



Planning Proposal to reclassify land at Mullumbimby from community to operational land

Proposal Title : **Planning Proposal to reclassify land at Mullumbimby from community to operational land**

Proposal Summary : **The planning proposal seeks to reclassify Lot 1 DP 952598, Vallances Road, Mullumbimby from 'community' to 'operational'.**

PP Number : **PP_2014_BYRON_002_00** Dop File No : **14/09289**

Proposal Details

Date Planning Proposal Received : **05-Jun-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 : **Vallances Road**

Suburb : City : **Mullumbimby** Postcode : **2482**

Land Parcel : **Lot 1 DP 952598**

DoP Planning Officer Contact Details

Contact Name : **Jenny Johnson**

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RPA Contact Details

Contact Name : **Greg Smith**

Contact Number : **0266267219**

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DoP Project Manager Contact Details

Contact Name : **Jim Clark**

Contact Number : **0266416604**

Contact Email : **Jim.Clark@planning.nsw.gov.au**

Land Release Data

Growth Centre : Release Area Name :

Regional / Sub Regional Strategy : **Far North Coast Regional Strategy** Consistent with Strategy : **Yes**

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MDP Number :

Date of Release :

Area of Release (Ha) :

Type of Release (eg

Residential /

Employment land) :

No. of Lots : 0

No. of Dwellings 0

(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government **Yes**

Lobbyists Code of

Conduct has been

complied with :

If No, comment :

The Department's Code of Practice in relation to communication and meetings with Lobbyists has been complied with to the best of the Region's knowledge.

Have there been

meetings or

communications with

registered lobbyists? :

No

If Yes, comment :

Northern Region has not met any lobbyists in relation to this proposal, nor has Northern Region been advised of any meetings between other agency officers and lobbyists concerning this proposal.

Supporting notes

Internal Supporting

Notes :

External Supporting

Notes :

A public hearing is required by the Local Government Act when land is proposed to be reclassified.

This land is situated immediately to the west of the Brunswick Valley Sewage Treatment Plant.

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 the subject land from community to operational land. It also proposes to extinguish any interests applying to the land that require it to be retained as a public reserve. The change to the classification will allow for the potential sale of this land to fund services involved with the existing Sewerage Treatment Plant (STP) and future infrastructure projects.

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

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

Comment :

It is noted that the planning proposal was prepared by Council prior to the making of Byron LEP 2014. The current explanation of provisions was drafted to cater for the reclassification to occur under either Byron LEP 1988 or Byron LEP 2014.

With the recent making of Byron LEP 2014, part of the land was deferred by the Minister's delegate due to its proposed environmental zoning. This has resulted in part of the land being governed by Byron LEP 2014 and the remaining part by Byron LEP 1988. As a result, amendments to both LEPs will be required to reclassify the land. It is recommended that the planning proposal be amended prior to exhibition to clearly identify this issue. It is also noted that the planning proposal currently contains proposed drafting amendments to

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both LEP(s). It is considered preferable that these proposed drafting amendments be removed prior to public exhibition and replaced with a plain english explanation of the intended amendment to assist the understanding of the general public.

Council has noted in the planning proposal that it is unknown at this time whether the land is a public reserve or subject to any trust, estates, interests, dedications, conditions, restrictions or covenants on the land. If it is found that the land is a public reserve or subject to a trust, etc, Council wishes to remove these interests as part of the reclassification process. If it is confirmed by Council prior to the making of the plan that interests on the land title will sought to be changed, the Governor's approval under section 30 of the Local Government Act 1993 will be required.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.5 Rural Lands

2.2 Coastal Protection

2.3 Heritage Conservation

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

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 No 71—Coastal Protection

SEPP (Infrastructure) 2007

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

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

It is noted that while not identified by Council in the planning proposal, if the land is confirmed to be a public reserve, s117 Direction 6.2 Reserving Land for Public Purpose would also be applicable. This matter is discussed further in the Assessment section of this report.

Mapping Provided - s55(2)(e)

Is mapping provided? **Yes**

If No, comment :

The proposal includes mapping which adequately shows the land which is affected by the proposed amendment.

It is noted that as the reclassification will involve changes to both Byron LEP 2014 and Byron LEP 1988, mapping of the relevant part lots will be required for both LEPs before the plan can be made.

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Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council did not specify a preferred exhibition period, however under the requirements of Section 34 of the Local Government Act 1993, an exhibition period of 28 days will be required. In addition, a public hearing will also need be held under section 29 of the Act as the proposal includes a reclassification from community land to operational land.

An exhibition period of 28 days is considered appropriate for the proposal.

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 appropriate objectives and intended outcomes;
- 2) Providing an adequate justification for the proposal;
- 3) Allowing for a suitable proposed community consultation program;
- 4) Providing a time line for the completion of the proposal. Council has suggested a time line of 12 months, which is acceptable.

Note: Although the 'Explanation of Provisions' was not suitable to satisfy the adequacy criteria, it will be conditioned by the Gateway and be amended prior to exhibition.

It is not known at this time whether the land is a public reserve or subject to a trust, estates, interests, dedications, conditions, restrictions or covenants will require the Governor's approval to be discharged. As this is not known at present, it is not appropriate for delegation to be granted to Council in this instance.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The Byron LEP was made in May 2014.

This planning proposal will require an amendment to both Byron LEP 2014 and Byron LEP 1988.

Assessment Criteria

Need for planning proposal : The planning proposal is a result of Council's Financial Sustainability Project Plan (FSPP) 2013. The land was originally purchased to facilitate access to the STP and support future options surrounding the STP.

Council has now determined through the Financial Sustainability Project Plan that it is no longer necessary to retain the land for the STP and that the sale of the land could aid Council to address the rising costs associated with the STP. The reclassification of the land from Community to Operational will allow Council to investigate the option of selling the land in accordance with the FSPP and fund future infrastructure projects.

Consistency with strategic planning framework : Far North Coast Regional Strategy
The proposal to reclassify the subject lot is not inconsistent with the provisions of the Far North Coast Regional Strategy.

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SEPP's

The proposal is not inconsistent with any relevant State Environmental Planning Policy.

S117 Directions

The proposal to reclassify the subject lot is considered to be consistent with all relevant s117 Directions except in relation to:

4.4 Planning for Bushfire Protection

This Direction is relevant as the Planning Proposal applies to land that is identified as bushfire prone land. The Direction requires the RPA to consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued. Until this consultation has occurred the consistency of the proposal with the Direction cannot be resolved.

6.2 Reserving Land for Public Purposes

If prior to the making of the plan it is confirmed that the land is a public reserve, an inconsistency with s117 Direction 6.2 Reserving Land for Public Purpose would arise as the Secretary has not yet granted approval to reduce the existing public reserve. If this occurs, the inconsistency will need to be agreed to by the Secretary prior to the plan being made.

Environmental social
economic impacts :

The planning proposal will not have any direct adverse impact on critical habitat or threatened species, populations or ecological communities, or their habitats. Similarly the planning proposal will not have any direct adverse effects on the natural built or socio-economic environment.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
Timeframe to make LEP :	12 months	Delegation :	DDG
Public Authority Consultation - 56(2)(d) :	NSW Rural Fire Service		

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, provide reasons :

Identify any additional studies, if required :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

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

If Yes, reasons :

Planning Team Recommendation

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

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S.117 directions :
 1.2 Rural Zones
 1.5 Rural Lands
 2.2 Coastal Protection
 2.3 Heritage Conservation
 4.1 Acid Sulfate Soils
 4.3 Flood Prone Land
 4.4 Planning for Bushfire Protection
 5.1 Implementation of Regional Strategies
 6.1 Approval and Referral Requirements

Additional Information : It is recommended that:

- 1) The planning proposal should proceed;
- 2) The planning proposal is to be completed within 12 months;
- 3) A community consultation period of 28 days be undertaken;
- 4) A public hearing be held into the reclassification in accordance with the requirements of section 29 of the Local Government Act 1993;
- 5) Council is to consult with the NSW Rural Fire Service;
- 6) The planning proposal is to be amended prior to exhibition so that it only contains a plain English version of the explanation of provisions;
- 7) That the Secretary (or his delegate) note the current inconsistency with section 117 Direction 4.4 Planning for Bushfire Protection, and the potential inconsistency with section 117 Direction 6.2 Reserving Land for Public Purposes, and that these inconsistencies will need to be resolved prior to the proposal being finalised; and
- 8) Delegation not been granted to Council, as the reclassification may require approval by the Governor depending on whether any land interests are to be changed.

Supporting Reasons : The proposal to change the classification of the land from community to operational will allow Council to potentially dispose of the excess property to fund future infrastructure projects and is considered appropriate.

Panel Recommendation

Recommendation Date : 13-Jun-2014

Gateway Recommendation : Passed with Conditions

Panel Recommendation : This planning proposal is considered minor and the Gateway determination is to be issued under delegation by the General Manager. Therefore the planning proposal will not be considered by the panel.

Gateway Determination

Decision Date : 16-Jun-2014

Gateway Determination : Passed with Conditions

Decision made by : General Manager, Northern Region

Gateway Determination : The Planning Proposal should proceed subject to the following conditions:

1. That the planning proposal be amended prior to exhibition by:
 - (a) identifying the need to amend both Byron Local Environmental Plan 1988 and Byron Local Environmental Plan 2014 to reclassify the land; and
 - (b) removing the proposed drafting amendments and providing a plain English explanation of the planning proposal in the Explanation of Provisions;
2. Community consultation is required under sections 56(2)(c) and 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 Environment 2013).
3. Consultation is required with the NSW Rural Fire Service under section 56(2)(d) of the

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EP&A Act. NSW Rural Fire Service is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

5. The planning proposal 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 to accompany the proposed LEP amendment.

6. The time frame for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Exhibition period : **28 Days**

Gateway Timeframe : **12 months**

Extension Timeframe : **3 months**

Total Timeframe : **15 months**

Proposal Due Date for Finalisation: **23-Sep-2015**

Status: **Overdue**

Revised Determination (e.g. Extensions & Alterations):

Extension granted due delay in finalising report of the public hearing, and the need to refer the proposal to the Governor to extinguish trusts.

Implementation

Gateway effective date : **23-Jun-2014**

Exhibition start date : **29-Jul-2014**

Exhibition end date : **26-Aug-2014**

Exhibition duration : **29**

Public hearing : **s30**

Date : **18-Dec-2014**

Date advice received from RPA : **01-May-2015**

Days with RPA : **313**

LEP Assessment

Days with DoP : **15**

Number of submissions : **3**

Additional studies conducted : **No**

Agency consultation consistent with recommendation : **Yes**

If No, comment : **NSW Rural Fire Service**

In accordance with the Gateway determination and to satisfy the inconsistency

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with s117 Direction 4.4 Planning for Bushfire Protection consultation was conducted with the NSW Rural Fire Service. The NSW Rural Fire Service response was as follows:

'raise no concerns or issues in relation to bushfire'

As consultation has now been undertaken with the NSW Rural Fire Service, the inconsistency with s117 Direction 4.4 Planning for Bushfire Protection has been requested by Council to be accepted by the Secretary's delegate as in accordance with the direction.

Agency Objections :

No

If Yes, comment :

See comments above.

NSW Trade & Investment Crown Lands

NSW Trade & Investment Crown Lands made a submission during the exhibition period and raised the following concern:

- If any of the Crown roads need to be utilised for access/constructed due to any future proposal over Lot 1 DP 952598, these be transferred to administration of Byron Shire Council.

There is no such access included in this planning proposal.

Documentation consistent with Gateway :

Yes

If No, comment :

The planning proposal was exhibited in accordance with condition (2) of the Gateway determination from 29 July to 26 August 2014. Two submissions were received during the exhibition period.

NSW Trade & Investment Crowns Lands - see comments above.

The only other submission from an adjoining landowner raised concerns including:

- the use of the land as a depot;
- traffic issues;
- amenity (noise and air quality);
- is 'operational' the only suitable term;
- Minister involvement in reclassification, for sale of the land; and
- installation of Optus Tower in locality (not relevant to this proposal).

The land is being reclassified from community to operational. No new proposals or changes are occurring on the subject land therefore there will be no further impact regarding traffic or amenity. The permissible land uses will not change as a result of the land being reclassified from community to operational. The planning proposal does not propose the land to be used as a depot. The Minister's involvement in the proposal is required to progress the Gateway determination and as the Governor's approval is required for this reclassification, the Minister's approval is required to make the plan. (see below) No delegation was given to Byron Shire Council regarding this proposal.

Council has satisfactory addressed the issues raised in the submissions.

Public Hearing

A Public Hearing was held in accordance with s29 Local Government Act 1993 on 18 December 2014. One verbal submission was made at the hearing.

The issues raised from this submission were of similar or the same concerns raised from the submissions during public exhibition (ie. depot and traffic issues).

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Council has already adequately addressed the issues raised, however the Council representatives further discussed these issues with the landowner at the hearing.

Council, as part of the submission to make the plan, provided the necessary supporting information to determine if the subject land was identified as a Public Reserve or any trusts connected to the sites. The sites are not identified as a Public Reserve, although the use as a reserve may be implied.

As the site is not clearly identified as a Public Reserve, the inconsistency with s117 Direction 6.2 Reserving Land for Public Purpose (identified in the Planning Team Report) is now considered consistent with the direction.

All of the conditions of the Gateway determination have been met.

Proceed to Draft LEP :

Yes

If No, comment :

The LEP amendment for reclassification of Land from Community to Operational - Interests Changed for Lot 15 & Lot 16 DP 1178892 Dingo Lane, Myocum has been included in the same LEP amendment as this reclassification proposal.

As the amendment proposes changes to both Byron LEP 1988 and Byron LEP 2014, the LEP amendment has drafted as two separate amendments:

Byron Local Environmental Plan 1988 (Amendment No 154); and

Byron Local Environmental Plan 2014 (Amendment No 1).

Have all necessary changes requested by Council / Department / Agency / Other been made?

Yes

If No, comment :

Byron Shire Council did a Land & Property Information Title Search to determine if any 'interest's were attached to the site at Vallances Road (15/10/2014).

There is a reference to "A234199 Right of Way" which was not to be discharged under the LEP amendment. However it has now been determined that the Right of Way has not been used for access to the Sewerage Treatment Plant in which is was intended. It has been released and no longer exists.

A Right of Carriageway under DP1203903 was registered earlier this year and exists, is in the location of the access to the Sewage Treatment Plant and therefore should not be discharged. For this reason, the reference to "A234199 Right of Way" in each draft LEP instrument has been replaced with "Right of Carriageway registered with DP 1203903".

This change has been accepted by Council and the Department and is referenced correctly in the amendment.

In view of the possibility of an implied trust the matter was referred to Executive Council for the Governor's approval. The Minister's office was sent the necessary papers on 7 August 2015 and the Minister signed the reference to Ex-Co on 22 September. The Governor approved additions to the Schedules in both Byron LEP 1988 and Byron LEP 2014 on 7 October 2015.

LEP Determination

Date sent to legal : 15-May-2015

Total Days at PC : 37

Total Days at Legal/DoP : 116

PC Dates Details

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Date sent to PC : **03-Jun-2015** Date returned from PC : **09-Jul-2015** Days at PC : **37**

Other referrals : Date Sent : Date Received :

Elapsed Days : **168**

Date PC provided an opinion that draft LEP could be made : **09-Jul-2015**

Have changes been made to the draft LEP after obtaining final PC opinion? **No**

Determination Date : **14-Oct-2015** Determination Decision : **Approved**

Notification Date : **16-Oct-2015** Decision made by : **General Manager, Northern Region**

Link to Legislation Website : <http://www.legislation.nsw.gov.au/sessionalview/sessional/epi/2015-633.pdf>

Internal Supporting notes : **Referred to Ex-Co 22 September 2015. Governor's approval 7 October 2015.**

Documents

Document File Name	DocumentType Name	Is Public
Byron Shire Council_05-06-2014_LEP 2014 Amendment Lot 1 DP 952598 Vallances Road Mullumbimby - s56_.pdf	Proposal Covering Letter	Yes
Planning Proposal - Lot 1 DP952598 Vallances Road - Mullumbimby.pdf	Proposal	Yes
Planning Team Report 2014-06-13.pdf	Determination Document	Yes
Gateway Determination Report 2014-06-13.pdf	Determination Document	Yes
Gateway Determination 2014-06-16.pdf	Determination Document	Yes
Extension of time_Vallances Road.pdf	Determination Document	Yes