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Planning Proposal

Amendment to Kiama Local Environmental Plan 2011

Proposed Reclassification as Operational Land

9 O'Connell Place
Gerringong

November 2016



Subject		Planning Proposal – <i>Amendment to Kiama Local Environmental Plan 2011</i>
In respect of		Proposed Reclassification as Operational Land
Property		9 O'Connell Place Gerringong
Prepared for		Kiama Municipal Council
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Dated		November 2016



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1.0 Introduction

1.1 Preamble & Background

Martin Morris & Jones Pty Limited (MMJ Wollongong) has been engaged by Kiama Municipal Council (Council) to co-ordinate the preparation and lodgement of a Planning Proposal, seeking to reclassify land at 9 O'Connell Place, Gerringong, as operational land.

To provide a brief history, Council entered into a lease agreement with The Housing Trust back in 1990 for the occupation of the dwelling within the site for social/community housing purposes. The subject lease expired in May 2015 and subsequent discussions have been underway with The Housing Trust regarding a potential new lease. In this regard, it is understood that The Housing Trust has indicated a preference to acquire the property from Council, instead of entering into another lease arrangement. As such, a report to Council was provided at the ordinary meeting of 17th November 2015, that recommended proceedings to enable the potential consideration of the asset in the future, as well as preserving the opportunity for a new long term lease arrangement.

In terms of a more detailed background, this Council report provided the following summary:-

"In 1990, Council and The Housing Trust entered into a lease agreement for the use and occupation of a dwelling located at 9 O'Connell Street Gerringong for social housing purposes. Under the lease, Council became the land owner (by title deed) and the Housing Trust was responsible for the financing and construction of a dwelling. The lease requires the Housing Trust to be responsible for the general maintenance and use of the property and management of the dwelling as part of their broad social housing platform in the region. In return Council receives peppercorn rental (\$1p.a) and the lessee is responsible for all outgoings.

At the end of the lease, the agreement provides the opportunity for the property to be disposed if the dwelling is no longer required for social housing purposes by the lessee. In this situation, the proceeds of the sale of the property are split by a method stipulated in the lease.

Discussions with the Housing Trust have indicated that the likelihood of accepting a new negotiated rental amount, in addition to the capital outlay required to suitably upgrade the dwelling in the next few years (being a 25 year asset) is unlikely. However The Housing Trust has a long term objective to preserve the O'Connell Street property in their portfolio due to the limited supply of low cost housing in Gerringong (and the Kiama LGA as a whole) and would like Council to consider the option of disposing the property to them



directly. An outline of this option is included in a confidential information report in this business paper.

In order to realise this option, the land firstly has to be reclassified under the Local Government Act 1993 as operational land. An operational land classification does not prevent the property from continuing to be leased for the current purpose. The current use of the land under interim arrangements can take place until a long term lease is negotiated or the property is able to be considered for asset disposal.

The current classification of the land was made before amendments to the Local Government Act in 1993. Therefore the reclassification process is required to correct an anomaly and will provide Council and the lessee with the necessary security in the future in the event there is a change in direction/policy with regard to the provision of social housing.

Under the possible lease or disposal scenarios following any reclassification of the land, the objective, intent and purpose for the property to be used directly for social housing purposes will not be jeopardised."

At the above-mentioned ordinary meeting of 17th November 2015, Council resolved to commence the process to reclassify the subject site as operational land under the Local Government Act 1993 and, hence the purpose of this Planning Proposal.

The concise statement setting out the objective or intended outcome of this Planning Proposal can be described as follows:-

"To amend Kiama LEP 2011 to reclassify this land as operational land."

This Planning Proposal seeks to initiate this assessment and determination process in accordance with the provisions of the *Environmental Planning & Assessment Act, 1979*, and recommends amendment criteria to achieve the preferred long-term land use strategy for the subject site.

1.2 Conceptual Framework

This report provides a description of the subject site and surrounds, a summary of the existing and relevant legislative framework applying to the site, an identification of the future land use outcome sought by this Planning Proposal and a preliminary environmental review of those relevant matters generally considered for development. In addition to this, this report suggests the proposed amendment criteria required to *Kiama LEP 2011* in order to allow the implementation of this future desired reclassification outcome.



This Planning Proposal report has been prepared for Council in consideration of those requirements under *Section 55* of the *Environmental Planning and Assessment Act 1979 (the Act)*, together with the NSW Department of Planning and Environment's *"A guide to preparing planning proposals"* (October 2012). In general, this Planning Proposal comprises the following considerations as required:-

- ✓ A statement of the objectives or intended outcomes of the proposed instrument.
- ✓ An explanation of the provisions that are to be included in the proposed instrument.
- ✓ The justification for those objectives, outcomes and the process for their implementation. based on technical studies.
- ✓ The existing controls that apply to the site based on the Council's LEP Maps.
- ✓ Details of the community consultation to be undertaken on the planning proposal.

This report has been prepared for the purpose as described only and no part should be used for any other purpose and/or in any other context without prior approval from MMJ. Should any further information and/or discussion be required as a result of the advice contained within this report, please advise at the earliest convenience.

2.0 Site Characteristics

2.1 Description

The subject site is situated on the northern extent of O'Connell Place in Gerringong, a small 'dead end' street accessed off Willowbank Place (see *Figure 1*). Known as 9 O'Connell Place, this land incorporates one allotment title described as Lot 208 in Deposited Plan 792192.

O'Connell Place is a cul-de-sac 'no through road' residential street, which includes a 'Y' turning head arrangement for vehicles. The landholding has boundary frontages to this road totalling some 12.975 metres, and incorporates a total site area of approximately 708.6m². A public reserve providing pedestrian through access to Bridges Road is located adjacent to the east of subject site (see *Figure 2*).

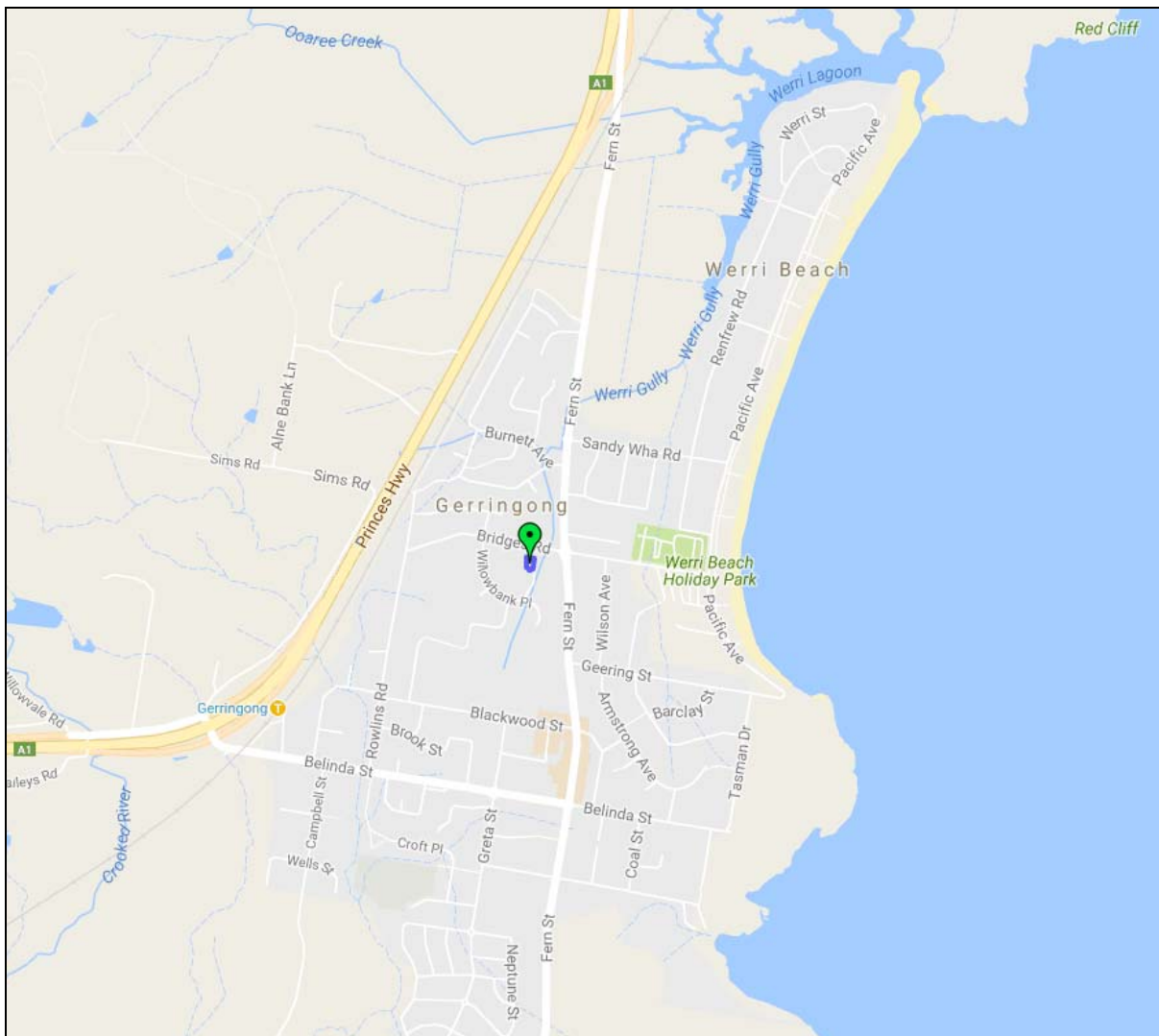


Figure 1: Location Plan (Source: NearMap)

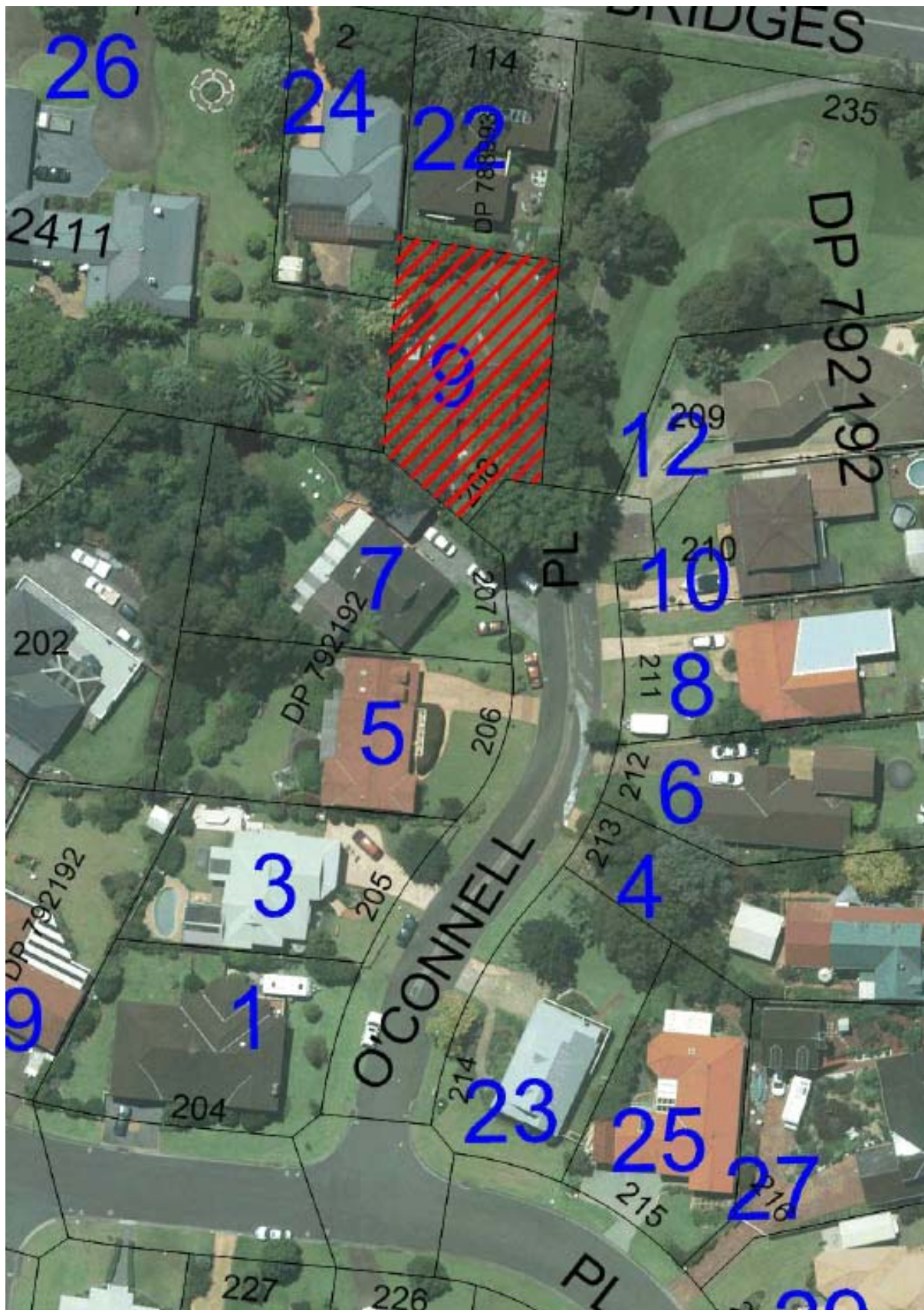


Figure 2: Site Plan (Source: Kiama Municipal Council)

2.2 Existing Development

As aforementioned, the site incorporates a brick and tile single storey dwelling, currently management by The Housing Trust for social housing purposes. It is understood this dwelling was constructed back in 1990. Vehicular access to the property is gained via the north-western end of O'Connell Place via a roll-kerb arrangement off the turning head. No garage or other notable structures are evident within the site, apart from a small garden shed located at the rear of the dwelling.



Photo 1: Subject Dwelling



Photo 2: O'Connell Place viewing north

The natural landform of the location is an almost amphitheatre-like effect at the northern end of O'Connell Place, being generally the low-point of surrounding topographic profiles. The site itself has a moderate slope across the property (downwards from north-west corner to south-east corner), with the grade level difference of some 4 metres throughout. The lot contains mainly grass cover and small garden areas/shrubs, with some larger scattered domestic trees (varied species) located to the peripheral areas and boundaries. As above, the site is located adjacent to a public reserve gully area, which acts as a stormwater detention basin for the surround residential catchment. Known as Werri Gully, this public reserve area also provides opportunities for passive and active recreation space, with pedestrian/cycle path link.



Photo 3: Adjacent Public Reserve



Photo 4: Pedestrian/cycle path through Public Reserve

2.3 Locational Context

In general, the site is located at the heart of the historically established coastal suburb of Gerringong, which is primarily characterised by low density residential development. This existing Gerringong neighbourhood is host to a range of residential properties and types (primarily detached housing), many of which have been subject to infill redevelopment over time in the form of single and double storey dwellings.

In the immediate context, this land adjoins low density residential development to the north, south and west. Whilst a public reserve as aforementioned occupies land adjacent to the east.

In the wider context, the property is in relatively close proximity to the Gerringong Town Centre (flanking Fern Street some 550m to the south-east of the site) which has a full range of retail, commercial and support related activities and uses. The site also has relatively good and convenient access to a variety of community facilities including recreation, schools, public transport, etc.



Figure 3: Aerial Photo/Context (Source: NearMap)



3.0 Existing Legislative Framework

3.1 Environmental Planning & Assessment Act 1979

The *Environmental Planning & Assessment Act 1979 (EP&A Act)* (as amended) provides the statutory planning framework for development within NSW. *Section 5* of the *EP&A Act* identifies the objectives of the legislation which are:-

- (a) to encourage:*
- a. the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;*
 - b. the promotion and co-ordination of the orderly and economic use and development of land;*
 - c. the protection, provision and co-ordination of communications and utility services;*
 - d. the provision of land for public purposes;*
 - e. the provision and co-ordination of community services and facilities; and*
 - f. the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats; and*
 - g. ecologically sustainable development; and*
 - h. the provision and maintenance of affordable housing; and*
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State; and*
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment."*

3.2 State Policies & Directions

3.2.1 Ministerial Directions

General directions are issued from time to time to all Council's pursuant to *Section 117 (2)* of the *EP&A Act* relating to matters to be considered in association to Planning Proposals. These directions are considered within *Section 6.2.4* of this report.



3.2.2 State Policies

State Environmental Planning Policies (SEPPs) deal with issues significant to the state and people of NSW. In considering the subject proposal, several policies may be applicable to the existing development of this land for residential purposes, which are considered within *Section 6.2.3* of this report.

3.3 Kiama LEP 2011

The *Kiama LEP 2011* provides the statutory planning framework for development throughout most parts of the Kiama Local Government Area (LGA). It establishes broad objectives for development and determines permissible and prohibited land uses within particular zones. The site in question is subject to the provisions of this planning instrument.

This land is currently zoned 'R2 Low Density Residential' under *Kiama LEP 2011*. The objectives and permissible land uses for this zone are as follows:-

"Zone R2 Low Density Residential"

1 Objectives of zone

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To increase the supply of secondary dwellings for affordable rental housing stock.*
- *To provide economic and employment opportunities for people who conduct business activities from their homes where these will not adversely affect the amenity of neighbours or the neighbourhood.*

2 Permitted without consent

Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Boat sheds; Business identification signs; Child care centres; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Exhibition homes; Exhibition villages; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Hospitals; Places of public worship; Recreation areas; Respite day care centres; Roads; Secondary dwellings



4 Prohibited

Any development not specified in item 2 or 3"

The *LEP* contains special considerations for development and, in this regard, the following Parts of the *LEP* have been noted as they provide special provisions relevant to the classification and reclassification of public land:-

- *Clause 5.2 – Classification and reclassification of public land; and*
- *Schedule 4 – Classification and reclassification of public land*

There are no other special provisions within the *LEP* that are considered relevant in this instance.

3.4 Illawarra-Shoalhaven Regional Plan

The *Illawarra-Shoalhaven Regional Plan (ISRP)* was adopted by the NSW State Government in November 2015 and applies to the LGAs of Kiama, Shellharbour, Shoalhaven and Wollongong. The primary purpose of the *ISRP* is to provide "*the strategic policy, planning and decision-making framework to guide the region to sustainable growth over the next 20 years*". It ensures that adequate land is available and appropriately located to sustainably accommodate the projected housing needs and economic growth of the Region over the next 20 years or so, as well as set out a range of actions that will protect the Region's natural features, such as the Illawarra Escarpment, Lake Illawarra and Jervis Bay.

As stated in the Plan, the following key principles underpin the planning framework adopted:-

- ✓ *"identify and protect land with high environmental value and recognise cultural heritage values;*
- ✓ *support the sustainable use of land and water resources and build resilience to natural hazards and climate change;*
- ✓ *support a strong, resilient and diversified economy that will enable the community to respond to environmental, economic and social challenges;*
- ✓ *integrate transport and land use planning, and support improvements in active transport (walking and cycling), public transport and transport infrastructure (including freight);*
- ✓ *take a balanced approach to housing that provides choice, affordability, and supports the orderly supply of land for development;*
- ✓ *increase housing density around centres that have access to jobs and transport and are*



already appealing to residents;

- ✓ *encourage urban design that reduces car dependency, improves the public domain, promotes energy efficiency and supports healthier environments; and*
- ✓ *improve infrastructure coordination."*



4.0 Objectives or Intended Outcomes

As aforementioned, at their ordinary meeting of 17th November 2015, Council resolved to commence the process to reclassify the subject site as operational land under the *Local Government Act 1993* and, hence the purpose of this Planning Proposal.

The concise statement setting out the objective or intended outcome of this Planning Proposal is as follows:-

"To amend Kiama LEP 2011 to reclassify this land as operational land."

Following reclassification, this will then enable Council to consider the potential disposal of the asset in the future, in addition to preserving the opportunity for a new long term leasing agreement with The Housing Trust.



5.0 Explanation of Provisions

This Planning Proposal seeks to achieve the aforementioned objective or intended outcomes by amending *Kiama LEP 2011* as follows:-

- By listing the subject site within *“Schedule 4 – Part 1 Land classified, or reclassified, as operational land – no interests changed”*.

In this regard, it is understood that existing reservations, interests, restrictions, covenants, dedications and easements as listed on the Certificate of Title will not change as a result of this proposal.

The proposal does not propose any new planning controls relating to the site in terms of land zoning, height of buildings, floor space ratio, or standard minimum lot size, or amends the existing *Kiama LEP 2011* maps.



6.0 Justification

6.1 Need for the Planning Proposal

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

Yes.

The planning proposal was initiated in response to the below Council resolution:

*“Minutes of Ordinary Meeting of 17th November 2015
Item 13.2 Lease agreement Housing Trust
15/424*

Committee recommendation that Council commence the process to reclassify Lot 208 DP792192 as operational land under the Local Government Act 1993 in order to maximise options for the long term use of the property for social housing purposes and that an independent consultant be appointed to facilitate this reclassification process.

(Councillors McClure and Way)”

As such, this Planning Proposal is in accordance with the above resolution has been prepared for the *NSW Department of Planning and Environment*, in order to obtain *Section 56* Gateway Determination approval for the reclassification.

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

Yes.

It is considered that the Planning Proposal is the best means of achieving the intended outcome. Essentially, an amendment to *Part 1, Schedule 4* of the *Kiama LEP 2011* is required, and Council consider this the most effective way of achieving the key objectives and desired outcome for reclassifying this land as operational.

This chosen means of progressing a reclassification of the subject site will enable Council to consider the potential disposal and/or long term social housing lease strategy in the future.



6.1.3 *Is there a net community benefit?*

As aforementioned, Council entered into a lease agreement with The Housing Trust back in 1990 for the occupation of the dwelling within the site for social/community housing purposes. The subject lease expired in May 2015 and subsequent discussions have been underway with The Housing Trust regarding a potential new lease. In this regard, it is understood that The Housing Trust has indicated a preference to acquire the property from Council, instead of entering into another lease arrangement. This desire for The Housing Trust to add the subject site to their portfolio is due to the limited supply of low cost housing in Gerringong (and the Kiama LGA as a whole) and, to enable this, the land must be reclassified to operational as proposed.

In terms of community benefits, the long term preservation of social housing will not be jeopardised by this Planning Proposal, rather assisted, by maximising options for it to be retained for this purpose. Conversely, should no agreement with The Housing Trust be reached, then the reclassification provides Council with the flexibility to sell the property to another party and, thus, the ability to allocate funds gained from the sale to other areas of the community.

In this regard, it is understood that existing reservations, interests, restrictions, covenants, dedications and easements as listed on the Certificate of Title will not change as a result of this proposal.

6.2 Relationship to Strategic Planning Framework

The NSW Department of Planning and Environment has published an '*LEP Practice Note PN 16-001*' dated 5th October 2016, relating to the *Classification and reclassification of public land through a local environmental plan* (refer attached as *Appendix 1*). This practice note provides guidance on the process to classify or reclassify public land through a local environmental plan, including the level of information Council must provide in this Planning Proposal. In this regard, the following Table provides a summary of those relevant matters for consideration:-

Matter:	Response:
The current and proposed classification of the land.	From existing community land, to proposed operational land.
Whether the land is a 'public reserve' (defined in the LG Act)	As understood, the land is not defined as a public reserve.
The strategic and site specific merits of the reclassification and evidence to support this.	As provided by Council, the current classification of the land was made before amendments to the Local

	<p>Government Act in 1993. Therefore the reclassification process is required to correct an anomaly and will provide Council and the lessee with the necessary security in the future in the event there is a change in direction/policy with regard to the provision of social housing.</p>
<p>Whether the planning proposal is the result of a strategic study or report.</p>	<p>The planning proposal was initiated in response to the below Council resolution:</p> <p><i>“Minutes of Ordinary Meeting of 17th November 2015 Item 13.2 Lease agreement Housing Trust 15/424</i></p> <p><i>Committee recommendation that Council commence the process to reclassify Lot 208 DP792192 as operational land under the Local Government Act 1993 in order to maximise options for the long term use of the property for social housing purposes and that an independent consultant be appointed to facilitate this reclassification process.</i></p> <p><i>(Councillors McClure and Way)”</i></p>
<p>Whether the planning proposal is consistent with council’s community plan or other local strategic plan.</p>	<p>The Planning Proposal is consistent with the recently adopted ISRP, which identifies increased demands/targets for housing within the region. In addition, given the minor reclassification nature of this Planning Proposal, the operational land outcome will not contradict the intent of the KUS.</p>
<p>A summary of council’s interests in the land, including:</p> <ul style="list-style-type: none"> - how and when the land was first acquired (e.g. was it dedicated, donated, provided as part of a subdivision for public open space or other purpose, or a developer contribution) - if council does not own the land, the land owner’s consent; - the nature of any trusts, dedications etc. 	<p>Council already owns the land.</p> <p>In 1990, Council and The Housing Trust entered into a lease agreement for the use and occupation of a dwelling located at 9 O’Connell Street Gerringong for social housing purposes. Under the lease, Council became the land owner (by title deed) and the Housing Trust was responsible for the financing and construction of a dwelling.</p> <p>The subject lease expired in May 2015 and subsequent discussions have been underway with The Housing Trust regarding a potential new lease. In this regard, it is understood that The Housing Trust has indicated a preference to acquire the property from Council, instead of entering into another lease arrangement. As such, a report to Council was</p>



	<p>provided at the ordinary meeting of 17th November 2015, that recommended proceedings to enable the potential consideration of the asset in the future, as well as preserving the opportunity for a new long term lease arrangement.</p>
<p>Whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why.</p>	<p>In this regard, it is understood that existing reservations, interests, restrictions, covenants, dedications and easements as listed on the Certificate of Title will not change as a result of this proposal.</p>
<p>The effect of the reclassification (including, the loss of public open space, the land ceases to be a public reserve or particular interests will be discharged).</p>	<p>Following reclassification, this will then enable Council to consider the potential disposal of the asset in the future, in addition to preserving the opportunity for a new long term leasing agreement with The Housing Trust.</p> <p>No physical or operational changes are proposed at this stage, and will be subject to Council determination post-reclassification.</p>
<p>Evidence of public reserve status or relevant interests, or lack thereof applying to the land (e.g. electronic title searches, notice in a Government Gazette, trust documents).</p>	<p>Refer above and other commentary throughout Planning Proposal.</p>
<p>Current use(s) of the land, and whether uses are authorised or unauthorised.</p>	<p>The land is used for authorised residential social housing purposes.</p>
<p>Current or proposed lease or agreements applying to the land, together with their duration, terms and controls.</p>	<p>At the end of the lease, the agreement provides the opportunity for the property to be disposed if the dwelling is no longer required for social housing purposes by the lessee. In this situation, the proceeds of the sale of the property are split by a method stipulated in the lease.</p> <p>Discussions with the Housing Trust have indicated that the likelihood of accepting a new negotiated rental amount, in addition to the capital outlay required to suitably upgrade the dwelling in the next few years (being a 25 year asset) is unlikely. However The Housing Trust has a long term objective to preserve the O'Connell Street property in their portfolio due to the limited supply of low cost housing in Gerringong (and the Kiama LGA as a whole) and would like Council to consider the option of disposing the property to them directly. An outline</p>

	<p>of this option is included in a confidential information report in this business paper.</p> <p>In order to realise this option, the land firstly has to be reclassified under the Local Government Act 1993 as operational land.</p>
Current or proposed business dealings (e.g. 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).	Refer above.
Any rezoning associated with the reclassification (if yes, need to demonstrate consistency with an endorsed Plan of Management or strategy).	The proposal does not propose any new planning controls relating to the site in terms of land zoning, height of buildings, floor space ratio, or standard minimum lot size, or amends the existing Kiama LEP 2011 maps.
How council may or will benefit financially, and how these funds will be used.	Unknown at this stage and to be determined by Council at a later date.
How council will ensure funds remain available to fund proposed open space sites or improvements referred to in justifying the reclassification, if relevant to the proposal.	Not relevant to this proposal, as the reclassification process is merely required to correct an anomaly relative to existing land use and improvements.
A Land Reclassification (part lots) Map, in accordance with any standard technical requirements for spatial datasets and maps, if land to be reclassified does not apply to the whole lot.	Not applicable.
Preliminary comments by a relevant government agency, including an agency that dedicated the land to council, if applicable.	Refer commentary throughout Planning Proposal relative to The Housing Trust. No further commentary available from other government agencies at this time.

6.2.1 *Is the planning proposal within the objectives and actions contained within the applicable regional or sub-regional strategy?*

The Planning Proposal is consistent with the recently adopted ISRP, which identifies increased demands/targets for housing within the region. In this regard, the Plan is very focussed on a collective vision "...for a sustainable future and a resilient community, capable of adapting to



changing economic, social and environmental circumstances..." To achieve this, five main goals have been set down, being:-

- 1) *a prosperous Illawarra-Shoalhaven;*
- 2) *a region with a variety of housing choices, with homes that meet needs and lifestyles;*
- 3) *a region with communities that are strong, healthy and well-connected;*
- 4) *a region that makes appropriate use of agricultural and resource lands;*
and
- 5) *a region that protects and enhances the natural environment.*

In terms of the above goals, the most relevant in this instance is *"Goal 2 – a variety of housing choices, with homes that meet needs and lifestyles"*, given the existing residential development and site's context. For Kiama, one State Government direction is to collaborate Council to review housing opportunities within the LGA so it can best respond to changing housing needs. To achieve this, the NSW Government will work with Council to monitor and review the potential of the area to accommodate housing demand.

Being mindful of this, it is clear that the proposed reclassification of land for operational purposes within an already defined residential urban area will not contradict with the objectives and actions of this Plan.

6.2.2 Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

Kiama Urban Strategy

The Kiama Urban Strategy (KUS) was adopted by Council in 2011, and provides the strategic planning direction for development within the LGA until the year 2021. From a residential perspective, the KUS provides considerations for urban expansion (both in terms of infill and greenfield development) to satisfy housing demands within the area.

Given the minor reclassification nature of this Planning Proposal, the operational land outcome will not contradict the intent of the KUS.

6.2.3 Is the planning proposal consistent with applicable state environmental planning policies?

Yes.



A review and assessment against the proposal's consistency with the applicable SEPPs is attached as *Appendix 2* of this report. In this regard, it is noted that the subject site is already developed residential land, and consistency with any deemed SEPPs for a future redevelopment of the site (should this ever be pursued by Council, The Housing Trust, or another party) should be determined at the development application/assessment stage.

6.2.4 *Is the planning proposal consistent with applicable Ministerial Directions (Section 117 Directions)?*

Yes.

A review and assessment against the proposal's consistency with the applicable Section 117 Directions is attached as *Appendix 3* of this report. Being mindful of this assessment, it is considered that this Planning Proposal is clearly consistent with the relevant current strategic State-based planning initiatives applying to the site.

6.3 Environmental, Social and Economic Impact

6.3.1 *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?*

No.

The Planning Proposal relates to the reclassification of an existing residential property within an established urban and residential housing area. The subject site is not located within a critical habitat or threatened species, populations and ecological communities and would not result in adverse impacts to such communities.

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

No.

There are no likely environmental impacts anticipated as a result of this planning proposal. The site is not unsuitable for future residential occupation by virtue of physical characteristics (ie. vegetation, bushfire, flooding and the like), nor will the proposed reclassification pose a hazard to the environment and/or the surrounding community. Additionally, the land subject to this Planning Proposal is not known to contain any items of aboriginal significance, nor European



heritage.

Notwithstanding, should the site be redeveloped in the future, any other potential impacts as a result of a proposed new residential development on site by an applicant would be dealt with at the development application/assessment stage.

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

Yes.

The Planning Proposal involves the reclassification of one lot, of which is already developed and occupied for residential social housing purposes. As aforementioned, the long term preservation of social housing will not be jeopardised by this Planning Proposal, rather assisted, by maximising options for it to be retained for this purpose. Conversely, should no agreement with The Housing Trust be reached, then the reclassification provides Council with the flexibility to sell the property to another party and, thus, the ability to allocate funds gained from the sale to other areas of the community.

In this regard, it is understood that existing reservations, interests, restrictions, covenants, dedications and easements as listed on the Certificate of Title will not change as a result of this proposal. Given the nature and minor scale of the proposal, it is not anticipated that any further significant social or economic effects will emerge.

6.4 State and Commonwealth Interests

There are no significant Commonwealth or State interests in the Planning Proposal other than in general for a more appropriate planning and development outcome on the site consistent with the State's regional and subregional strategies strategic planning framework described herein.

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

Yes.

The subject site is serviced readily by sewer, water, power, telecommunications and the like, which are already connected to the existing public infrastructure presently supporting the existing dwelling and surrounding neighbourhood. This infrastructure currently has sufficient capacity to accommodate the continued use of this site for residential purposes.



In addition, access to the subject site is gained via the public roads, which services the immediate residential area. The traffic generation characteristics will not be altered by this Planning Proposal, and there is ample capacity within the existing/proposed public road network to accommodate existing traffic levels.

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

A s.56 gateway determination has not yet been issued at this time, however, if successful, consultation with the relevant State and Commonwealth authorities will be undertaken as part of the formal exhibition process. The Gateway Determination will stipulate to Council the required consultation with public authorities.



7.0 Community Consultation

Any s.56 gateway determination will confirm community consultation requirements. If the Planning Proposal is supported, community consultation will involve an exhibition period for a minimum of some 28 days, as well as a public hearing. The community are likely to be notified of the commencement of the exhibition period via a notice in a local newspaper and through publication on Council's website. Additionally, notification letters will be distributed to surrounding and nearby property owners.

The written notice will likely:

- Give a brief description of the objectives or intended outcomes of the Planning Proposal;
- Indicate the land affected by the Planning Proposal;
- State where and when the Planning Proposal can be viewed/inspected;
- Give the name and address of the relevant planning authority (Council) for the receipt of submissions; and
- Indicate the last date for submissions.

During the exhibition period, the following material will likely be made available for inspection:

- The Planning Proposal report, in the form approved for community consultation by the Director General of Planning;
- The gateway determination; and
- Any studies relied upon by the Planning Proposal.

After the exhibition period has ended, at least 21 days public notice is to be given before the hearing. The public hearing is required to be held in accordance with the '*Department's LEP Practice Note PN 16-001*' dated 5th October 2016. Again, this will be confirmed following receipt of a s.56 Gateway Determination.



8.0 Conclusion

This Planning Proposal seeks to reclassify land at 9 O'Connell Place, Gerringong, as operational land.

The planning proposal was initiated in response a Council resolution of their Ordinary Meeting of 17th November 2015, of which provided "...that Council commence the process to reclassify Lot 208 DP792192 as operational land under the Local Government Act 1993 in order to maximise options for the long term use of the property for social housing purposes and that an independent consultant be appointed to facilitate this reclassification process..."

As such, this Planning Proposal report has been prepared for Council in consideration of those requirements under *Section 55 of the Environmental Planning and Assessment Act 1979 (the Act)*, together with the NSW Department of Planning and Environment's "*A guide to preparing planning proposals*" (October 2012).

A review of those development and environmental matters required for consideration in this instance has been undertaken, and it is considered that the subject reclassification to operational land will be appropriate. This existing land use will be in keeping with current community expectations for the appropriate use of available land, and will provide an improved land use outcome for the area through the retention of available residential stock for social housing purposes.

It is concluded that the Planning Proposal can be justified relative to environmental, social and economic effects and will be in the public interest. Accordingly, the Planning Proposal should be forwarded to the Department of Planning for a favourable gateway determination in accordance with *Section 56 of the EP&A Act, 1979*.



APPENDIX 1:

“LEP Practice Note 16-001”

Ref No.	PN 16-001
Issued	5 October 2016
Related	Supersedes PN 09-003

Classification and reclassification of public land through a local environmental plan

The purpose of this practice note is to update guidance on classifying and reclassifying public land through a local environmental plan (LEP). This practice note emphasises the need for councils to demonstrate strategic and site specific merit, includes a comprehensive information checklist and clarifies issues arising for public reserves and interests in land. It should be read in conjunction with *A guide to preparing local environmental plans* and *A guide to preparing planning proposals*.

Classification of public land

Public land is managed under the *Local Government Act 1993* (LG Act) based on its classification. All public land must be classified as either community land or operational land (LG Act ss.25, 26).

- *Community* land – is land council makes available for use by the general public, for example, parks, reserves or sports grounds.
- *Operational* land – is land which facilitates the functions of council, and may not be open to the general public, for example, a works depot or council garage.

What is public land?

Public land is defined in the LG Act as any land (including a *public reserve*) vested in, or under council control. Exceptions include a public road, land to which the *Crown Lands Act 1989* applies, a common, land subject to the *Trustees of Schools of Arts Enabling Act 1902* or a regional park under the *National Parks and Wildlife Act 1974*.

Why classify public land?

The purpose of classification is to identify clearly that land made available for use by the general public (community) and that land which need not (operational). How public land is classified determines the ease or difficulty a council can have dealings in public land, including its sale, leasing or licensing. It also provides for transparency in council's strategic asset management or disposal of public land.

Community land must not be sold, exchanged or otherwise disposed of by a council. It can be leased,

but there are restrictions on the grant of leases and licences, and also on the way community land can be used. A plan of management (PoM), adopted by council, is required for all community land, and details the specific uses and management of the land.

There are no special restrictions on council powers to manage, develop, dispose, or change the nature and use of operational land.

How is public land classified or reclassified?

Depending on circumstances, this is undertaken by either:

- council resolution under ss.31, 32, or 33 (through LG Act s.27(2)), or
- an LEP under the *Environmental Planning and Assessment Act* (through LG Act s.27(1)).

Councils are encouraged to classify or reclassify land by council resolution where suitable.

Classification of public land occurs when it is first acquired by a council and classified as either community or operational.

Reclassification of public land occurs when its classification is changed from community to operational, or from operational to community.

Reclassification through an LEP

Classification and reclassification of public land through an LEP is subject to both the local plan-making process in the EP&A Act and the public land management requirements of the LG Act.

A planning proposal to classify or reclassify public land, will need to be prepared in accordance with this practice note and the additional matters specified in Attachment 1 to this practice note.

Reclassification through an LEP is the mechanism with which council can remove any public reserve status applying to land, as well as any interests affecting all or part of public land (LG Act s.30).

It is critical that all interests are identified upfront as part of any planning proposal. If public land is reclassified from community to operational, without relevant interests being identified and discharged, then the land will need to be reclassified back to community (usually by council resolution under LG Act s.33¹) before being reclassified in a new planning proposal to operational, to explicitly discharge any interests.

While a reclassification proposal to remove the public reserve status of land and/or discharge interests may not necessarily result in the immediate sale or disposal of the land, the community should be aware the public land in question is no longer protected under the LG Act from potential future sale once it has been reclassified to operational.

Councils should obtain their own advice when proposing to discharge any interests and be aware that this may attract a claim for compensation under the *Land Acquisition (Just Terms Compensation) Act 1991*.

Where land has been dedicated to council by a State agency for a particular purpose and a trust exists, it is advisable for council to seek the views of that agency prior to council commencing any planning proposal affecting the land.

Public reserve is defined in the LG Act and includes a public park and land declared or dedicated as a public reserve.

Land can be dedicated as a public reserve by either:

- registering a deposited plan with a statement creating a lot(s) as 'public reserve', or
- publishing a notification in the Government Gazette for an existing parcel.

Interests in land refers to property ownership as well as rights and privileges affecting land, such as leasehold, easements, covenants and mortgages.

For the purpose of reclassification through an LEP, 'interests' means trusts, estates, dedications, conditions, restrictions and covenants affecting the land.

A legal owner of land may not be the only person with an interest in the land. For example, one person may have the benefit of an easement for services, such as water, electricity or sewerage over someone else's land.

Certain interests are registered on title to ensure they are on record and cannot be disregarded if sold to a new owner. An electronic title search is generally conducted to determine the land owner, correct land description and the type of interests which may affect the land.

Standard Instrument LEP requirements

Clause 5.2—Classification and reclassification of public land in Standard Instrument LEPs enables councils to classify or reclassify public land as operational land or community land in accordance with the LG Act. The land to be reclassified or classified is described in Schedule 4 of the LEP.

Schedule 4 is not to refer to any land already classified or reclassified.

Where there is no public land to be classified, or reclassified, through a principal LEP (i.e. the LEP applies to the whole of a local government area), Schedule 4 will appear blank.

Note: At a later stage council may lodge a planning proposal to remove previous listings in Schedule 4. This will not affect the classification status of these parcels of land.

Department assessment

A proposal to classify or reclassify public land through an LEP must have planning merit. The Department will undertake an assessment to determine whether the proposal demonstrates strategic and site specific merit.

Community consultation

Planning proposals to reclassify public land are to be publicly exhibited for at least 28 days.

A copy of this practice note is to be included in the public exhibition materials.

¹ Note: Council is required to give public notice of the proposed resolution and provide a period of at least 28 days during which submissions may be made (LG Act s.34).

Public hearings

Councils must hold a public hearing when reclassifying public land from community to operational (EP&A Act s.57 & LG Act s.29). This gives the community an opportunity to expand on written submissions and discuss issues with an independent person in a public forum.

After the exhibition period has ended, at least 21 days public notice is to be given before the hearing. This allows the person chairing the hearing sufficient time to consider written submissions and all issues raised.

There are specific requirements for the independence of the person chairing the hearing, their preparation of a public hearing report and council making the report publicly available (LG Act s.47G).

Governor's approval

The Governor's approval is required when a reclassification proposal seeks to remove any public reserve status and/or discharge any interests affecting public land (s.30).

When a council reports back to the Department on the community consultation undertaken and requests the Department make the LEP, the Department will arrange legal drafting of the LEP, including recommending the Governor approve the provisions before the LEP can be legally made.

Where the Governor's approval is required, the council's report accompanying the final planning proposal must address:

- council's interests in the land;
- whether the land is a 'public reserve';
- the effect of the reclassification, including loss of open space, any discharge of interests, and/or removal of public reserve status;
- the strategic and site specific merits of the reclassification and evidence to support this;
- any current use of the land, and whether uses are authorised or unauthorised;
- how funds obtained from any future sale of the land will be used;
- the dates the planning proposal was publicly exhibited and when the public hearing was held;
- issues raised in any relevant submissions made by public authorities and the community;
- an explanation of how written and verbal submissions were addressed or resolved; and
- the public hearing report and council resolution.

Authorisation of delegation

Local plan making functions are now largely delegated to councils.

A Written Authorisation to Exercise Delegation is issued to a council as part of the Gateway determination. However, where an LEP requires the Governor's approval, this council delegation cannot be issued. In this instance, the council must request the Department make the LEP.

A decision to classify or reclassify public land cannot be sub-delegated by council to the general manager or any other person or body (LG Act s.377(1)(l)).

Background

On July 1, 1993 when the LG Act commenced, the following land under council ownership or control, was automatically classified as *community* land:

- land comprising a public reserve,
- land subject to a trust for a public purpose,
- land dedicated as a condition of consent under s.94 of the EP&A Act,
- land reserved, zoned or otherwise designated for use under an environmental planning instrument as open space,
- land controlled by council and vested in Corporation Sole - Minister administering the EP&A Act.

Councils must keep a register of land under their ownership or control (LG Act s.53) and anybody can apply to a council to obtain a certificate of classification (LG Act s.54).

Further information

A copy of this practice note, *A guide to preparing planning proposals* and *A guide to preparing local environmental plans* is available at:

<http://www.planning.nsw.gov.au>

For further information, please contact the Department of Planning and Environment's Information Centre by one of the following:

Post: GPO Box 39, Sydney NSW 2001.

Tel: 1300 305 695

Email: information@planning.nsw.gov.au

Authorised by:
Carolyn McNally
Secretary

Important note: This practice 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 practice note.

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ATTACHMENT 1 – INFORMATION CHECKLIST FOR PROPOSALS TO CLASSIFY OR RECLASSIFY PUBLIC LAND THROUGH AN LEP

The process for plan-making under the EP&A Act is detailed in *A guide to preparing planning proposals* and *A guide to preparing local environmental plans*.

Importantly, *A guide to preparing local environmental plans* contains the Secretary's requirements for matters that must be addressed in the justification of all planning proposals to reclassify public land. Councils must ensure the Secretary's requirements are addressed.

Councils must also comply with any obligations under the LG Act when classifying or reclassifying public land. More information on this can be found in *Practice Note No. 1 - Public Land Management* (Department of Local Government, 2000).

All planning proposals classifying or reclassifying public land must address the following matters for Gateway consideration. These are in addition to the requirements for all planning proposals under section 55(a) – (e) of the EP&A Act (and further explained in *A guide to preparing planning proposals* and *A guide to preparing local environmental plans*).

- the current and proposed classification of the land;
- whether the land is a 'public reserve' (defined in the LG Act);
- the strategic and site specific merits of the reclassification and evidence to support this;
- whether the planning proposal is the result of a strategic study or report;
- whether the planning proposal is consistent with council's community plan or other local strategic plan;
- a summary of council's interests in the land, including:
 - how and when the land was first acquired (e.g. was it dedicated, donated, provided as part of a subdivision for public open space or other purpose, or a developer contribution)
 - if council does not own the land, the land owner's consent;
 - the nature of any trusts, dedications etc;
- whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why;
- the effect of the reclassification (including, the loss of public open space, the land ceases to be a public reserve or particular interests will be discharged);
- evidence of public reserve status or relevant interests, or lack thereof applying to the land (e.g. electronic title searches, notice in a Government Gazette, trust documents);
- current use(s) of the land, and whether uses are authorised or unauthorised;
- current or proposed lease or agreements applying to the land, together with their duration, terms and controls;
- current or proposed business dealings (e.g. 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);
- any rezoning associated with the reclassification (if yes, need to demonstrate consistency with an endorsed Plan of Management or strategy);
- how council may or will benefit financially, and how these funds will be used;
- how council will ensure funds remain available to fund proposed open space sites or improvements referred to in justifying the reclassification, if relevant to the proposal;
- a Land Reclassification (part lots) Map, in accordance with any standard technical requirements for spatial datasets and maps, if land to be reclassified does not apply to the whole lot; and
- preliminary comments by a relevant government agency, including an agency that dedicated the land to council, if applicable.



APPENDIX 2:

“State Environmental Planning Policy Checklist Review”

State Environmental Planning Policies

SEPP	Consistency
SEPP No 1— Development Standards	Not Applicable.
SEPP No 14— Coastal Wetlands	Not Applicable.
SEPP No 19— Bushland in Urban Areas	Not Applicable.
SEPP No 21— Caravan Parks	Not Applicable.
SEPP No 26— Littoral Rainforests	Not Applicable.
SEPP No 30— Intensive Agriculture	Not Applicable.
SEPP No 33— Hazardous and Offensive Development	Not Applicable.
SEPP No 36— Manufactured Home Estates	Not Applicable.
SEPP No 44— Koala Habitat Protection	Not Applicable.
SEPP No 47— Moore Park Showground	Not Applicable.
SEPP No 50— Canal Estate Development	Not Applicable.
SEPP No 52— Farm Dams and Other Works in Land and Water Management Plan Areas	Not Applicable.
SEPP No 55— Remediation of Land	Not Applicable.
SEPP No 62— Sustainable Aquaculture	Not Applicable.
SEPP No 64— Advertising and Signage	Not Applicable.
SEPP No 65— Design Quality of Residential Apartment Development	Not Applicable.
SEPP No 70— Affordable Housing (Revised Schemes)	Not Applicable.
SEPP No 71— Coastal Protection	<p>Consistent.</p> <p>The subject land is in private ownership, and its does not impede public access to and along the coastal foreshore for pedestrians and/or persons with a disability. The reclassification to operational land will not have a detrimental impact upon the amenity of the coastal foreshore (ie. overshadowing, bulk and scale or loss of existing public views) and/or compromise the scenic qualities of the NSW coast.</p> <p>Also, the proposal will not impact upon existing animals, plants, fish, wildlife corridors, coastal processes, cultural places, water quality, heritage and the like.</p> <p>Therefore, the nature of this proposal is such that it will not contravene the aims of this Policy, nor its intent and, as such, the outcome will not compromise the environmental quality of this coastal land.</p>
SEPP (Affordable Rental Housing) 2009	Consistent.

State Environmental Planning Policies

	<p>Whilst not directly related to the proposed reclassification of land, this Planning Proposal is consistent with the aims:-</p> <p>“to facilitate the retention and mitigate the loss of existing affordable rental housing,” ...and... “to facilitate the development of housing for the homeless and other disadvantaged people who may require support services,..”</p>
SEPP (Building Sustainability Index: BASIX) 2004	Not Applicable.
SEPP (Exempt and Complying Development Codes) 2008	Not Applicable.
SEPP (Housing for Seniors or People with a Disability) 2004	Not Applicable.
SEPP (Infrastructure) 2007	<p>Consistent.</p> <p>The existing residential site is already readily serviced by sewer, water, power, telecommunications and the like.</p>
SEPP (Integration and Repeals) 2016	Not Applicable.
SEPP (Kosciuszko National Park—Alpine Resorts) 2007	Not Applicable.
SEPP (Kurnell Peninsula) 1989	Not Applicable.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Not Applicable.
SEPP (Miscellaneous Consent Provisions) 2007	Not Applicable.
SEPP (Penrith Lakes Scheme) 1989	Not Applicable.
SEPP (Rural Lands) 2008	Not Applicable.
SEPP (State and Regional Development) 2011	Not Applicable.
SEPP (State Significant Precincts) 2005	Not Applicable.
SEPP (Sydney Drinking Water Catchment) 2011	Not Applicable.
SEPP (Sydney Region Growth Centres) 2006	Not Applicable.
SEPP (Three Ports) 2013	Not Applicable.
SEPP (Urban Renewal) 2010	Not Applicable.
SEPP (Western Sydney Employment Area) 2009	Not Applicable.
SEPP (Western Sydney Parklands) 2009	Not Applicable.



APPENDIX 3:

“Section 117 Directions Checklist Review”

Local Planning Directions Section 117 Directions

Directions	Consistency
1. Employment and Resources	
1.1 Business and Industrial Zones	Not Applicable.
1.2 Rural Zones	Not Applicable.
1.3 Mining, petroleum Production and Extractive Industries	Not Applicable.
1.4 Oyster Aquaculture	Not Applicable.
1.5 Rural Lands	Not Applicable.
2. Environment and Heritage	
2.1 Environmental Protection Zones	Not Applicable.
2.2 Coastal Protection	<p>Consistent.</p> <p>Whilst close to the coastline, the subject site is quite separated from the ocean foreshore areas. The proposal will not contradict the aims of the NSW Coastal Policy.</p>
2.3 Heritage Conservation	<p>Consistent.</p> <p>The subject site is not listed as an item of heritage significance, nor is it located within any Heritage Conservation Areas. However, the property has been identified to have a few heritage listed items within close proximity. In this regard, the nature of this proposal is such that the existing development/land use within the site will not change.</p> <p>light of this, it must be recognised that the proposed reclassification will not contradict the heritage conservation aims, nor affect the integrity of these local heritage items or places themselves.</p>
2.4 Recreation Vehicle Areas	Not Applicable.
3. Housing	
3.1 Residential Zones	<p>Consistent.</p> <p>The Planning Proposal is consistent with the objectives of this Direction, being to broaden the choice of housing types for the Region; make efficient use of existing infrastructure and services to ensure new housing has appropriate access to infrastructure and services; and minimises the impact of residential development on the environmental and resource lands.</p> <p>As above, all services are already available to this residential land. The subject site is also site</p>

Local Planning Directions Section 117 Directions

	located in the heart of an already existing residential urban area, and will not result in the consumption of rural land for housing and associated urban development on the urban fringe.
3.2 Caravan Parks and Manufactured Home Estates	Not Applicable.
3.3 Home Occupants	Consistent. Home occupations are already permitted within the site without consent.
3.4 Integrating Land Use and Transport	Not Applicable.
3.5 Development Near Licensed Aerodromes	Not Applicable.
3.6 Shooting Ranges	Not Applicable.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Consistent. The site to which the proposal applies is affected by Class 5 Acid Sulfate Soils. Although, given the site is developed already, no change to existing conditions are proposed by this reclassification.
4.2 Mine Subsidence and Unstable Land	Not Applicable.
4.3 Flood Prone Land	Not Applicable.
4.4 Planning for Bushfire Protection	Not Applicable.
5. Regional Planning	
5.1 Implementation of Regional Strategies	Consistent. The proposed reclassification of land for operational purposes within an already defined residential urban area will not contradict the objectives and actions of ISRP.
5.2 Sydney Drinking Water Catchments	Not Applicable.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Not Applicable.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Not Applicable.
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	Not Applicable.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008, see amended Direction 5.1)	Not Applicable.
5.7 Central Coast (Revoked 10 July 2008, see amended Direction 5.1)	Not Applicable.
5.8 Second Sydney Airport: Badgerys Creek	Not Applicable.
5.9 North West Rail Link Corridor Strategy	Not Applicable.

Local Planning Directions Section 117 Directions

6. Local Plan Making	
6.1 Approval and Referral Requirements	Not Applicable.
6.2 Reserving Land for Public Purposes	Not Applicable.
6.3 Site Specific Provisions	Not Applicable.
7. Metropolitan Planning	
7.1 Implementation of A Plan for Growing Sydney	Not Applicable.
7.2 Implementation of Greater Macarthur Land Release Investigation	Not Applicable.