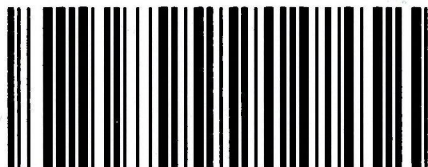




# COOMA-MONARO SHIRE COUNCIL

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Enquiries: Sue Robb (SRCL)  
Our Ref: WS/COO/42 & PL/STR/3  
Your Ref:

5 March 2010

B Whitworth  
Acting Regional Director – Southern Region  
PO Box 5475  
WOLLONGONG NSW 2520

Department of Planning  
RECEIVED

8 - MAR 2010

Southern Region

Dear Mr Whitworth

## PLANNING PROPOSAL – RECLASSIFICATION OF LOT 1 DP 901952 COOMA

At the Council meeting of 8 February 2010, Council resolved:

- “1 That the planning proposal for the amendment of Cooma-Monaro Local Environmental Plan 1993 – (Urban) for the reclassification of Lot 1 DP 901952 (from Community Land to Operational Land) for a “Gateway Determination” in accordance with Section 56 of the NSW Environmental Planning and Assessment Act 1979 be forwarded to the NSW Minister for Planning.
- 2 That the proposed resolution to classify Lot 7329 DP 1133957 and Lot 3 DP 227330 as Operational Land be advertised, in accordance with Section 34 of the NSW Local Government Act 1993”.

Please find attached the reports to Council dated 14 December 2009 and 8 February 2010 and the Resolutions. The Report dated 8 February 2010 contains the Planning Proposal.

Could this Planning Proposal please be determined under the “Gateway” process.

If you wish to discuss this matter or require additional information please contact Sue Robb, Strategic Planner.

Yours sincerely

RONALD DAKIN  
MANAGER OF PLANNING

for  
PETER SMITH  
DIRECTOR OF ENVIRONMENTAL SERVICES

# COUNCIL MEETING HELD 8 FEBRUARY 2010

## ITEM NO 7

### PROPOSED AMENDMENT OF COOMA-MONARO LOCAL ENVIRONMENTAL PLAN 1993 — (URBAN) TO ALLOW THE RECLASSIFICATION OF LOT 1 DP 901952 AND TO ADVISE OF THE NEED TO ADVERTISE THE PROPOSED COUNCIL RESOLUTION TO CLASSIFY LOT 7329 DP 1133957 AND LOT 3 DP 227330 AS OPERATIONAL LAND.

|                                                |                                         |
|------------------------------------------------|-----------------------------------------|
| <b>Reporting Officer:</b><br>Strategic Planner | <b>File No:</b><br>WS/COO/42 & PL/STR/3 |
| <b>Budget Allocation:</b><br>Nil               | <b>Expenditure to Date:</b><br>Nil      |
| <b>Effect of Recommendation on Budget:</b> Nil |                                         |

#### Purpose of Report:

To obtain a recommendation to:

- amend the *Cooma-Monaro Local Environmental Plan 1993 — (Urban)* for the reclassification of Lot 1 DP 901952 (from Community Land to Operational Land);
- advertise the proposed resolution to classify Lot 7329 DP 1133957 and Lot 3 DP 227330 as Operational Land, in accordance with Section 34 of the *NSW Local Government Act 1993*

#### Commentary:

##### **Synopsis**

Sections 25 and 26 of the *Local Government Act 1993* require that all public land must be classified as either Community Land or Operational Land. The Council Report dated 14 December 2009 outlined the proposed exchange of lots regarding the development of a water reservoir at Church Hill, Cooma, the need to reclassify and classify land and amend *Development Control Plan No 6 - Cooma Urban Area*. This Report advises that under Section 34 of the *NSW Local Government Act 1993*, Council must give public notice of a proposed resolution to classify or reclassify public land as well as advising that to dispose of Lot 1 DP 901952 it will be necessary to reclassify the lot from Community Land to Operational Land and that this requires an amendment to the *Cooma-Monaro Local Environmental Plan 1993 — (Urban)*.

##### **Introduction**

As outlined in the Cooma-Monaro Shire Council Report of 14 December 2009, Council is constructing a new water supply reservoir and associated pipe work on Lot 7329 DP 1133957 (currently owned by the Crown but being acquired by Council). The infrastructure will encroach on the adjoining lot, Lot 3 DP 227330 (which is owned by Kraft Earthmoving Pty Ltd). Council wishes to acquire Lot 3 DP 227330 by exchanging it for Lot 1 DP 901952 (owned by Council). Kraft Earthmoving Pty Ltd proposes to use Lot 1 DP 901952 for residential purposes.

In order for Council to exchange the lots, Lot 1 DP 901952 needs to be reclassified from Community Land to Operational Land under the *NSW Local Government Act 1993*. Additionally, Lot 7329 DP 1133957 and Lot 3 DP 227330 will need to be classified Operational Land.

Council is advised that several additional administrative procedures need to be undertaken so that Lot 1 DP 901952 and Lot 7329 DP 1133957 can be classified as Operational Land. These were not outlined in the report of the 14 December 2009, this Report seeks to rectify this.

## **Report**

### *Lot 1 DP 901952*

A Council resolution was made to reclassify the land from Community Land to Operational Land. However, Council is advised that land currently classified as Community Land can only be reclassified through an amendment of a Local Environmental Plan, in this instance the *Cooma-Monaro Local Environmental Plan 1993 — (Urban)*. Changes to Part 3 of the *NSW Environmental Planning and Assessment Act 1979* mean that Council must prepare a planning proposal under Section 55 of the Act. A planning proposal has been prepared (see below) in accordance with the Department of Planning's publications *A guide to preparing planning proposals* and *A guide to preparing local environmental plans* (NSW Department of Planning, July 2009). The planning proposal contains the matters required by the Director General to be addressed in all planning proposals.

If Council wishes to proceed with the amendment of the *Cooma-Monaro Local Environmental Plan 1993 — (Urban)*, the planning proposal will be forwarded to the Minister for Planning for a "Gateway Determination". The intention of the "Gateway" process is to allow a planning proposal to be reviewed at an early stage to make a decision whether to proceed further, before significant resources are committed. At the "Gateway Determination" stage the Minister will decide:

- whether the proposal will proceed, with or without variation and whether it should be re-submitted
- the level of community consultation required
- whether input from State and Commonwealth authorities is required
- the necessity for a public hearing by the Planning Assessment Commission or other body
- the appropriate timeframes for the various stages of the proposal

Following the gateway determination the proposal will be publicly exhibited, government authority views sought and Council will consider any submissions received.

After the exhibition of the planning proposal, a public hearing will be held as required under Section 29 of the *NSW Local Government Act 1993*.

A report will then be prepared for Council to consider the community consultation and public hearing.

Under the new planning procedures it is only the planning proposal and supporting documents which are exhibited. The legal instrument (draft Local Environmental Plan) is prepared by the Parliamentary Counsel when the planning proposal is finalised, immediately before it is made by the Minister (or their delegate). The Local Environmental Plan takes effect when it is published on the NSW Legislation website.

The NSW Department of Planning website allows the planning proposal to be tracked by the public. The Planning Proposal Tracking tool allows the public access to:

- information on planning proposals that have been submitted to the Department
- the "Gateway Determination" including the reasons why the proposal has been allowed to continue or why it has been refused
- the final -determination of a planning proposal

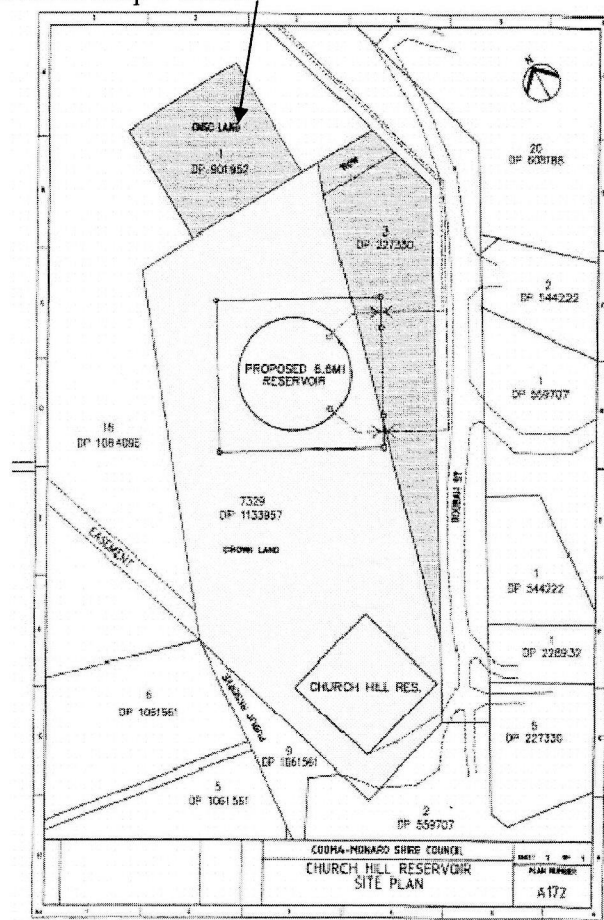
The planning proposal is shown below:

**Cooma-Monaro Shire Council  
Planning Proposal  
Reclassification of Lot 1 DP 901952, Cooma**

**Part 1 Intended Outcomes**

An amendment of the *Cooma-Monaro Local Environmental Plan 1993 — (Urban)* to reclassify Lot 1 DP 901952 from Community Land to Operational Land pursuant to Section 27 of the *NSW Local Government Act 1993*.

The subject land is shown in Map 1 below.



Map 1                      Lot 1 DP 901952  
Source:                   Cooma-Monaro Shire Council

**Part 2 Explanation of the Provisions**

Amendment of Schedule 2 Classification and reclassification of public land of the *Cooma-Monaro Local Environmental Plan 1993 — (Urban)* to include Lot 1 DP 901952.

**Part 3 Justification**

Cooma-Monaro Shire Council is constructing a new 6.6 megalitre water reservoir and associated pipe work on Lot 7329 DP 1133957 (currently owned by the Crown but being acquired by Council). The infrastructure will encroach on the adjoining lot, Lot 3 DP 227330 (which is owned by Kraft Earthmoving Pty Ltd). Council wishes to acquire Lot 3 DP 227330 by exchanging it for Lot 1 DP 901952 (owned by Council). Kraft Earthmoving Pty Ltd proposes to use Lot 1 DP 901952 for residential purposes. Lot 1 DP 901952 does not have direct access to a public road. Access for the proposed residences will be via adjoining lots. In order for Council to exchange the lots, Lot 1 DP 901952 needs to be reclassified from community land to operational land under the *NSW Local Government Act 1993*. This



process is being undertaken using the *Cooma-Monaro Local Environmental Plan 1993 — (Urban)*.

Sections 25 and 26 of the *Local Government Act 1993* requires that all public land must be classified as either Community Land or Operational Land. Lot 1 DP 901952 by default is classified as Community Land. Community Land cannot be sold so it must be reclassified as Operational Land. The reclassification process is undertaken through the *NSW Environmental Planning and Assessment Act 1979*.

Lot 1 DP 901952 is currently zoned 2(Urban Zone) under the *Cooma-Monaro Local Environmental Plan 1993 — (Urban)* and 5(a) Special Uses under *Development Control Plan No 6 – Cooma Urban Area* as the potential owner wishes to use the site for residential purposes it is proposed that *Development Control Plan No 6 – Cooma Urban Area* be amended to a Development Control Plan residential zone subject to the exhibition of the Development Control Plan and adoption of the amended version by Council. There is no need to amend the *Cooma-Monaro Local Environmental Plan 1993 — (Urban)* land use zone 2(Urban Zone) as it permits dwellings. It is intended that an assessment of the following matters be undertaken prior to the amendment of the Development Control Plan:

- the management of the decommissioned reservoir – the lot contained a 1.5 megalitre unroofed concrete reservoir for the Cooma Water Supply. The reservoir was decommissioned during the 1980s as it was no longer used. The reservoir walls were half in the ground and half above. The above ground walls were broken and pushed onto the reservoir floor which as been fractured to prevent ground water collecting. Clean fill from the site was used to cover the concrete. To build on this site the broken concrete may have to be removed and replaced with controlled fill.
- native flora and fauna
- Aboriginal heritage
- bushfire risk

#### **Section A-Need for the planning proposal**

##### **1 Is the planning proposal a result of any strategic study or report?**

The Cooma Water Supply Strategy report which was prepared by the NSW Department of Public Works in June 2005 recommended that the current reservoir be replaced.

##### **2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

The *NSW Local Government Act 1993* requires that land must be classified Operational Land if it is to be disposed off. An amendment of the Local Environmental Plan is required for the reclassification.

##### **3 Is there a net community benefit?**

The proposal is of benefit to the community as it will assist in the development of a new water reservoir for Cooma. The new reservoir will assist in the provision of a water supply that meets legislative and policy guidelines as well as enabling the growth of Cooma.

#### **Section B-Relationship to strategic planning framework**

##### **4 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?**

There are no regional or strategic plans applying to this proposal.

##### **5 Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan**

There is no strategic plan for Cooma. The Alpine Strategy, a regional plan but not a regional strategy supports the growth of Cooma.

**6 Is the planning proposal consistent with applicable state environmental planning policies?**

There are no relevant state environmental planning policies.

**7 Is the planning proposal consistent with applicable Ministerial Directions (117 directions)?**

Relevant 117 Directions are *6.1 Approval and Referral Requirements* and *6.2 Reserving Land for Public Purposes*. The proposal complies with Direction 6.1. The proposal also complies with Direction 6.2 as there is no loss of public land. Lot 3 DP 227330 is 2,940m<sup>2</sup> (Kraft Earthmoving Pty Ltd) and Lot 1 DP 901952 is 1,619m<sup>2</sup> (Cooma-Monaro Shire Council).

**Section C – Environmental, social and economic impact**

**8 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

A flora and fauna study will be undertaken as part of the proposed amendments to *Development Control Plan No 6 – Cooma Urban Area*.

**9 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

The following assessments will be undertaken as part of the proposed amendments to *Development Control Plan No 6 – Cooma Urban Area*

- Aboriginal heritage
- bushfire risk
- the management of the decommissioned reservoir

**10 How has the planning proposal adequately addressed any social and economic effects?**

Yes

**Section D – State and Commonwealth interests**

**11 Is there adequate public infrastructure for the planning proposal?**

Not applicable

**12 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

There has been no consultation with the Commonwealth government as there are unlikely to be any matters of significance to the Commonwealth.

The State government departments of:

- NSW Office of Water
- NSW Public Works, Department of Services, Technology and Administration

have been involved in the development of the water reservoir.

**Part 4 – Community Consultation**

- one advertisement will be placed in a local newspaper. Comment will be received for 14 days
- Council will write to adjoining landowners
- the proposal will be placed on the NSW Department of Planning website
- as required under Section 29 of the *NSW Local Government Act 1993*, a public hearing will be held under Section 57 *NSW Environmental Planning and Assessment Act 1979*

**Additional information pertaining to the reclassification of land**

**If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished**  
There are no interests.

**The concurrence of the landowner, where the land is not owned by the relevant planning authority**

Cooma-Monaro Shire Council is the owner of land.

A diagram of the plan making process is included in the attachments.

*Lot 7329 DP 1133957 and Lot 3 DP 227330*

Council resolved to classify Lot 7329 DP 1133957 (Crown land currently being acquired by Council) and Lot 3 DP 227330 based on the 14 December 2009 Council report. However, Council is advised that under Section 34 of the *NSW Local Government Act 1993*, Council must give public notice of a proposed resolution to classify or reclassify public land.

It is recommended that Council resolve to give public notice of the proposed resolution to classify Lot 7329 DP 1133957 and Lot 3 DP 227330.

**Summary:**

N/A

**RECOMMENDATION:**

- 1 That the planning proposal for the amendment of *Cooma-Monaro Local Environmental Plan 1993 — (Urban)* for the reclassification of Lot 1 DP 901952 (from Community Land to Operational Land) for a “Gateway Determination” in accordance with Section 56 of the *NSW Environmental Planning and Assessment Act 1979* be forwarded to the NSW Minister for Planning.
- 2 That the proposed resolution to classify Lot 7329 DP 1133957 and Lot 3 DP 227330 as Operational Land be advertised, in accordance with Section 34 of the *NSW Local Government Act 1993*.

**Item No 7      Proposed Amendment of Cooma-Monaro Local Environmental Plan 1993 — (Urban) To allow the Reclassification of Lot 1 DP 901952 and to advise of the need to advertise the Proposed Council Resolution to Classify Lot 7329 DP 1133957 and Lot 3 DP 227330 as Operational Land.**

**1026      RESOLVED:  
(Kaltoum/Nott)**

- 1 That the planning proposal for the amendment of *Cooma-Monaro Local Environmental Plan 1993 — (Urban)* for the reclassification of Lot 1 DP 901952 (from Community Land to Operational Land) for a “Gateway Determination” in accordance with Section 56 of the *NSW Environmental Planning and Assessment Act 1979* be forwarded to the NSW Minister for Planning.
- 2 That the proposed resolution to classify Lot 7329 DP 1133957 and Lot 3 DP 227330 as Operational Land be advertised, in accordance with Section 34 of the *NSW Local Government Act 1993*.

**CARRIED**

# COUNCIL MEETING HELD 14 DECEMBER 2009

## **ITEM NO 11**      **PURCHASE OF PRIVATE LAND FOR CHURCH HILL RESERVOIR**

|                                                                           |                                            |
|---------------------------------------------------------------------------|--------------------------------------------|
| <b>Reporting Officer:</b><br>Manager Water & Wastewater                   | <b>File No:</b><br>WS/COO/4.2              |
| <b>Budget Allocation:</b><br>\$3,695,000– 2009/10 & \$3,000,000 – 2010/11 | <b>Expenditure to Date:</b><br>\$48,392.82 |
| <b>Effect of Recommendation on Budget:</b> Nil                            |                                            |

### **Purpose of Report:**

For the purchase of private land for Church Hill Reservoir.

### **Commentary:**

The proposed new 6.6 Ml Church Hill reservoir rising main and trunk main pipework and security fencing will encroach onto an adjoining privately owned narrow wedge shaped parcel of land, Lot 3 DP 227330, of area 2,940 m<sup>2</sup> fronting Boobah Street.

Council staff have been negotiating with the owner of this lot for its purchase, by Council, for the new Church Hill Reservoir. The owner has offered to exchange, with conditions, this lot for Council owned land, Lot 1 DP 901952, area 1,619 m<sup>2</sup>, which adjoins his subdivision. The property owner's conditions are that the site is free from contamination, is zoned residential to build on, and Council pays or waives the fees for the dumping of the concrete excavated from the Council land.

### **Land Location:**

Both, Council's land, Lot 1 DP 901952, and the privately owned land, Lot 3 DP 227330, adjoin the Church Hill reservoir site which is currently Crown land as shown on the attached plans. Council's land Lot 1 DP 901952 is land locked. The private land, Lot 3 DP227330 has frontage to Boobah Street.

### **Zoning:**

Council's Lot 1 DP 901952 is zoned Residential 2 under the LEP and 5(a) Special Uses – Water Supply under DCP 6.

Lot 3 DP 227330 is zoned Residential 2 under the LEP and 5(a) Special Uses – Water Supply under DCP 6.

The adjoining land is zoned Residential 2 under the LEP and residential 2(b) under DCP 6.

### **Land Use:**

Council land Lot 1 DP 901952 was occupied by a 1.5 Ml unroofed concrete reservoir for the Cooma Water Supply. The reservoir was decommissioned and demolished during the 1980's as it was no longer used. The reservoir walls were half in the ground and half above. The above ground walls were broken and pushed onto the reservoir floor which has been fractured to prevent ground water collecting. Clean fill from the site was used to cover the concrete. To build on this site the broken concrete may have to be removed and replaced with controlled fill.



The privately owned land, Lot 3 DP 227330, is vacant.

**Future Land Use:**

To use Council's land, Lot 1 DP 901952, for residential purposes will require amendments to DCP 6. However the land is currently classified as "community" and will need to be change to "operational" before Council can dispose of the land. This process will take time. The owner of Lot 3 DP 227330 is aware that the process will take at least 12 months.

No change to the zoning of the private Lot 3 DP 227330 is required to use it for water supply purposes. However if this lot is acquired by Council a Council resolution will be required to classify the lot as "operational".

**From Here:**

Council owned land, Lot 1 DP 901952, has no operational value and therefore may be disposed.

Council needs to acquire Lot 3 DP 227330 for water supply purposes, i.e. construction of the new Church Hill Reservoir. Acquiring this lot by exchanging it with Council's land, Lot 1 DP 901952, appears to be the simplest means to achieve Council requirements.

With regard to the possible contamination of Council's land, Council has no record that the land may or may not be contaminated. Therefore the land will need to be tested for residential capabilities by a competent testing consultant.

**Summary:**

N/A

**RECOMMENDATION:**

That a legal agreement be undertaken to exchange Council owned land, Lot 1 DP 901952 with Lot 3 DP 227330, Boobah Street, Cooma subject to the following principles and conditions:

- 1 That Lot 1 DP 901952 being reclassified to "operational" and DCP 6 be amended to change the zoning to residential 2(b);
- 2 That if the concrete is required to be removed from Lot 1 DP901952, the Cooma Landfill fees be funded from Water Fund.
- 3 That Lot 1 DP901952 is free of contamination.
- 4 That the owner of Lot 3 DP 227330, permit unrestricted access to and construction work for the new reservoir on the lot until land transfer has been completed.
- 5 That when Lot 3 DP 227330 is owned by Cooma-Monaro Shire Council it be classified as "operational".
- 6 That each party pay their own legal fees.
- 7 That the fee for title transfer be at Council's cost.
- 8 That Council's Seal be affixed to any necessary documentation.

**941   RESOLVED:  
(Kaltoum/McDonald)**

That a legal agreement be undertaken to exchange Council owned land, Lot 1 DP 901952 with Lot 3 DP 227330, Boobah Street, Cooma subject to the following principles and conditions:

- 1      That Lot 1 DP 901952 being reclassified to “operational” and DCP 6 be amended to change the zoning to residential 2(b);
- 2      That if the concrete is required to be removed from Lot 1 DP901952, the Cooma Landfill fees be funded from Water Fund.
- 3      That Lot 1 DP901952 is free of contamination.
- 4      That the owner of Lot 3 DP 227330, permit unrestricted access to and construction work for the new reservoir on the lot until land transfer has been completed.
- 5      That when Lot 3 DP 227330 is owned by Cooma-Monaro Shire Council it be classified as “operational”.
- 6      That each party pay their own legal fees.
- 7      That the fee for title transfer be at Council’s cost.
- 8      That Council’s Seal be affixed to any necessary documentation.

**CARRIED**

**CARRIED UNANIMOUSLY (9-0)**