period under section 68 of the EP&A Act (section 29 of the LG Act) for an LEP and in accordance with section 57(6) (when the Part 3 amendment to the EP&A Act commences).

Public hearing provisions are set out in the EP&A Regulation (clause 14) and public notice of a hearing must be sent or published **at least 21 days** before the start of the public hearing.

The independence of the person chairing the public hearing and requirements relating to the preparation and inspection of reports from the hearing are specified in section 47G of the LG Act.

Further information

A copy of this practice note, Standard Instrument, and other specific practice notes and planning circulars on using the Standard Instrument, can be accessed on the Department's website <http://www.planning.nsw.gov.au/lep/index.asp>

Authorised by:

Sam Haddad, Director-General

List of attachments:

1. Main steps (in sequence) for classifying and reclassifying public land under the *Environmental Planning and Assessment Act 1979*
2. General requirements for classification or reclassification of land through local environmental plans and planning proposals

Attachment 1. Main steps (in sequence) for classifying and reclassifying public land under the *Environmental Planning and Assessment Act 1979*

Requirements prior to commencement of the 2008 Part 3 amendment to the EP&A Act	Requirements after commencement of the 2008 Part 3 amendment to the EP&A Act when it applies to a proposal
Council notifies the Department of a decision to prepare a draft LEP including a proposal to classify or reclassify public land (section 54 of the EP&A Act). This notification is accompanied by an appropriate level of information including for the following: - a justification for the proposal - reasons why council acquired an interest - details that would also accompany a plan at exhibition stage (see Attachment 2) - any proposal to extinguish or retain other interests in the land through the reclassification - a justification /explanation as to why such interests are being extinguished - any rezoning associated with the classification/ reclassification - any preliminary comments by a relevant government agency, including agency's consent where land is vested or held by an agency other than council - consideration of any relevant directions e.g. section 117 Direction 6.2—Reserving Land for Public Purposes, where appropriate.	A planning proposal is forwarded by council to the Minister (new section 56 of the EP&A Act), including a proposal to classify or reclassify public land. This proposal contains an appropriate level of information including for the following: - a justification for the planning proposal - reasons why council acquired an interest - details that would also accompany a plan at exhibition stage (see Attachment 2) - any proposal to extinguish or retain other interests in the land through the reclassification - a justification /explanation as to why such interests are being extinguished - any rezoning associated with the classification/ reclassification - any preliminary comments by a relevant government agency, including an agency in which the land is vested or held - consideration of any relevant directions, e.g. section 117 Direction 6.2—Reserving Land for Public Purposes, where appropriate.
Consultation with relevant public agencies and other stakeholders (section 62 of the EP&A Act).	See below.
After consultation, council submits a draft LEP to the Department and, subject to the issue of a section 65 certificate, the draft LEP is exhibited for a minimum of 28 days and the public invited to provide written submissions to the exhibited LEP within the exhibition period.	Following review, at the gateway, if the planning proposal is to proceed, requirements for the various stages of the proposal, including consultation requirements, will be provided to council (new section 56(1), 56(2) of the EP&A Act).
Where a draft LEP includes reclassification of 'community' land to 'operational' land, council holds a public hearing into the proposal in accordance with section 68 of the EP&A Act (section 29 of the Local Government Act). *	Where a planning proposal includes reclassification of 'community' land to 'operational' land, council holds a public hearing into the proposal in accordance with new section 57(6) of the EP&A Act. *
Such a hearing follows the requirements of clause 14 of the EP&A Regulation including that a notice of the details for the hearing must be published in a local newspaper and sent to any person requesting a hearing a minimum of 21 days prior to the hearing.	Such a hearing follows the requirements of clause 14 of the EP&A Regulation including that a notice of the details for the hearing must be published in a local newspaper and sent to any person requesting a hearing a minimum of 21 days prior to the hearing.
Where it is considered appropriate, the draft LEP is submitted to the Director-General together with details of all submissions and the report of the public hearing, together with a statement of other matters set out in section 68 of the EP&A Act.	Consultation for a planning proposal under new section 57 of the EP&A Act is completed when council has considered any submissions made concerning the proposed instrument and the report of any public hearing. Where the planning proposal is to proceed, the Director-General makes arrangements for the drafting of the LEP to give effect to the final proposal (new section 59 of the EP&A Act).
The Director-General furnishes a report to the Minister if the Director-General is satisfied that the draft LEP has been prepared in accordance with any applicable standard instrument under section 33A (section 69 of the EP&A Act).	
The Minister determines whether to make the LEP under section 70 of the EP&A Act. **	The Minister (or Minister's delegate) determines whether to make the LEP under new section 59 of the EP&A Act. **

Notes:

* Where a proposal includes a classification of 'operational' land to 'community' land, a public hearing is not generally required.

** Where a reclassification proposes to extinguish other interests in the land, the approval of the Governor is required in accordance with section 30 of the LG Act.

Attachment 2. General requirements for classification or reclassification of land through local environmental plans and planning proposals

Exhibition

When exhibiting a planning proposal or draft LEP to classify or reclassify public land, council must provide a written statement including the following:

- the reasons why the draft LEP or planning proposal is being prepared including the planning merits of the proposal, e.g. the findings of a centres' strategy, council's intention to dispose of the land, provision of open space in a town centre
- the current and proposed classification of the land
- the reasons for the reclassification including how this relates to council's strategic framework, council's proposed future use of the land, proposed zones, site specific requirements, e.g. heritage controls, anticipated physical or operational changes resulting from the reclassification
- council's ownership of the land, if this applies
- the nature of council's interest in the land, e.g. council has a 50 year lease over the site
- how and when the interest was first acquired, e.g. the land was purchased in 20XX through section 94
- the reasons council acquired an interest in the land, e.g. for the extension of an existing park; council was given responsibility for the land by a State agency
- any agreements over the land together with their duration, terms, controls, agreement to dispose of the land, e.g. whether any aspect of the draft LEP or planning proposal formed part of the agreement to dispose of the land and any terms of any such agreement
- an indication, as a minimum, of the magnitude of any financial gain or loss from the reclassification and of the type(s) of benefit that could arise e.g. council could indicate the magnitude of value added to the land based on comparable sites such as the land is currently valued at \$1500 per square metre, nearby land zoned for business development is valued at between \$2000 and \$5000 per square metre
- the asset management objectives being pursued, the manner in which they will be achieved and the type of benefits the council wants, i.e. without necessarily providing details of any possible financial arrangements, how the council may or will benefit financially
- whether there has been an 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

- Relevant matters required in plan making under the EP&A Act
- A copy of this practice note must be included in the exhibition material to assist the community in identifying information requirements. Council staff may wish to identify the column in Attachment 1 that applies.

Post-exhibition

Once a decision has been made regarding whether the draft LEP or planning proposal proceeds, everyone who made a written submission must be notified in writing of the decision.

Written notification must occur within 14 days of the decision and needs to clearly identify the reasons for council's decision. An explanation must be included of how issues raised in submissions were addressed including the reasons for council's decision.

The final report after exhibition to either the Director-General or the Minister should include:

- a brief summary of council's interest in the land
- issues raised in any relevant submissions
- the dates of the exhibition and the hearing
- an explanation of how issues raised were addressed or resolved.

Additional matters to be addressed when the Governor's approval is required

The Governor's approval is required for the extinguishment of public reserve status and other interests in land which a council proposes to reclassify from 'community' to 'operational' status under the LG Act.

Council must provide sufficient information in accordance with this practice note to inform the Minister of any public reserve and/or other third party property interests (e.g. trust, covenant, easement) that are proposed to be extinguished upon the making of such a draft LEP or planning proposal.

Important note

This 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 note.

© 2009 New South Wales Government through the Department of Planning
www.planning.nsw.gov.au
DOP 09_004

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

PLANNING PROPOSAL

RECLASSIFICATION OF LAND FROM COMMUNITY TO OPERATIONAL BYRON BAY SWIMMING POOL

Part of LOT 4 DP 827049 BAY STREET BYRON BAY

Prepared for Byron Shire Council

September 2010

Table of Contents

Introduction	Page 3
Part 1 – Proposal Objective	Page 3
Part 2 – Explanation of Provisions	Page 3
Part 3 – Justification	Page 3
Part 4 – Community Consultation	Page 12
Conclusion	Page 12

Lot 4 DP 827049



Disclaimer : While all reasonable care has been taken to ensure the information contained on this map is up to date and accurate, no warranty is given that the information contained on this map is free from error or omission. Any reliance placed on such information shall be at the sole risk of the user. Please verify the accuracy of the information prior to using it.
Note : The information shown on this map is a copyright of the Byron Shire Council and the NSW Department of Lands.

Scale = 1:1,222
Metres 20 40 60

(Scale correct at A4 size)

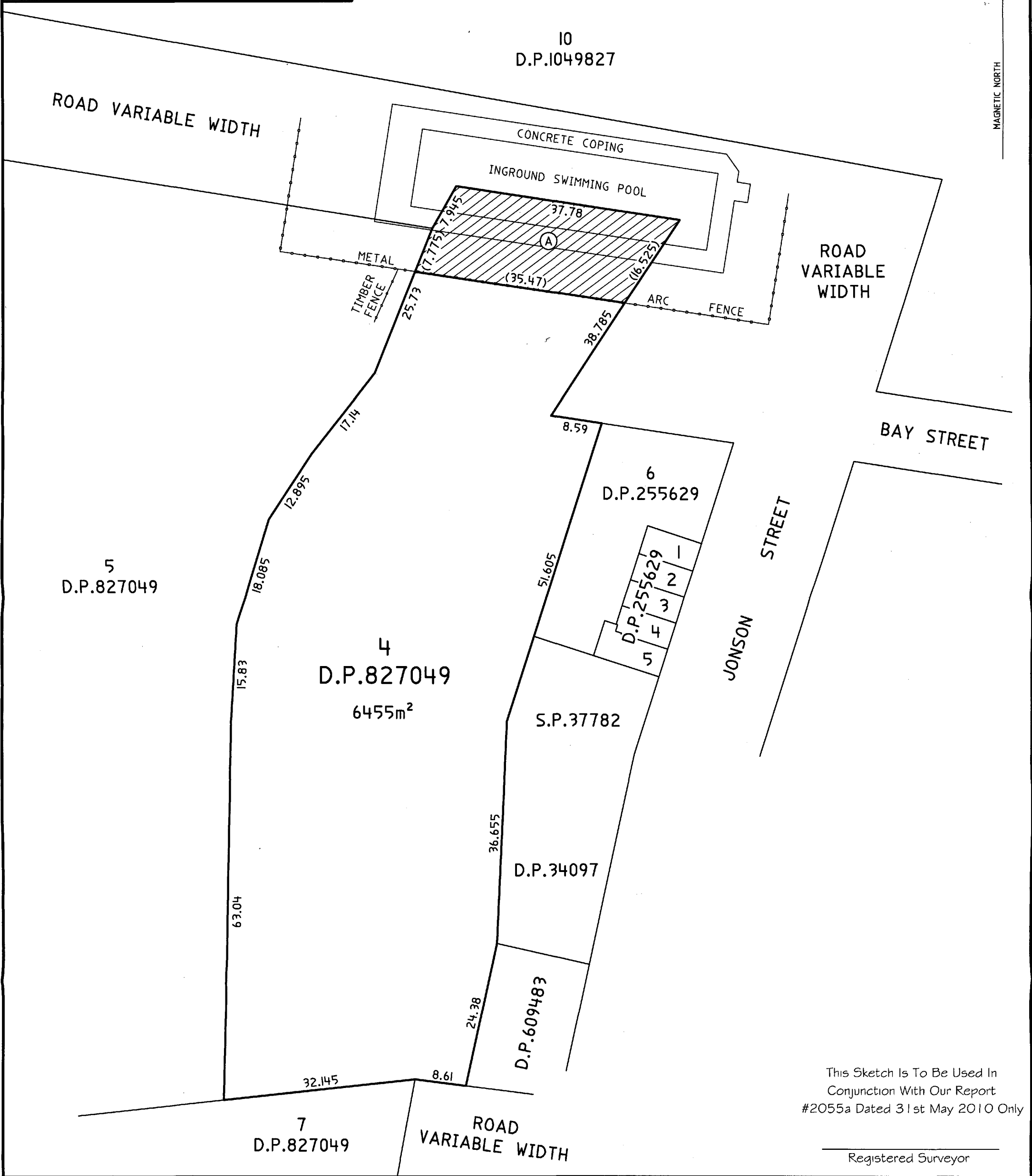


5/05/2010

Plan Of Lot 4 D.P.827049
Bay Street,
Byron Bay,
Shire Of Byron
Parish Of Byron, County Of Rous

Ⓐ PART LOT 4 D.P.827049, COMMUNITY LAND TO BE RECLASSIFIED OPERATIONAL (551.5m²).

MAGNETIC NORTH



This Sketch Is To Be Used In
Conjunction With Our Report
#2055a Dated 31st May 2010 Only

Registered Surveyor

CLIENT:- Byron Shire Council PO Box 219 Mullumbimby 2482 Att: Samantha Harris	Scale:- 1:600 @ A3(Size)	Scott Thompson Surveying Pty. Ltd. Trading As: Canty's Surveyors ABN 49 093 101 305	SHEET No 1
	Datum:- ****		# of SHEETS 1
	Date: 31st May 2010		F/BOOKS No Notes
	Reference:- 2055a		Level Origin
	File:- VP-PM CD43		****
Drawn: Ossie Welsh	PLEASE NOTE: In the event that this document and/or any attachment or associated document and/or part thereof is utilised in any manner whatsoever, other than under the sole control of Canty's Surveyors and for the specific purposes for which it was prepared then Canty's Surveyors will not be liable for such use or any damages of whatever type or extent which may result. Unless specifically otherwise stated the dimensions and areas as shown are preliminary and subject to final cadastral survey. Use of this drawing without the title block contravenes copyright law and will be prosecuted in accordance with the 'Copyright' laws.	Business 1/59 Centennial Circuit Byron Bay NSW 2481 Postal PO Box 609 Byron Bay NSW 2481 Phone: (02) 66856675 66856680 Facsimile: (02) 66856250 email cantysurveying@bigpond.com Residential 1 Postal 18 Palmer Avenue, Ocean Shores, 2483 Phone: (02) 6680 5404	Coordinate Basis Assumed
Checked: Scott Thompson			

INTRODUCTION

Kate Singleton Pty Ltd has been engaged by Byron Shire Council to prepare a planning proposal for the reclassification of part of Lot 4 DP 827049 from community to operational. The site presently contains part of the Byron Bay Swimming Pool.

The total area of Lot 4 DP 827049 is 6455m² and the area of the land proposed to be reclassified is 551.5m².

The attached figures locate the site and illustrate the area proposed for reclassification.

PART 1 PROPOSAL OBJECTIVE

To reclassify part of Lot 4 DP 827049, comprising 551.5m², from community to operational land.

PART 2 EXPLANATION OF PROVISIONS

Amend Schedule 11 of Byron Local Environmental Plan 1988 by inserting the following in Part 1 of schedule:

Part of Lot 4 DP 827049 as shown edged heavy black on the map marked "Byron Local Environmental Plan 1988 (Amendment No. XX)" is reclassified as operational land.

PART 3 JUSTIFICATION

Section A Need for Planning Proposal

1. Is the planning proposal a result of any strategic study or report?

The Planning Proposal is not a result of any strategic study or report. The reclassification of the land from community to operational is intended to reflect the use of the Byron Bay Swimming Pool site as a whole. The area proposed for reclassification currently contains part of the Byron Bay Swimming Pool.

The remainder of the pool and associated commercial land uses are sited on road reserve. It is intended that the road reserve on which the rest of the swimming pool and associated uses are sited will be closed and also classified as operational land in the near future. The site contains a restaurant at present and it is considered that the classification of the land as operational land better reflects the existing use of the site.

The Byron Bay Swimming Pool was constructed in 1969. Council purchased the property from the State Rail Authority in June 1993. There were no restrictions on the purchase in the

contract. The land was originally classified as operational and then reclassified as community land due to Council's internal purchasing arrangements.

The subject land is currently zoned 7(f2)(Urban Coastal Land Zone) as illustrated in the following extract from Byron Local Environmental Plan 1988 (BLEP 1988):



2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

Amending BLEP 1988 to reclassify the subject land from community to operational is the best means of achieving the objectives of the planning proposal. Reclassifying the land to operational will allow Council greater options in the management of the site in the context of the existing commercial uses on the Byron Bay Swimming Pool site as a whole.

Consideration was given to deferring the matter to the Comprehensive Shire-wide LEP process however given the likely timeframe of that process it is considered preferable to proceed with the reclassification as a planning proposal.

3. *Is there a community benefit?*

The net community benefit will arise from the greater options available for managing the site as a whole. The Byron Bay Swimming Pool site contains existing commercial uses and the reclassification of this part of the site will benefit the community in the context of the 'tidying up' of the management of the land as a whole.

Section B Relationship to Strategic Planning Framework

4. *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or subregional strategy?*

The planning proposal is consistent with the Far North Coast Regional Strategy. The subject land is identified as a “Proposed Future Urban release Area” in the Far North Coast Regional Strategy.

5. *Is the planning proposal consistent with the local council’s Community Strategic Plan, or other local strategic plan?*

The proposed reclassification of the land is consistent with Council's Community Strategic Plan.

6. *Is the planning proposal consistent with applicable State Environmental Planning Policies?*

The planning proposal is considered to be consistent with relevant State Environmental Planning Policies (SEPPs), including the following:

- State Environmental Planning Policy No. 14 – Coastal Wetlands (SEPP No. 14)

The subject land is not identified as containing SEPP No. 14 coastal wetlands.

- State Environmental Planning Policy No. 44 – Koala Habitat Protection (SEPP No. 44)

The subject land does not contain potential koala habitat as identified in accordance with SEPP No. 44.

- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP No. 55)

The planning proposal does not have implications in terms of the provisions of SEPP No. 55.

- State Environmental Planning Policy No. 71 – Coastal Protection (SEPP No. 71)

The proposed reclassification of the land is consistent with the relevant aims and provisions of SEPP No. 71.

- State Environmental Planning Policy (North Coast Regional Environmental Plan) (NCREP SEPP)

The planning proposal is consistent with the provisions of the NCREP SEPP. The proposed reclassification of the land will not impact on the coastal hazard provisions or permissible land uses prescribed in accordance with the provisions of BLEP 1988.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The following provides a summary of the Section 117 Directions issued on 1 July 2009 in accordance with the provisions of the Environmental Planning and Assessment Act, 1979, relevant to the subject planning proposal.

Direction No.	Provisions	Consideration
No. 2.2 – Coastal Protection	When this direction applies (1) This direction applies when a relevant planning authority prepares a planning proposal that applies to land in the coastal zone. What a relevant planning authority must do if this direction applies (2) A planning proposal must include provisions that give effect to and are consistent with: (a) the <i>NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997</i>, and (b) the <i>Coastal Design Guidelines 2003</i>, and (c) the manual relating to the management of the coastline for the purposes of section 733 of the <i>Local Government Act 1993</i> (the <i>NSW Coastline Management Manual 1990</i>).	The site is currently zoned 7(f2)(Urban Coastal Land Zone) in accordance with the provisions of BLEP 1988. The existing provisions of BLEP 1988 regarding coastal land uses address the requirements of the Section 117 Direction. No additional provisions are considered to be required for the subject planning proposal.
No. 5.1 – Implementation of Regional Strategies	What a relevant planning authority must do if this direction applies (3) Planning proposals must be consistent with a regional strategy released by the Minister for Planning.	The planning proposal is consistent with the provisions of the Far North Coast Regional Strategy.

Direction No.	Provisions	Consideration
No. 6.2 – Reserving Land for Public Purposes	Objectives (1) The objectives of this direction are: (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition. Where this direction applies (2) This direction applies to all relevant planning authorities. When this direction applies (3) This direction applies when a relevant planning authority prepares a planning proposal. What a relevant planning authority must do if this direction applies (4) A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General). (5) When a Minister or public authority requests a relevant planning authority to reserve land for a public purpose in a planning proposal and the land would be required to be acquired under Division 3 of Part 2 of the <i>Land Acquisition (Just Terms Compensation)</i>	The subject proposal to reclassify the land is consistent with the provisions of this Section 117 Direction.

Direction No.	Provisions	Consideration
	<i>Act 1991</i>, the relevant planning authority must: (a) reserve the land in accordance with the request, and (b) include the land in a zone appropriate to its intended future use or a zone advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), and (c) identify the relevant acquiring authority for the land. (6) When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal relating to the use of any land reserved for a public purpose before that land is acquired, the relevant planning authority must: (a) include the requested provisions, or (b) take such other action as advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) with respect to the use of the land before it is acquired. (7) When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal to rezone and/or remove a reservation of any	

Direction No.	Provisions	Consideration
	land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the relevant planning authority must rezone and/or remove the relevant reservation in accordance with the request. Consistency (8) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that: (c) with respect to a request referred to in paragraph (7), that further information is required before appropriate planning controls for the land can be determined, or (d) the provisions of the planning proposal that are inconsistent with the terms of this direction are of minor significance.	

In addition to the Section 117 Directions nominated above, the NSW Department of Planning issued a Practice Note (PN 09-003) titled "Classification and reclassification of public land through a local environmental plan" on 12 June 2009.

The Practice Note contains general requirements for classification or reclassification of land, including the provision of a written statement addressing the following matters:

Requirement	Response
Reason why the planning proposal is being prepared.	The planning proposal is being prepared so that the land can be reclassified from community to operational land.
Current and proposed classification.	The land is currently classified as Community land and it is proposed that the land be classified as Operational land.
Reason for the reclassification.	The reclassification of the land from community to operational is intended to reflect the use of the Byron Bay Swimming Pool site as a whole. The area proposed for reclassification currently contains part of the Byron Bay Swimming Pool. The remainder of the pool and associated commercial land uses are sited on road. It is intended that the road reserve on which the rest of the swimming pool and associated uses are sited will be closed and also classified as operational land in the near future. The site contains a restaurant at present and it is considered that the classification of the land as operational land better reflects the existing use of the site.
Council's ownership of the land.	The subject site is owned by Council.
How and when the interest was acquired.	The Byron Bay Swimming Pool was constructed in 1969. Council purchased the property from the State Rail Authority in June 1993. There were no restrictions on the purchase in the contract.
The reason Council acquired an interest in the land.	Council acquired the interest in the land as the Byron Bay Swimming Pool was sited on the land.
Any agreements over the land.	There is a current Management Agreement for the Byron Bay Swimming Pool together with a lease for the Fishheads Restaurant.
An indication of any financial loss or gain from	The reclassification of the land together with a

Requirement	Response
the reclassification.	subdivision and rationalisation of the land will enable Council to call competitive tenders for lease of the Fishheads Restaurant.
The asset management objectives being pursued.	The reclassification of the land will provide greater flexibility in the management of the land and provide for the integration of the land with the remainder of the site comprising the Byron Bay Swimming Pool.
Whether there has been an agreement for the sale or lease of the land.	There are no agreements for sale of the land. The Fishheads Restaurant situate on the site is leased.
Relevant matters required in plan making under the EP & A Act.	The reclassification is proposed to be carried out in accordance with: S55 Relevant Authority to prepare a planning proposal S56 Gateway Determination S57 Community Consultation
A copy of the Practice Note.	Attached

Section C Environmental, Social and Economic Impact

8. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

The proposal is unlikely to adversely affect critical habitat or threatened species, populations or ecological communities, or their habitats.

9. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

The site contains existing facilities and the proposed reclassification of the land is unlikely to result in adverse environmental effects.

10. *How has the planning proposal adequately addressed any social and economic effects?*

The planning proposal is considered unlikely to result in adverse social or economic impacts.

Section D State and Commonwealth Interests

11. *Is there adequate public infrastructure for the planning proposal?*

Existing public infrastructure is adequate for the site.

12. *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?*

The issues raised by State and Commonwealth public authorities will be addressed following consultation with them.

PART 4 COMMUNITY CONSULTATION

It is anticipated that the community consultation requirements of the Local Government Act in relation to the reclassification of community land to operational land, including the requirement to conduct a Public Hearing, will provide sufficient opportunity for consultation with the local community.

CONCLUSION

The proposed reclassification of the land from community to operational is considered to be consistent with relevant statutory and policy provisions. The area proposed for reclassification currently contains part of the Byron Bay Swimming Pool. The classification of the land as operational land will provide for improved management of the land and better reflects the existing use of the site.



Note	PN 09–003
Date	12 June 2009
Related	Supersedes (re)classification advice in Best Practice Guideline (1997)

Classification and reclassification of public land through a local environmental plan

The purpose of this practice note is to update (and supersede) previous guidance on the process to classify or reclassify public land through a local environmental plan including a principal plan in accordance with the Standard Instrument.

Introduction

‘Public land’ is any land (including a public reserve) vested in, or under the control of, council. Exceptions include roads, land to which the *Crown Lands Act 1989* applies, a common, or land to which the *Trustees of Schools of Arts Enabling Act 1902* applies.

‘Community’ land is generally open to the public, for example, parks, reserves or sports grounds.

‘Operational’ land may be used for other purposes, for example, as works depots or garages, or held by council as a temporary asset.

‘Classification’ of public land refers to the process when this land is first acquired and first classified as either ‘operational’ land or ‘community’ land.

‘Reclassification’ of public land refers to the process of changing the classification of ‘operational’ land to ‘community’ land or from ‘community’ land to ‘operational’ land.

How is public land classified or reclassified?

Depending on circumstances, this is undertaken by either:

- resolution of council under section 31, 32 or 33 of the *Local Government Act 1993* (LG Act) [through section 27(2)], or
- a local environmental plan (LEP) under the *Environmental Planning and Assessment Act 1979* (EP&A Act) [through section 27(1) of the LG Act].

In both cases, it is not possible for councils to delegate their decision to classify or reclassify public land [section 377(1) of the LG Act]. Councils are encouraged to classify or reclassify land through the LG Act wherever circumstances conform to sections 31, 32 or 33 of the LG Act.

The remaining parts of this practice note identify the key areas councils must consider when proposing to classify or reclassify public land by means of a local environmental plan (LEP) under the second option.

This practice note supersedes the sections relating to classification and reclassification in *LEPs and council land*, Best Practice Guideline (Department of Urban Affairs and Planning 1997).

Procedure under the EP&A Act

Where classification or reclassification is proposed through an LEP, council is advised to include the proposal as early as possible in the draft LEP or planning proposal. If the public land to be classified or reclassified is not owned by council, landowner’s consent is required prior to either section 54 or section 56 of the EP&A Act (when the Part 3 amendment to the EP&A Act applies).¹

The proposal would then form part of the material presented through either section 54 or section 56 of the EP&A Act (when the Part 3 amendment to the EP&A Act applies).

¹ In relation to the Part 3 amendment, council should also check the changes to the EP&A Act and Regulation once these commence.

To assist councils, the steps in preparing material either as a draft LEP or planning proposal are summarised in Attachment 1. Column 1 of Attachment 1 sets out the requirements in accordance with the EP&A Act **prior to** the Part 3 amendment commencing. Column 2 of the attachment sets out the requirements **after** the Part 3 amendment commences. In relation to the Part 3 amendment, council should also check the savings and transitional arrangements under the EP&A Act, once these commence.

Where land is proposed to be reserved for a public purpose such as provision of public services and facilities, section 117 Direction 6.2—Reserving Land for Public Purposes applies. The Direction also sets out requirements when a reservation of public land for such purposes is no longer required.

A summary of relevant matters that need to be available at the time the planning proposal is first forwarded are listed in Attachment 2 under 'Exhibition'. Other matters for exhibition and later stages are listed separately in that attachment.

Provisions in the Standard Instrument

The following Standard Instrument provisions are relevant to the classification and reclassification of public land.

Clause 5.2—Classification and reclassification of public land

The purpose of this clause is to enable councils to classify or reclassify public land identified in Schedule 4 of the Standard Instrument. Only public land to be classified or reclassified by publication on the NSW legislation website of that principal LEP is to be identified in the schedule. Schedule 4 must not contain a reference to any land already classified or reclassified.

Part 1 Schedule 4—change to 'operational' land, no interest changes

Land is identified in Part 1 of Schedule 4 where the trusts, estates, interests, dedications, conditions, restrictions or covenants over the land are to remain after reclassification to 'operational land', i.e. where **no** interests will change.

Part 2 Schedule 4—change to 'operational' land and an interest will change

Land is identified in Part 2 of Schedule 4 where the land is to be classified or reclassified as 'operational land' and some of the trusts, estates, interests, dedications, conditions, restrictions, or covenants over the land remain. The interests to remain are identified in column 3 of this part of the schedule.

Part 3 Schedule 4—change to 'community' land

Land proposed to be classified or reclassified as 'community land' through the LEP is identified in Part 3 of the schedule.

Where there is no land to be classified or reclassified through the LEP, the clause remains with the schedule empty.

General requirements for exhibition

Public exhibition of the LEP occurs after certification of the LEP (in accordance with section 66 of the EP&A Act). Public exhibition of a planning proposal may occur in accordance with section 57(2) (when the Part 3 amendment to the EP&A Act commences). To assist the public in understanding an exhibited draft LEP or planning proposal to classify or reclassify land, requirements are summarised in Attachment 2.

A copy of council's response to these requirements together with a copy of this practice note is to be part of material displayed during public exhibition of an LEP or planning proposal to reclassify or classify public land.

Public hearing

A public hearing must be held when 'community land' is proposed to be reclassified as 'operational land'.

To ensure council and the community have sufficient time to consider relevant matters associated with the proposed change, the public hearing is held **after** the close of the exhibition period under section 68 of the EP&A Act (section 29 of the LG Act) for an LEP and in accordance with section 57(6) (when the Part 3 amendment to the EP&A Act commences).

Public hearing provisions are set out in the EP&A Regulation (clause 14) and public notice of a hearing must be sent or published **at least 21 days** before the start of the public hearing.

The independence of the person chairing the public hearing and requirements relating to the preparation and inspection of reports from the hearing are specified in section 47G of the LG Act.

Further information

A copy of this practice note, Standard Instrument, and other specific practice notes and planning circulars on using the Standard Instrument, can be accessed on the Department's website <http://www.planning.nsw.gov.au/lep/index.asp>

Authorised by:

Sam Haddad, Director-General

List of attachments:

1. Main steps (in sequence) for classifying and reclassifying public land under the *Environmental Planning and Assessment Act 1979*
2. General requirements for classification or reclassification of land through local environmental plans and planning proposals

Attachment 1. Main steps (in sequence) for classifying and reclassifying public land under the *Environmental Planning and Assessment Act 1979*

Requirements prior to commencement of the 2008 Part 3 amendment to the EP&A Act	Requirements after commencement of the 2008 Part 3 amendment to the EP&A Act when it applies to a proposal
Council notifies the Department of a decision to prepare a draft LEP including a proposal to classify or reclassify public land (section 54 of the EP&A Act). This notification is accompanied by an appropriate level of information including for the following: - a justification for the proposal - reasons why council acquired an interest - details that would also accompany a plan at exhibition stage (see Attachment 2) - any proposal to extinguish or retain other interests in the land through the reclassification - a justification /explanation as to why such interests are being extinguished - any rezoning associated with the classification/ reclassification - any preliminary comments by a relevant government agency, including agency's consent where land is vested or held by an agency other than council - consideration of any relevant directions e.g. section 117 Direction 6.2—Reserving Land for Public Purposes, where appropriate.	A planning proposal is forwarded by council to the Minister (new section 56 of the EP&A Act), including a proposal to classify or reclassify public land. This proposal contains an appropriate level of information including for the following: - a justification for the planning proposal - reasons why council acquired an interest - details that would also accompany a plan at exhibition stage (see Attachment 2) - any proposal to extinguish or retain other interests in the land through the reclassification - a justification /explanation as to why such interests are being extinguished - any rezoning associated with the classification/ reclassification - any preliminary comments by a relevant government agency, including an agency in which the land is vested or held - consideration of any relevant directions, e.g. section 117 Direction 6.2—Reserving Land for Public Purposes, where appropriate.
Consultation with relevant public agencies and other stakeholders (section 62 of the EP&A Act).	See below.
After consultation, council submits a draft LEP to the Department and, subject to the issue of a section 65 certificate, the draft LEP is exhibited for a minimum of 28 days and the public invited to provide written submissions to the exhibited LEP within the exhibition period.	Following review, at the gateway, if the planning proposal is to proceed, requirements for the various stages of the proposal, including consultation requirements, will be provided to council (new section 56(1), 56(2) of the EP&A Act).
Where a draft LEP includes reclassification of 'community' land to 'operational' land, council holds a public hearing into the proposal in accordance with section 68 of the EP&A Act (section 29 of the Local Government Act). *	Where a planning proposal includes reclassification of 'community' land to 'operational' land, council holds a public hearing into the proposal in accordance with new section 57(6) of the EP&A Act. *
Such a hearing follows the requirements of clause 14 of the EP&A Regulation including that a notice of the details for the hearing must be published in a local newspaper and sent to any person requesting a hearing a minimum of 21 days prior to the hearing.	Such a hearing follows the requirements of clause 14 of the EP&A Regulation including that a notice of the details for the hearing must be published in a local newspaper and sent to any person requesting a hearing a minimum of 21 days prior to the hearing.
Where it is considered appropriate, the draft LEP is submitted to the Director-General together with details of all submissions and the report of the public hearing, together with a statement of other matters set out in section 68 of the EP&A Act.	Consultation for a planning proposal under new section 57 of the EP&A Act is completed when council has considered any submissions made concerning the proposed instrument and the report of any public hearing. Where the planning proposal is to proceed, the Director-General makes arrangements for the drafting of the LEP to give effect to the final proposal (new section 59 of the EP&A Act).
The Director-General furnishes a report to the Minister if the Director-General is satisfied that the draft LEP has been prepared in accordance with any applicable standard instrument under section 33A (section 69 of the EP&A Act).	
The Minister determines whether to make the LEP under section 70 of the EP&A Act. **	The Minister (or Minister's delegate) determines whether to make the LEP under new section 59 of the EP&A Act. **

Notes:

* Where a proposal includes a classification of 'operational' land to 'community' land, a public hearing is not generally required.

** Where a reclassification proposes to extinguish other interests in the land, the approval of the Governor is required in accordance with section 30 of the LG Act.

Attachment 2. General requirements for classification or reclassification of land through local environmental plans and planning proposals

Exhibition

When exhibiting a planning proposal or draft LEP to classify or reclassify public land, council must provide a written statement including the following:

- the reasons why the draft LEP or planning proposal is being prepared including the planning merits of the proposal, e.g. the findings of a centres' strategy, council's intention to dispose of the land, provision of open space in a town centre
- the current and proposed classification of the land
- the reasons for the reclassification including how this relates to council's strategic framework, council's proposed future use of the land, proposed zones, site specific requirements, e.g. heritage controls, anticipated physical or operational changes resulting from the reclassification
- council's ownership of the land, if this applies
- the nature of council's interest in the land, e.g. council has a 50 year lease over the site
- how and when the interest was first acquired, e.g. the land was purchased in 20XX through section 94
- the reasons council acquired an interest in the land, e.g. for the extension of an existing park; council was given responsibility for the land by a State agency
- any agreements over the land together with their duration, terms, controls, agreement to dispose of the land, e.g. whether any aspect of the draft LEP or planning proposal formed part of the agreement to dispose of the land and any terms of any such agreement
- an indication, as a minimum, of the magnitude of any financial gain or loss from the reclassification and of the type(s) of benefit that could arise e.g. council could indicate the magnitude of value added to the land based on comparable sites such as the land is currently valued at \$1500 per square metre, nearby land zoned for business development is valued at between \$2000 and \$5000 per square metre
- the asset management objectives being pursued, the manner in which they will be achieved and the type of benefits the council wants, i.e. without necessarily providing details of any possible financial arrangements, how the council may or will benefit financially
- whether there has been an 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

- Relevant matters required in plan making under the EP&A Act
- A copy of this practice note must be included in the exhibition material to assist the community in identifying information requirements. Council staff may wish to identify the column in Attachment 1 that applies.

Post-exhibition

Once a decision has been made regarding whether the draft LEP or planning proposal proceeds, everyone who made a written submission must be notified in writing of the decision.

Written notification must occur within 14 days of the decision and needs to clearly identify the reasons for council's decision. An explanation must be included of how issues raised in submissions were addressed including the reasons for council's decision.

The final report after exhibition to either the Director-General or the Minister should include:

- a brief summary of council's interest in the land
- issues raised in any relevant submissions
- the dates of the exhibition and the hearing
- an explanation of how issues raised were addressed or resolved.

Additional matters to be addressed when the Governor's approval is required

The Governor's approval is required for the extinguishment of public reserve status and other interests in land which a council proposes to reclassify from 'community' to 'operational' status under the LG Act.

Council must provide sufficient information in accordance with this practice note to inform the Minister of any public reserve and/or other third party property interests (e.g. trust, covenant, easement) that are proposed to be extinguished upon the making of such a draft LEP or planning proposal.

Important note

This 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 note.

© 2009 New South Wales Government through the Department of Planning
www.planning.nsw.gov.au
DOP 09_004

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.