



PLANNING PROPOSAL

RECLASSIFICATION OF LAND TO OPERATIONAL – INTERESTS CHANGED

THE 'ROUNDHOUSE SITE'

LOT 530 DP 238451 ORANA ROAD, OCEAN SHORES

23 May 2014

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INTRODUCTION

The intended outcome of the instrument proposed by this Planning Proposal is that the public Land owned by the Council known as Lot 530 DP 2384514 Orana Road, Ocean Shores (the “Land”):

- (a) is classified as “operational” in accordance with Part 2 of Chapter 6 of the Local Government Act 1993 (“LG Act”); **and**
- (b) ceases to be a public reserve (if it is a public reserve); **and**
- (c) is discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the Land or any part of the Land, except for:
 - (i) any reservations that except land out of a Crown grant relating to the Land, and
 - (ii) reservations of minerals (within the meaning of the Crown Lands Act 1989).

The Land was classified as “operational” by Byron Local Environmental Plan 1988 (Amendment No 86) on 22 March 2002. However, Byron Local Environmental Plan 1988 (Amendment No 86) provided that the Land:

- (a) to the extent (if any) that the Land was a public reserve, did not cease to be a public reserve; and
- (b) continued to be affected by any trusts, estates, interests, dedications, conditions, restrictions or covenants by which it was affected before its classification, or reclassification, as operational land.

The Land is presently within Zone No 2 (a) - (Residential Zone) under the provisions of Byron Local Environmental Plan 1988. Development consent to subdivide the Land into 11 residential lots was granted on 8 April 2003 and the subdivision is presently being carried out. The Council has resolved to sell the lots by way of public auction in order to fund future infrastructure projects in Ocean Shores and other parts of the Byron Local Government Area.

A proposed auction of some of the lots was recently cancelled to investigate certain assertions made just prior to the auction including assertions to the effect that the Land is subject to a trust for a public purpose that was not expunged by the reclassification of the Land pursuant to Byron Local Environmental Plan 1988 (Amendment No. 86) and therefore could not be sold.

Whilst the Council does not admit or concede that the Land is subject to a trust for a public purpose it proposes, for abundant caution, to utilise the power set out in section 30 of the LG Act to make provision in a local environmental plan to the effect that, on commencement of the plan, the Land, if it is a public reserve, ceases to be a public reserve, and that the Land is by operation of the plan discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the Land or any part of the Land, except for:

- (a) any reservations that except land out of a Crown grant relating to the Land, and
- (b) reservations of minerals (within the meaning of the Crown Lands Act 1989).

It appears that the power in section 30 of the LG Act is only available where a local environmental plan reclassifies “community” land as “operational” land. Given that the Land is presently classified as “operational” it would be necessary for the Council to give public notice under section 34 of the LG Act of a proposed resolution to reclassify the Land as “community” land and then resolve pursuant to section 33 of the LG Act that the Land be reclassified as “community” land before the instrument intended by this Planning Proposal is then made to reclassify the Land from “community” land to “operational” land.

This planning proposal has been prepared with reference to the provisions of the LG Act, the Environmental Planning and Assessment Act 1979 ("EP&A Act"), and the Department of Planning's Guidelines "A guide to preparing planning proposals" and "A guide to preparing local environmental plans".

BACKGROUND

Byron Shire Council is the owner of the Land which is locally known as the "Roundhouse Site". The Land was originally part of a dairy farm but from around 1969 was used as a sales office for the Ocean Shores development and accommodated a sixteen sided circular building – the "Roundhouse". The Land was zoned Special Uses 5(a) – Community Purposes under Byron Local Environmental Plan 1988 (LEP) and on 27 July 1990 the Land and Environment Court ordered Council to compulsorily acquire the Land. The Land was acquired by Council on 26 July 1991. The Roundhouse building was demolished in 1993.

The Land was rezoned to Zone No. 2(a) (Residential Zone) by way of LEP (Amendment No. 46) made on 2 July 1996 – refer to the LEP zoning map extract below. The lot was classified **operational land – interests not changed** by way of LEP (Amendment No. 86) made on 22 March 2002. The LEP Amendment resulted in the Land being described in Part 2 of Schedule 11 of the LEP. Under subclause 47(3) of the LEP, land described in Part 2 of Schedule 11:

- (a) *to the extent (if any) that the land is a public reserve, does not cease to be a public reserve, and*
- (b) *continues to be affected by any trusts, estates, interests, dedications, conditions, restrictions or covenants by which it was affected before its classification, or reclassification, as operational land.*

Development Application No. 10.2001.627.1 for subdivision to create eleven (11) lots and associated road works was consented to on 8 April 2003. The subdivision works are nearing completion in preparation for the lodgement of the subdivision certificate application, prior to registration of the final plan of subdivision (refer to the recent photograph of the site and the approved plan of subdivision provided in **Attachment A** to this Planning Proposal). Four of the residential lots were to be auctioned in March 2014, however, Council's ability to sell the Land was challenged. The auction did not proceed.

At its meeting on 10 April 2014 Council resolved:

1. *That Council note that this report being a late report will not compromise the community's knowledge of or ability to participate in the decision-making on this matter because, if it proceeds, there will need to be extensive community consultation and many opportunities to make submissions to Council and at Council meetings.*
2. *That a planning proposal be prepared and submitted to the NSW Minister for Planning & Infrastructure in accordance with Division 4 of Part 3 of the Environmental Planning and Assessment Act 1979 and Sections 27(1) and 30 of the Local Government Act 1993 for the making of a local environmental plan to classify or reclassify the said land as operational land and to make provision to the effect that, on commencement of the plan, the land, if it is a public reserve, ceases to be a public reserve, and that the land is by operation of the plan discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except for:*
 - (i) *any reservations that except land out of a Crown grant relating to the land, and*
 - (ii) *reservations of minerals (within the meaning of the Crown Lands Act 1989).*
3. *That the same process as set out in 2. be pursued as required, in the same planning proposal or in concurrent planning proposal/s, for the following land:*
 - (a) *Lot 1, DP952598, Vallances Road Mullumbimby*
 - (b) *Lots 15 & 16, DP1178892, Dingo Lane Myocum*
 - (c) *Lot 10, DP850902, Station St, Mullumbimby (Administration Centre)*
 - (d) *Lot 1, DP435267, Station St, Mullumbimby (Old Telstra site)*

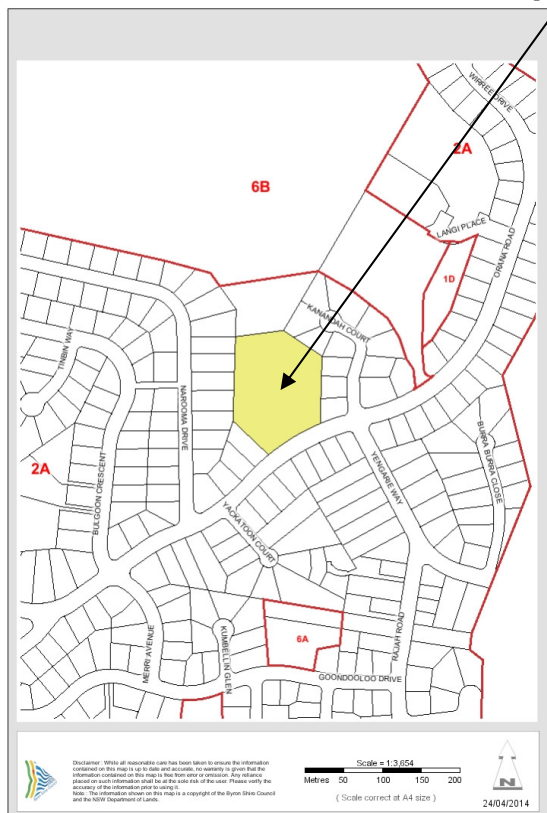
- (e) Lot 4, DP841856, Mill St, Mullumbimby
- (f) Lot 12, DP267109, Bayshore Drive, Byron Bay
- (g) Lot B, DP 372589, Corner Lawson & Fletcher Sts, Byron Bay

4. That it be noted that as a result of delay to the Roundhouse project, infrastructure projects, including Ocean Shores infrastructure projects, that were proposed to be funded from the proceeds of sale of the Roundhouse land, will now be delayed, or may not be able to be delivered depending on the outcome of the LEP amendment process.

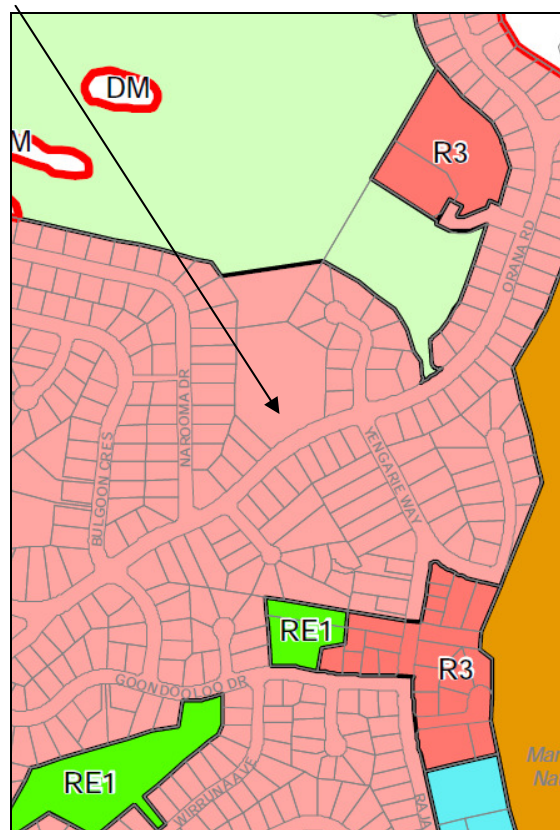
Item 2 of the above resolution relates to the Land that is the subject of this Planning Proposal. The other land referred to in item 3 above does not relate to this Planning Proposal.

The Land is entirely within proposed Zone R2 Low Density Residential under Draft Byron Local Environmental Plan 2014 (Draft LEP) – refer to Draft LEP zoning map extract below. There is no public land identified for reclassification in Schedule 4 of the Draft LEP, which is equivalent to Schedule 11 of the current LEP.

Subject site



1988 LEP Zone Map extract



Draft LEP 2014 Zone Map extract

In order for the classification of the Land to be changed from **operational land – interests not changed** to **operational land – interests changed**, to achieve the intended outcome indicated below, the Land would first need to be reclassified to 'community land' by way of a Council resolution because the power in section 30 of the LG Act is only available where a local environmental plan reclassifies 'community land' as 'operational land'. As part of this resolution Council would note that the intention is to subsequently reclassify the Land to 'operational land – interests changed' by way of the amending local environmental plan that is the subject of this Planning Proposal. The necessary order of procedures to be followed includes:

1. Public notice would need to be given in accordance with section 34 of the Local Government Act 1993 of a proposed resolution to the effect that the Land, which is public land presently classified as 'operational' land, is to be reclassified as 'community' land pursuant to section 27(2) and section 33 of the Local Government Act 1993. The notice must include the terms of the proposed

resolution and a description of the Land and specify a period of not less than 28 days during which submissions may be made to the Council.

2. Council would need to resolve to reclassify the Land as community land immediately prior to the Land subsequently being reclassified as operational land by way of the amending local environmental plan (the Amending LEP) that is the subject of this Planning Proposal pursuant to section 27(1) of the Local Government Act 1993 so that:
 - (a) the Amending LEP may, pursuant to section 30 of the Local Government Act 1993, make provision to the effect that, on commencement of the plan, the Land, if it is a public reserve, ceases to be a public reserve; and that
 - (b) the Land is, by operation of the Amending LEP, discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the Land or any part of the Land, except for:
 - (i) any reservations that except land out of a Crown grant relating to the Land, and
 - (ii) reservations of minerals (within the meaning of the Crown Lands Act 1989).

Provisions (a) and (b) require the Governor's approval under section 30 of the Local Government Act 1993. The Governor's approval is sought by the Department before the Minister makes the Amending LEP.

3. The Council resolution to reclassify the Land as community land would need to be passed after completion of the community consultation and public hearing in respect of the Amending LEP and before the Minister makes the Amending LEP. The Department has advised that the Minister can be asked to publish the Amending LEP on the legislation website on a specific date (which becomes the date on which the Amending LEP becomes effective). The date that the Amending LEP is published on the legislation website should be the day after the Council resolution to reclassify the Land to community land, to minimise the length of time that the Land is classified as community land.

A more detailed indicative timeline is provided in Part 6 of this Planning Proposal below.

PART 1 OBJECTIVES AND INTENDED OUTCOMES OF THE PROPOSED INSTRUMENT

The **intended outcome** of the instrument proposed by this Planning Proposal is that the Land:

- (a) is classified as "operational" in accordance with Part 2 of Chapter 6 of the Local Government Act 1993 ("LG Act"); **and**
- (b) ceases to be a public reserve (if it is a public reserve); **and**
- (c) is discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the Land or any part of the Land, except for:
 - (i) any reservations that except land out of a Crown grant relating to the Land, and
 - (ii) reservations of minerals (within the meaning of the Crown Lands Act 1989).

PART 2 EXPLANATION OF PROVISIONS TO BE INCLUDED IN THE PROPOSED INSTRUMENT

- (1) If the Draft LEP is made prior to the proposed instrument the provisions to be included in the proposed instrument would be to the effect that the Draft LEP is amended to include Lot 530 DP 238451, Orana Road Ocean Shores in Part 2 of Schedule 4 of the Draft LEP.
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- (2) If the Draft LEP has not been made by the time that proposed instrument is to be made the provisions to be included in the proposed instrument would be to the effect that Byron Local Environmental Plan 1988 is amended to omit the words “Orana Road Lot 530, DP 238451” that appear under the heading “Ocean Shores” in Part 2 of Schedule 11 of Byron Local Environmental Plan 1988 and to insert under Columns 1,2 and 3 of Part 3 of Schedule 11 respectively the words “Ocean Shores” and “Lot 530, DP 238451” and “Nil”.

Possible provisions to be included in the proposed instrument are contained in **Attachment B** of this Planning Proposal.

PART 3 JUSTIFICATION FOR OBJECTIVES, OUTCOMES AND IMPLEMENTATION PROCESS

Section A – Need for the Planning Proposal

Q1. Is the planning proposal a result of any strategic study or report?

The Planning Proposal reflects Council’s intention to complete the subdivision and sale of the Land (unencumbered except for the reservations mentioned above) in accordance with the objectives of the proposed Zone R2 Low Density Residential, which are:

- (a) To provide for the housing needs of the community within a low density residential environment, and
- (b) To enable other land uses that provide facilities or services to meet the day to day needs of residents,

or alternatively, the existing Zone No. 2(a) (Residential Zone), which are:

- (a) To make provision for certain suitable lands, both in existing urban areas and new release areas, to be used for the purposes of housing and associated neighbourhood facilities of high amenity and accessibility,
- (b) To encourage a range of housing types in appropriate locations,
- (c) To enable development for purposes other than residential purposes only if it is compatible with the character of the living area and has a domestic scale and character, and
- (d) To control by means of a development control plan the location, form, character and density of permissible development.

Importantly, the Planning Proposal is a key plank in Council’s Financial Sustainability Project Plan in terms of generating sufficient reserves to fund future infrastructure projects within Ocean Shores and other parts of the Council area.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Amending the LEP or Draft LEP in the manner proposed is the best, most efficient and most time effective approach to delivering the desired objectives and intended outcomes of the Planning Proposal. The Land is already classified as operational, and the proposed procedure would confirm that the Land:

- (a) ceases to be a public reserve to the extent (if any) that it is a public reserve; and

- (b) is discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the Land or any part of the Land, except for:
 - (i) any reservations that except land out of a Crown grant relating to the Land; and
 - (ii) reservations of minerals (within the meaning of the Crown Lands Act 1989).

Section B – Relationship to strategic planning framework

Q3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?

The Planning Proposal is consistent with the objectives and actions of the Far North Coast Regional Strategy relating to this land which is within the Ocean Shores coastal village, because the proposed instrument will:

- (a) not change the zoning of the Land;
- (b) ultimately result in a change to the classification of the Land to a different type of operational classification compared to that which exists, but properly reflecting Council's intention that the Land be developed for residential purposes demonstrated by the rezoning from 5(a) to 2(a);
- (c) not have a significant effect in terms of environmental, agricultural, farmland, vegetation, habitat, areas of high biodiversity, waterway, wetland or coastline or landscape values (including scenic and cultural landscapes);
- (d) not change the location of planned residential development;
- (e) not have a significant effect in terms of extractive resources; and
- (f) reflect the objectives of the relevant zone.

Q4. Is the planning proposal consistent with Council's local strategy or other local strategic plan?

The Planning Proposal is consistent with the key community outcomes and strategies of Council's Draft Community Strategic Plan 2022.

Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is consistent with applicable State Environmental Planning Policies (SEPP) which include:

SEPP 14 – Coastal Wetlands

The site does not contain nor adjoin any SEPP 14 wetlands.

SEPP 19 – Bushland in Urban Areas

The site does not contain nor adjoin, and the Planning Proposal does not propose to disturb, any bushland zoned or reserved for public open space purposes.

SEPP 26 – Littoral Rainforest

The site does not contain nor adjoin any SEPP 26 littoral rainforest.

SEPP 44 – Koala Habitat Protection

The site does not contain nor adjoin any koala habitat.

SEPP 55 – Remediation of Land

The report on the above mentioned Development Application No. 10.2001.627.1 advised in relation to contamination as follows: *"A dip site was identified in the estate and as a result Aztec Environmental Consultants were engaged to undertake a comprehensive study of the whole estate. As a result of the previous investigations Council is satisfied that there are no outstanding issues in respect to the State Policy and no further investigation is warranted"*.

SEPP 71 – Coastal Protection

The Planning Proposal is consistent with the provisions of SEPP 71 in relation to preparing draft LEPs.

SEPP (Infrastructure) 2007

The Planning Proposal is not contrary to the provisions of SEPP (Infrastructure) 2007.

North Coast Regional Environmental Plan

The Planning Proposal is consistent with the provisions of the North Coast Regional Environmental Plan. In particular, the Planning Proposal assists with achieving the objective to promote the provision of a range of adequate, affordable and suitable housing to meet the needs of the region's population. The proposal will not have a significant impact in terms of strategic planning or environmental hazard considerations.

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The Planning Proposal is consistent with applicable Ministerial Directions as follows:

2. Environment and Heritage

2.2 Coastal Protection

The Planning Proposal is consistent with the relevant principles outlined in the NSW Coastal Policy.

2.3 Heritage Conservation

The site is identified in Council's Community Based Heritage Study dated July 2008, with details provided in Volume 3 of the Study. The site is not a heritage item under the LEP, although it is a proposed local heritage item under the Draft LEP. However the Land was reclassified to operational in 2002 and the subdivision of the Land was approved in 2003, well before the Study and the Draft LEP were prepared. Whilst the Study's heritage statement describes the site as containing the original administration centre and sales office building for the Ocean Shores development, this building was demolished in 1993 and approved subdivision works have since been carried out on the site and are nearing completion. Therefore the proposed reclassification of the Land has no implications with respect to the heritage value of the site, because it merely results in the classification of the Land changing to another type of operational land and will not cause or require any further disturbance of any remnant heritage characteristics of the site.

3. Housing, Infrastructure and Urban Development

3.1 Residential Zones

The Planning Proposal will facilitate the subdivision of the Land in accordance with the existing and proposed residential zones which apply to the Land.

5. Regional Planning

5.1 Implementation of Regional Strategies

The Planning Proposal is consistent with the Far North Coast Regional Strategy's relevant aims, outcomes and actions.

6. Local Plan Making

6.1 Approval and Referral Requirements

The Planning Proposal outlines relevant community consultation requirements, but does not introduce any additional concurrence or referral requirements and does not relate to designated development.

The purpose of NSW Planning & Infrastructure's Practice Note 09-003 *Classification and reclassification of public land through a local environmental plan* dated 12 June 2009 is to provide

updated guidance on the process to classify or reclassify public land through a local environmental plan. A written statement is to be provided addressing 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 Planning Proposal is prepared to facilitate Council's intention to complete the subdivision and sale of the proposed residential lots in accordance with the zone objectives and the previous development consent. The Planning Proposal is a key plank in Council's Financial Sustainability Project Plan in terms of generating sufficient reserves to fund future infrastructure projects in Ocean Shores and other parts of the Council area.

- *The current and proposed classification of the land*

The Land is currently operational **Land classified, or reclassified, under amended section 30 of Local Government Act 1993—interests not changed** under Part 2 of Schedule 11 of the LEP. Following the procedure outlined in this Planning Proposal, the land would ultimately be classified to either: (i) operational **Land classified, or reclassified, as operational land—interests changed** under Part 2 of Schedule 4 of the Draft LEP; or (ii) operational **Land classified, or reclassified, under amended section 30 of Local Government Act 1993—interests changed** under Part 3 of Schedule 11 of the LEP, whichever applies at the time of the making of the proposed instrument.

- *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*

The reclassification facilitates the intended use of the Land for residential purposes in accordance with the development consent that has been granted to subdivide the Land and the work that has been carried out on the site. The reclassification accords with the existing and proposed residential zones that apply. The reclassification results in no physical change to the site. The reclassification provides certainty to the community, assists with facilitating the sale of the separate proposed lots and ultimately provides funding for the infrastructure projects referred to in part 4 of the above mentioned Council resolution.

- *Council's ownership of the land, if this applies*

The Land is currently in Council's ownership as a single allotment. Council intends to obtain a subdivision certificate for the approved subdivision of the Land and then register the approved subdivision.

- *The nature of council's interest in the land, e.g. council has a 50 year lease over the site*

Council is the owner of the Land.

- *How and when the interest was first acquired, e.g. the land was purchased in 20XX through section 94*

On 27 July 1990 a declaration was made by the Land and Environment Court in *Cochrane v Byron Shire Council* (1990) NSWLEC to the effect that the Council was bound to acquire the Land from the then owners. A consequential order was also made in the following terms:

"2. I order that the Council of the Shire of Byron shall, after complying without delay with the provisions of the Local Government Act 1919 (as amended) and Ordinances thereunder, thereupon make application to his Excellency, the Governor, pursuant to the

Act and those Ordinances for approval to resume the land being Lot 530 DP 238451 comprising certificate of title 11210 folio 241."

At the time the order and declaration were made the Land was zoned 5(a) (Special Uses Zone) under Byron Local Environmental Plan 1988. The map relating to LEP 1988 identified the Land with the words "5(a) COMM. PURP."

On 12 March 1991, the Council resolved to acquire the Land pursuant to Section 532 of the Local Government Act 1919 and to affix its seal to an application to the Minister for Local Government for approval to cause a Notice of the Resumption to be published in the NSW Gazette.

On 3 July 1991, the NSW Governor approved the publication by the Council of a Notice of Resumption of the Land "for the purpose of giving effect to the provisions of Clause 43(3) of the Byron Local Environmental Plan 1988."

On 26 July 1991 the Notice of Resumption of the Land was published in the NSW Government Gazette No. 110 (page 6237) a copy of which is annexed and marked "G".

Proceedings were subsequently commenced in the Land and Environment Court in relation to the amount of compensation payable by the Council to the former owners of the Land. Judgment in the compensation proceedings was published by the Land and Environment Court on 1 April 1993 (see *Cochrane & Ors v The Council of the Shire of Byron No. 30089 of 1992 Justice Bannon*).

The Council was ordered by the Court in the compensation proceedings to pay each of the three Applicants \$330,693.33 (i.e. a total of \$992,079.99) for their interests in the Land.

- *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*

See above.

- *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*

No agreements have presently been entered into by the Council to dispose of the Land. However, the Council has previously resolved to sell the lots resulting from the subdivision of the Land by way of public auction in order to fund future infrastructure projects in Ocean Shores and other parts of the Byron Local Government Area.

A proposed auction of some of the lots was cancelled to investigate certain assertions made just prior to the auction including assertions to the effect that the Land is subject to a trust for a public purpose that was not expunged by the reclassification of the Land pursuant to Byron Local Environmental Plan 1988 (Amendment No. 86) and therefore could not be sold.

A report relating to the Land included in the business papers for the Council meeting on 10 April 2014 stated that the Ocean Shores Community Association (OSCA) is arguing that

".....the Roundhouse site has not been properly classified as Operational Land, it is affected by a trust and/or that Council has no legal power to sell the land. Council believes that OSCA is wrong and that Council does have the power to sell the land as the land was correctly classified as Operational Land by a valid LEP Amendment".

The proposed instrument and process outlined in this Planning Proposal will provide clarity and certainty that the Land:

- (a) is classified as “operational” in accordance with Part 2 of Chapter 6 of the Local Government Act 1993 (“LG Act”); **and**
- (b) ceases to be a public reserve (if it is a public reserve); **and**
- (c) is discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the Land or any part of the Land, except for:
 - (i) any reservations that except land out of a Crown grant relating to the Land, and
 - (ii) reservations of minerals (within the meaning of the Crown Lands Act 1989).
- *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 Land is already classified operational, zoned residential and approved for residential subdivision, and the subdivision works are nearing completion. The purpose of the Planning Proposal is to facilitate a process of confirming that the Land is not a public reserve and expunging any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the Land or any part of the Land and to allow the sale and development of the approved residential lots in accordance with the zone objectives. The reclassification of the Land provides certainty for the community in relation to the:

- (a) operational land classification of the Land;
- (b) cessation of any public reserve applying to the Land or any part of the Land; and
- (c) discharging of any trusts, estates, interests, dedications, conditions, restrictions or covenants affecting the Land or any part of the Land, except for:
 - (i) any reservations that except land out of a Crown grant relating to the Land, and
 - (ii) reservations of minerals (within the meaning of the Crown Lands Act 1989),
- *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.*

It is reported that the sale of the Land is a fundamental component of Council’s Financial Sustainability Project Plan because funds from it are earmarked as being the ‘seed money’ that could be reinvested to increase Council’s infrastructure management capacity.

- *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.*

There is presently no agreement entered into to sell or lease the Land. However, as stated above the Council has previously resolved to sell the lots resulting from the subdivision of the Land by way of public auction in order to fund future infrastructure projects in Ocean Shores and other parts of the Byron Local Government Area.

It is expected that the Council would proceed to sell the lots resulting from the subdivision of the Land by way of public auction as soon as possible after the proposed instrument is made.

- *Relevant matters required in plan making under the EP&A Act.*

This Planning Proposal addresses the relevant matters required in plan making under the Environmental Planning and Assessment Act 1979.

- *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.*

A copy of the relevant Practice Note will be included, if required at the relevant time, in the exhibition material.

Section C – Environmental, social and economic impact

Q7. 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?

Council's GIS mapping does not indicate that the site contains high conservation value vegetation, koala habitat, SEPP 14 wetland, SEPP 26 littoral rainforest or threatened fauna habitat. The Land has been significantly disturbed by past activities associated with dairy farming, sales office and subdivision activities. The proposed reclassification is unlikely to have a significant effect on any critical habitat or threatened species, populations or ecological communities, or their habitats.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The Planning Proposal assists with facilitating the sale and subsequent use of the Land for low density residential purposes in accordance with the objectives of the zone.

Q9. Has the planning proposal adequately addressed any social and economic impacts?

The reclassification will contribute towards the provision of additional housing opportunities to meet the needs of the population and is unlikely to have to any adverse social or economic impacts.

Section D – State and Commonwealth interests

Q10. Is there adequate public infrastructure for the planning proposal?

The servicing of the proposed residential lots would be completed prior to the issue of the subdivision certificate in accordance with the development consent. No further services are required as a result of the proposed reclassification.

Q11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

The views of State and Commonwealth public authorities would be considered (where required) after the public exhibition process is completed.

PART 4 MAPPING

The Planning Proposal includes the LEP and Draft LEP zoning map extracts to identify the site. It is anticipated that the Amending LEP will not require maps.

PART 5 COMMUNITY CONSULTATION

Council has not undertaken, and is not required to undertake, any pre-planning proposal consultation. The gateway determination will specify the community consultation that must be undertaken on the Planning Proposal. The exhibition period is likely to be either 14 or 28 days in length and the relevant material will be made available for public inspection during the exhibition period as specified in NSW Planning & Infrastructure's *A guide to preparing local environmental plans*.

A public hearing must be arranged in respect of this Planning Proposal in accordance with section 29 of the Local Government Act 1993 because the Planning Proposal relates to the reclassification of community land to operational land. Council will consider any submissions made concerning the Amending LEP and the report of the public hearing into the proposed LEP.

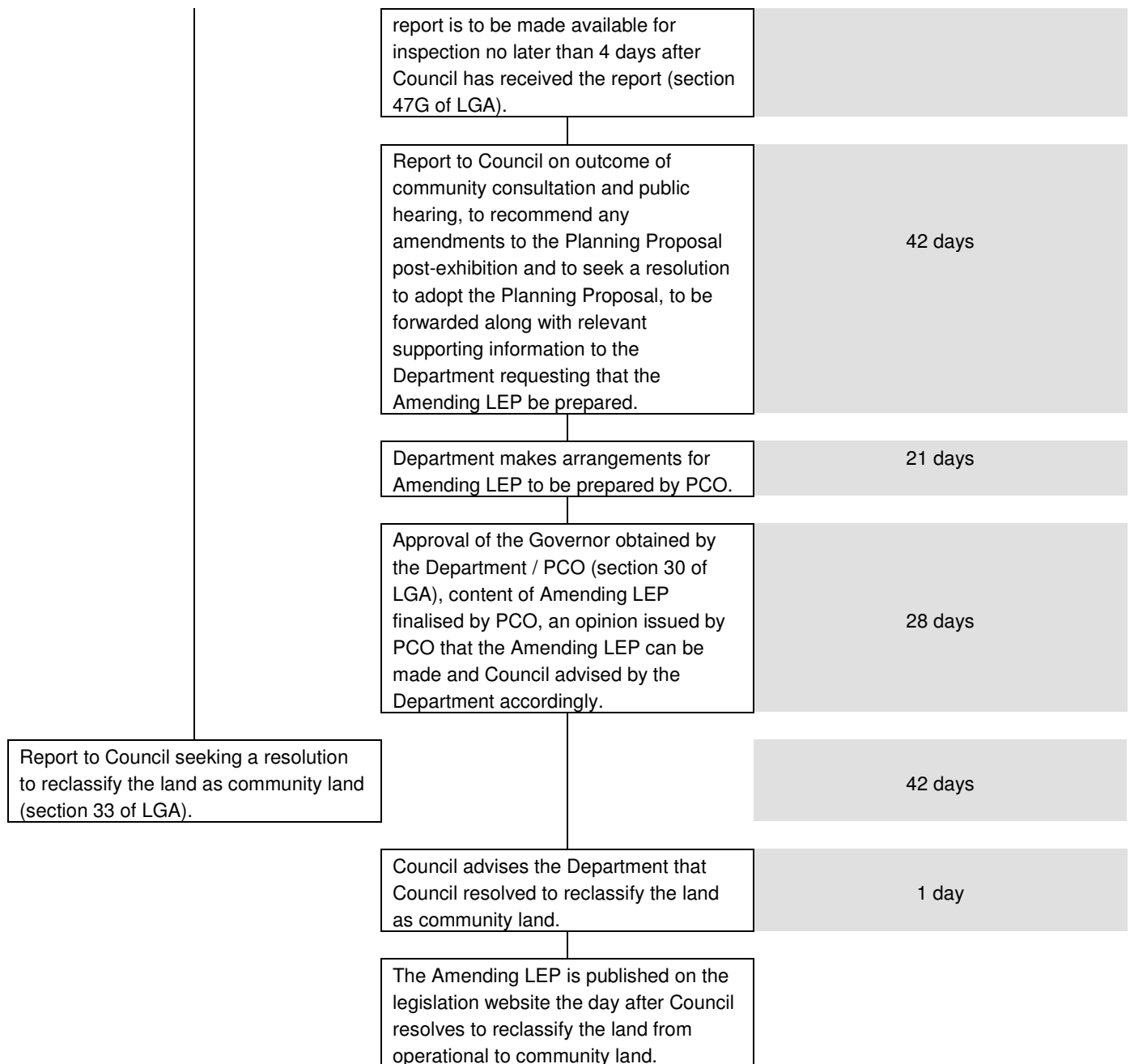
PART 6 PROJECT TIMELINES

An indicative project timeline is provided below, noting that:

1. The timeframes for each stage in the project are approximate only;
2. The timeframes are not concurrent;
3. There may be substantial intervening periods between each stage in the project; and
4. Each timeframe relating to the reclassification from 'operational to community' component of the project may not exactly match the timeframe of an adjacent stage of the 'community to operational' reclassification component.

INDICATIVE PROJECT TIMELINE

Reclassification Components and Stages		Timeframe
<u>'Operational to Community'</u> component stages	<u>'Community to Operational'</u> component stages	
	Council forwards the Planning Proposal to the Department	14 days
	The Department carries out the Gateway and returns the Planning Proposal with the Gateway determination to Council (section 56 of EPA)	56 days
Report to Council seeking a resolution to place a public notice of proposed reclassification from operational land to community land.		35 days
Completion of required technical information after receipt of gateway determination, including preparation for community consultation and public notice processes. The stages after the gateway determination may be varied by the gateway determination		35 days
Public notice of proposed resolution to reclassify the land as community land (section 34 of LGA). The public notice must include the name by which the land is generally known, and should also include the Lot, DP, street and suburb particulars (section 54A of LGA).	Community consultation (including public exhibition) for Planning Proposal (section 57 of EPA).	Public notice period 28 days Public exhibition 14 days or 28 days (or other period as specified in the gateway determination)
	Preparation for and conducting of public hearing (section 29 of LGA), by a person other than a Councillor or employee (section 47G of LGA).	56 days
	Preparation of report on public hearing by the person presiding at the public hearing (section 57(7) of EPA). The	



Note: 'EPA' means Environmental Planning and Assessment Act 1979, 'LGA' means Local Government Act 1993 and 'PCO' means the Office of Parliamentary Counsel.

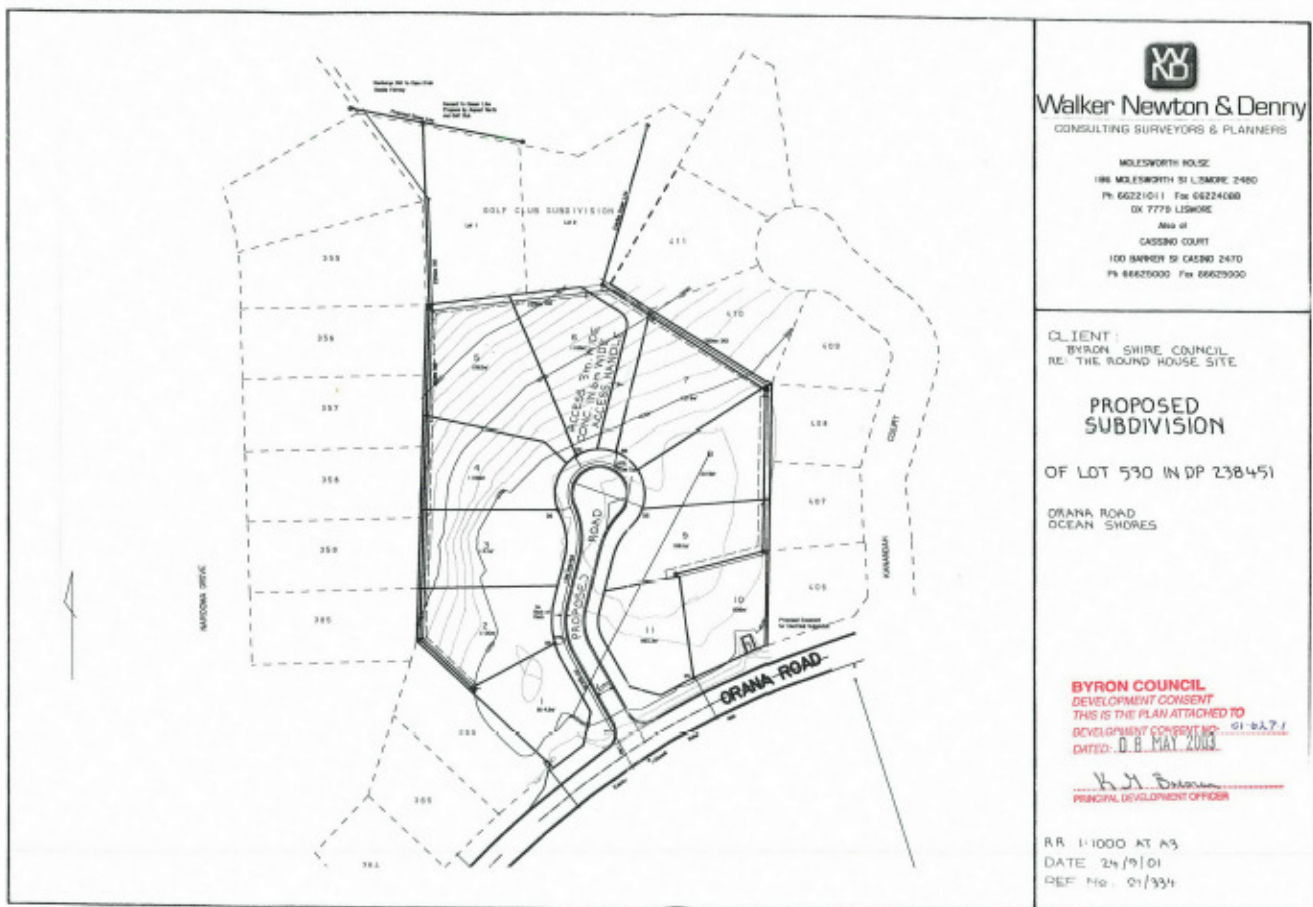
CONCLUSION

The proposed reclassification of the Land to "operational land – interests changed" is satisfactory having regard to relevant legislative and environmental planning requirements. The Planning Proposal is consistent with the objectives of the existing and proposed residential zone and the approved development of the site. The reclassification is intended to provide certainty to the community in the process of subdividing and selling the Land, and is to assist with providing funding for future infrastructure projects in Ocean Shores and other parts of the Council area. The reclassification reflects the existing and intended future use, and facilitates the proper planning and development of the Land, in accordance with Council's intention for the Land.

ATTACHMENT A – PHOTOGRAPH OF THE SITE AND APPROVED PLAN OF SUBDIVISION



(Photograph taken: 28 April 2014)



Plan of Subdivision, approved under the consent to DA 10.2001.627.1

ATTACHMENT B – POSSIBLE PROVISIONS TO BE INCLUDED IN THE PROPOSED INSTRUMENT

If the Draft LEP has been made when the Amending LEP is nearing being made, Schedule 4 of the Draft LEP would be amended by inserting the following in Part 2 of Schedule 4 of the Draft LEP in Columns 1, 2 and 3, respectively:

Ocean Shores	Lot 530, DP 238451 Orana Road	Nil
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OR

If the Draft LEP has not been made when the Amending LEP is nearing being made, Schedule 11 of the LEP would be amended by:

- (a) deleting the following from Part 2:

Orana Road	Lot 530, DP 238451
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and:

- (b) inserting the following in Part 3 in Columns 1, 2 and 3, respectively:

Ocean Shores	Lot 530, DP 238451 Orana Road	Nil
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