

Reclassification of Lot 530 DP 238451 (Roundhouse Site), Orana Road, Ocean Shores

Proposal Title : **Reclassification of Lot 530 DP 238451 (Roundhouse Site), Orana Road, Ocean Shores**

Proposal Summary : **reclassify the site to operational land to enable the discharge of any interests which may apply to the land.**

As the land is already classified as operational land, it may be required that Council undertakes reclassification in two stages - firstly from Operational (no interests changed) to Community, and secondly from Community to Operational – (interests changed). This application relates to the second stage of the process, reclassifying from Community to Operational – interests changed.

PP Number : **PP_2014_BYRON_004_00** Dop File No : **14/08801**

Proposal Details

Date Planning Proposal Received :	18-Sep-2014	LGA covered :	Byron
Region :	Northern	RPA :	Byron Shire Council
State Electorate :	BALLINA	Section of the Act :	55 - Planning Proposal
LEP Type :	Reclassification		

Location Details

Street :	Orana Road		
Suburb :	Ocean Shores	City :	Postcode : 2460
Land Parcel :	Lot 530 DP 238451		

DoP Planning Officer Contact Details

Contact Name : **Jim Clark**
 Contact Number : **0266416604**
 Contact Email : **jim.clark@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Greg Smith**
 Contact Number : **0266267219**
 Contact Email : **council@byron.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name : **Jim Clark**
 Contact Number : **0266416604**
 Contact Email : **jim.clark@planning.nsw.gov.au**

Reclassification of Lot 530 DP 238451 (Roundhouse Site), Orana Road, Ocean Shores

Land Release Data

Growth Centre :		Release Area Name :	
Regional / Sub Regional Strategy :	Far North Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	0	No. of Dwellings (where relevant) :	11
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes :

The planning proposal was submitted on 18 September 2014. Legal advice has previously been sought in regards to various aspects of this proposal. Advice has been obtained from within the Department and from Byron Council's solicitors. The advice is discussed in the report.

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives adequately describes the intention of the planning proposal. The proposal seeks to reclassify Lot 530 DP 238451, Orana Road, Ocean Shores within the Byron Shire LGA from community to operational – interests changed.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. The amendment will include the additional entry into Part 2 Land Classified, or reclassified, as operational land – interests changed - Schedule 4 of the Byron Shire LEP 2014.**

No mapping or other written amendments are required.

Advice has been sought by Council as to alternative means of discharging the public purpose trust, but no other legal mechanism has been identified. Reversion of this land

back to a community classification prior to re-classification as operational (trusts discharged) appears the only means of achieving the objectives of this planning proposal.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

2.2 Coastal Protection

2.3 Heritage Conservation

* May need the Director General's agreement

3.1 Residential Zones

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 14—Coastal Wetlands

SEPP No 19—Bushland in Urban Areas

SEPP No 26—Littoral Rainforests

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP (Infrastructure) 2007

North Coast REP 1988

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

A location map has been provided with the proposal - however a map showing the land should be prepared for exhibition in accordance with the Department's Technical Guidelines.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

GCouncil has indicated that under the requirements of Section 34 of the Local Government Act 1993 an exhibition period of 28 days will commence following receipt of an approved Gateway determination. In addition, a public hearing will be held as required under section 29 of the Local Government Act 1993 as the proposal includes the reclassification from "community" land to "operational" land. This hearing is proposed to occur following completion of the public exhibition period.

Council proposes to run concurrent community consultation with regards to the reclassification of this land from Operational (no interests changed) to Community. With the community land classification proposed to be in force for one day only. An indicative timeline has been submitted showing how these two processes will occur together.

Council does not wish to proceed with the proposal if there is a real risk the land could remain community. This would take away from the objective of the proposal.

Discussions have been ongoing regarding whether an issue of apprehended bias arises by the issue of, and / or application for a Gateway determination to enable reclassification of this land to operational prior to a resolution to reclassify to community. Council's advice is that community consultation will be openly undertaken

with full disclosure of the reasoning for these reclassifications.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

The planning proposal satisfies the adequacy criteria by:

- 1) Providing an appropriate objective and intended outcome.
- 2) Providing a suitable explanation of the provisions for the LEP to achieve the outcomes.
- 3) Providing an adequate justification for the proposal.
- 4) Outlining a proposed community consultation program.
- 5) Providing a timeline for the completion of the proposal. Council has suggested a timeline of 12 months, which is acceptable.
- 6) Council has not asked for plan-making delegations to be issued. The approval of the Governor will be required for the discharge of trusts (actual or implied). Accordingly delegations cannot be issued.

Proposal Assessment

Principal LEP:

Due Date :

Comments in
relation to Principal
LEP :

The Byron Shire Standard Instrument LEP was made in May 2014, and came into force on the 21 July 2014.

This land is, and will remain, zoned R2 Low Density Residential. This planning proposal seeks an amendment to Schedule 4 of the Byron Shire LEP 2014.

Assessment Criteria

Need for planning
proposal :

This land is currently zoned R2 residential and benefits from an approved 11 lot subdivision, for which infrastructure construction has nearly been completed. When listing some of the approved lots for auction Council was approached by a community group who claim this land is subject to a public purpose trust, and that they intended to apply to the Attorney General to injunct the sale of the property. Council has received its own advice and determined to proceed with this proposal in order to avoid the expense and delay of defending the sale of the land in Court.

A title search reveals that there are a number of interests in the land, some of which will remain and some of which are proposed to be extinguished. Confirmation of which will be discharged can be required as a condition of any Gateway determination.

Confidential legal advice regarding the need for this planning proposal is attached to this report (see documents - advice from Council's solicitors and from within the Department).

If this land is impressed with a public purpose trust there appears to be no other pathway to discharge this trust prior to the sale of the land. If the land is sold subject to the trust upon completion of the transfer future purchasers are able to rely on the indefeasibility provisions of the Real Property Act 1900. This protection however does not apply between exchange of the contracts and completion of the transfer.

According to the Council, there is a risk that the sale of this land may be subject to an application for injunction by the Attorney General in this period. The community group opposing the sale of this land have advised Council they will approach the Attorney General in this regard. The Council advises it needs to be assured

the sale of the property can proceed unhindered.

The Department's advice questions the need for the proposal based on the points of view as to whether unspecified implied trusts exist which need to be discharged, and/ or whether the proposal is for a proper planning purpose. The advice concludes however that there is no legal reason why the proposal could not be issued with a Gateway determination.

Consistency with strategic planning framework :

Far North Coast Regional Strategy (FNCRS)

The FNCRS was released in 2007 and identifies the Government's key strategic directions for the Far North Coast. The FNCRS broadly aims to provide for sustainable development within the identified settlement planning hierarchy.

The unhindered sale of this land will enable infill development which contributes to the meeting of FNCRS dwelling targets in the coastal area. This proposal is in keeping with the FNCRS.

Byron Council: Community Strategic Plan 2022

This plan identifies the key community outcomes and strategies for the Byron area. This is a high level plan however the proposal is not inconsistent with the broad principles it contains.

Council has advised that the sale of this land will provide seed funding for essential infrastructure projects which have been identified in the short term delivery and operational plans.

STATE ENVIRONMENTAL PLANNING POLICIES and SECTION 117 DIRECTIONS

Council has listed a number of section 117 directions and State Policies as relevant. However the zoning of the land is not being altered, and plans for residential development of the site have been approved (at least in principle). The purpose of the proposal is to reclassify land. As such no inconsistencies with SEPPs or directions apply.

Environmental social economic impacts :

ENVIRONMENTAL IMPACTS

This site is highly disturbed comprising an open grassy area with a road and services. It is not likely that this planning proposal will adversely impact on threatened species, populations or ecological communities or their habitats.

SOCIAL & ECONOMIC CONSIDERATIONS

Social

This reclassification will enable the unhindered sale of the 'Roundhouse' land. There is a sector of the community opposing the sale of this land. However the proceeds of this sale are intended to fund projects which benefit other sectors of the community. Council has undertaken significant community consultation in finalising the Community Strategic Plan 2022 and the Northern Shire Sporting Field Strategy 2008.

Disbenefits could include restrictions on access to view the surrounding Ocean Shores development - the site has been commonly used as a lookout, although not formally set aside for that purpose.

This is a minor matter of local significance and Council has intimate and pre-existing knowledge of the community's position. It is reasonable to accept Council's position that the social benefits outweigh any detriment.

Economic

The sale of this land is expected to generate significant income which is proposed to be reinvested into local infrastructure.

Reclassification of Lot 530 DP 238451 (Roundhouse Site), Orana Road, Ocean Shores**Assessment Process**

Proposal type : **Minor** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **DDG**

Public Authority Consultation - 56(2)(d) : **Other**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

Legal Services

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
CONFIDENTIAL Byron Council legal advice Roundhouse.pdf	Proposal	No
CONFIDENTIAL-LSB advice 1.pdf	Proposal	No
CONFIDENTIAL-LSB advice 2.pdf	Proposal	No
Byron Shire Council_18-09-2014_LEP 2014 Amendment - Lot 530 DP 238451 Orana Road Ocean Shores - resubmitted planning proposal_.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **2.2 Coastal Protection
2.3 Heritage Conservation
3.1 Residential Zones
5.1 Implementation of Regional Strategies
6.1 Approval and Referral Requirements**

Additional Information : **It is recommended that the planning proposal PP_2014_BYRON_004_00, to include Lot 530 DP 238451 in Part 2 of Schedule 4 of the Byron Local Environmental Plan 2014, should proceed subject to the following conditions:**

1. The planning proposal is to be amended prior to exhibition by:
 - a. updating the proposal to reflect the notification of the Byron Local Environment Plan 2014 (LEP), and
 - b. amending the Objectives and Intended Outcomes so that they are written in such a way they can be easily understood by the general community.
2. Community consultation is required under sections 57 of the Environmental Planning and Assessment Act 1979 (EP&A Act) as follows:
 - a. The planning proposal must be made publicly available for a minimum of 28 days, and
 - b. The relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning and Infrastructure 2013).
 - c. Council is to conduct a public hearing in accordance with the requirements of section 29 of the Local Government Act 1993 as the planning proposal involves reclassification of land to operational.
3. No consultation is required with public authorities under section 56(2)(d) of the EP&A Act.
4. A public hearing is not required to be held into the matter under section 56(2)(e) of the EP&A Act. This does not discharge Council from the obligation to undertake a public hearing as required above.
5. The planning proposal must be amended prior to submitting the plan to the Department to be made by:
 - a. providing information on whether the planning proposal will extinguish any interests applying to the land; and
 - b. including appropriate mapping in accordance with the Department's Technical Guidelines to accompany the proposed LEP amendment.
6. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

(No delegation should be issued to Council to finalise the proposal as the Governor's approval may be required to discharge any actual or implied trust.)

Supporting Reasons :

The reasons for the above recommendations for the planning proposal are as follows:

1. The proposal to reclassify this land is considered necessary by Council to fund ongoing infrastructure projects in the Byron Local Government Area and there appears no legal reason why it could not proceed to Gateway; and
2. While there may be another process to enable the same outcome, this pathway provides certainty to both Council and prospective purchasers of the land. It also enables a clear pathway for objectors to the proposal to air their concerns in a public forum.

Consideration was given to a condition to the Gateway determination requiring that the land be reclassified to community first - as is Council's intention. However Council does not want such a condition as it may prejudice the outcome of Council's intention to have the land classified as operational (trusts discharged). The legal advice is there is no legal necessity for such a condition to be imposed by the Gateway.

Signature:



Printed Name:

JIM CLARK

Date:

3 October 2014

