



## 13.7 Planning Proposal to Rezone and Reclassify Community Land - Part of Lot 2 DP 775152 being Public Reserve Innes Road, Moss Vale

**Reference:** 5901/46, PN 1704923  
**Report Author:** Land Use Planner  
**Authoriser:** Acting Strategic Planning Team Leader/Coordinator  
**Applicant:** LEP Planning Pty Ltd  
**Owner:** Wingecarribee Shire Council  
**Link to Corporate Plan:** Encourage creativity in utilisation of our community assets

### PURPOSE

The purpose of this report is to seek a minor amendment to Council's Resolution of 23 September 2015 relating to a Planning Proposal for the purpose of amending the zoning, minimum lot size and classification of part of a Public Reserve at Lot 2 DP 775152 Innes Road, Moss Vale under Wingecarribee Local Environmental Plan (WLEP) 2010.

This report recommends that a Planning Proposal relating to that Part of the subject site, rather than the whole of the subject site, be prepared and forwarded to the Department of Planning and Environmental for a Gateway Determination.

### VOTING ON THE MOTION

Councillors are required to record their votes on this matter

### RECOMMENDATION

**THAT** a Planning Proposal be prepared and submitted to the Department of Planning and Environment to amend Wingecarribee Local Environmental Plan 2010 to:

- (a) Rezone Part of Lot 2 DP 775152 Innes Road, Moss Vale from RE1 Public Recreation to B4 Mixed Use;
- (b) Apply a Minimum Lot Size of 'Q' (700sqm) to Part of Lot 2 DP 775152 Innes Road, Moss Vale; and
- (c) Reclassify Part of Lot 2 DP 775152 Innes Road, Moss Vale from Community to Operational and amend Schedule 4 of WLEP 2010 accordingly.

### REPORT

#### **BACKGROUND**

On 24 November 2014 Council received a request from Lee Environmental Planning, representing the owners of Lot 8 Sec 1 DP 975386, 173 Lackey Road, Moss Vale to

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purchase part of a Council reserve. In doing so, the owners of Lot 8 would be able to gain access to the rear of their property from Innes Road. A copy of the report is included as **Attachment 1**.

On 23 September 2015 Council resolved to prepare a Planning Proposal to amend Wingecarribee LEP 2010 as follows:

*THAT a Planning Proposal be prepared and submitted to the Department of Planning and Environment to amend Wingecarribee Local Environmental Plan 2010 by:*

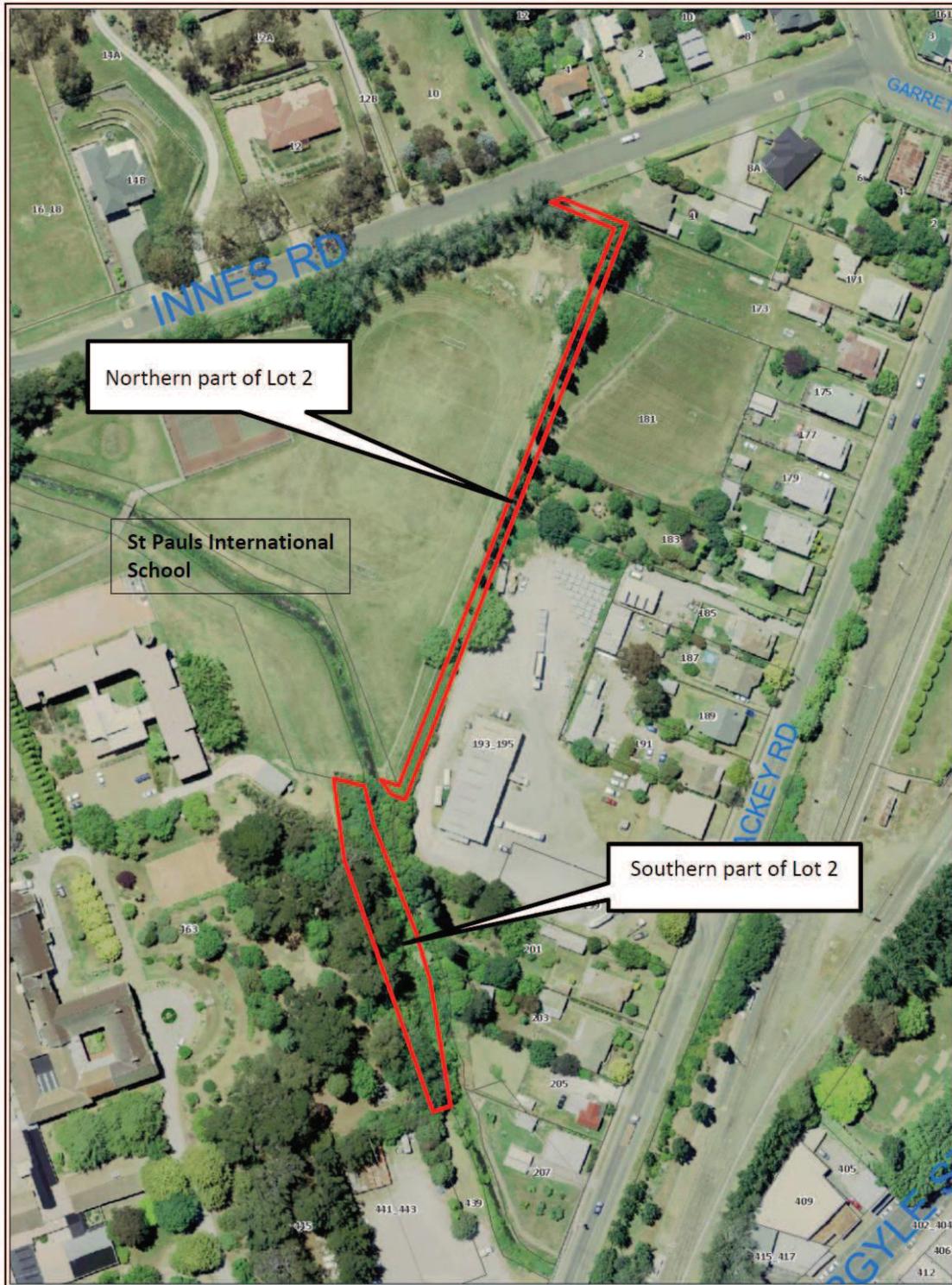
- (a) *Rezoning Lot 2 DP 775152 Innes Road, Moss Vale from RE1 Public Recreation to B4 Mixed Use;*
- (b) *Applying a Minimum Lot Size of 700sqm, depicted as 'Q' on the minimum lot size maps to Lot 2 DP 775152 Innes Road, Moss Vale; and*
- (c) *Reclassifying Lot 2 DP 775152 Innes Road, Moss Vale from Community to Operational.*

This resolution applies to all of Lot 2 DP 775152. At the time of preparing the report it was thought that Lot 2 extended from Innes Road to Whites Creek. However, in preparing the Planning Proposal it became apparent that in fact Lot 2 also comprises a section on the southern side of Whites Creek. **Figure 1**(over) indicates the two separate sections. Only the northern section of Lot 2 is affected by the Planning Proposal, therefore Council needs a new resolution pertaining to 'Part of Lot 2' rather than 'Lot 2'.

### **DETAILS OF PROPOSAL**

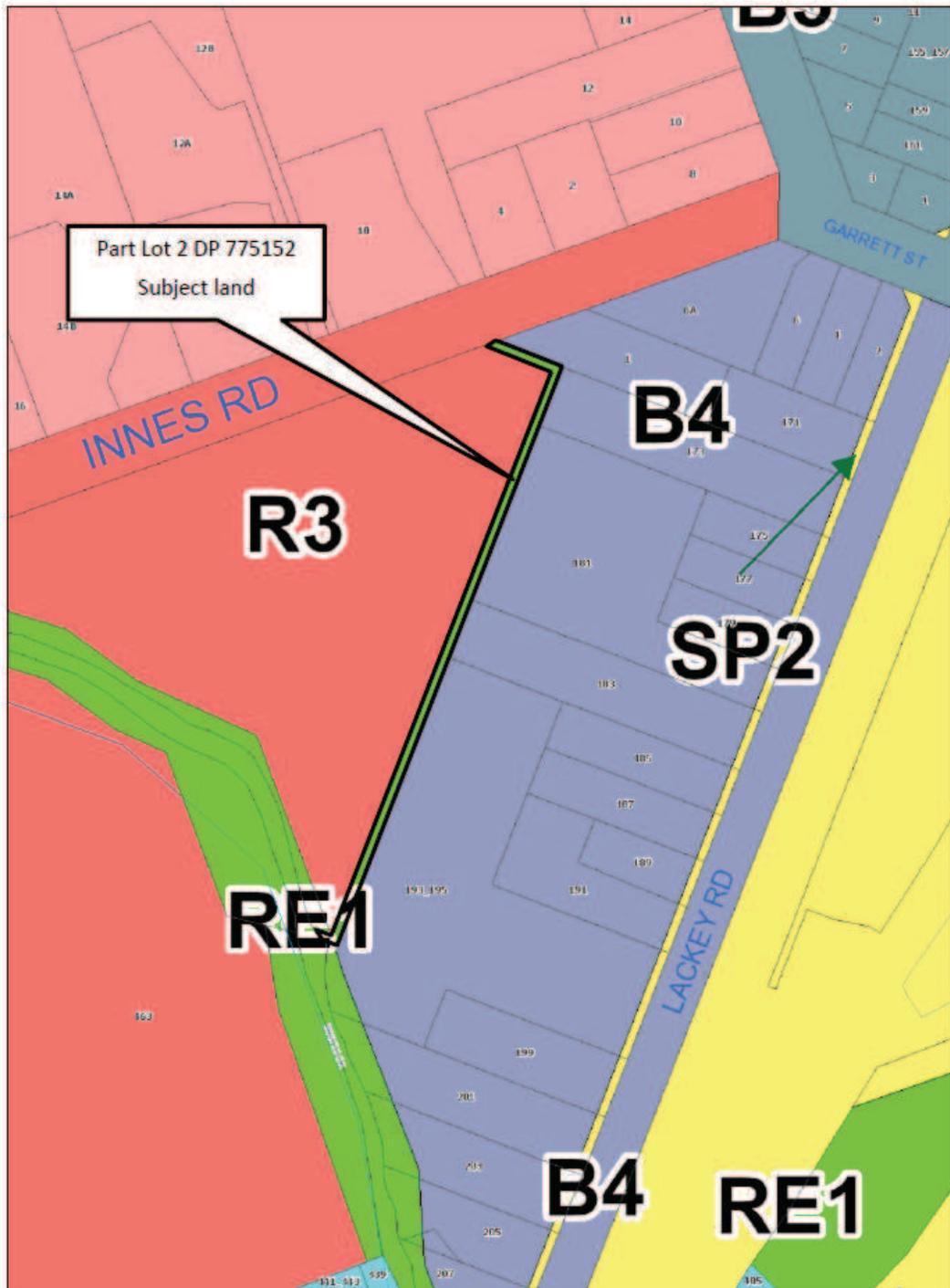
#### **Subject Site and Locality**

The whole of Lot 2 has a total area of 1,834 square metres and is in two parts. The northern part (the subject of this Planning Proposal) has an area of 684.1 square metres (sqm) and forms a strip of Council land zoned RE1 Public Recreation between St Paul's College and B4 Mixed Use zoned Land on Lackey Road. This part of the site does not contain any improvements or public facilities. The southern part lies on the western side of Whites Creek to the rear of the former Central Hotel along the bank of Whites Creek adjacent to St Paul's International School. Only the northern part of Lot 2 is the subject of the Planning Proposal. **Figure 2** (over) details the location of this part.



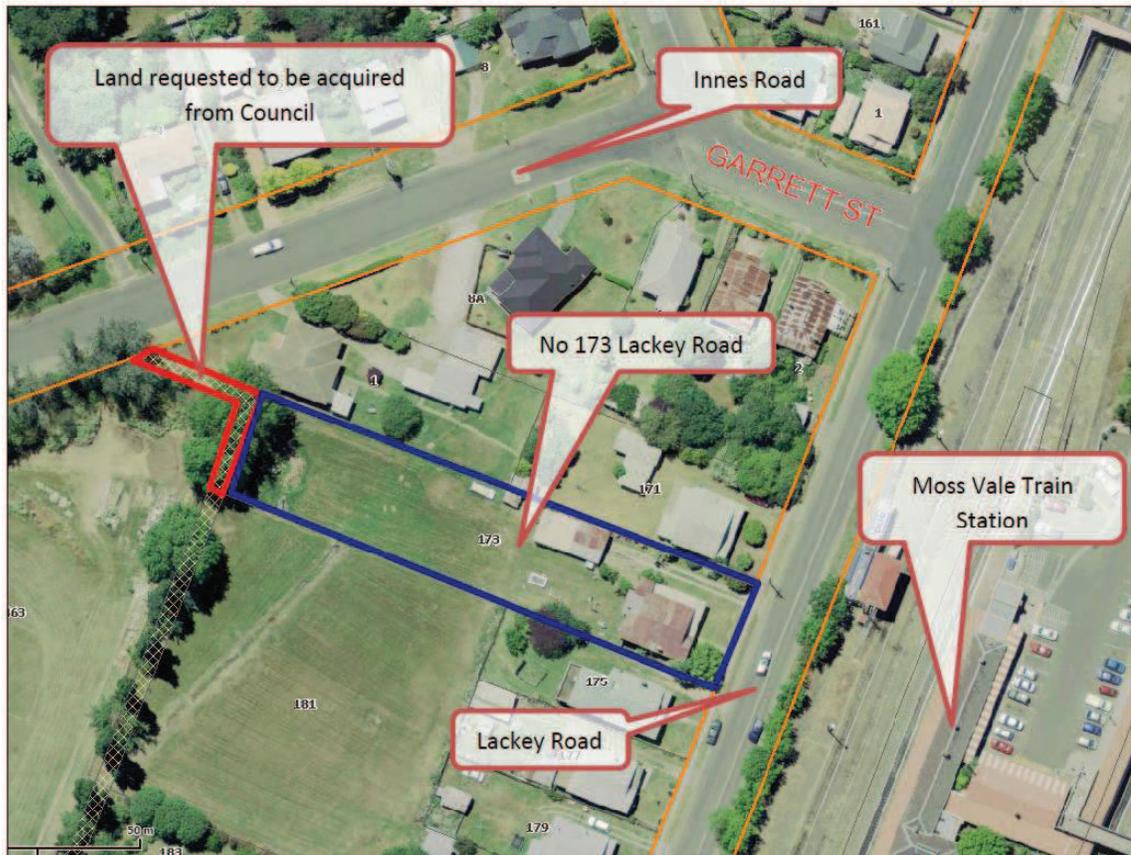
**Figure 1** identifying both parts of Lot 2.

The specific area of interest for this Planning Proposal (and the reason for the need to revise Council's Resolution) is the Northern Part of Lot 2.



**Figure 2** identifying the Part of Lot 2 which is the subject of the Planning Proposal.

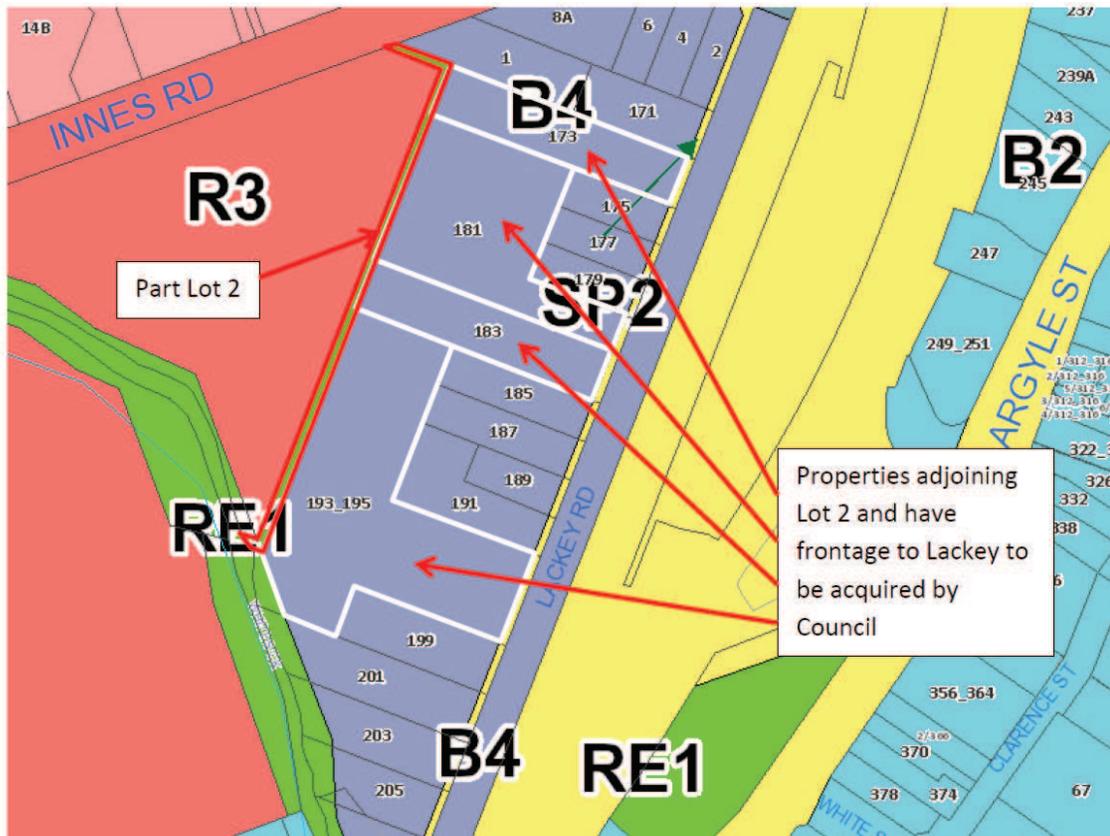
The specific area of interest for the original proponents representing the owners of 173 Lackey Road is identified below.



**Figure 3** Portion of Lot 2 of interest to original proponents.

As stated previously, acquisition by the owners of 173 Lackey Road of the area of land identified above in red, would effectively land lock the remainder of this Part of Lot 2 for future access to Innes Road. To address this, Council has approached the other three (3) adjoining owners (identified in Figure 4 below) who have a common boundary with Lot 2 for them to consider purchasing the remainder from Council. Of interest in this exchange is that, as identified in Figure 4 there is a similarly dimensioned area of land fronting Lackey Road zoned 'SP2 Local Roads' that Council may acquire for future widening of Lackey Road. Council could therefore acquire the 'SP2 Local Roads' zoned land as part of an exchange for the land at the rear of their properties that is the subject of this Planning Proposal.

Council has received declarations of interest from two of the owners of the adjoining properties. Council has had no reply from the third adjoining owner. Negotiations regarding the ownership, exchange or occupation of land cannot be undertaken until the subject land is reclassified as 'Operational'. Any negotiations with adjoining owners for exchange of the identified part of Lot 2 would not commence until the Planning Proposal had been finalised.



**Figure 4** identifying properties with a common boundary to the subject site and land identified as 'SP2 Local Roads' under WLEP 2010.

**STATUTORY PROVISIONS**

**PLANNING PROPOSAL PROCESS**

If Council amends the Resolution of 23 September 2015 to apply to part of Lot 2 DP 775152 only, the preparation of a Planning Proposal for Gateway Determination can proceed.

Should Council or the Gateway Determination end the process, the applicant does not have appeal rights in this case, as the land the subject of the Planning Proposal is Council's Land. Hence, ultimately if Council does not wish to sell, swap or exchange the subject land it cannot be legally required to do so by a third party. It is noted that Council can be requested to acquire the land along Lackey Road zone 'SP2 Local Roads' by the owners of the land upon which it is an encumbrance.

**Wingecarribee LEP2010**

As the subject part of Lot 2 is zoned RE1 Public Recreation under WLEP 2010, a Planning Proposal is required to rezone the land as per the adjoining properties (to B4 Mixed Use).

Similarly, as it is classified as Community Land under the Local Government Act 1993, a Planning Proposal is also required to reclassify it to Operational under Schedule 4 of the WLEP 2010. The reclassification of the land is required to enable Council to negotiate and affect any sale, exchange or swap of the land between Council and property owners of land



identified in **Figure 4**. Under the reclassification process, a public hearing is required to be held.

Further, as the identified part of Lot 2 currently has no minimum lot size, a Planning Proposal is also required to apply a Minimum Lot Size of 700sqm under WLEP 2010.

As such it is recommended that Council proceed with the Planning Proposal for a Gateway Determination to enable Council to undertake such negotiations.

**Development Control Plans**

The Planning Proposal would not require any amendments to the Moss Vale Town Plan DCP.

**State Environmental Planning Policies**

In accordance with the Section 117 of the Environmental Planning and Assessment Act 1979, any Directions requiring the Planning Proposal to address relevant SEPPs will be undertaken as part of the Gateway application.

**Section 117 Directions**

The Minister for Planning, under section 117(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) issues Directions that Council must follow when preparing Planning Proposals. The Directions cover the following broad categories:

1. Employment and resources
2. Environment and heritage
3. Housing, infrastructure and urban development
4. Hazard and risk
5. Regional planning
6. Local plan making.

The Department of Planning and Environment will review the Planning Proposal report by Council, which will address consistencies and inconsistencies with the S117 Directions.

All remaining aspects of this Planning Proposal will be as previously presented to Council and remain unchanged.

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**CONSULTATION**

**COMMUNITY ENGAGEMENT**

**External Referrals**

<b>Referrals/Notice</b>	<b>Advice/Response/Conditions</b>
Water NSW	To be requested prior to Gateway Application should Council resolve to prepare a Planning Proposal



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**Internal Referrals**

**Specialist description:**

Property Officer

**Comments:**

The request to consider the disposal of part of the Public Reserve that adjoins 173 Lackey Road has triggered a review of the RE1 and SP2 zoned land in the vicinity. As outlined above, the Public Reserve adjoining 173 Lackey Road is a narrow 3 metre strip of land which runs between St Paul's International College and four (4) lots of privately owned property (including 173 Lackey Road, Moss Vale).

If Council resolves to reclassify and rezone the land currently zoned RE1, this will potentially enable a future 'land swap' to occur in respect of the four (4) properties, enabling Council to acquire the SP2 land for road widening in exchange for the RE1 land. This will save Council considerable costs otherwise payable in compensation to the affected land owners.

**Recommendations:**

To enable consideration of a future land swap, it is recommended that Council proceed with the Planning Proposal for Gateway Determination with the purpose of disposing of part of a Public Reserve known as Part of Lot 2 DP 775152 Innes Road, Moss Vale.

**Neighbour Notification (or Advertising)/Public Participation**

Should Council resolve to prepare a Planning Proposal and a Gateway Determination to proceed is received, the Gateway Determination will outline the minimum requirements for public exhibition and community consultation. Nevertheless, as the subject land is currently classified as Community Land, a Public Hearing will be required following the community consultation period.

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**SUSTAINABILITY ASSESSMENT**

• **Environment**

An environmental assessment of the Community Land (part of Lot 2) has not been undertaken by Council. Council may wish to undertake an environmental assessment prior to applying for a Gateway Determination to establish if there are any environmental factors that may hinder any property valuation and subsequent swap or sale of the land.

There would no direct environmental impact on the adjacent Whites Creek as part of this Planning Proposal however should the Planning Proposal proceed, environmental impacts may result due to any future development on the lots adjoining the subject site. These impacts would be addressed at the development application stage.

• **Social**

There are no social issues in relation to this report as the land, due to its narrow width and location, has little public recreation value and is unlikely to disadvantage any members of the community in respect to the loss of this unutilised and unmaintained recreation space.

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- **Broader Economic Implications**

There are no broader economic implications in relation to this report, as any potential land sale/swap/exchange is limited to four (4) adjoining properties, excluding St Paul's College. Hence, there are minimal external economic implications. Nevertheless, there is certainly potential for Council to save costs to the community, via reducing acquisition costs for the land fronting Lackey Road via possible land swaps.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

Should Council resolve to proceed prepare a Planning Proposal as recommended, it would be prepared in accordance with the *Environmental Planning & Assessment Act, 1979*, *Environmental Planning Assessment Regulations* and current Guidelines published by the Department of Planning and Environment, for submission to the Gateway.

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#### RELATIONSHIP TO CORPORATE PLANS

The Planning Proposal is generally in accordance with Council's *Fit for the Future* proposal and Corporate Plans to rationalise land owned by Council. In this case Council has the opportunity to dispose of community land that has limited community value and acquire land for road widening at a significantly reduced cost to the community.

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#### COUNCIL BUDGET IMPLICATIONS

Council staff resources involved in the preparation of the Planning Proposal have been appropriately provided for within the 2015/2016 financial year management plan.

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#### RELATED COUNCIL POLICY

There are no other Council Policies related to this matter other than those already discussed in this report.

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#### OPTIONS

The options available to Council are:

##### Option 1

Prepare a Planning Proposal for Gateway determination to rezone part of Lot 2 DP 775152 Innes Road, Moss Vale from RE1 Public recreation to B4 Mixed Use, provide the land with a minimum lot size of 'Q' (700sqm) and reclassify the land from 'Community' to 'Operational' under Wingecarribee LEP 2010.

##### Option 2

Not prepare a Planning Proposal and leave the land as community land.

Option 1 is the recommended option to this report, as it will enable Council to dispose of land that is of little community benefit and negotiate land swaps for acquiring land identified for road widening on Lackey Road at a reduced cost to the community.

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#### CONCLUSION

Part of Lot 2 DP 775152 Innes Road, Moss Vale has been identified by an adjoining property owner for purchase so as to gain access to the rear of their land from Innes Road, Moss Vale. The subject site is a narrow strip of community land, with limited community value. There is significant potential however, once the land is rezoned and made operational, to negotiate land swaps/sales with adjoining property owners, who's properties have frontage to Lackey Road that are identified for acquisition and road widening by Council.

Essentially there are significant savings to be made for the community if Council is able to swap part of Lot 2 for the frontages of adjoining properties along Lackey Road Moss Vale to be acquired for road widening.

The conclusion of this report therefore is that the Planning Proposal proceed as recommended.

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#### ATTACHMENTS

1. Previous Council Report 23 September 2015

**13.7 Planning Proposal to Rezone and Reclassify Community Land -  
Part of Lot 2 DP 775152 being Public Reserve Innes Road, Moss  
Vale**

ATTACHMENT 1

Previous Council Report 23 September 2015



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ATTACHMENT 1

**13.2 Planning Proposal to Rezone and Reclassify Community  
Land - Lot 2 DP775152 being Public Reserve Innes  
Road, Moss Vale**

**Reference:** PN1704923  
**Report Author:** Acting Coordinator Strategic Planning  
**Authoriser:** Group Manager Planning, Development & Regulatory Services  
**Applicant:** LEP Planning  
**Owner:** Wingecarribee Shire Council  
**Link to Corporate Plan:** Encourage creativity in utilisation of our community assets

**PURPOSE**

The purpose of this report is to discuss the potential for preparing a Planning Proposal for Gateway Determination with the purpose of disposing of Public Reserve known as Lot 2 DP 775152 Innes Road, Moss Vale (Lot 2). Lot 2 is approximately 3 metres wide and located between St Paul's International College and B4 Mixed Use zone that fronts Lackey Road.

This report recommends that a Planning Proposal be prepared and forwarded to the Department of Planning and Environmental for Gateway Determination.

**VOTING ON THE MOTION**

Councillors are required to record their votes on this matter.

**RECOMMENDATION**

**THAT** a Planning Proposal be prepared and submitted to the Department of Planning and Environment to amend Wingecarribee Local Environmental Plan 2010 by:

- (a) Rezoning Lot 2 DP 775152 Innes Road, Moss Vale from RE1 Public Recreation to B4 Mixed Use;
- (b) Applying a Minimum Lot Size of 700sqm, depicted as 'Q' on the minimum lot size maps to Lot 2 DP 775152 Innes Road, Moss Vale; and
- (c) Reclassifying Lot 2 DP 775152 Innes Road, Moss Vale from Community to Operational.

**REPORT**

**BACKGROUND**

On 24 November 2014 Council received a request from Lee Environmental Planning, representing the owners of Lot 8 Sec 1 DP 975386, 173 Lackey Road, Moss Vale to

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Vale****ATTACHMENT 1****Previous Council Report 23 September 2015****AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

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potentially purchase part of a Council reserve approximately 3 metres wide to the rear of their property (**Attachment 1**). By purchasing part of the Council reserve, the owners of Lot 8 would be able to gain access to Innes Road from the rear of their property.

However, the 'part' of the Council reserve they wished to acquire is 'part' of a long and narrow 3 metre wide strip of land known as Lot 2 DP 775152 Innes Road, Moss Vale (Lot 2) (**Attachment 2**). Further, the part they wished to acquire is the only access to Lot 2 from Innes Road and if closed off would land lock the remainder of Lot 2.

Another consideration is that part of the frontage of Lot 8 Sec 1 DP 975386, 173 Lackey Road, Moss Vale is marked as land acquisition for road widening under Wingecarribee Local Environmental Plan 2010. Hence there is potential for a land swap.

Lot 2 also adjoins the boundaries of 4 other lots, which have frontage identified to be acquired for road widening purposes along Lackey Road (**Attachment 3**). Thus, since the initial request investigations have been undertaken to determine if it would be beneficial to the Council to reclassify the entirety of Lot 2 from community to operational. The reclassification would then allow Council to negotiate land swap arrangements with the 4 land owners where their properties front Lackey Road and have part of that frontage identified for acquisition for road widening.

This report discusses the proposal required to rezone Lot 2 to B4 Mixed Use with a minimum lot size of 700sqm and reclassify it from Community to Operational.

**DETAILS OF PROPOSAL****Subject Site and Locality**

Lot 2 has a total area of 1,937.7 square metres and is approximately 3 metres wide, forming a strip of Council land zoned RE1 Public Recreation between St Paul's College and B4 Mixed Use zoned Land to Lackey Road. Whilst zoned RE1 Public Recreation the land does not contain any improvements or public facilities. (**Attachment 2**).

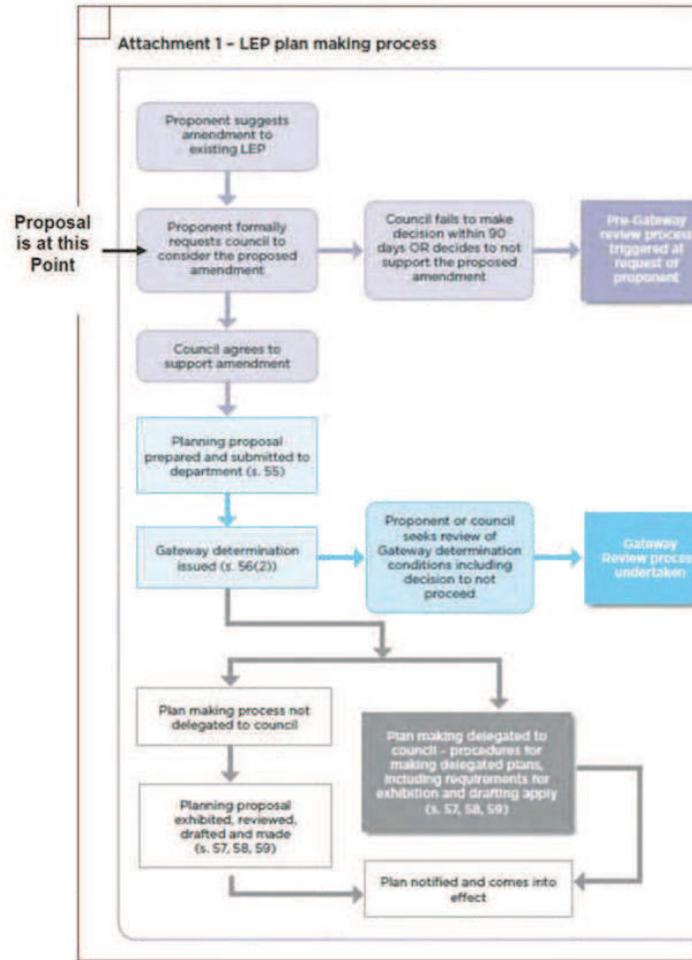
**STATUTORY PROVISIONS****PLANNING PROPOSAL PROCESS**

A flowchart of the Planning Proposal Process is provided below:

13.7 Planning Proposal to Rezone and Reclassify Community Land - Part of Lot 2 DP 775152 being Public Reserve Innes Road, Moss Vale

ATTACHMENT 1

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This Planning Proposal is at the very initial stage of the process (Step 2 in flowchart), where Council considers the Planning Proposal lodged by the applicant and whether or not to proceed. If Council decides to proceed then the process will follow through to Step 5, where a Gateway Determination is issued either in favour or not in favour of the Planning Proposal, which will either end it or continue the process.

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Part of Lot 2 DP 775152 being Public Reserve Innes Road, Moss  
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Should Council or the Gateway Determination end the process, the applicant does not have appeal rights in this case, as the land the subject of the Planning Proposal is Council's Land. Hence, ultimately if Council does not wish sell/swap the land it cannot be forced to do so by a third party.

**Wingecarribee LEP2010**

As Lot 2 is zoned RE1 Public Recreation and is classified as Community Land under the Local Government Act 1993, a Planning Proposal is required to rezone the land (likely B4 Mixed Use) and to reclassify it to Operational to enable Council to negotiate and affect any sale or exchange of land between Council and property owners of land identified in **Attachment 3**. Further, as the land is community land, it currently has no minimum lot size. All surrounding land, zoned other than RE1, has a minimum lot size of 700sqm. Hence the Planning Proposal would also seek to make the minimum lot size 700sqm so it is consistent with surrounding properties.

As such it is recommended that Council prepare a Planning Proposal for a Gateway Determination to enable Council to undertake such negotiations.

**Development Control Plans**

The Planning Proposal, if proceeded with, would not require any amendments to the Moss Vale Town Plan DCP.

**State Environmental Planning Policies**

In accordance with the Section 117 of the Environmental Planning and Assessment Act 1979, any Directions requiring the Planning Proposal to address relevant SEPPs will be undertaken as part of the Gateway application.

**Section 117 Directions**

The Minister for Planning, under section 117(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) issues Directions that Council must follow when preparing Planning Proposals. The Directions cover the following broad categories:

1. employment and resources
2. environment and heritage
3. housing, infrastructure and urban development
4. hazard and risk
5. regional planning
6. local plan making.

The Department of Planning and Environment will review the Planning Proposal report by Council, which will address consistencies and inconsistencies with the S117 Directions.

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**CONSULTATION**

**COMMUNITY ENGAGEMENT**

**External Referrals**

Referrals/Notice	Advice/Response/Conditions
Water NSW	To be requested prior to Gateway Application should Council resolve to prepare a Planning Proposal

**Internal Referrals**

**Specialist description:**

Property Officer

**Comments:**

The request to consider the disposal of part of the Public Reserve that adjoins 173 Lackey Road has triggered a review of the RE1 and SP2 zoned land in the vicinity. As outlined above, the Public Reserve adjoining 173 Lackey Road is a narrow 3 metre strip of land which runs between St Paul's International College and 4 lots of privately owned property (including 173 Lackey Road, Moss Vale).

If Council resolves to reclassify and rezone the land currently zoned RE1, this will potentially enable a future 'land swap' to occur in respect of the 4 properties, enabling Council to acquire the SP2 land for road widening in exchange for the RE1 land. This will save Council considerable costs otherwise payable in compensation to the affected land owners.

**Recommendations:**

To enable consideration of a future land swap, it is recommended that Council proceed with the Planning Proposal for Gateway Determination with the purpose of disposing of Public Reserve known as Lot 2 DP 775152 Innes Road, Moss Vale.

**Neighbour Notification (or Advertising)/Public Participation**

Should Council resolve to prepare a Planning Proposal; and should a Positive Gateway Determination be received, the Gateway will outline the minimum requirements for public exhibition and community consultation. Nevertheless, as the land is Community Land, a Public Hearing will be required following the community consultation period. The timing of the Public Hearing is legislated to enable Council to contact all submission makers and invite them to the Public Hearing. Council would also contact all adjoining property owners in writing during the exhibition period.

**SUSTAINABILITY ASSESSMENT**

• **Environment**

An environmental assessment of the Community Land (Lot 2) has not been undertaken by Council. It would be prudent of Council to undertake an environmental assessment prior to applying for a Gateway Determination to establish if there are any environmental factors that may hinder any property valuation and subsequent swap or sale of the land.

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- **Social**

There are no social issues in relation to this report, as the land, due to its narrow width and location, has little public recreation value and is unlikely to disadvantage any members of the community in respect to the loss of recreation space.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report, as any potential land sale/swap is limited to 4 adjoining properties, excluding St Paul's College. Hence, there are minimal external economic implications. Nevertheless, there is certainly potential for Council to save costs to the community, via reducing acquisition costs for the land fronting Lackey Road via possible land swaps.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

Should Council resolve to prepare a Planning Proposal, the Planning Proposal will be prepared in accordance with the *Environmental Planning & Assessment Act, 1979*, *Environmental Planning Assessment Regulations* and current Guidelines published by the Department of Planning and Environment, for submission to the Gateway.

**RELATIONSHIP TO CORPORATE PLANS**

The Planning Proposal is generally in accordance with Council's Fit for the Future proposal and Corporate Plans to rationalise land owned by Council. In this case Council has the opportunity to dispose of community land that has limited community value and acquire land for road widening at a significantly reduced cost to the community.

**COUNCIL BUDGET IMPLICATIONS**

There is no cost to Council in preparing the Planning Proposal other than staff time.

**RELATED COUNCIL POLICY**

There are no other Council Policies related to this matter other than those already discussed in this report.

**OPTIONS**

The options available to Council are:

**Option 1**

Prepare a Planning Proposal for Gateway determination to rezone Lot 2 DP 775152 Innes Road, Moss Vale from RE1 Public recreation to B4 Mixed Use, provide the land with a minimum lot size of 700sqm and Reclassify the land from Community to Operational.

**Option 2**

Not prepare a Planning Proposal and leave the land as community land.

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Vale**

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Option 1 is the recommended option to this report, as it will enable Council to dispose of land that is of little community benefit and negotiate land swaps for acquiring land identified for road widening on Lackey Road at a reduced cost to the community.

**CONCLUSION**

Lot 2 DP 775152 Innes Road, Moss Vale is a narrow strip of community land, with limited community value. There is significant potential, once the land is rezoned and made operational, to negotiate land swaps/sales with adjoining property owners, who's properties have frontage to Lackey Road that are identified for acquisition and road widening by Council.

Essentially there are significant savings to be made for the community if Council is able to swap the Lot 2 for frontages to be acquired for road widening.

**ATTACHMENTS**

1. No 173 Lackey Road and Proposed Community Land to be Acquired from Council
2. Lot 2 - Extract of Zone Map
3. Property Adjoining Lot 2 with frontage on Lackey Road to be acquired by Council

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13.2 Planning Proposal to Rezone and Reclassify Community Land -  
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ATTACHMENT 1 No 173 Lackey Road and Proposed Community  
Land to be Acquired from Council



ATTACHMENT ONE



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Part of Lot 2 DP 775152 being Public Reserve Innes Road, Moss  
Vale



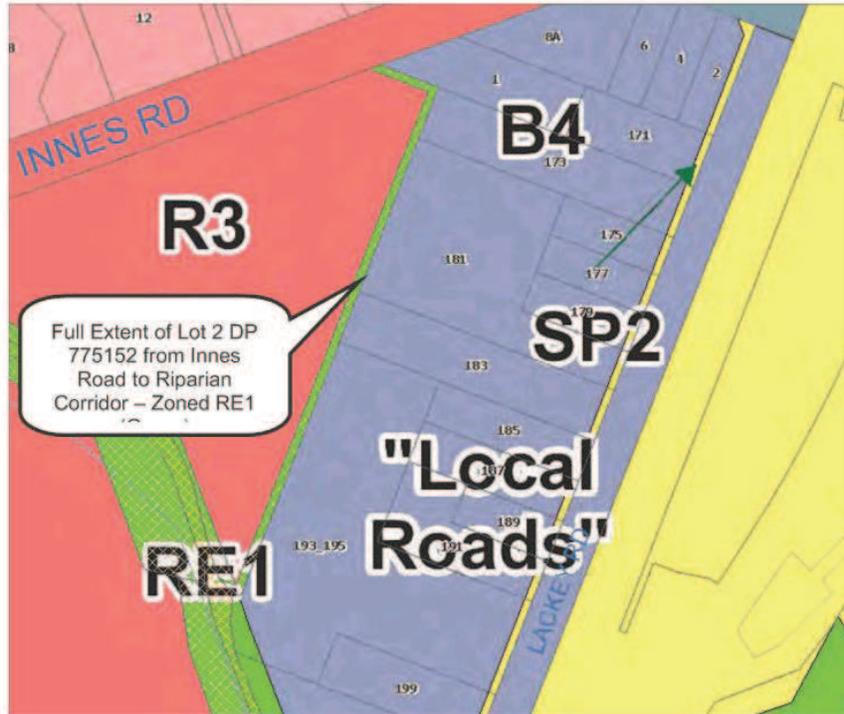
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13.2 Planning Proposal to Rezone and Reclassify Community Land -  
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ATTACHMENT 2 Lot 2 - Extract of Zone Map



ATTACHMENT TWO



13.7 Planning Proposal to Rezone and Reclassify Community Land -  
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ATTACHMENT 1

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13.2 Planning Proposal to Rezone and Reclassify Community Land -  
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ATTACHMENT 3 Property Adjoining Lot 2 with frontage on  
Lackey Road to be acquired by Council



ATTACHMENT THREE

