

10.1. Reclassification of Council owned land at Cattle Bay, Eden

A portion of foreshore land at Cattle Bay was dedicated to Council as Public Reserve in August 2009 by Eden Resort Hotel Pty Ltd (ERH), the adjoining property owner. In error, formal access over the reserve to their proposed marina development was not established prior to the land's dedication. This report seeks Council approval to commence the process required to reclassify a section of the reserve as Operational Land in order to facilitate the access and enter into a Deed of Agreement with ERH to rectify various other issues relating to the foreshore land.

Group Manager Strategy and Business Services

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Background

Council is in receipt of a development application for the construction of a 154 berth marina comprising the refurbishment of the former Heinz cannery wharf, three floating fixed pontoon arms, fixed wave attenuator, temporary land based management buildings, car-parking and service infrastructure.

The application is currently under assessment by Council staff and will be subject to determination by the Southern Region Joint Regional Planning Panel.

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The land component of the development comprises Lot 2 and part of Lot 4 DP 1138056. Lot 2 is owned by the proponent, ERH and has an area of 1.67 hectares. Lot 4 comprises a strip of foreshore land having an area of 6,566m² which has been dedicated to Council in the subdivision as public reserve.

Formal long term access across a section of the public reserve is required by the proponent for the purpose of linking both the land and water based components of the proposed marina development. The application nominates a corridor of approximately six metres wide which would be constructed to facilitate pedestrian and service vehicle access. Public access across the foreshore would not be precluded.

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Prior to dedication of the foreshore land to Council, certain demolition and rehabilitation works were to be undertaken by ERH as part of the Eden Resort Hotel Masterplan to facilitate their further development within the Cattle Bay area. To date, those works have not been carried out and it is strongly recommended that prior to granting an easement in favour of ERH over the foreshore land, a Deed be entered into between Council and ERH setting out the responsibilities and requirements of both parties to rectify all outstanding matters.

Issues

Legal

The public reserve is classified as 'Community Land' and categorised as 'Park' under Section 35 of the *Local Government Act 1993*. A planning proposal prepared by a consultant on behalf of ERH was lodged with Council on 6 July 2015.

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The planning proposal supports the reclassification of a nominated six metre wide corridor within Lot 4 DP 1138056 from 'Community land' to 'Operational land' to facilitate a formal access arrangement not permitted by the current 'Community land' categorisation. Figure 1 illustrates the location of Lot 4 DP 1138056 and the portion of Lot 4 proposed for reclassification.

The intended effect of the planning proposal is the amendment of Part 2 of Schedule 4 of the Bega Valley Local Environmental Plan 2013 to include part of Lot 4 DP 1138056 as land reclassified as operational land with interests changed (i.e. the public reserve status of the land is also removed).



Figure 1: Aerial photo of the subject land (with Lot 4 DP 1138056 shown in red outline and land proposed for reclassification in solid red)

- 50 Until such time as the section of foreshore land is reclassified to enable registration of an easement to the benefit of ERH to provide a legal access corridor from the proposed marina to their land based development, ERH have requested Council's consideration to enter into a lease or licence to allow the developer access to the reserve to install utility service conduits and pipes and undertake construction related activity from their adjacent land. Council is able to grant a licence to ERH under Section 46(1) of the *Local Government Act 1993*, for the purpose of utility service connections and is satisfied that Clause 116 of the Local Government (General) Regulations 2005 permits the grant of a short term licence for construction related activity.

Consultation

- 60 Council's General Manager and staff have been liaising with ERH and their planning consultant over the past 12 months to determine the best way to resolve the issue of providing legal access across Council's public foreshore reserve (within the constraints of the *Local Government Act, 1993*) and to have the old structures demolished and the site rehabilitated. ERH have confirmed by email their intention to undertake the demolition and rehabilitation works of the existing buildings when they commence to develop their land based development. That obligation however and their intention in that regard should be obtained in a legal context and a formal Deed entered into between ERH and Council is considered the best mechanism to achieve that.

- 70 In accordance with the requirements of the *Local Government Act 1993* and NSW Department of Planning and Environment Guidelines, the planning proposal to reclassify part of Lot 4 DP 1138056 from 'Community land' to 'Operational land' will be publically exhibited for a period of not less than 28 days and a public hearing will be held following the exhibition period.

Financial

With regard to the requirement to reclassify a portion of the foreshore land, it is acknowledged that access should always have been retained across that reserve to the benefit

of ERH prior to its dedication to Council. This requirement was overlooked by both parties at that time and it is therefore suggested that ERH only be responsible for any direct out-of-pocket expenses incurred by Council as part of the reclassification process such as advertising and public hearing costs. Council's Planning Proposal lodgement fee should not be charged in this instance.

A market rental valuation can be obtained to determine the licence fee payable if required, however would not be below Council's minimum annual lease/licence fee of \$510.40. As the licence is only for a short term purpose pending reclassification and registration of a formal easement, Council may choose in this instance to simply apply the minimum annual fee.

Conclusion

In order to rectify the lack of legal access across the public reserve for ERH's proposed development and to enable construction related activities to commence prior to the reclassification of land, Council approval is sought to the lodgement of a planning proposal to reclassify a six metre wide portion of Council public reserve (being Lot 4 DP 1138056) from 'Community' to 'Operational' land.

Council staff have assessed the planning proposal to reclassify part of Lot 4 DP 1138056 from 'Community land' to 'Operational land' and are of the opinion the planning proposal contains sufficient information to meet the requirements of the *Environmental Planning and Assessment Act 1979* and the Department of Planning and Environment's Guidelines.

Council approval is also sought to enter into a formal Deed of Agreement with Eden Resort Hotel Pty Ltd, setting out the obligations and rights of both parties in relation to the foreshore land, including the obligation of ERH to demolish existing structures and rehabilitate the public foreshore reserve to a standard acceptable to the Council.

Attachments

Nil

Recommendation

1. That Council authorise the Mayor and General Manager to execute a suitable Deed of Agreement with Eden Resort Hotel Pty Ltd, as owners of Lot 2 DP 1138056, which identifies their obligation to demolish existing structures and rehabilitate the foreshore land dedicated to Council by subdivision, being Lot 4 DP 1138056.
2. The Planning Proposal to reclassify part of Lot 4 DP 1138056 from 'Community land' to 'Operational Land' be forwarded to the NSW Department of Planning and Environment for Gateway Panel determination.
3. That Council approve in-principle the creation of an easement for access and utility services across Lot 4 DP 1138056 if reclassification of that portion of land to 'operational' receives approval from the Department of Planning.
4. That Council enter into a short term licence agreement with Eden Resort Hotel Pty Ltd, to authorise access to the reserve to install utility service conduits and pipes and undertake construction related activity from their adjacent land, until such time as the above easement can be registered over the land for this purpose.
4. That Council authorise the Mayor and General Manager to execute the necessary documentation to create the required easement.

Bega Valley Shire Council Minutes

Council Meeting 22 July 2015

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Resolved

1. That Council authorise the Mayor and General Manager to execute a suitable Deed of Agreement with Eden Resort Hotel Pty Ltd, as owners of Lot 2 DP 1138056, which identifies their obligation to demolish existing structures and rehabilitate the foreshore land dedicated to Council by subdivision, being Lot 4 DP 1138056.
2. The Planning Proposal to reclassify part of Lot 4 DP 1138056 from 'Community land' to 'Operational Land' be forwarded to the NSW Department of Planning and Environment for Gateway Panel determination.
3. That Council approve in-principle the creation of an easement for access and utility services across Lot 4 DP 1138056 if reclassification of that portion of land to 'operational' receives approval from the Department of Planning.
4. That Council enter into a short term licence agreement with Eden Resort Hotel Pty Ltd, to authorise access to the reserve to install utility service conduits and pipes and undertake construction related activity from their adjacent land, until such time as the above easement can be registered over the land for this purpose.
4. That Council authorise the Mayor and General Manager to execute the necessary documentation to create the required easement.



Land & Property Information

A division of the Department of Finance & Services

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 4/1138056

SEARCH DATE	TIME	EDITION NO	DATE
8/7/2015	11:05 AM	1	25/8/2009

LAND

LOT 4 IN DEPOSITED PLAN 1138056
AT EDEN
LOCAL GOVERNMENT AREA BEGA VALLEY
PARISH OF EDEN COUNTY OF AUCKLAND
TITLE DIAGRAM DP1138056

FIRST SCHEDULE

BEGA VALLEY SHIRE COUNCIL

SECOND SCHEDULE (3 NOTIFICATIONS)

- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 LAND EXCLUDES MINERALS WITHIN THE PART SHOWN SO DESIGNATED IN THE
TITLE DIAGRAM - SEE CROWN GRANT
- 3 THE LAND WITHIN DESCRIBED IS PUBLIC RESERVE

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

ATTACHMENT 4 – EVALUATION CRITERIA FOR THE DELEGATION OF PLAN MAKING FUNCTIONS

Local Government Area: Bega Valley Shire

Name of draft LEP: Bega Valley Local Environmental Plan 2013

Address of Land (if applicable): Lot 4 DP 1138056 at Cattle Bay, Eden

Intent of draft LEP:

To reclassify part of an allotment, being Lot 4 DP 1138056 at Cattle Bay, Eden from 'community land' to 'operational land' by amending Part 2 of Schedule 4 of Bega Valley Local Environmental Plan 2013.

Additional Supporting Points/Information:

Evaluation criteria for the issuing of an Authorisation	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
(Note: where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)				
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the planning proposal contain details related to proposed consultation?	Y			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?	Y			
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments	Y/N			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?	N			
Heritage LEPs	Y/N			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?		N/R		
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		N/R		
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage		N/R		

Office been obtained?				
Reclassifications	Y/N			
Is there an associated spot rezoning with the reclassification?	N			
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?	NA			
Is the planning proposal proposed to rectify an anomaly in a classification?	N			
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?	Y			
Will the draft LEP discharge any interests in public land under section 30 of the Local Government Act, 1993?	Y			
If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?	Y			
Has the council identified 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?	Y			
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?	Y			
Spot Rezoning	Y/N			
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?	N			
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	N			
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?	N			
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?	NA			

Does the planning proposal create an exception to a mapped development standard?	N			
Section 73A matters				
Does the proposed instrument a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?; b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land? (NOTE – the Minister (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).	N			

NOTES

- Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance.
- Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department.