

**REPORT OF THE PUBLIC HEARING
OF 5 NOVEMBER 2015 INTO THE
PROPOSAL BY BEGA VALLEY SHIRE
COUNCIL TO RECLASSIFY ONE
PARCEL OF COMMUNITY LAND.**

**Subject land: Part Lot 4 DP 1138056, public reserve,
Cattle Bay, Eden**

**Garret Barry MPiA CPP
Garret Barry Planning Services Pty Ltd
20 November 2015.**

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1 Introduction

Bega Valley Shire Council has resolved to exhibit a proposal to reclassify a parcel of Public Land from Community Land to Operational Land.

The subject land is part lot 4 DP 1138056 and is defined in Attachment one of this report.

I, Garret Barry, Director, Garret Barry Planning Services Pty Ltd was engaged by Council to conduct a public hearing into the proposed reclassification in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and Local Government Act 1993.

Public exhibition of a Planning Proposal to reclassify the above land from Community to Operational Land was effected between 4 September and 2 October 2015. A copy of the advertisement placed in the local papers in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and its Regulation forms Attachment 2.

I am advised Council did not receive any written submission about the Planning Proposal but did receive some telephone inquiries from members of the public seeking background information.

In accordance with the requirements of Section 29 of the Local Government Act 1993, a public hearing is required to be held into any Council proposal to reclassify Community Land as Operational Land.

Public notice of the hearing was advertised in the local newspapers on 13 and 16 October 2015 and a copy of the advertisement forms Attachment 3.

The hearing in relation to this parcel was held on Thursday 5 November 2015, commencing 6 pm in the Eden Fisherman's Club, Imlay St, Eden.

I, Garret Barry, consultant town planner of Tathra, NSW, presided at the hearing. I confirm I am a person qualified to conduct such a hearing in accordance with Section 47G (2) of the Local Government Act. I also confirm that I have no conflict of interest in this proposal.

Twenty-three members of the public attended. Council's Manager of Planning Services, Mr Keith Tull was also in attendance.

As chairperson, I gave a summary of the purpose of the hearing, the requirements of the Local Government and Environmental Planning and Assessment Acts, details on the land proposed for reclassification and the proposed method for hearing submissions.

Each of the twenty- three persons indicated they wished to address the hearing. Section Two below lists each person and a summary of their address. Four persons raised specific issues relating to the proposal and the remaining nineteen persons stated

when called on to make submission that they endorsed all comments of the previous speakers. As such I consider all 23 submissions to be valid submissions.

I assess the issues raised in their submissions in Section 3.2. I conclude for the reasons detailed in Section 3.3, that the reclassification of part Lot 4 DP 1138056 from Community to Operational Land is supported.

The hearing concluded at 7.07 pm.

2 Submissions

5th November 2015. Eden – Public Hearing. Summary of addresses received

Attendee Names	Address	Summary of submission made
Amanda Midlam	21 Brabble Street, Eden	• Marina of no benefit to local community • Concerned operational land means Council would be free to sell at a future date • Short term leasing a good control • This is the best summer beach when the north—easterly wind is up
Megan Pendlebury	34 Cattle Bay Road, Eden	• Supports previous speaker's points. • Full and guaranteed public access required. • Beach popular. • Why should Council make operational before Marina DA is determined? • Concerns as to process- did not realise submission period for LEP phase was only opportunity for written submission.
Janine Gerhety		• Endorses both previous speaker's comments.
Steve Reed	RMB Whittles Road, Wapengo	• Concerned that small boat owners will not be able to access and use this bay- beach is easy place for launching small craft
Sean Crehan	246 Lakeside Drive, Eden	• endorses all comments of previous speakers
Michael Crehan	29 Lakeside Drive, Eden	• endorses all comments of previous speakers
Richard Bryce	3 Stanley Street, Eden	• endorses all comments of previous speakers
Helen Clothier	263 Imlay Street, Eden	• endorses all comments of previous speakers
Joann Manson	263 Imlay Street, Eden	• endorses all comments of previous speakers
Corina Collins	1 Flinders Street, Eden	• endorses all comments of previous speakers
Jamie Ramsie	5 Calle Street, Eden	• endorses all comments of previous speakers
Jeremy Baker	1 Flinders Street, Eden	• endorses all comments of previous speakers
Denise Switben	4 Cocora Street, Eden	• endorses all comments of previous speakers
Rob Whiter	30 Cocora Street, Eden	• Endorses previous comments. • Very concerned at lack of property and fire management of land site of Eden Resort Hotels.

		• Considers fire risk to surrounding residential owners is very great.
Fiona Campbell	23 Cosham Close, Eden	• endorses all comments of previous speakers
Justin Gilbert	5 Calle Street, Eden	• endorses all comments of previous speakers
Fiona Elton	2 Bold Street, Eden	• endorses all comments of previous speakers
Tamayra Bowes	17 Calle Street, Eden	• endorses all comments of previous speakers
Kerrie Wilson	8 Andrea Street, Eden	• endorses all comments of previous speakers
Brooke Pearce	77 Bungo Street, Eden	• endorses all comments of previous speakers
Jamie Crofton	6 Emblen Street, Eden	• endorses all comments of previous speakers
Kodie Smith	4 Banks Street, Eden	• endorses all comments of previous speakers
Julie Straight	1 Curalo Street, Eden	• endorses all comments of previous speakers

3 Analysis and Recommendations to Council

This section contains my analysis of submissions to the hearing and recommendations for Council's consideration as to the process from here.

3.1 Overview of the proposal for reclassification

Detail on the subject land and relevant surrounding issues is provided in the Planning Proposal and Council reports. The following is a summary of that information with some additional information provided by Council officers:

- Lot 4 DP 1138056 was dedicated to Council as public reserve in 2009. Prior to that I am advised the land comprising lot 4 was owned by Eden resort Hotels Pty Ltd.
- That company has received approval to a masterplan for the development of a resort. That masterplan required the dedication of Lot 4 but also indicated the area proposed for reclassification as being needed as a strip for access to the existing jetty and Bay.
- But it appears when the company dedicated lot 4, provision of a long term legal access to the jetty was overlooked.
- On dedication to Council, lot 4 became Community Land. As such there is no legal path for Council to grant permanent legal rights of access or similar provision for services unless the land is converted to Operational land.
- The intent of the masterplan, subject to development approval, was that permanent access from the resort to the proposed marina would be available across the reserve area (now lot 4).
- Council resolved on 22 July 2015:
 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.*
- I am advised a DA for the marina portion of the project has been lodged and will be considered by the Southern Joint Regional Planning Panel on 1 December 2015.
 - If the reclassification to Operational land was to progress to gazettal, Council has approved in principle to grant an easement for access and utility services in favour of the resort site over the proposed operational land.

The area of land for reclassification is approximately 200 square metres and would be a strip 7 metres wide as depicted in Attachment 1.

3.2 Analysis of submission

3.2.1 Marina “of no benefit to Community”

All 23 community members making submission did not support the marina and included the following concerns as reasons why:

- They consider it would significantly constrain a popular bay and restrict the potential of one of the best beaches for community use when the frequent summer north-easterly winds are blowing.
- They see no advantage or benefit for the local community in the proposed marina.
- They consider small boat owners may face restrictions both in the bay and with beach access.

Assessment:

There is clearly some community concern about the Marina. However the appropriate place for that concern to be addresses and assessed is as part of the marina DA assessment and is not considered a factor of direct relevance to the proposed reclassification. The community members present were advised of this and of their right to seek to address the Panel at the meeting of 1 December.

3.2.2 Concerns as to confusion with the process

Several Community members commented they had concerns at the process and had not been aware of the ability to make submission on the Planning Proposal or marina DA. I advised the hearing I considered all statutory requirements appeared to have been met for the hearing and that all submissions made at the hearing would be reported to Council.

3.2.3 Concerns as to the implications of Operational Land status

All persons making submission were concerned the conversion to Operational land gave council the power to sell off the strip and thereby deny public access across the full

beach. While opposing the marina altogether, the persons making submission considered if the marina was approved then short term leases should suffice for the developer and the land all remain public reserve and retain Community status.

I advised the hearing the expressed intent of the Council in the minute seemed limited to granting an easement across the land for access and services and as such Council seemed to be proposing to otherwise retain the public access across the proposed operational land.

3.2.4 Site management by Eden Resort Hotels Pty Ltd

Concerns were expressed at a perceived lack of adequate management of the site by the owner. It was pointed out the old building works on the now dedicated reserve had yet to be removed as required in the masterplan and were considered to be a public hazard.

Concerns were also expressed as to a lack of adequate bushfire protection works in the forested parts of the resort site.

3.3 Conclusions and recommendations

There is obviously some objection or concerns in the local community as to the marina proposal and the site management by Eden Resort Hotels Pty Ltd.

The concerns about site management seem to be understood by Council and I note Council is proposing to require a deed for rehabilitation of the foreshore. Perhaps Council may wish to also follow-up on site work by the Company to lessen fire hazard.

But the appropriate vehicles for resolution of the marina and resort proposals are through the development application process. A DA is under assessment for the marina. There has been a masterplan approved for the site for some years that supports in principle the resort and marina works subject to a detailed assessment proving them satisfactory as part of the development application process.

The DA process allows for public input, consideration of public views, assessment of impacts on amenity...etc. I do not consider it reasonable and it may well be beyond Council's lawful powers to expect Council to constrain the marina development through the reclassification process. Council as well as the community has the ability to put any concerns about the marina proposal to the Panel as submissions and the Panel is bound to give genuine concerns consideration in its determination of the DA.

The reclassification process and this hearing is limited to a consideration of the impacts on Lot 4 of the conversion from Community to Operational land.

The lack of creation of an easement by the developer at time of dedication of Lot 4 appears to have been an oversight and if effected that that time may have negated the need for this reclassification.

It seems it was always the intent from approval of the masterplan that legal access be available to the resort owner over the proposed reclassification area for services, resort

patrons and vehicles. The masterplan also seems to propose ongoing rights of public access to the full foreshore strip contained in Lot 4.

Should the marina be approved, it is reasonable the developer have the surety of legal access for services, patrons and vehicles across the reserve. The development is a significant investment and without Operational land status, the developer could only be granted short term licences to access across community land. This would give no long term surety of access.

Should the marina be refused or not proceed, then the need for the reclassification would seem to disappear. For this reason I recommend that council not finalise the reclassification until the marina DA is determined.

The persons attending the hearing raised concerns that Operational land status could see Council “sell off” the operational strip. Hypothetically operational land is unrestricted freehold land in the Council’s title. But Council has limited its actions at this point to in principle support for the granting of an easement that may see an access suitable for services, pedestrians and vehicles over what otherwise would be publically accessible land. The specification of the standard and management of such access would be addressed through the DA process. Public access across the proposed operational land is to continue.

Given public expectations and the obligations on Council to retain public access to coastal foreshores, it seems highly unlikely a Council would dispose of this land.

Recommendation

1. Subject to consent being obtained for the proposed marina, I consider it is open to Council to proceed to finalise the reclassification of that part of Lot 4 DP 1138056 as defined in Attachment 1 from Community Land to Operational Land.

4 Attachment 1 Subject Land



Aerial photo of the subject land shown solid red (with Lot 4 shown in red outline and yellow shading)

5 Attachment 2 Advertisement for Planning Proposal

Exhibition of Planning Proposal – Reclassification of Council owned land at Cattle Bay, Eden

This notice is to inform local residents and interested persons about the public exhibition of a Planning Proposal to amend Bega Valley Local Environmental Plan 2013 in accordance with Sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979.

The objective of the Planning Proposal is to reclassify part of Lot 4 DP 1138056 from 'community land' to operational land' to enable access and services across the foreshore of Cattle Bay, Eden for the existing jetty and a proposed marina development

The planning proposal and supporting documentation can be viewed at Council's Bega office at Zingel Place, Bega between 9:00am and 4:30pm Monday to Friday, or at the Merimbula Library located in Market Street, the Eden Library located at the corner of Imlay and Mitchell Streets or the Bermagui Library located in Bunga Street during their normal opening hours, or on Council's website at www.begavalley.nsw.gov.au.

The planning proposal is on exhibition between 4th September and 2nd October 2015.

To make a submission, write or email Council before the close of business, Friday 2nd October 2015.

Submissions must include your full name and address, contact details, signature and political donations or gifts disclosure and be addressed to: The General Manager, Bega Valley Shire Council, PO Box 492, Bega NSW 2550, or by email to: council@begavalley.nsw.gov.au.

Under the Government Information (Public Access) Act 2009, details of your submission, including your name and address will be publicly available on request. You can request that your name and address not be disclosed by writing "objection in confidence" on your submission, however Council may still be obliged to release these details. Submissions that do not contain the author's name and address may not be considered as Council will be unable to validate their authenticity.

For further information, please contact Sophie Thomson from Council's Planning Services section on 6499 2246.

6 Attachment 3 Advertisement for Public Hearing

Public Notice as placed in local papers 13, 14 and 16 October 2015.

Public hearing for reclassification of Council owned land at Cattle Bay, Eden
This notice is to advise local residents and interested persons of the public hearing for the reclassification of part of Lot 4 DP 1138056 from 'community land' to operational land' to remove the public reserve status and enable access and services across the foreshore of Cattle Bay, Eden for the existing jetty and a proposed marina development.

The public hearing is being held in accordance with Section 57 of the Environmental Planning and Assessment Act 1979 and Section 29 of the Local Government Act 1993.

The public hearing will take place in the Eden Fishermen's Recreation Club, Imlay St, Eden from 6 to 7pm on Thursday, 5th November 2015.

For further information, please contact Sophie Thomson from Council's Planning Services section on 6499 2246.