

Item:	5.1	Ref: INT/2012/14488
Title:	Draft Amendment No 2 Armidale Dumaresq LEP 2012 Reclassification of Community Land to Operational Land	Container: A12/5824
Author:	Manager Sustainability and Strategic Planning	
Attachments:	1. Attachment 1. LEP procedure for reclassification of community land 2. Attachment 2. Planning Proposal No 2 Reclassification of community land & rezoning	

Introduction:

One of the recommendations from the *Armidale Dumaresq Council: Achieving Sustainable Infrastructure, Services and Finances* (Review Today Pty Ltd, 2009) was for Council to look at selling excess public lands and applying the proceeds to the asset backlog, in particular Roads. As part of that process Council identified 10 parcels of Community Land that could potentially be surplus land and community consultation was undertaken seeking views and input.

Public land must be classified as either Community or Operational under the *Local Government Act 1993* (LG Act). Surplus land needs to be reclassified from Community to Operational prior to Council selling the land. The reclassification is achieved by an amending local environmental plan (LEP).

At its meeting on 28 May 2012, Council decided to proceed with reclassifying four properties from Community to Operational. The purpose of Draft Amendment No 2 to Armidale Dumaresq LEP 2012 is to reclassify the four properties and to rezone 2 properties from Public Recreation to Residential.

Report:**Classification and reclassification of public land**

Under the LG Act all public land must be classified as either Community or Operational. The purpose of the classification is to identify public land to be kept for use by the general public (Community) and land which need not (Operational). Community Land generally includes public parks and the like. Operational Land generally includes land for carrying out Council's functions as well as land held for investment.

A council has no power to sell, exchange or otherwise dispose of Community Land, unless it is for the purpose of enabling the land to become, or be added to, a Crown reserve or to land that is reserved or dedicated under the National Parks and Wildlife Act 1974. There are also restrictions on leasing or licensing Community Land under the LG Act. No such restrictions on the sale, lease or licensing of land apply to Operational Land.

Under section 27 of the LG Act, public land may be reclassified from Community to Operational by a LEP. The procedure for an amending LEP that reclassifies public land from Community to Operational is outlined in Attachment 1 to this report.

Surplus Community Land in Armidale

One of the recommendations from the *Armidale Dumaresq Council: Achieving Sustainable Infrastructure, Services and Finances* (Review Today Pty Ltd, 2009) was for Council to look at selling excess public lands and applying the proceeds to the asset backlog, in particular roads. As part of that process Council identified 10 parcels of Community Land that could potentially be surplus land. Surplus land would need to be reclassified from Community to Operational prior to Council selling the land. Council wrote to all ratepayers seeking their comments on the 10 identified parcels and relevant material was exhibited from 1 December 2011 to 31 January 2012. Council received up to the closing date 7 petitions, 84 individual submissions and 38 standard letters. Two public forums were provided to allow submitters and members of the public to speak to their submissions.

During the process it was recognised that where Council had a section 94 development contributions plan and relevant lands were contributed as open space through these plans, then net monies raised from any future sale would need to be reinvested into parks and recreational purposes. This somewhat diluted the initial stated purpose to use proceeds from any sales towards the Roads backlog but created the opportunity to fund better recreational facilities for the public.

Council considered the issues raised in the submissions at its meeting on 28 May 2012 along with legal advice based on title and historical research, including the circumstances under which Council had acquired the land. Council resolved (Minute No: 117/12):

- (a) *That Council note the report on the reclassification of community lands.*
- (b) *That Council withdraw lot 31 Simpson Ave and Lot 22 Hawke Street and the eastern section of lot 65 fronting Burgess Street from the proposed reclassification process.*
- (c) *That Council not include in an amending LEP process, the proposed reclassification of the following community land:*
 - (i) *13 Homestead Lane.*
 - (ii) *7-11 Caroline Crescent Armidale.*
 - (iii) *14 Fiona Crescent Armidale.*
- (c) *That Council include in an amending LEP process, the proposed reclassification of the following community land:*
 - (iv) *43-49 White Avenue Armidale Lot 20 DP 711016.*
 - (v) *Pt lot 65 Bona Vista Road and lot 1 DP203174.*
 - (vi) *1A The Boulevarde lot 50 DP 732610.*
 - (vii) *Rear of 1 and 3 Birch Crescent.*
- (d) *Should the above lands be reclassified under the amending LEP and developed and sold, that Council allocate funds to upgrade recreational facilities such as the facilities on South Hill, upgrading of change rooms at Rolagas fields, rubber resurfacing of MacDonald park play ground and new toilets at MacDonald Park with the balance of net proceeds from sale of*

former section 94 provided lands, applied to the implementation of the Armidale Dumaresq Recreational Plan.

- (e) *Should the non Section 94 land be approved under the amending LEP that the net proceeds from any sales be applied to the roads backlog.*

Draft Amendment No 2 to LEP 2012 – reclassification of community land

The purpose of Draft Amendment No 2 to LEP 2012 is to implement part(c)(iv)-(vii) of the above resolution (Minute No: 117/12) by reclassifying the following public land in Armidale from Community to Operational through an amending LEP process:

- Lot 20 DP 711016, 43-49 White Avenue
- Part Lot 65 DP 253418, Part 15A Bona Vista Road
- Lot 1 DP 203174, 17 Bona Vista Road
- Lot 50 DP 732610, 1A The Boulevarde.

Note: the rear of 1 and 3 Birch Crescent (Part Lot 20 DP 48722) is already classified as Operational Land in Council's Public Land Register and therefore this land is not included in Draft Amendment No 2.

A Planning Proposal for Draft Amendment No 2 is attached to this Report (Attachment 2) and includes maps of the land subject of the reclassification.

Should the reclassification of the land parcels occur, they are proposed to be sold for residential purposes. The properties at 43-49 White Avenue and 1A The Boulevarde are already zoned R1 General Residential under LEP 2012. However Part 15A and 17 Bona Vista Road are zoned RE1 Public Recreation. Therefore, Draft Amendment No 2 also proposes to rezone this land to R1 General Residential. The parcels will also be included on the LEP 2012 Lot Size Map showing that the minimum lot size standard for subdivision is 500m², which is consistent with the standard applying to land in the R1 General Residential zone.

Clause 5.2 *Classification and reclassification of public land* of LEP 2012 enables Council to reclassify public land as Operational Land. The land to be reclassified will be included in Schedule 4 of LEP 2012 under Part 1 or 2. Part 2 enables the discharge of interests (public reserve, trust, estate, interest, condition, restriction or covenant) that may apply to the land. Under Section 30 of the LG Act the approval of the Governor is required where it is proposed to discharge any interests in public land before the LEP is made by the Minister for Planning and Infrastructure. Table 1 of this report indicates those parcels of land that are a public reserve and whether they are subject to an interest (trust, estate, interest, condition, restriction etc). Also, where a Planning Proposal discharges interests in public land, local plan making functions will not be delegated to councils by the DP&I. As it is proposed as part of the reclassification to discharge some of the interests applying to the parcels, Council will not be seeking plan making delegations from the DP&I in this instance.

Table 1 provides a summary of interests applying to the land; whether the land was dedicated under section 94 and the purpose for which it was dedicated (noting that if Council sells the land the proceeds of that sale must be used for that purpose); and the existing and proposed zonings under LEP 2012.

It is proposed to extinguish all interests identified in Table 1 except for:

- the covenant on Lot 20 DP 711016, 43-49 White Avenue, that denies access to the Armidale bypass
- the drainage easement in DP 243473 that applies to Lot 65 DP 253418, 15 Bona Vista Road.

Table 1. Land subject of proposed reclassification

Property	Interests	Dedicated under s94	Zoning
Lot 20 DP 711016, 43-49 White Avenue Area = 10,970m ²	BK 2936 NO 715 - a covenant on the land which was recorded in July 1969 between the then owners (not Council) and the Commissioner of Main Roads whereby access was denied to the Armidale bypass.	The land should be considered to have been acquired as the equivalent of a s94 contribution. Purpose – open space.	<u>Current & Proposed</u> R1 General Residential
Pt lot 65 DP 253418, Pt 15A Bona Vista Road Area = 6,395m ² approx.	☐ Caveat by the Register General forbidding registration of instruments not authorised by the provisions of the Local Government Act, 1919, relating to public reserves. ☐ DP243473 Easement for drainage appurtenant to Lot 65 DP 253418.	No.	<u>Current</u> RE1 Public Recreation <u>Proposed</u> R1 General Residential
Lot 1 DP203174, 17 Bona Vista Road Area = 651m ²	None.	No.	<u>Current</u> RE1 Public Recreation <u>Proposed</u> R1 General Residential
Lot 50 DP 732610, 1A The Boulevarde Area = 4,226m ²	☐ Caveat by the Register General forbidding unauthorised dealings with public reserves.	Yes. Purpose – open space.	<u>Current & Proposed</u> R1 General Residential

The suitability of the parcels of land in Table 1 for future residential development has been considered based on known planning constraints applying to each site. Future development of the properties at 43-49 White Avenue and 1A The Boulevarde may require specialist studies, the

outcomes of which could impact on the maximum potential lot yield for a subdivision but are unlikely to prevent development of at least some of the properties.

In relation to 15A and 17 Bona Vista Road, Council decided on 28 May 2012 that Lot 1 DP 203174 and the western part of Lot 65 DP 253418 be reclassified as Operational with the eastern part of Lot 65 remaining as Community land to be used as a park. Since Council's decision, submissions have been received from individuals and a community group seeking to have all of the land kept as a park. One of the main reasons provided is to protect the land's flora and fauna attributes. Council's Senior Officer Civic and Recreation Services prepared a report entitled *15A Bona Vista Road Armidale – Assessment of Environmental Values* (January 2012) with additional field assistance from a Senior Ecologist, NSW Office of Environment and Heritage. The report noted that the land supports a remnant patch of native vegetation on basalt soil. Introduced species are scattered through the site, but predominantly over the western half. The site provides significant habitat value for local wildlife. The plant community on the site is an example of the White Box, Yellow Box, Blakely's Red Gum Woodland (Box-Gum Woodland) Endangered Ecological Community (EEC). This plant community is listed under both the NSW *Threatened Species Conservation Act 1995* and also the Commonwealth *Environmental Protection and Biodiversity Act 1999*. The report included recommendations for future use of the land.

Given the concerns raised in public submissions Council is now seeking further assessment of the biodiversity values of the land, including an assessment of significance in accordance with Section 5A of the EPA Act 1979. At this time it is intended that the assessment will be completed in February 2013. Depending on the outcomes of the assessment the Planning Proposal may need to be altered in relation to 15A & 17 Bona Vista Road. Council may alter a Planning Proposal at any time during preparation of a Draft LEP amendment but needs to inform the DP&I of the changes as they occur and a revised Gateway Determination may be issued to Council.

Financial Implications:

The reclassification of the parcels of land from Community to Operational will enable Council to sell the land and to use the proceeds of the sale on improving or embellishing existing open space facilities and addressing some of Council's roads asset backlog.

Environmental Implications:

Preliminary assessment of the land to be reclassified considers that it is likely to be suitable for residential development, although relevant specialist studies will need to be carried out and the outcomes may impact on the overall development potential of the land. An independent flora and fauna study is also being undertaken for land at 15A and 17 Bona Vista Road, Armidale.

Policy Issues:

Not applicable.

Social Implications:

Reclassification of the land will mean that land which has been kept for use by the general public will be able to be sold, exchanged or otherwise disposed of. However, it is intended that some of the proceeds from any such sale will be used to embellish existing open space areas.

Integrated Planning and Reporting Issues:

The proposed reclassification of the parcels of land from Community to Operational will assist in achieving the following Strategic Goals in Council's Community Strategic Plan:

- *5P-10.1 – Council to achieve asset sustainability and be able to accommodate needs in asset growth.*
- *5I-2.1 – increased use of shared [recreation] infrastructure*
- *5G-6.2 - to have addressed Council's asset backlog.*

In relation *Strategic Goal 5I-2.4 – Improve access to recreational facilities*, the proposed reclassification of the land and future disposal for residential development may affect accessibility to recreational facilities. However, the property at Bona Vista Road has been subject of a grazing lease and, like the properties at White Avenue and The Boulevarde, has not been fully utilised for recreational purposes and there are other parks nearby.

Risk Management Issues:

Not applicable.

Legal Issues:

Preparation of a Draft LEP that proposes to reclassify land from Community to Operational must comply with the relevant provisions of the LG Act, EPA Act and EPA Regulations.

RECOMMENDATION:

- (a) That the Planning Proposal for Draft Amendment No 2 to Armidale Dumaresq Local Environmental Plan 2012, which proposes to reclassify the following public land from Community to Operational under the *Local Government Act 1993* and rezone the land to Residential where it is not already zoned for that purpose:
- Lot 20 DP 711016, 43-49 White Avenue, Armidale
 - Pt Lot 65 DP 253418, Pt 15A Bona Vista Road, Armidale
 - Lot 1 DP203174, 17 Bona Vista Road, Armidale
 - Lot 50 DP 732610, 1A The Boulevarde, Armidale
- be forwarded to the Department of Planning and Infrastructure with a request for a Gateway Determination, in accordance with the *Environmental Planning and Assessment Act 1979*.
- (b) That a further report be provided to Council after a Gateway Determination is issued and following public exhibition of the Planning Proposal for Draft Amendment No 2 to Armidale Dumaresq Local Environmental Plan 2012.