

Planning Services

Gateway Determination Report

LGA	Clarence Valley
RPA	Clarence Valley Council
NAME	Reclassification of Council Land
NUMBER	PP_CLARE_001_00
LEP TO BE AMENDED	Clarence Local Environmental Plan 2011 (CVLEP 2011)
ADDRESS	163 properties
DESCRIPTION	See Table at Appendix 1 within Planning Proposal Vol.1
RECEIVED	27/3/2018 (adequacy date)
FILE NO.	IRF18/54
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of planning proposal

The planning proposal seeks to reclassify 163 Council owned properties from Community to Operational under the Local Government Act 1993 (LG Act) by insertion into Part 1 Schedule 4 of the CVLEP2011 and insertion of a part lots map for Ferry Park (Lot 434 DP 823599). A draft "Land Reclassification (Part Lots) Map" is at Appendix 10 of Volume 1 depicting only the part of Lot 434 DP 823599 (Ferry Park) reclassified as operational.

Site description

The location of the individual land parcels is shown on maps contained in Volume 2 of the planning proposal.

Existing planning controls

The zoning of each property is listed in the Table to Appendix 1 in Volume 1 of the planning proposal. The planning proposal does not change the zoning of any land parcel or make any other amendment to the CVLEP 2011 written instrument (other than Part 1 Schedule 4).

Surrounding area

The locality surrounding the individual land parcels is shown on maps contained in Volume 2 of the planning proposal.

Summary of recommendation

It is recommended that the planning proposal proceed subject to conditions. This will allow Council to commence the process of regularising an historical error created by the introduction of the LG Act and the requirement for Council to classify land as Community or Operational within 12 months of its introduction. Where Councils failed to meet this timeframe, the classification defaulted to Community. In some instances, Council's resolution was just outside of the 12-month time frame, whilst in others, gaps in historical records created uncertainty as to correct classifications.

Proceeding with the planning proposal will allow community consultation and enable Council to effect operational transparency and good governance. Sufficient information is given in the planning proposal to proceed. Council does not propose to extinguish any public reserve status or change/extinguish any other interests and as such the Governor's approval under S.30 LG Act is not required.

PROPOSAL

Objectives or intended outcomes

The Statement of Objectives describes the intention of the planning proposal. The proposal intends to amend CVLEP 2011 to reclassify the subject lands from community to operational. The principle reason for the planning proposal is to reaffirm the classification of these parcels of public land as operational. Council has assumed a default classification of Community over these lands due to irregularities and/or inconsistencies in their previous manner of classification. The outcome of the planning proposal will return the lands to Operational, as they were originally believed to have been.

The objectives are clear and will be easily understood by the community during the community consultation process.

Explanation of provisions

The planning proposal does not change the zoning of any land parcel or make any other amendment to the CVLEP 2011 (other than Part 1 Schedule 4 and the introduction of the "Land Reclassification (Part Lots) Map"). These provisions are clearly stated and will not require amendment prior to community consultation.

Mapping

The planning proposal contains maps that are adequate to identify the subject lands and are sufficient for exhibition purposes. As only part of Lot 434 DP 823599 (Ferry Park) is proposed to be reclassified to operational a draft "Land Reclassification (Part Lots) Map" will be exhibited. The draft "Land Reclassification (Part Lots) Map" is at Appendix 10 of Volume 1 of the planning proposal. It is recommended that the boundary between the operational and community land be shifted to ensure that the amenities and river access at the southern end of the land remains community land, and that the commercial areas of the land are contained within the operational land (Figures 1 and 2).



Figure 1. Proposed boundary between community and operational as per planning proposal.

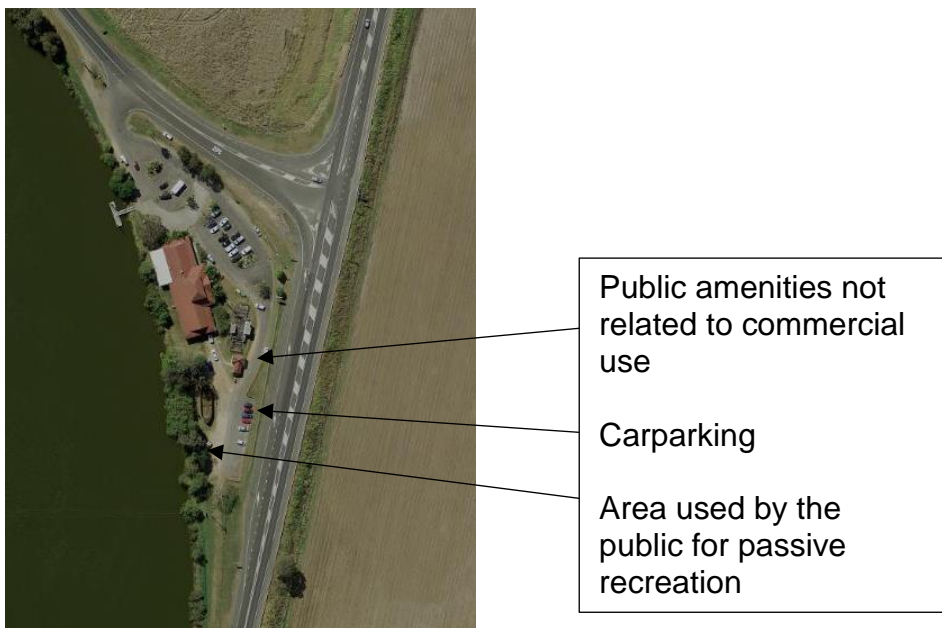


Figure 2. Land uses that will be reclassified as operational under proposed boundary

NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of any specific strategy or study. The need for the planning proposal resulted from investigations during Council's asset and land rationalisation process. Legal advice confirmed that anomalies in the procedures and processes of former Councils and their compliance with the LG Act in relation to the classification of land vested in or under its control, created uncertainty as to current classification. The planning proposal is the necessary remedial action recommended by Council's legal advisor to enable management and/or disposal of Council owned operational land.

The planning proposal is the only means for achieving the reclassification of the public land from community to operational.

STRATEGIC ASSESSMENT

State

The Premier's Priorities include the improvement of government services. This planning proposal supports that priority at a local level by providing the mechanism by which public consultation can be undertaken. The reclassification of Council owned land will ensure that Plans of Management can be prepared for land that is Community land and that surplus operational land may be leased, sold or developed where appropriate.

Regional / District

The directions and actions contained within the NCRP 2036 are not directly relevant to the planning proposal, however, it is considered that the planning proposal is not inconsistent with any of the directions or actions.

Local

The following Local strategies and strategic plans are relevant to the planning proposal:

The Clarence 2027

The proposal to reclassify the land parcels to operational may enable Council to better serve its community with appropriate infrastructure. The reclassification of some infrastructure to operational land, such as quarries, sewerage treatment plants, pump stations etc will permit Council to affect its sale should it become redundant to its operational needs. These funds may be allocated elsewhere to improving other infrastructure.

The planning proposal displays a strong, accountable and representative government and provides transparency in rectifying a legal uncertainty, that may have been otherwise overlooked, given the age of the irregularities involved.

Council's 2017/18 - 2020/21 Delivery Program and Operational Plan 2017/18

The planning proposal is generally consistent and supports the Delivery Program and the Operational Plan. Where parcels of land are surplus to the needs of Council and the community and their ownership is no longer deemed appropriate, the reclassification to operational land will permit the sale of the land. Traditionally, infrastructure such as water and sewer networks, footpaths and drainage reserves are classified as operational, which enables more flexible decisions to be made about the purpose to which they are put. This will enable more strategic asset management and maintenance to efficiently occur, than if it were otherwise classified as community land.

Clarence Valley Open Spaces Strategic Plan 2012

The strategic plan identifies the need to investigate the disposal of vacant lands with little value or recreation potential, such as excess operational lands, floodprone land acquisitions in South Grafton and small pockets of land in South Grafton. Lands that are classified as community may not be sold and must be reclassified as operational to sell the property. The planning proposal will enable the sale of the land following

investigation process adopted in the Open Spaces plan, should it be deemed necessary.

Many of the properties contained within the planning proposal are either consistent with the type of lands identified within the Plan (having little value to the community or generally inaccessible to the public) or otherwise are already developed in a manner that is consistent with an operational classification, e.g. civic halls, dwelling houses, pump stations, drainage reserves and the like. These properties do not have management plans attached to them as is required for community land.

Section 9.1 Ministerial Directions

Consistent

The planning proposal is consistent with the following s.9.1 Ministerial directions:

- 1.1 Business and Industrial Zones
- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.2 Coastal Management
- 2.4 Recreation Vehicle Areas
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 5.4 Commercial and Retail Development along the Pacific Highway, North Coast
- 5.10 Implementation of Regional Plans
- 6.1 Approval and Referral Requirements.
- 6.2 Reserving Land for Public Purposes

Inconsistency of Minor Significance

The planning proposal is inconsistent with the following directions, however, it is recommended that the delegate be satisfied that the provisions of the planning proposal that are inconsistent with the relevant direction are of minor significance.

2.1 Environment Protection Zones – The objective of the direction is to protect and conserve environmentally sensitive areas and a planning proposal must include provisions that facilitate their protection and conservation. The planning proposal does not amend the provisions of the LEP as they relate to environmental protection zones already contained within the CVLEP 2011. This inconsistency is of minor significance.

2.3 Heritage Conservation - The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance, and a planning proposal must contain provisions that facilitate this objective. The planning proposal does not amend the provisions of the CVLEP 2011 relating to heritage matters which already serve the objective of the direction. This inconsistency is of minor significance.

Unresolved Inconsistencies

The planning proposal is inconsistent with direction 4.4 Planning for Bushfire Protection and will remain unresolved until consultation with the NSW Rural Fire Service is undertaken, as required by the terms of the direction.

State environmental planning policies

No State Environmental Planning Policies are applicable to the planning proposal as the planning proposal does not involve a development application nor facilitates specific development to occur.

SITE-SPECIFIC ASSESSMENT

Social

The reclassification of Council owned lands will not have direct social consequences. However, as operational land can be leased or sold without the restrictions relating to community land, the result of the reclassification may have social implications dependent upon what Council resolves to do with the land. It is recommended that where Council leases or rents an allotment of land to an individual or an organisation, that they be specifically notified as part of the community consultation process. Examples of specific notifications would be where Council owns a dwelling house which is privately rented, community buildings which are leased to the NSW Rural Fire Service or community groups (e.g. the Mens' Shed at Iluka STP). Given the number of allotments being reclassified in this planning proposal, individual notification will ensure that those tenants are aware of the planning proposal and have an opportunity to contribute to the consultation process.

Environmental

No adverse environmental impacts will result from the planning proposal.

Economic

The reclassification of the Council owned land will not have a direct economic impact, however, indirectly it will enable surplus operational land to be leased or sold and this will contribute to Council revenue.

Infrastructure

Many of the properties that are being reclassified to operational land are drainage reserves or contain substantial built infrastructure, e.g. sewerage treatment plants, pump stations, footpaths or roads. The reclassification proposed will dispense with the requirement for a Plan of Management to be prepared for the land and for any development proposed thereon.

CONSULTATION

Community

Council proposes to exhibit the planning proposal for 28 days as part of the community consultation process. It is recommended that some tenants who lease or

rent affected land, be advised that the planning proposal is on public exhibition. Council states that a public hearing will be conducted under s.29 of the LG Act in accordance with the requirement of s. 3.34(2)(e) of the EPA Act. Council states that it will exhibit the planning proposal in accordance with the Department's Practice Note (PN 09-003) Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land.

This community consultation is considered appropriate for this planning proposal.

Agencies

Council proposes to consult with the NSW Rural Fire Service as some of the subject lands are on mapped bushfire prone land. It is further recommended that NSW Department of Primary Industries (Fisheries) and the NSW Roads and Maritime Services also be consulted. Council should identify which properties of the 163 contained within the planning proposal may be of interest to these agencies.

TIME FRAME

The proposed time frame of nine months is considered appropriate given the complexity of the planning proposal and the need for a public hearing to be conducted.

LOCAL PLAN-MAKING AUTHORITY

Council at its Ordinary Meeting of 15 November 2016 resolved not to accept authorisation as the local plan-making authority. As the reclassification has the potential to generate income for Council by the sale of operational land, this resolution is supported and will promote transparency in the Gateway and plan-making process.

CONCLUSION

The planning proposal is supported to proceed with conditions for the following reasons:

1. The planning proposal will provide certainty as to the classification of council owned land under the LG Act.
2. The planning proposal will enable appropriate classifications to be applied to land within Council ownership.
3. The reduction of inappropriately classified council owned land will enable Council to focus on preparation of any outstanding Plans of Management for community land and provide options for the management or sale of the operational lands without the restrictions attached to community land.
4. The planning proposal provides a vehicle for community consultation in relation to the reclassification of community land to operational land within the Clarence Valley Local Government Area.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 2.1 Environment Protection Zones and 2.3 Heritage Conservation are minor; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning, determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. A public hearing is to be conducted under s.29 of the LG Act in accordance with the requirement of s. 3.34(2)(e) of the EPA Act.
3. Consultation is required with the following public authorities:
 - NSW Department of Primary Industry (Fisheries)
 - NSW Rural Fire Service
 - NSW Roads and Maritime Services
4. To facilitate understanding of the planning proposal, Council is to identify which property(ies) the relative agency may wish to focus their comments on, e.g. NSW DPI (Fisheries) regarding the canals or the NSW RMS regarding the Lawrence Road.
5. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
6. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.
7. The area within Ferry Park to be reclassified as operational is to be limited to that associated with the commercial undertaking of the land, e.g. restaurant, parking, walkways etc. The public amenities, parking and riverbank area located on the land (south of the main building) which are used by the public, are to be identified as community land.
8. Where community land, the subject of this planning proposal, is leased/rented to an organisation or an individual, Council is to provide notification that the planning proposal is on public exhibition and contain a reference to the land that is under lease/rent.



12/4/18

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