

ITEM 8.3	COUNCIL CARPARKS REVIEW
REPORTING MANAGER	GROUP MANAGER STRATEGIC PLANNING
TRIM FILE REF	2013/299676
ATTACHMENTS	1 Carpark Locations and Profiles (Included In Attachments Booklet)

EXECUTIVE SUMMARY

PURPOSE

To report to Council the results of a strategic review of Council's public carparks, specifically the conflicts identified between the zoning and land classification of some carparks and the manner in which they are being used.

SUMMARY

Council staff have conducted a review of the planning controls relating to Council's public carparks.

Issues with a number of carparks have arisen since the *Local Government Act 1993* came into force. These issues relate to conflicts between the zoning and land classification of some carparks and the manner in which they are being used. For example, adjoining private landholders (both residential and businesses) are using the community classified land to access their property, which is not allowed under the *Local Government Act 1993*.

To resolve these conflicts, it is recommended that the Warringah Local Environmental Plan 2011 (WLEP 2011) be amended to rezone several carparks. Also, that consideration is given to the reclassification of certain other carparks. Prior to proceeding to initiate any potential land reclassification, due to the interest in community classified land, it is recommended that the community be consulted and the results be reported to Council.

FINANCIAL IMPACT

Nil

POLICY IMPACT

Nil

RECOMMENDATION OF DEPUTY GENERAL MANAGER ENVIRONMENT

That Council:

- A. Prepare and seek Gateway Determination for planning proposals to rezone the following carparks from RE1 Public Recreation:
 - a. to B2 Local Centre - Collaroy Street Carpark, Collaroy
 - b. to B2 Local Centre - Lagoon Street Carpark, Narrabeen
 - c. to B2 Local Centre - Darley Street and Starkey Street Carpark, Forestville
 - d. to B1 Neighbourhood Centre - McIntosh Road Carpark, Narrabeena (being Crown Land and subject to Owners consent)

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- B. Prepare a planning report to consult with the community in regards to the potential reclassification of the following carparks from community land to operational land; and rezoning the land so that the carparks reflect the surrounding land use:
- a. Mooramba Road Carpark, Dee Why
 - b. Brookvale Carpark, Lot 10 / 9999 Winbourne Road, Brookvale
 - c. Oliver Street and Lawrence Street Carpark, Freshwater
- C. Prepare a planning report to consult with the community in regards to the potential reclassification or creation of a public road within the carpark adjacent to Dee Why Rockpool
- D. Seek delegation from the NSW Department of Planning and Infrastructure to liaise directly with Parliamentary Counsel's Office in the making of amending local environmental plans.
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REPORT

BACKGROUND

A review has been undertaken of Council's public carparks across the Warringah Local Government Area. The review was undertaken because Council was aware of incidents where there are conflicts and inconsistencies between the zoning and land classification of some carparks and the manner in which they are being used.

The public carparks reviewed can be summarised as having two key purposes; they provide car parking:

- for open space - parks, playing fields, beaches, foreshores, etc.; or
- for local centres, for example, Freshwater Village, Collaroy Beach, Narrabeen Village, some involving 'Park and Ride' usage by bus commuters.

Of the 237 public carparks that have been reviewed, nine carparks present conflicts between their usage and their planning provisions that are considered to be a priority for resolution. There are two key aspects to these usage concerns:

- All carparks within Warringah have been zoned open space, and as such are classified under the Local Government Act as 'Community Land'. 'Community Land' is not permitted to have access across it to adjoining private land. There are several incidents of this occurring, mainly at carparks within local centres
- Carparks within local centres are zoned RE1 Public Open Space but do not provide car parking in association with open space usage, that is, to support visitation to parks, playing fields or beaches. As a result these carparks are inconsistent with the objectives of the open space zone. The carpark would be better served by being zoned to be consistent with the land which it serves, in most cases one of the business zonings.

PURPOSE – WHY DID COUNCIL UNDERTAKE A CARPARK REVIEW?

A review of public carparks is an action within the Warringah Community Strategic Plan. The purpose of the carpark review was to find and resolve issues that have arisen during the operation of Council's carparks as:

- a) the *Local Government Act 1993* (LG Act) specified that Council owned land must be classified as community or operational and;
- b) Warringah Local Environmental Plan (WLEP) 2000 stated that if public open space land did not have a plan of management, only exempt development and development for the purpose of recreation facilities can be carried out on public open space.

WHY HAS THIS COME ABOUT?

In each case the carparks, the subject of concern, and their adjoining land holdings have been in existence for many years; as have the access arrangements. It is therefore appropriate to ask why this current problem has arisen.

The answers lie in a number of changes to legislation over an extended time period including the Local Government Act (change from the previous *Local Government Act 1919 Act* to the current *Local Government Act 1993 Act*), case law and changes in subsequent Local Environmental Plans (eg. WLEP 1985, WLEP 2000 and the current WLEP 2011). A brief summary of some key milestones in this history is provided as follows:

- 1993 - Introduction of the new *Local Government Act 1993*. When this came into force, Councils were given a time period to nominate the classification for each parcel of land. If this was not done, the land was automatically classified as 'community'

- 1994 – A Council report resolved to reclassify certain land parcels. Most Council owned carparks were recommended to be classified as operational land. This was resolved by Council and most carparks became operational
- 1997 – There was a landmark court case regarding these matters *Bathurst City Council v PWC Properties Pty Limited (30 September 1998)* (Bathurst City Council decision). The case successfully challenged the reclassification process undertaken by Councils of certain parcels of land following the introduction of the *Local Government Act 1993*
- 1997 – (9 December 1997) there was a further Council Report to again reclassify certain parcels of land following the Bathurst City Council decision
- 2000 – (22 February 2000) there was a Council Report identifying those parcels to be reclassified and those that should not be reclassified
- When Council prepared the WLEP 2000, being a locality based planning scheme, there were no zones. It was decided that most Council owned land be marked on the LEP maps as 'green', being identified as Public Open Space. This included public carparks
- WLEP 2011 came into force in December 2011 and reintroduced a traditional zoning scheme to Warringah. A principle adopted in preparing WLEP 2011 was to translate (as best as possible) like for like planning provisions. This has resulted in the green areas under WLEP 2000 being translated to RE1 Public Recreation.

WHY IS THE CURRENT SITUATION AN ISSUE?

Section 46 of the LG Act, prohibits the sale, or lease or use of community land for 'private' use. This provision affects uses of publicly owned carparks for private and delivery vehicle movements. On this basis the classification of a carpark as community land limits Council's ability to regularise access to adjoining private land holdings.

There are several carparks where private landholders are using Council carparks to access their land, without a formal access arrangement. Due to the legal risk of such a situation it is not appropriate for such an informal arrangement to continue. It is therefore preferable that Council reclassify the carparks that are being used for private access, to operational land.

In addition to the above the use of RE1 Public Recreation zoned land as a carpark is inconsistent with the objectives of the zone, where the carpark does not support public recreation. For example a carpark that supports a sportsfield is correctly zoned RE1 Public Recreation, compared to a carpark that is zoned RE1 Public Recreation, but it is used mainly in association with a local shopping centre. Council as a landowner must work within the objectives of a zone just as a private landholder is required to. It is preferable that the function of these sites better reflect the zone and the purposes for which they are used.

WHY RECLASSIFY: FORMALISE CURRENT ACCESS ARRANGEMENTS TO PRIVATE LAND

Once land is reclassified to operational, Council can enter into a licence agreement with the relevant private landowners, to formalise (or regularise) the private use of public land. In regard to the matters which are the subject of this report this would involve a licence agreement for access to the private land from the public land / carpark.

As discussed, the formalisation of such a use is required to protect Council and the broader community. A licence cannot be entered into between Council and private landholders over public land, whilst the land retains its community land classification.

WHAT IS PROPOSED TO FIX THE SITUATION?

It has been identified that there are eight carparks that require initial attention and these are the focus of this report (refer to Attachment 1 for a map of each carpark). In summary:

- Four carparks require a rezoning from RE1 Public Recreation to reflect, and be compatible, with their surrounding land use zone
- Three carparks require rezoning and potentially land reclassification (in part or whole)
- One carpark (adjoining Dee Why Rockpool) requires a section to be reclassified or potentially made into a public road.

These eight carparks and their proposed/ potential planning changes are summarised as follows:

- Collaroy Street Carpark, Collaroy. Zoned RE1 Public Recreation to be rezoned to B1 Neighbourhood Centre, to reflect the surrounding land uses that the carpark serves
- Lagoon Street Carpark, Narrabeen. Zoned RE1 Public Recreation to be rezoned to B1 Neighbourhood Centre, to reflect the surrounding land uses that the carpark serves
- Darley Street and Starkey Street Carpark, Forestville. Zoned RE1 Public Recreation to be rezoned to B1 Neighbourhood Centre, to reflect the surrounding land uses that the carpark serves
- McIntosh Road Carpark, Narrabeena. Zoned RE1 Public Recreation to be rezoned to B1 Neighbourhood Centre, to reflect the surrounding land uses that the carpark serves.

The following carparks potentially require land reclassification (in part or whole), with the exception of the carpark adjacent to Dee Why Rockpool which may benefit from part of its land being reclassified to a public road:

- Brookvale Carpark, Lot 10/ 9999 Winbourne Road, Brookvale. Multiple adjoining private landholders (mainly businesses) use the carpark for vehicle access to their properties and therefore this use conflicts with the land's community classification and open space zoning
- Oliver Street and Lawrence Street Carpark, Freshwater. Several adjoining private landholders use the carpark for vehicle access to their properties and therefore this use conflicts with the land's community classification and open space zoning
- Carpark adjacent to Dee Why Rockpool. An adjoining private landholder (apartment building) uses the carpark for vehicle access to their property and therefore this use conflicts with the land's community classification and open space zoning
- Mooramba Road Carpark, Dee Why. There are no access conflicts by adjoining land owners in relation to this carpark however the site occupies an important location within the Dee Why town centre and has been mooted in the past as a potential location for increased car parking provision and expanded use by park and ride commuters. It is therefore appropriate to consider the site's planning controls (including its classification) to determine whether there is a case to support a change in planning provisions.

THE REMAINING CARPARKS

As previously noted the review considered 237 carparks; eight being recommended for initial attention in this report. Council's asset register identifies that there are 237 carpark assets however in reality some carparks comprise more than one 'asset' within the register and therefore the actual number is less than this.

Of the remaining carparks there are approximately 200 within the asset register, mostly associated with open space, that do not require any further action stemming from this review.

There are approximately 15 other carparks that require further investigation to resolve different use and planning anomalies. The nature of these anomalies range from inconsistencies between Council's records (land register and GIS mapping system); ill-defined site boundaries that need to be clarified; and carparks occupying road reserves. Addressing these remaining anomalies will be prioritised as part of Council's future works program.

WHERE TO FROM HERE

In order to resolve the issues outlined above the following course of action is proposed:

- Proceed with the preparation of planning proposals for the four carparks within local centres that only require rezoning and seek Gateway Determinations from the Department of Planning and Infrastructure. Community consultation will occur as part of the statutory processing of the draft LEP
- In relation to the four carparks that have conflicts between their use by adjoining private land, zoning and land classification:
 - Prepare planning reports and consult with the community. These land holdings potentially require land classification to resolve their use / planning conflicts
 - Report back to Council the results of the community consultation prior to proceeding with any potential planning regime changes.

FINANCIAL IMPACT

Nil

POLICY IMPACT

Nil