

**SC18/25 PLANNING PROPOSAL - RECLASSIFICATION OF PUBLIC LAND - 50 MINORIE DRIVE, TOORMINA (LOT 2 DP 579023) - PRE-GATEWAY DETERMINATION**

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<b>MyCoffs:</b>	<b>D.2 We have effective use of public resources.</b>
<b>Attachments:</b>	<b>ATT1 SC18/25 Planning Proposal - Reclassification of Public Land - 50 Minorie Drive, Toormina (Lot 2 DP 579023) - Version 1: Pre-Gateway Determination - July 2018</b> <b>ATT2 SC18/25 NSW DPE Practice Note - Classification and Reclassification of Public Land Through a Local Environmental Plan</b>

## EXECUTIVE SUMMARY

This report presents a Planning Proposal to Council (Attachment 1), which seeks to reclassify a parcel of public land located at 50 Minorie Drive, Toormina from community land to operational land to correct an historical error in classifying this land.

The land has been the site of the Toormina Community Preschool Incorporated since 1976. To correct this situation, it is necessary to reclassify the land from community land to operational land under the *Local Government Act 1993* with the ultimate aim being for Council to formally transfer the land to the ownership of Toormina Community Preschool Incorporated.

This report recommends that Council endorse the Planning Proposal, which allows for an amendment to Schedule 4 of *Coffs Harbour Local Environmental Plan (LEP) 2013*, and seek a 'Gateway Determination' from the NSW Department of Planning and Environment (DPE) to allow Council to place the Planning Proposal on public exhibition.

This Planning Proposal has been prepared in accordance with the DPE practice note titled '*Classification and reclassification of public land through a local environmental plan*' (5 October 2016), which is required to be included in the public exhibition documents. This practice note is provided as Attachment 2 to this report.

The outcome of the exhibition will be reported to Council at a future meeting.

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## RECOMMENDATION:

That Council:

1. **Endorse a Planning Proposal (Attachment 1) to amend *Coffs Harbour Local Environmental Plan 2013* to update Schedule 4 to reclassify 50 Minorie Drive, Toormina (Lot 2 DP 579023) from community land to operational land and forward it to NSW Department of Planning and Environment seeking a "Gateway Determination".**
2. **Request that the Secretary of the NSW Department of Planning and Environment issue a written authorisation to Council to exercise delegation of the plan making functions under Section 3.34 of the *Environmental Planning and Assessment Act 1979* in respect of the Planning Proposal.**
3. **Subject to the Gateway Determination from NSW Department of Planning and Environment, place the Planning Proposal on public exhibition and hold a public hearing.**
4. **Note that a further report will be brought back to Council for consideration of any submissions following the public exhibition and public hearing of the Planning Proposal.**
5. **Notify the Toormina Community Preschool Incorporated of Council's decision.**

## REPORT

### Description of Item:

The subject land is Lot 2 DP 579023, 50 Minorie Drive, Toormina and has an area of 1,343 m<sup>2</sup>. The nearest major street is Toormina Road. The subject land is located between an ALDI supermarket to the west and the Toormina Library to the east. Toormina Gardens Shopping Centre is located to the north. The current land use zoning under *Coffs Harbour LEP 2013* is B2 Local Centre. The subject land is shown in Figure 1.

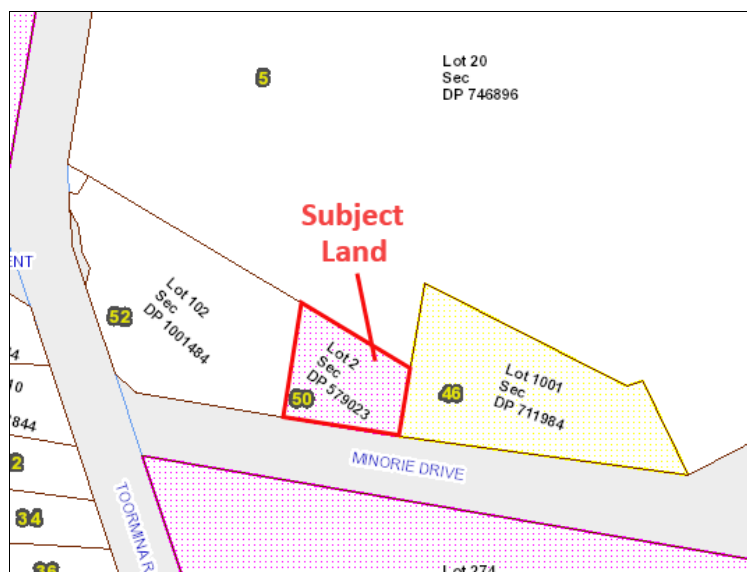


**Figure 1: Location of the Subject Land**

Classification of public land occurs when the land is first acquired by a council and classified as either community or operational. Community land is typically available for use by the general public, examples include parks, reserves or sports grounds.

Operational land may not necessarily be open to the general public, and is used to enable the functions of Council such as a works depot, water tower, and some community facilities which can include preschools. There are no special restrictions on council powers to manage, develop, dispose, or change the nature and use of operational land.

The subject land is classified as community land, as shown in Figure 2:



**Figure 2: Land Classification Map**

### LEGEND



**Community Land**



**Operational Land**

Reclassification of public land from operational to community, or from community to operational (in the case of this Planning Proposal) can take place when circumstances dictate. This Planning Proposal has been initiated to correct an historical land classification error which applies to the subject land.

At its Ordinary Meeting of 21 July 1975, Council resolved to accept the transfer of Lot 2 DP 579023 from Toormina Holdings Pty Ltd, so that Council could act as the trustee for the Toormina Preschool Association.

At its Ordinary Meeting of 18 August 1975, Council further resolved that the transfer of Lot 2 DP 579023 from Toormina Holdings Pty Ltd to Council be accepted and a Memorandum of Transfer be completed under Seal of Council. The endorsed Memorandum of Transfer notes that Council would accept the transfer of the land and act as the trustee for the Toormina Preschool Association at the time. The land was formally transferred to Council on 1 September 1975.

At its Ordinary Meeting of 20 October 1975, Council resolved that the declaration of trust regarding the transfer of Lot 2 DP 579023 from Toormina Holdings Pty Ltd to Council, be completed under Seal. The Declaration of Trust was executed by Council on 23 October 1975. Despite the Declaration of Trust stating that the preschool was a company at that time, the preschool did not become a company until 9 December 1975. The preschool later became an incorporated association (Toormina Community Preschool Incorporated) in December 1991.

The intention of the Declaration of Trust was for Toormina Community Preschool Incorporated to direct Council to formally transfer the land to the ownership of Toormina Community Preschool Incorporated, which would have enabled the land to be subsequently reclassified as operational land. However, Council's records indicate that Toormina Community Preschool Incorporated did not take that course of action at that time.

The land was therefore incorrectly classified as community land upon the introduction of the *Local Government Act 1993*. This classification is inconsistent with the intention of the Declaration of Trust. This situation has become problematic in that due to its classification as community land, Toormina Community Preschool Incorporated is unable to secure bank loans and undertake other actions which allow it to manage its operations autonomously from Council. To correct this situation, it is necessary to reclassify the land from community land to operational land under the *Local Government Act 1993* with the ultimate aim being for Council to formally transfer the land to the ownership of Toormina Community Preschool Incorporated.

The most appropriate means to reclassify public land is by an amendment to Schedule 4 of Council's LEP under the *Environmental Planning and Assessment (EP&A) Act 1979*, which must be done by resolution of Council. The first stage of this process is preparation of a Planning Proposal for Council's consideration, which is included as Attachment 1 to this report.

The intended outcome of this Planning Proposal is to amend *Coffs Harbour LEP 2013* so that Lot 2 DP 579023 is reclassified from community land to operational land.

#### **Issues:**

There are no issues associated with Council progressing this Planning Proposal to request a Gateway Determination from the DPE.

#### **Options:**

Council has two options available relating to this report:

1. Adopt the recommendation of this report, and resolve to proceed with the Planning Proposal.  
**Comment:** Option 1 will correct a historical error which has been discussed in this report and correctly identify Lot 2 DP 579023 as being operational land under the *Local Government Act 1993*.

2. Reject the recommendation, and resolve not to proceed with the Planning Proposal.

**Comment:** This option would mean that the subject land will retain its current status as community land, and the historical classification error will remain uncorrected. If this option is pursued, Toormina Preschool Incorporated would not be able to secure bank loans and undertake improvements to the centre-based child care facility.

This report recommends that Council pursue Option 1.

### **Sustainability Assessment:**

- **Environment**

Environmental sustainability issues have been considered and are addressed in Part 3 of the Planning Proposal (Attachment 1).

- **Social**

Social sustainability issues have been considered and are addressed in Part 3 of the Planning Proposal (Attachment 1).

- **Civic Leadership**

The outcomes of the Planning Proposal if endorsed, will accord with Council's Community Strategic Plan (CSP) in relation to the effective use of public resources, i.e. 'we effectively manage the planning and provision of regional public services and infrastructure' (MyCoffs CSP D2.1).

- **Economic – Broader Economic Implications**

There are no broader economic implications associated with this Planning Proposal.

- **Economic - Delivery Program/Operational Plan Implications**

Should Council proceed with this Planning Proposal to reclassify the subject land, the work will be undertaken in-house as an addition to the 2017/18 Operational Plan.

### **Risk Analysis:**

This Planning Proposal is considered to be of low risk to Council. Reclassification of the subject land will correct an historical error, and allow Toormina Community Preschool Incorporated to undertake its operations autonomously from Council. This will be ensured by correctly classifying Lot 2 DP 579023 as operational land under the *Local Government Act 1993*.

### **Consultation:**

Should Council resolve to progress this Planning Proposal, and the NSW Department of Planning and Environment endorses its exhibition, all documents will be exhibited in accordance with the Gateway Determination and section 3.34 of the *EP&A Act 1979*. A Planning Proposal to reclassify public land is required to be publicly exhibited for at least 28 days.

Additionally, in accordance with section 3.34 of the *EP&A Act 1979* and the NSW Department of Planning and Environment practice note titled '*Classification and reclassification of public land through a local environmental plan*', Council must also hold a public hearing when reclassifying public land from community to operational. A public hearing gives the community an opportunity to expand on written submissions and discuss issues with an independent person in a public forum. The practice note (Attachment 2) is also required to be included in the public exhibition documents.

After the exhibition period has ended, at least 21 days written notice is to be given before the public hearing takes place.

**Related Policy, Precedents and / or Statutory Requirements:**

This Planning Proposal addresses all relevant statutory requirements and Council policies.

**Implementation Date / Priority:**

The timeframe to progress a Planning Proposal is governed by the EP&A Act 1979 and commences on the date that the Planning Proposal is forwarded to DPE.

The projected timeline is as follows:

July 2018:	Forward the Planning Proposal to DPE, requesting a Gateway Determination.
July – August 2018:	Issue of a Gateway Determination from DPE.
August – September 2018:	Public Exhibition / Consultation period (including the public hearing).
October 2018:	Report to Council for determination of the Planning Proposal.
November 2018:	Submission to DPE, requesting the making of the LEP Amendment.

**Conclusion:**

Submission of a Planning Proposal and the subsequent amendment of *Coffs Harbour LEP 2013* is the most appropriate means to reclassify the subject land, and therefore correct the historical error which has been discussed in this report. Pending endorsement by NSW DPE, the Planning Proposal will be exhibited, and a public hearing will be held. The outcome of the exhibition and public hearing will be reported to Council at a future meeting.