

Reclassification - 21 Bradford Close, Kotara

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Reclassification - 21 Bradford Close, Kotara

Summary of Proposal

Proposal	Reclassification of part of 21 Bradford Close, Kotara from community to operational.
Property Details	Lot 182, DP 850168
Applicant Details	BB Retail Capital P/L Level 14, 71 Macquarie Street SYDNEY NSW 2000

Background

Council has received a request to amend Newcastle LEP 2012 in order to reclassify the subject site from community to operational. The subject parcel encompasses an existing drainage channel, sewer and pipeline easements, as well as a shared pedestrian path/cycleway. This parcel of land (within existing Kotara Home Centre) is the only portion of community land within the existing commercial centre.

The site is currently owned by Newcastle City Council. Council resolved on 24 February 2015 to sell the subject parcel to the owners of Kotara Home Centre (BB Retail Capital).

The Planning Proposal is not seeking to change the zoning of the land (which is currently B2), but simply change the classification of the land from community to operational in order to transfer the ownership to BB Retail Capital (owner of adjacent lots). The proposal is not seeking to expand the types of uses in the B2 zone which may be sensitive to the flood prone characteristics of the land.

Site

The site is at 21 Bradford Close, Kotara described as Lot 182, DP 850168. This parcel is approximately 4,700m² and contains a drainage channel, sewer and pipeline easements, as well as a shared pedestrian path/cycleway.

The site is within an existing retail centre (Kotara Home Centre) and abuts Kullaiba Rd to the south and Bradford Close to the north-east. In conjunction with the neighbouring Kotara Westfield, this area forms retail services and employment generating uses for the region.

(see **Figure 1:** Subject Site).

Figure 1: Subject site



Part 1 - Objectives or Intended Outcomes

To reclassify 21 Bradford Close, Kotara from community to operational land.

Part 2 - Explanation of Provisions

It is proposed to amend the Newcastle Local Environmental Plan 2012 by:

- Including the subject land within Part 1 – Land classified or reclassified, as operational land – no interests changed within Schedule 4 Classification and reclassification of public land, as follows:
 - a) Column 1 to read “Kotara”
 - b) Column 2 to read “Lot 182, DP 850168”.

The effect of the proposed amendments is to reclassify 21 Bradford Close Kotara from community to operational land.

Part 3 – Justification

Section A - Need for the planning proposal

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

The planning proposal is the result of a council resolution to sell the land to existing owners of the Kotara Homemaker Centre (BB Retail Capital P/L). This parcel of land is the only part of the existing retail centre not owned and managed by the Centre. The subject parcel of land is not defined as public reserve or public park under the Local Government Act 1993, and is considered unsuitable for public open space other than continuance of the use of the shared pedestrian / cycleway which crosses the land. It is noted that this is to be maintained in perpetuity as a condition of sale including easements for public access.

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

Yes, amending the Newcastle Local Environmental Plan 2012 is considered the best means of achieving the objectives of the planning proposal.

Section B - Relationship to strategic planning framework

3. 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)?

Hunter Regional Plan 2036

The Hunter Regional Plan applies to the land. Kotara is identified as a strategic centre in the Plan. The priorities for this centre are:

- Continue to provide regionally significant retail, and support growth and diversification of other employment and economic activities.
- Investigate opportunities for medium to high density housing within (as shop top housing) or close to the centre, in areas not constrained by flooding.
- Enhance public transport access to other strategic centres in Greater Newcastle.

The reclassification and sale of this land will have no adverse impacts on the existing retail centre. The Kotara Home Centre can continue to operate as a viable shopping centre providing employment and retail services for the wider Newcastle community.

4. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Newcastle 2030 Community Strategic Plan

Council adopted the Newcastle 2030 Community Strategic Plan in February 2011, as revised in 2013. The CSP is supported by seven strategic directions. The planning proposal primarily aligns to the strategic direction 'Open and Collaborative Leadership' identified within the Newcastle 2030 Community Strategic Plan.

Compliance with the LEP amendment process, in particular section 57 – community consultation of the *Environmental Planning and Assessment (EP&A) Act 1979*, will assist in achieving the strategic objective; “Consider decision-making based on collaborative, transparent and accountable leadership” and the identified strategy 7.2b, which states: “Provide opportunities for genuine and representative community engagement in local decision making”.

The planning proposal also aligns with the strategic direction 'Connected City'. The retention and continued maintenance of the sites cycle/pedestrian pathway assists in meeting the strategic direction 1.2b "Plan for cyclists and pedestrians in planning for new developments".

Local Planning Strategy

The Planning Proposal is consistent with the principles and strategic directions of the Local Planning Strategy. In particular, the land is not of usable size and quality for general open space and recreation land other than the existing shared pedestrian path/cycleway. This will be maintained for public access via easements as a condition of sale.

Parkland and Recreation Strategy

The subject parcel of land is not defined as public reserve or public park under the Local Government Act 1993, and is considered unusable for general open space and recreation land other than the existing shared pedestrian path/cycleway. This will be maintained for public access via easements as a condition of sale.

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

Consistency (of the planning proposal) with State Environmental Planning Policies is outlined in the table below.

Table 1 - Consideration of State Environmental Planning Policies

Name of SEPP	Applicable	Consistency
State Environmental Planning Policy No 1 (Development Standards)	No	
State Environmental Planning Policy No 14 (Coastal Wetlands)	No	
State Environmental Planning Policy No 19 (Bushland in Urban Areas)	No	
State Environmental Planning Policy No 21 (Caravan Parks)	No	
State Environmental Planning Policy No 26 (Littoral Rainforests)	No	
State Environmental Planning Policy No 30 (Intensive Agriculture)	No	
State Environmental Planning Policy No 33 (Hazardous and Offensive Development)	No	
State Environmental Planning Policy No 36 (Manufactured Home Estates)	No	
State Environmental Planning Policy No 44 (Koala Habitat Protection)	Yes	The SEPP applies to the entire LGA, however, the land is urban and does not consist of areas of koala habitat.

Name of SEPP	Applicable	Consistency
State Environmental Planning Policy No 47 (Moore Park Showground)	No	
State Environmental Planning Policy No 50 (Canal Estate Development)	No	
State Environmental Planning Policy No 52 (Farm Dams and Other Works in Land and Water Management Plan Areas)	No	
State Environmental Planning Policy No 55 (Remediation of Land)	No	The land is not identified under Council records as contaminated.
State Environmental Planning Policy No 62 (Sustainable Aquaculture)	No	
State Environmental Planning Policy No 64 (Advertising and Signage)	Yes	The SEPP applies to the entire LGA, however the SEPP is not applicable to this planning proposal.
State Environmental Planning Policy No 65 (Design Quality of Residential Flat Development)	No	
State Environmental Planning Policy No 70 (Affordable Housing (Revised Schemes))	No	
State Environmental Planning Policy No 71 (Coastal Protection)	No	
State Environmental Planning Policy (Affordable Rental Housing) 2009	No	
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	No	
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	No	
State Environmental Planning Policy (Infrastructure) 2007	No	
State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007	No	
State Environmental Planning Policy (Kurnell Peninsula) 1989	No	
State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007	No	
State Environmental Planning Policy Penrith Lakes Scheme	No	
State Environmental Planning Policy (Rural Lands) 2008	No	
State Environmental Planning Policy (State and Regional Development) 2011	No	
State Environmental Planning Policy (State Significant Precincts) 2005	No	
State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011	No	
State Environmental Planning Policy (Sydney Region Growth Centres) 2006	No	

Name of SEPP	Applicable	Consistency
State Environmental Planning Policy (Three Ports) 2013	No	
State Environmental Planning Policy (Urban Renewal) 2010	No	
State Environmental Planning Policy (Western Sydney Employment Area) 2009	No	
State Environmental Planning Policy (Western Sydney Parklands) 2009	No	

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Consistency (of the planning proposal) with State Environmental Planning Policies is outlined in the table below.

Table 2 - Consideration of Section 117 Directions

S117 Direction	Applicable	Consistent
1. Employment and Resources		
1.1 Business and Industrial Zones	Yes	Consistent. The proposal will have no adverse impacts upon the viability of the Kotara Home Centre. The Kotara Home Centre and surrounding retail uses form an important standalone shopping centre which provides retail services and employment opportunities to the community. The sale of the land to BB Retail Capital will provide additional opportunities for future growth across the centre.
1.2 Rural Zones	No	
1.3 Mining, Petroleum Production and Extractive Industries	No	
1.4 Oyster Aquaculture	No	
1.5 Rural Lands	No	
2. Environment and Heritage		
2.1 Environment Protection Zones	No	
2.2 Coastal Protection	No	
2.3 Heritage Conservation	No	
2.4 Recreation Vehicle Areas	No	
3. Housing, Infrastructure and Urban Development		
3.1 Residential Zones	No	
3.2 Caravan Parks and Manufactured Home Estates	No	
3.3 Home Occupations	No	

S117 Direction	Applicable	Consistent
3.4 Integrating Land Use and Transport	Yes	Consistent. Kotara Home Centre and surrounding retail are served by existing bus services and is approximately 1.5km from Kotara Railway Station. While this proposal does not pertain to the expansion of the existing retail uses, the acquisition of additional land by BB Retail Capital will provide opportunities for the potential future growth of retail services on a site served by public transport. BB Retail Capital have agreed to the ongoing maintenance of the land subject to the Planning Proposal. There will be a legal easement for access for the public as part of the new title details. This would apply to the existing shared pedestrian path/cycleway.
3.5 Development Near Licensed Aerodromes	No	
4. Hazard and Risk		
4.1 Acid Sulfate Soils	Yes	Consistent. The subject site is mapped as containing Class 5 soils on the Acid Sulfate Soils Map. Class 5 is the least critical category. Any future development of the site will be required to address acid sulfate soil management.
4.2 Mine Subsidence and Unstable Land	No	
4.3 Flood Prone Land	Yes	Consistent. The land to which this Planning Proposal applies is a stormwater drainage channel that runs through an existing retail centre (Kotara Home Centre) owned by BB Retail Capital. The Planning Proposal is not seeking to change the zoning of the land (which is currently B2), but simply change the classification of the land from community to operational in order to transfer the ownership to BB Retail Capital (owner of adjacent lots). The proposal is not seeking to expand the types of uses in the B2 zone which may be sensitive to the flood prone characteristics of the land.
4.4 Planning for Bushfire Protection	No	
5. Regional Planning		
5.1 Implementation of Regional Strategies	Yes	Consistent. This has now been replaced with the Hunter Regional Plan 2036.
5.2 Sydney Drinking Water Catchments	No	
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	No	
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	No	
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	No	

S117 Direction	Applicable	Consistent
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	No	
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	No	
5.8 Second Sydney Airport: Badgerys Creek	No	
5.9 North West Rail Link Corridor Strategy	No	
5.10 Implementation of Regional Plans	Yes	Consistent. The Hunter Regional Plan 2036 applies and the planning proposal is consistent with this Plan.
6. Local Plan Making		
6.1 Approval and Referral Requirements	Yes	Consistent. The planning proposal does not propose the introduction of any new referral or concurrence provisions.
6.2 Reserving Land for Public Purposes	No	
6.3 Site Specific Provisions	No	

The Department of Planning and Environment's Practice Note PN 16-001 includes a checklist for proposals to classify or reclassify public land through an LEP. The information required to be addressed in the checklist for 21 Bradford Close Kotara is contained in **Table 3**.

Table 3 - Consideration of PN 16-001

Criteria	Comment
The current and proposed classification of the land.	Current: Community Proposed: Operational
Whether the land is a 'public reserve' (defined in the LG Act).	No. Council purchased the site in June 1995 for use as a cycleway. The site is not used as a public reserve and is not of suitable quality for general open space and recreation land other than the existing shared pedestrian path/cycleway.
The strategic and site specific merits of the reclassification and evidence to support this.	Refer to Part 3 (Justification) of the planning proposal for further information.
Whether the planning proposal is consistent with Council's community plan or other local strategic plan.	Yes the planning proposal is consistent with Council's Community Strategic Plan and Local Planning Strategy.
A summary of Council's interests in the land: - How and when the land was first acquired - If council does not own the land, the land owners consent - The nature of any trusts, dedications etc.	Council purchased the site in June 1995 for use as a cycleway. It is a condition of sale that the maintenance and retention in perpetuity of the shared pedestrian path/cycleway and creation of associated public access easements.
Whether any interest in land is proposed to be discharged and if so an explanation of the reasons why.	The site contains easements for drainage, sewer and pipeline. These easements will remain unchanged and will be maintained by the future owner. A condition of the sale is the maintenance and retention in perpetuity of the shared pedestrian path/cycleway and creation of

Criteria	Comment
	associated public access easements.
The effect the reclassification (including the loss of public open space, the land ceased to be a public reserve or particular interests will be discharged).	The effect of the reclassification is to enable the sale of the land. The land comprises a drainage channel and adjacent shared pedestrian path/cycleway, and does not form part of Council's formally managed parklands. A condition of sale is the maintenance and retention in perpetuity of the shared pedestrian path/cycleway and creation of associated public access easements.
Evidence of public reserve status or relevant interests, or lack thereof applying to the land. (eg. electronic searches, notice in Government Gazette, trust documents).	The land is not a public reserve. Council purchased the site in June 1995 for use as a cycleway. The site is not used as a public reserve and is not of suitable quality for general open space and recreation land other than the existing shared pedestrian path/cycleway.
Current use(s) of the land and whether uses are authorised or unauthorised.	The site is currently used as drainage channel and contains sewer and pipeline, along with a shared pedestrian/cycle path. The uses are authorised and will continue to operate in such manner after any change to land classification. A condition of sale is the maintenance and retention in perpetuity of the cycleway and creation of associated public access easements.
Current or proposed lease or agreements applying to the land, together with their duration, terms and controls.	A condition of sale is the maintenance and retention in perpetuity of the cycleway and creation of associated public access easements.
Current or proposed business dealings (eg. 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).	Council has agreed to sell the land to the owner of Kotara Home Centre (BB Retail Capital) following the reclassification of the land. BB Retail Capital currently own adjacent lots with 21 Bradford Close being the only lot (within the Kotara Home centre) under the ownership of Council. The zoning of the land will remain B2. Sale of the land will transfer responsibility for all future maintenance of the cycleway to the purchaser (BB Retail Capital). Responsibilities to other parties in relation to storm water and sewer infrastructure, easements and covenants will transfer to the purchaser on sale of the land.
Any rezoning associated with reclassification (if yes, need to demonstrate consistency with an endorsed Plan of Management or Strategy).	N/A
How Council may or will benefit financially, and how these funds will be used.	The funds received by Council from the future sale of the land will be held in the Land and Property Reserve. The sale of the site will also provide ongoing income to Council through the levying of rates.
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.	The funds from the sale of land will be held in Council's Land and Property Reserve.
A Land Reclassification (part lots) Map, in accordance with any standard technical requirements for spatial datasets and maps, if	N/A

Criteria	Comment
land to be reclassified does not apply to the whole lot.	
Preliminary comments by a relevant government agency, including an agency that dedicated the land to Council, if applicable.	N/A

Section C - Environmental, social and economic impact

7. *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?*

The site is currently developed for urban purposes and the planning proposal has no potential for critical habitat or threatened species, populations or ecological communities, or their habitats, to be adversely affected.

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

Mine Subsidence

The site is not located within a Mine Subsidence District.

Hydrology and Water Management

Council's records indicate that the site is 'flood prone land'. Flood information has been sourced from the *Newcastle City Wide Floodplain Management Plan*, prepared in accordance with the *Floodplain Development Manual 2005* prepared by the State Government. The following key information is identified for the site:

- The risk to life is considered extreme and the site is unsuitable for habitation either residential or short stay.
- No building or structure is to be erected and no land is to be filled by way of the deposition of any material except minor alteration to existing ground level which does not significantly alter the fundamental flow pattern of the floodwater.

The site is part of an existing open drainage channel. It is proposed to maintain the channel in perpetuity.

Bushfire

According to Newcastle Bush Fire Hazard Map (2009) the land is not affected by bushfire risk or in the vicinity of such a risk.

Heritage

There are no listed items of environmental heritage on site or in the vicinity of the site.

Contamination

There is no known contamination of the land and the current and former uses of the land are unlikely to have caused risk of contamination.

Traffic Impacts and Vehicular and Pedestrian Access

There are no changes proposed to the adjacent road network, and the reclassification is not considered to intensify traffic movements. The existing shared pedestrian path/cycleway will be retained and provide a link throughout the existing retail centre. A condition of sale requires an easement for this shared pedestrian path/cycleway for public access.

BB Retail Capital are the owners of a vehicle and pedestrian bridge over the subject lot. A licence agreement is active with Hunter Water to facilitate access between Kullaiba Road and the northern side of the Kotara Home Centre.

9. *Has the planning proposal adequately addressed any social and economic effects?*

Social

The proposed reclassification will result in a loss of community land. The subject parcel of land is not defined as public reserve or public park under the *Local Government Act 1993*, and is considered unsuitable for community use with the exception of the existing shared pedestrian path/cycleway which will remain with appropriate easements for public access. Therefore, the reclassification and sale of this land is considered to have no adverse impacts upon the community. The ongoing provision of access and drainage is required in perpetuity as part of the sale of land.

Economic

The reclassification of the land and proposed future sale of the land will remove the existing maintenance and liability cost burden to Council.

Section D - State and Commonwealth interests

10. *Is there adequate public infrastructure for the planning proposal?*

The subject site is within an established urban area, with available connection to all necessary services, such as water and sewage. The site also has good access to public transport and is within an existing commercial centre.

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

Consultation with State and Commonwealth public authorities are not required for this planning proposal.

Part 4 – Mapping

The Planning proposal does not seek to amend any maps within Newcastle LEP 2012.

The following maps illustrate the land proposed to be reclassified as a result of amending Schedule 4 - 'Classification and reclassification of public land':

Figure 2: Existing Land Classification - Community



Figure 3: Proposed Land Classification - Operational



Part 5 – Community Consultation

Council recommends that the Planning Proposal be exhibited in accordance with the requirements of section 57 of the *EP&A Act 1979* and section 34 of the *Local Government Act 1993*. The Proposal was placed on public exhibition for 28 days commencing 13 March 2017.

Written notification of the community consultation was provided in a local newspaper and on Council's website. The written notice contained:

- a brief description of the intended outcomes of the planning proposal
- an indication of the land which is affected by the proposal
- information on where and when the planning proposal can be inspected
- the name and address of Council for the receipt of submissions
- the closing date for submissions.

During the public exhibition period the following documents were placed on public exhibition:

- the planning proposal
- the gateway determination
- the council report
- the LEP practice note: Classification and reclassification of land through a Local Environmental Plan (PN 16-001)

There were no submissions received during the exhibition period.

As per section 29 of the *Local Government Act 1993*, a public hearing was held following the public exhibition period, on 11 May 2017. There were no representatives from the public at this hearing.

Part 6 – Project Timeline

The project is expected to be completed within ten (10) months from Gateway Determination. The following timetable is proposed:

Task	Planning Proposal Timeline											
	Jan 17	Feb 17	Mar 17	Apr 17	May 17	Jun 17	Jul 17	Aug 17	Sep 17	Oct 17	Nov 17	Dec 17
Issue of Gateway Determination												
Prepare any outstanding studies			N/A									
Consult with required State Agencies			N/A									
Exhibition of planning proposal and technical studies												
Public Hearing												
Review of submissions and preparation of report to Council												
Report to Council following exhibition												
Planning Proposal sent back to Department requesting that the draft LEP be prepared												