

Requirements of LEP Practice Note PN 09-003:

**Classification and reclassification of public land
through a Local Environmental Plan**

Checklist

Planning Proposal to rezone and reclassify Council owned land at 5 Ray Street, 12 William Street and 1275 Pacific Highway Turramurra, via an amendment to the Ku-Ring-Gai Local Environmental Plan (Local Centres) 2012

LEP Practice Note PN 09-003: Classification and reclassification of public land through a Local Environmental Plan

Why is the Draft LEP being prepared?

- This information is found in the Council reports dated 12th November 2013 and 8 December 2015. Refer to **Appendix A and B**.

The current and proposed classification of the land

- The subject land, being 5 Ray Street (Lot 2 DP 221290), 12 William Street (Lot 1 DP 519532) and 1275 Pacific Highway (Lot 1 DP 81994) Turramurra, are currently classified as 'Community Land' under the *Local Government Act 1993*.

It is proposed to reclassify the sites to 'Operational Land' under the *Local Government Act 1993*.

The strategic reasons for the reclassification

- The re-classification will enable the Council to facilitate a comprehensive planning and development response for the Turramurra centre, which will incorporate a new park, community facilities, retail shops and residential apartments.

To achieve this optimal town centre outcome, Council needs to include land that it currently owns in the redevelopment project. The re-classification is a necessary step in Council partnering with the private sector to deliver the community facilities identified in Council's DCP and section 94 contributions plan.

Further details regarding the strategic basis for the re-classification is provided at 'Background to the Planning Proposal' in Part 1 – Objectives and Intended Outcomes and at Section A – 'Need for the Planning Proposal' in Part 3 – Justification of the Planning Proposal.

Council's ownership of the land

- This is confirmed in the Certificates of Title.

The nature of Council's interest in the land

- Council is the owner of the land. The land is currently utilised for short-stay car parking, commuter car parking, public library and park. The re-classification would not remove the current use of the land in the short-term. Rather, it would give other landowners in the Precinct

some confidence that Council was intent on utilising its assets as part of an integrated development.

Further details regarding Council's interest in the land is found in the Council Report dated 12 November 2013, and at 'Background to the Planning Proposal' in Part 1 – Objectives and Intended Outcomes and at Section A – 'Need for the Planning Proposal' in Part 3 – Justification of the Planning Proposal.

How and when Council's interest in the land was acquired

- Council records indicate that Council compulsorily acquired both 5 Ray Street and 12 William Street in 1947 for 'council purposes' using general revenue funds. 1275 Pacific Highway was acquired in 1935 from the Commissioner for Railways.

There is no information available from Council records that would indicate that the sites were dedicated in accordance with a condition imposed under Section 94 of the EP&A Act 1979.

Further details are provided at 'Land to which the Planning Proposal applies' in Part 1 – Objectives and Intended Outcomes of the Planning Proposal.

Any agreements over the land and the details thereof

- There are no agreements over the land.

Prospective change in land valuation

- The type of financial benefit that could arise would occur if the land were then sold to another party. The rezoning of part of 5 Ray Street, the William Street road reserve and 1275 Pacific Highway could potentially increase the value of the site. Currently, the RE1 zone places considerable constraints on the co-ordinated development of the precinct and significantly reduces the value of the asset.

In view of this and the current rate of inflation of residential properties on the North Shore of Sydney, Council will seek to attain a revised land valuation report closer to the public exhibition of the planning proposal.

If the land is to be sold at a later date, Council have a policy, which clearly sets out the responsibilities and process of selling Council owned land. Council adopted the *Acquisition and Divestment of Land Policy* on 10 June 2014. The Policy states:

The acquisition and divestment of Land by Council requires a formal process that is underpinned by probity, due diligence, analysis of risk and other key issues. Land acquisitions and/or divestments undertaken by Council are crucial to the strategic provision of open space, operational and community benefits, and achieving planning objectives associated with the development, growth and revitalisation of the local centres.

Any decisions to sell or lease all or part of the land will require a separate resolution from Council.

Asset Management objectives

- This information is found in the Council reports dated 12th November 2013 and 8 December 2015.

Is there any agreement to sell or lease the land?

- There is no agreement to sell or lease the land. Any future decision to deal in the land following reclassification would require a further report and formal resolution of Council.

Other relevant matters

- Please refer to the Planning Proposal.

Attach a copy of Practice Note PN 09-003

- See next page overleaf



Note	PN 09–003
Date	12 June 2009
Related	Supersedes (re)classification advice in Best Practice Guideline (1997)

Classification and reclassification of public land through a local environmental plan

The purpose of this practice note is to update (and supersede) previous guidance on the process to classify or reclassify public land through a local environmental plan including a principal plan in accordance with the Standard Instrument.

Introduction

‘Public land’ is any land (including a public reserve) vested in, or under the control of, council. Exceptions include roads, land to which the *Crown Lands Act 1989* applies, a common, or land to which the *Trustees of Schools of Arts Enabling Act 1902* applies.

‘Community’ land is generally open to the public, for example, parks, reserves or sports grounds.

‘Operational’ land may be used for other purposes, for example, as works depots or garages, or held by council as a temporary asset.

‘Classification’ of public land refers to the process when this land is first acquired and first classified as either ‘operational’ land or ‘community’ land.

‘Reclassification’ of public land refers to the process of changing the classification of ‘operational’ land to ‘community’ land or from ‘community’ land to ‘operational’ land.

How is public land classified or reclassified?

Depending on circumstances, this is undertaken by either:

- resolution of council under section 31, 32 or 33 of the *Local Government Act 1993* (LG Act) [through section 27(2)], or
- a local environmental plan (LEP) under the *Environmental Planning and Assessment Act 1979* (EP&A Act) [through section 27(1) of the LG Act].

In both cases, it is not possible for councils to delegate their decision to classify or reclassify public land [section 377(1) of the LG Act]. Councils are encouraged to classify or reclassify land through the LG Act wherever circumstances conform to sections 31, 32 or 33 of the LG Act.

The remaining parts of this practice note identify the key areas councils must consider when proposing to classify or reclassify public land by means of a local environmental plan (LEP) under the second option.

This practice note supersedes the sections relating to classification and reclassification in *LEPs and council land*, Best Practice Guideline (Department of Urban Affairs and Planning 1997).

Procedure under the EP&A Act

Where classification or reclassification is proposed through an LEP, council is advised to include the proposal as early as possible in the draft LEP or planning proposal. If the public land to be classified or reclassified is not owned by council, landowner’s consent is required prior to either section 54 or section 56 of the EP&A Act (when the Part 3 amendment to the EP&A Act applies).¹

The proposal would then form part of the material presented through either section 54 or section 56 of the EP&A Act (when the Part 3 amendment to the EP&A Act applies).

¹ In relation to the Part 3 amendment, council should also check the changes to the EP&A Act and Regulation once these commence.

To assist councils, the steps in preparing material either as a draft LEP or planning proposal are summarised in Attachment 1. Column 1 of Attachment 1 sets out the requirements in accordance with the EP&A Act **prior to** the Part 3 amendment commencing. Column 2 of the attachment sets out the requirements **after** the Part 3 amendment commences. In relation to the Part 3 amendment, council should also check the savings and transitional arrangements under the EP&A Act, once these commence.

Where land is proposed to be reserved for a public purpose such as provision of public services and facilities, section 117 Direction 6.2—Reserving Land for Public Purposes applies. The Direction also sets out requirements when a reservation of public land for such purposes is no longer required.

A summary of relevant matters that need to be available at the time the planning proposal is first forwarded are listed in Attachment 2 under ‘Exhibition’. Other matters for exhibition and later stages are listed separately in that attachment.

Provisions in the Standard Instrument

The following Standard Instrument provisions are relevant to the classification and reclassification of public land.

Clause 5.2—Classification and reclassification of public land

The purpose of this clause is to enable councils to classify or reclassify public land identified in Schedule 4 of the Standard Instrument. Only public land to be classified or reclassified by publication on the NSW legislation website of that principal LEP is to be identified in the schedule. Schedule 4 must not contain a reference to any land already classified or reclassified.

Part 1 Schedule 4—change to ‘operational’ land, no interest changes

Land is identified in Part 1 of Schedule 4 where the trusts, estates, interests, dedications, conditions, restrictions or covenants over the land are to remain after reclassification to ‘operational land’, i.e. where **no** interests will change.

Part 2 Schedule 4—change to ‘operational’ land and an interest will change

Land is identified in Part 2 of Schedule 4 where the land is to be classified or reclassified as ‘operational land’ and some of the trusts, estates, interests, dedications, conditions, restrictions, or covenants over the land remain. The interests to remain are identified in column 3 of this part of the schedule.

Part 3 Schedule 4—change to ‘community’ land

Land proposed to be classified or reclassified as ‘community land’ through the LEP is identified in Part 3 of the schedule.

Where there is no land to be classified or reclassified through the LEP, the clause remains with the schedule empty.

General requirements for exhibition

Public exhibition of the LEP occurs after certification of the LEP (in accordance with section 66 of the EP&A Act). Public exhibition of a planning proposal may occur in accordance with section 57(2) (when the Part 3 amendment to the EP&A Act commences). To assist the public in understanding an exhibited draft LEP or planning proposal to classify or reclassify land, requirements are summarised in Attachment 2.

A copy of council’s response to these requirements together with a copy of this practice note is to be part of material displayed during public exhibition of an LEP or planning proposal to reclassify or classify public land.

Public hearing

A public hearing must be held when ‘community land’ is proposed to be reclassified as ‘operational land’.

To ensure council and the community have sufficient time to consider relevant matters associated with the proposed change, the public hearing is held **after** the close of the exhibition period under section 68 of the EP&A Act (section 29 of the LG Act) for an LEP and in accordance with section 57(6) (when the Part 3 amendment to the EP&A Act commences).

Public hearing provisions are set out in the EP&A Regulation (clause 14) and public notice of a hearing must be sent or published **at least 21 days** before the start of the public hearing.

The independence of the person chairing the public hearing and requirements relating to the preparation and inspection of reports from the hearing are specified in section 47G of the LG Act.

Further information

A copy of this practice note, Standard Instrument, and other specific practice notes and planning circulars on using the Standard Instrument, can be accessed on the Department’s website <http://www.planning.nsw.gov.au/lep/index.asp>

Authorised by:

Sam Haddad, Director-General

List of attachments:

1. Main steps (in sequence) for classifying and reclassifying public land under the *Environmental Planning and Assessment Act 1979*
2. General requirements for classification or reclassification of land through local environmental plans and planning proposals

Attachment 1. Main steps (in sequence) for classifying and reclassifying public land under the *Environmental Planning and Assessment Act 1979*

Requirements prior to commencement of the 2008 Part 3 amendment to the EP&A Act	Requirements after commencement of the 2008 Part 3 amendment to the EP&A Act when it applies to a proposal
<p>Council notifies the Department of a decision to prepare a draft LEP including a proposal to classify or reclassify public land (section 54 of the EP&A Act).</p> <p>This notification is accompanied by an appropriate level of information including for the following:</p> <ul style="list-style-type: none"> - a justification for the proposal - reasons why council acquired an interest - details that would also accompany a plan at exhibition stage (see Attachment 2) - any proposal to extinguish or retain other interests in the land through the reclassification - a justification /explanation as to why such interests are being extinguished - any rezoning associated with the classification/ reclassification - any preliminary comments by a relevant government agency, including agency's consent where land is vested or held by an agency other than council - consideration of any relevant directions e.g. section 117 Direction 6.2—Reserving Land for Public Purposes, where appropriate. 	<p>A planning proposal is forwarded by council to the Minister (new section 56 of the EP&A Act), including a proposal to classify or reclassify public land.</p> <p>This proposal contains an appropriate level of information including for the following:</p> <ul style="list-style-type: none"> - a justification for the planning proposal - reasons why council acquired an interest - details that would also accompany a plan at exhibition stage (see Attachment 2) - any proposal to extinguish or retain other interests in the land through the reclassification - a justification /explanation as to why such interests are being extinguished - any rezoning associated with the classification/ reclassification - any preliminary comments by a relevant government agency, including an agency in which the land is vested or held - consideration of any relevant directions, e.g. section 117 Direction 6.2—Reserving Land for Public Purposes, where appropriate.
<p>Consultation with relevant public agencies and other stakeholders (section 62 of the EP&A Act).</p>	<p>See below.</p>
<p>After consultation, council submits a draft LEP to the Department and, subject to the issue of a section 65 certificate, the draft LEP is exhibited for a minimum of 28 days and the public invited to provide written submissions to the exhibited LEP within the exhibition period.</p>	<p>Following review, at the gateway, if the planning proposal is to proceed, requirements for the various stages of the proposal, including consultation requirements, will be provided to council (new section 56(1), 56(2) of the EP&A Act).</p>
<p>Where a draft LEP includes reclassification of 'community' land to 'operational' land, council holds a public hearing into the proposal in accordance with section 68 of the EP&A Act (section 29 of the Local Government Act). *</p>	<p>Where a planning proposal includes reclassification of 'community' land to 'operational' land, council holds a public hearing into the proposal in accordance with new section 57(6) of the EP&A Act. *</p>
<p>Such a hearing follows the requirements of clause 14 of the EP&A Regulation including that a notice of the details for the hearing must be published in a local newspaper and sent to any person requesting a hearing a minimum of 21 days prior to the hearing.</p>	<p>Such a hearing follows the requirements of clause 14 of the EP&A Regulation including that a notice of the details for the hearing must be published in a local newspaper and sent to any person requesting a hearing a minimum of 21 days prior to the hearing.</p>
<p>Where it is considered appropriate, the draft LEP is submitted to the Director-General together with details of all submissions and the report of the public hearing, together with a statement of other matters set out in section 68 of the EP&A Act.</p>	<p>Consultation for a planning proposal under new section 57 of the EP&A Act is completed when council has considered any submissions made concerning the proposed instrument and the report of any public hearing.</p> <p>Where the planning proposal is to proceed, the Director-General makes arrangements for the drafting of the LEP to give effect to the final proposal (new section 59 of the EP&A Act).</p>
<p>The Director-General furnishes a report to the Minister if the Director-General is satisfied that the draft LEP has been prepared in accordance with any applicable standard instrument under section 33A (section 69 of the EP&A Act).</p>	
<p>The Minister determines whether to make the LEP under section 70 of the EP&A Act. **</p>	<p>The Minister (or Minister's delegate) determines whether to make the LEP under new section 59 of the EP&A Act. **</p>

Notes:

* Where a proposal includes a classification of 'operational' land to 'community' land, a public hearing is not generally required.

** Where a reclassification proposes to extinguish other interests in the land, the approval of the Governor is required in accordance with section 30 of the LG Act.

Attachment 2. General requirements for classification or reclassification of land through local environmental plans and planning proposals

Exhibition

When exhibiting a planning proposal or draft LEP to classify or reclassify public land, council must provide a written statement including the following:

- the reasons why the draft LEP or planning proposal is being prepared including the planning merits of the proposal, e.g. the findings of a centres' strategy, council's intention to dispose of the land, provision of open space in a town centre
- the current and proposed classification of the land
- the reasons for the reclassification including how this relates to council's strategic framework, council's proposed future use of the land, proposed zones, site specific requirements, e.g. heritage controls, anticipated physical or operational changes resulting from the reclassification
- council's ownership of the land, if this applies
- the nature of council's interest in the land, e.g. council has a 50 year lease over the site
- how and when the interest was first acquired, e.g. the land was purchased in 20XX through section 94
- the reasons council acquired an interest in the land, e.g. for the extension of an existing park; council was given responsibility for the land by a State agency
- any agreements over the land together with their duration, terms, controls, agreement to dispose of the land, e.g. whether any aspect of the draft LEP or planning proposal formed part of the agreement to dispose of the land and any terms of any such agreement
- an indication, as a minimum, of the magnitude of any financial gain or loss from the reclassification and of the type(s) of benefit that could arise e.g. council could indicate the magnitude of value added to the land based on comparable sites such as the land is currently valued at \$1500 per square metre, nearby land zoned for business development is valued at between \$2000 and \$5000 per square metre
- the asset management objectives being pursued, the manner in which they will be achieved and the type of benefits the council wants, i.e. without necessarily providing details of any possible financial arrangements, how the council may or will benefit financially
- whether there has been an agreement for the sale or lease of the land; the basic details of any such agreement and, if relevant, when council intends to realise its asset, either

immediately after rezoning/reclassification or at a later time

- Relevant matters required in plan making under the EP&A Act
- A copy of this practice note must be included in the exhibition material to assist the community in identifying information requirements. Council staff may wish to identify the column in Attachment 1 that applies.

Post-exhibition

Once a decision has been made regarding whether the draft LEP or planning proposal proceeds, everyone who made a written submission must be notified in writing of the decision.

Written notification must occur within 14 days of the decision and needs to clearly identify the reasons for council's decision. An explanation must be included of how issues raised in submissions were addressed including the reasons for council's decision.

The final report after exhibition to either the Director-General or the Minister should include:

- a brief summary of council's interest in the land
- issues raised in any relevant submissions
- the dates of the exhibition and the hearing
- an explanation of how issues raised were addressed or resolved.

Additional matters to be addressed when the Governor's approval is required

The Governor's approval is required for the extinguishment of public reserve status and other interests in land which a council proposes to reclassify from 'community' to 'operational' status under the LG Act.

Council must provide sufficient information in accordance with this practice note to inform the Minister of any public reserve and/or other third party property interests (e.g. trust, covenant, easement) that are proposed to be extinguished upon the making of such a draft LEP or planning proposal.

Important note

This note does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this note.

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APPENDIX H – Title Searches

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH
-----FOLIO: 1/81994

SEARCH DATE	TIME	EDITION NO	DATE
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12/1/2016	1:53 PM	-	-

VOL 4666 FOL 244 IS THE CURRENT CERTIFICATE OF TITLE

LAND
-----LOT 1 IN DEPOSITED PLAN 81994
AT TURRAMURRA
LOCAL GOVERNMENT AREA KU-RING-GAI
PARISH OF GORDON COUNTY OF CUMBERLAND
TITLE DIAGRAM DP81994FIRST SCHEDULE

THE COUNCIL OF THE MUNICIPALITY OF KU-RING-GAI (T D130691)

SECOND SCHEDULE (1 NOTIFICATION)

1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)

NOTATIONS
-----NOTE: DP237813 - PROPOSED ROAD
UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

PRINTED ON 12/1/2016

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LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 2/221290

SEARCH DATE	TIME	EDITION NO	DATE
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19/3/2015	11:50 AM	-	-

VOL 9702 FOL 145 IS THE CURRENT CERTIFICATE OF TITLE

LAND

LOT 2 IN DEPOSITED PLAN 221290
AT TURRAMURRA
LOCAL GOVERNMENT AREA KU-RING-GAI
PARISH OF GORDON COUNTY OF CUMBERLAND
TITLE DIAGRAM DP221290

FIRST SCHEDULE

THE COUNCIL OF THE MUNICIPALITY OF KU-RING-GAI

SECOND SCHEDULE (1 NOTIFICATION)

1 LAND EXCLUDES MINERALS (S.141 PUBLIC WORKS ACT, 1912)

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

PRINTED ON 19/3/2015

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LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 1/519532

SEARCH DATE	TIME	EDITION NO	DATE
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19/3/2015	11:50 AM	-	-

VOL 10353 FOL 116 IS THE CURRENT CERTIFICATE OF TITLE

LAND

LOT 1 IN DEPOSITED PLAN 519532
AT TURRAMURRA
LOCAL GOVERNMENT AREA KU-RING-GAI
PARISH OF GORDON COUNTY OF CUMBERLAND
TITLE DIAGRAM DP519532

FIRST SCHEDULE

THE COUNCIL OF THE MUNICIPALITY OF KU-RING-GAI

SECOND SCHEDULE (2 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 LAND EXCLUDES MINERALS (S.141 PUBLIC WORKS ACT, 1912) AS REGARDS PART

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

PRINTED ON 19/3/2015

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