

RECLASSIFICATION OF LAND FROM
COMMUNITY LAND TO OPERATIONAL LAND

LOT 1 DP1267277, GONN ROAD, BARHAM

REPORT FROM PUBLIC HEARING
HELD ON 3 FEBRUARY 2022

Prepared by

Mark Dalzell, Director Infrastructure, Edward River Council

Report Issued on 11 February 2022

1 INTRODUCTION

1.1 Local Government Act

The *Local Government Act 1993 (LG Act)* classifies public land as either being community or operational. The *LG Act* sets out regulations regarding the management of public land, including the process required to reclassify community land as operational land. This classification and reclassification of public land is described in **Section 25 to 34** of the *LG Act*.

1.2 Public Hearing

As part of the process to reclassify community land to operational land, a council must undertake a Public Hearing (Hearing). This allows the community to provide additional information regarding the reclassification and raise any issues regarding the matter.

Following the Hearing, the Hearing Chair is to provide a report back to Murray River Council (Council) noting the discussions and outcome from the Hearing. Council is to make a copy of this report public within four days of receiving the report.

The meeting was held on Thursday, 3 February 2022 at the Barham Riverside Reception Centre, commencing at 6pm. A copy of the information supplied by Council regarding the Public Hearing is included in **Attachment 1**. A copy of the list of attendees and speakers at the Hearing is included in **Attachment 2**.

1.3 Independent Chair for the Public Hearing

I, Mark Dalzell, was asked by the Council to facilitate the Public Hearing as chair, in accordance with Section 47 of the *LG Act*. I am currently employed as the Director Infrastructure for Edward River Council, having held the role for approximately 12 months. I have over 20 years in experience in local government in NSW, including the management of public and crown land on behalf of councils and the community.

Section 47G of the *LG Act*, requires that the chair of the Hearing be independent and meet the following requirements:

- (2) The person presiding at a public hearing must not be—
 - a) A councillor or employee of the council holding the public hearing, or
 - b) A person who has been a councillor or employee of that council at any time during the 5 years before the date of his or her appointment.

I state that I am not currently, and have never been, employed by Murray River Council. This statement was also made at the start of the Hearing.

1.4 Declaration

I declare that the information and opinions contained in this report are those of the author and not those of either Murray River Council or Edward River Council.

2 BACKGROUND

2.1 Subject Site

The subject site is known as Lot 1 DP1267277 and is located along Gonn Road, to the north of the town of Barham. The land is currently zone RU1 – Primary Production. The location of the site is shown in the Public Hearing Pack provided by Council for the Hearing and included in **Attachment 1**.

The land was purchased by Council approximately 10 months ago, following a subdivision boundary realignment, and was purchased for the purpose of then selling to a developer for the construction and operation of micro-abattoir. Prior to this purchase the site was privately owned freehold land used of agricultural purposes.

Access to the site is via Gonn Road. The site can be connected to the town water reticulation system and does not have access to any rivers or creeks.

Currently the land is classified as community land and there is no evidence of the land having a specific purpose or a Plan of Management.

3 DISCUSSION FOR THE PROPOSED RECLASSIFICATION

There were several people at the Hearing who spoke in support of the proposed reclassification of the subject land. The points raised included:

- Council has always intended for the land to be classified as operational and it was an administrative oversight that a Council resolution regarding this classification was not made within three months of Council acquiring the subject site,
- The development of the site will benefit agriculture and primary production in the area, especially by providing local farmers a facility for the processing of livestock,
- The development is supported by Council,
- There has been a Development Approval issued for the development of a micro-abattoir, subject to the land reclassification proceeding. The Development Approval process addressed concerns regarding the construction and operation of the development in accordance with relevant legislation and regulations, and
- Council has only had control of the land for approximately 10 months and gained this control for the express purpose of development.

Regarding any administrative errors or oversights, it is noted that under the *LG Act*, land classified as community land has a higher value to the community and more protections than operational land. Whilst it is appreciated that Council did have the intent for the land to be classified as operational, this did not occur, and Council are undertaking the reclassification in accordance with the *LG Act*.

The economic benefits to the community, in terms of jobs and opportunity for the processing of livestock, have been stated. This use of the land must be balanced against the use of the land for community purposes.

Regarding Council's control of the land, it is noted that Council purchased the land approximately 10 months ago for the purpose of further development. There is no history of the land being community land and questions regarding its value to the community as community land for a specific purpose.

4 DISCUSSION AGAINST THE PROPOSED RECLASSIFICATION

There were several people at the Hearing who spoke out against, or raised concerns regarding, the proposed reclassification of the subject land. The concerns raised included:

- The current Development Approval for the site, which is deferred subject to the outcome of the land reclassification,
- Operational aspects of the micro-abattoir development should it go ahead,
- Council's general land dealing processes as part of this matter, and
- The reclassification process that Council has undertaken regarding this matter.

4.1 Concerns regarding the current Development Approval for the Site

Concerns were raised regarding the proposed development of the site for a micro-abattoir, should the land be reclassified from community land to operational land. Whilst not directly part of the land reclassification process, Council's clear intention to sell and have the site developed, rather than retaining the site for its own operational purposes, is connected to this matter. The concerns raised include:

- Concerns that the development was understood to be Exempt Development, thereby not requiring environmental and geotechnical studies regarding the development as part of the Development Application process,
- Does the micro-abattoir development meet EPA requirements?
- How will the development affect the existing water supply in the North Barham area? Concerns were raised that the amount of water required for the development will negatively affect other users. What upgrading works is Council undertaking to manage this concern,
- Condition of Gonn Road. Residents feel that the existing road is in poor condition and is not suitable for the development. Is Council going to upgrade Gonn Road as part of the development?
- The scale of the development, as a micro-abattoir, has grown markedly since the development was originally proposed,
- Work commenced on the site regarding the development prior to a Development Application being submitted,
- Access gate from the adjoining private property into the community land area,
- There is a Development Approval having been granted on community where there isn't an adopted Plan of Management,

Review of the information provided regarding the Development Approval shows that the approval has been granted in accordance with the *Environmental Planning and Assessment Act (EPAA Act)*, including all studies and investigations relevant for a development of this nature and size. The Development Approval is based on the development being Permitted with Consent, consistent with the Wakool Local Environmental Plan, and use of the site must be in accordance with the consent conditions.

Issues and concerns, including access to the water supply network, condition of Gonn Road and access to the site from private property, are operational matters and outside the scope of this reclassification process. It is recommended that Council review these issues and engage with the community so that these issues do not impact the future use of the site, whether this use be community or operational purposes, and the adjoining area.

It is not clear whether the work undertaken prior to the submission of the Development Application is subject to the application or not. Under the Wakool Local Environmental Plan, certain works are Permitted without Consent. Following a visit to the site on 3 February 2022, it is considered that any work that has occurred on the site would meet the requirements for being Permitted without Consent. It is noted, however, that as there is no Plan of Management for the land and as such any work undertaken on the site to date does not comply with the management of the community land.

4.2 Concerns regarding Operational Aspects of a Micro-Abattoir Development

Concerns were raised regarding the operations of a micro-abattoir at the site should the development go ahead. It was noted during the Hearing that, whilst the development is small in nature, it is different than operations on adjoining properties. Concerns raised regarding operations of the development included:

- Would the micro-abattoir be able to have a Property Identification Code (PIC) number issued by Local Lands Services? and
- No guarantees that the micro-abattoir will not impact adjoining properties and the environment due to odour and surface water run-off, especially to nearby creeks.

As noted, these issues are operational in nature and would be the responsibility of the operator of any development on the site to address. It is noted that the deferred Development Approval for the micro-abattoir on the site does include regulations and requirements for the operation of the proposed facility that are in keeping with current standards and that the owner of the facility would need to comply with these requirements and regulations. These requirements and regulations address the concerns raised at the Hearing.

Regarding the issuing of the PIC number, this would be an operational issue and not part of the considerations regarding the reclassification of the subject site.

4.3 Concerns regarding general Land Dealings as part of this Matter

Concerns were raised regarding the general land dealings for the subject site. These concerns included:

- How was the parcel of land, known as Lot 1 DP1267277, created given that the size of the lot is smaller than the minimum lot size specified in the Wakool Local Environmental Plan (minimum lot size for RU1 zoned land is 500 hectares),
- Was the parcel of land created by subdivision or by boundary re-adjustment?
- Concerns regarding how the land was purchased, given that land purchases were not part of the grant funding program eligibility,
- Was there an independent valuation of the land undertaken prior to any agreements regarding the purchase or sale of the land,
- Concerns that the site was purchased from an ex-Councillor,
- There was little transparency regarding the creation of the parcel of land for the subject site,
- Council's governance process regarding the land dealings with the developer of the micro-abattoir,
- Property values for adjoining properties may be reduced, and
- Access to the public land directly from an adjoining private property.

Regarding the creation of Lot 1 DP1267277 and the adjoining Lot 2 DP1267277, this was done through a boundary realignment of the then existing Lot 2 DP 1253876 and Lot 14 DP 111764. This boundary realignment was done in 2020 in compliance with the requirements of the *EPAA Act*.

It is noted that boundary adjustments or realignments, where existing property boundaries are altered in a minor way, are a form of subdivision and therefore fall within the definition of subdivision or a Plan of Subdivision. Therefore, it is understood that there is no conflict between using the terms subdivision and boundary realignment regarding the subject site, though it is recommended that a consistency of terminology is used.

Regarding the minimum lot size, it is noted that there are many lots or parcels of land within RU1 zones that were created prior to minimum lot size requirements being implemented and therefore have historical rights attached to them. A boundary realignment, as noted in this matter, would generally not impact these historical rights, as opposed to newly created lots which would need to meet the requirements of the Local Environmental Plan.

Regarding Council's governance of the matter, especially regarding the purchase of the land and other land dealings, these are outside the scope of this Hearing other than to note that these concerns were raised at the Hearing.

4.4 Concerns with the Reclassification Process

Concerns were raised at the Hearing regarding the process that Council have undertaken regarding the classification of the site. These include:

- The fact that an administrative error had occurred in the first place, therefore reflecting Council's governance regarding the management of public land,
- What is the public benefit of the re-classification?
- Will Council benefit from reclassifying and ultimately selling the land?
- The re-classification is a quasi-approval for the development of the micro-abattoir, due to the deferred nature of the current Development Approval, and
- A Plan of Management, as required by the *LG Act*, has not been put in place. This shall be discussed in **Section 4.5**. It was noted at the meeting that Council had purchased the land approximately 10 months ago.

It is noted that, specifically regarding the reclassification process, Council has complied with the *LG Act*. This includes holding a Hearing and receiving a report regarding the outcomes from the Hearing. Many comments were made at the Hearing regarding Council's interaction and engagement with the community and adjoining owners during the initial Development Application process. Discussion on this point is outside the scope of this report, other than to note the comments and concerns raised and to recommend to Council improvements regarding this area.

Regarding the fact that the current Development Approval is deferred subject to the land being classified as operational, it is noted that these processes are different. The land reclassification process must be undertaken on its own merits and not as a method to hinder development. It is noted that it would be preferable that land matters are dealt with prior to any development processes so that Council can continue with development processes with the knowledge that the land is suitable for any such development.

4.5 Plan of Management for the Site

In accordance with Section 36 of the *LG Act*, Council is required to prepare a draft Plan of Management for all community land that it controls. Neither the *LG Act* nor the *Local Government (General) Regulations* state a time by which Council must complete this requirement, though it is understood that this should occur shortly after Council acquires control of the relevant land. It is noted that Council is currently not adhering to the requirements of the *LG Act* by not having a Plan of Management for the land.

In reviewing the *LG Act* regarding this matter, no information was found stating that a Plan of Management must be in place for Council to proceed with the land reclassification process, or that not having a Plan of Management would impact this process. Therefore, the fact that there currently is no Plan of Management is not considered an impediment, just that Council is not complying with the requirements of the *LG Act*.

5 CONCLUSION

5.1 Findings from the Hearing

Discussions at the Hearing have raised several issues regarding the process that Council has undertaken regarding the development and classification of the land. These issues have been highlighted in **Section 4** of this report. There have been shortcomings in Council's management of this matter, including but not limited to:

- That the land was not classified as operational within three months of Council acquiring control of the land, even though the land was purchased for operational reasons,
- It is understood that Council needed to be advised of the status of the land and need for reclassification, rather than it being highlighted in a land register,
- It seems that no progress towards a Plan of Management has been made since Council purchased the land, though this is linked to the points noted above regarding Council's knowledge of the status of the land,
- Transparency regarding the development process for the micro-abattoir and engagement with the community. This has been highlighted through the comments and discussions during the Hearing, and
- Governance of general land dealing by Council.

Balancing the above points is that the land was specifically purchased for the development of a micro-abattoir and that, but for an administrative oversight, it would have been classified as operational upon the purchase of the land. There was no intention to use the land for community purposes and the site has historically been used for agricultural production.

It is noted that this report provides Council with the discussions and outcomes from the Hearing. This report is not a decision-making document. Upon receiving this report Council is encouraged to review and consider the findings from the Hearing as part of future deliberations and discussion regarding whether to move forward with this matter.

5.2 Acknowledgements

I would like to thank and congratulate Council and the Barham community on undertaking and engaging with this reclassification process. All participants, including speakers and the audience, acted in a highly professional manner, and allowed for the free expression of views regarding the matter at hand. This is essential for public hearings to be successful and allows Council to gain the most out of the process.

ATTACHMENT 1

PUBLIC HEARING PACK



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PUBLIC HEARING PACK

Reclassification of land from Community Land to Operational Land

Lot 1 DP1267277
Gonn Road, Barham

Public Hearing: Thursday 3rd February 2022 at 6pm

Barham Riverside Reception Centre, 15 Murray Street, Barham

Public Hearing

The information contained in this document relates to the Public Hearing to reclassify the community land parcel outlined below as Lot 1 DP1267277, Gonn Road, Barham 2732. The land is zoned RU1 Primary Production and has an area of 4 hectares. The site has vehicle access from Gonn Road and is currently (and has historically) been used as private farmland. The land is afforded a deferred commencement development consent issued on 26 August 2021 for a “Livestock processing industry (Abattoir with processing/ slaughtering capacity of 723 tonnes live weight of animals per year)”.

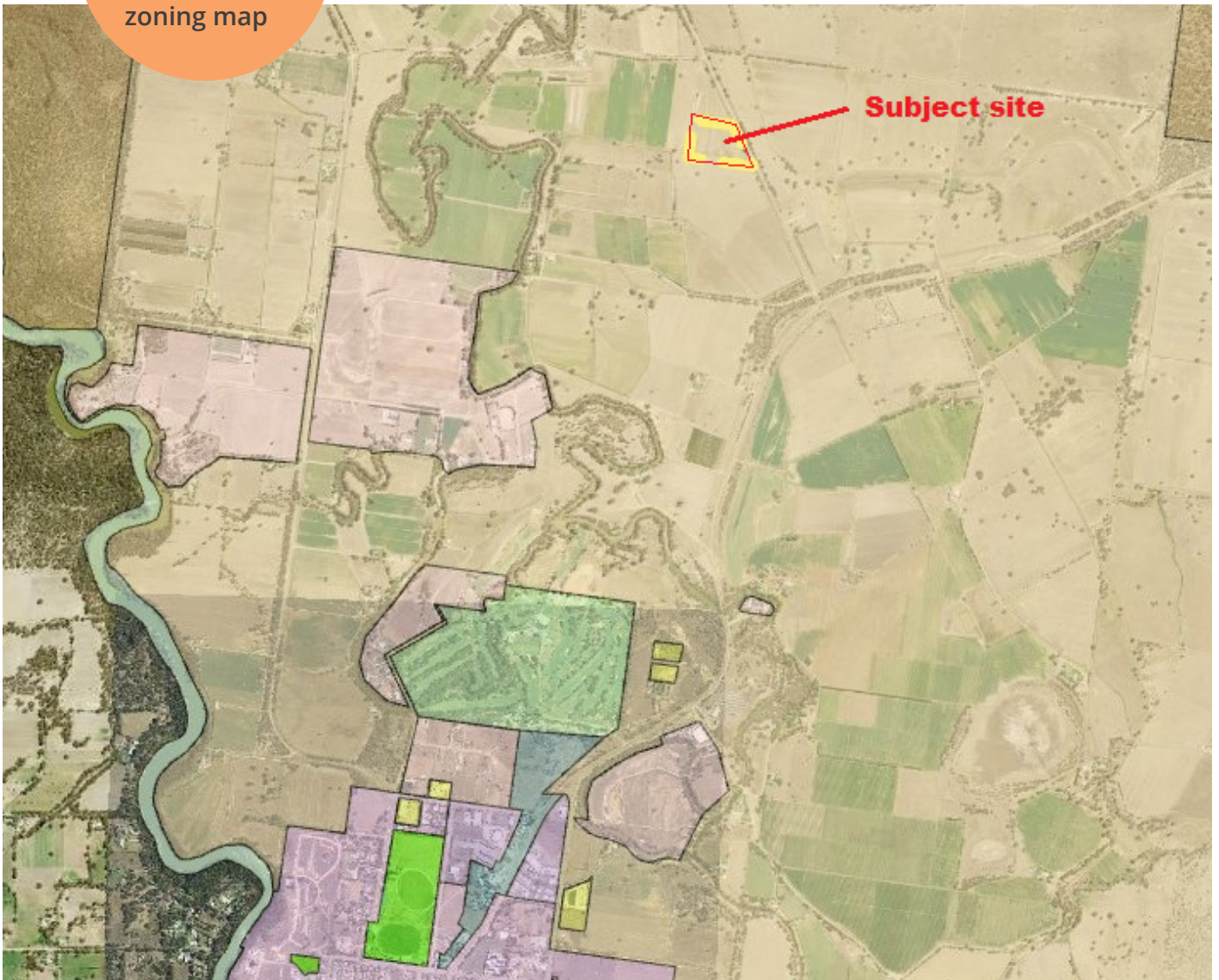
The current ‘community’ classification of the land does not reflect the intended use of the site as a micro abattoir, nor does it provide any community benefit as a traditional public use area. As the land has never been used or intended for a public access/community area, the Proposal will act purely to correct an administrative error associated with the initial transfer of land to Council. The Planning Proposal will facilitate an opportunity for co-location of compatible rural industry (a livestock processing facility).

Public Hearing

Reclassification of Lot 1 DP1267277
Gonn Road, Barham

i

Existing site
subject to
reclassification
and land use
zoning map



Public Hearing

Reclassification of Lot 1 DP1267277
Gonn Road, Barham



Aerial
photography
of the site



Background Information



This is an opportunity for our community to offer their insights and feedback



What is a Public Hearing?

A public hearing is a forum held to give our community an opportunity to provide feedback specifically on the reclassification of land. Under the relevant legislationⁱ Council must hold a public hearing regarding the proposed reclassification of community land to operational land.

This hearing must also be chaired by an independent facilitator. This gives the community a chance to share their thoughts with a person independent from Council in an open style setting.

What does 'reclassification of land' mean?

There are two classifications of public land – “community” and “operational”.

Community land is managed by Council and includes areas like parks and sporting fields (among other things)ⁱⁱ.

Operational land is public land which facilitates the operations of Council. Community land cannot be sold, exchanged or disposed ofⁱⁱⁱ without following the due process for reclassification to operational land^{iv}.

Why are we holding a public hearing to reclassify community land at Lawry Park?

When Council lodges a proposal with the State Government (DPIE) for assessment, the 'Gateway Determination' issued under that process must determine if a 'public hearing' is to be held in relation to that planning proposal^v. Due to the nature of this proposal (the reclassification of community land) a public hearing is a required step in the public consultation process, as set out in the Gateway Determination. A copy of the Gateway Determination is available on Council's website, and Your Say page. See Item 3 of the Gateway Determination.

Public Hearing

Reclassification of Lot 1 DP1267277
Gonn Road, Barham



When and where will the public hearing be held?

The hearing will be held on **Thursday 3rd February 2022**, at 6pm, at the Barham Riverside Reception Centre.

The Barham Riverside Reception Centre is located at 15 Murray Street, Barham.

How will the hearing details be advertised?

In accordance with the relevant legal requirements^{vi} the date of the public hearing must be publicly advertised for a minimum of 21 days after the consultation period for the proposal has ended. This allows the person chairing the hearing sufficient time to consider written submissions and all issues raised during the consultation period.

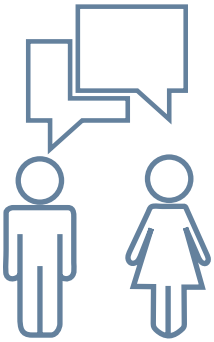
This planning proposal was advertised from 2nd December 2021 until 16th December 2021. The notice of advertisement for the public hearing will be printed in the Friday 17th December 2021 edition of the Swan Hill Guardian and the Thursday 23rd December 2021 edition of the Barham Bridge. The public hearing notice will also appear on Council's 'Your Say' page, Facebook page, and website from 16th December 2021.

Will I need to register to attend?

At this stage, Council do not anticipate registration will be required to attend the Hearing, however this is subject to change dependent on NSW Public Health Orders.

Public Hearing

Reclassification of Lot 1 DP1267277
Gonn Road, Barham



Who conducts a Public Hearing?

An independent chairperson conducts the public hearing and provides a report to Council with recommendations on the proposed reclassification of community land.

Under the relevant legislation^{vii} the person presiding at a public hearing must not be:

- a.** A Councillor or employee of the Council holding the public hearing.
- b.** A person who has been a Councillor or employee of that Council at any time during the five years before the date of his or her appointment.

Is there an opportunity for me speak at the Hearing?

Yes! The facilitator will seek your thoughts at the hearing and attendees will be encouraged to participate in an open style forum.

If you would like opportunity to formally present at the Hearing, that option is also available to you. To present at the Hearing, please register to attend using our 'Your Say' page and use the tools to indicate that you would like to make a presentation at the Hearing.

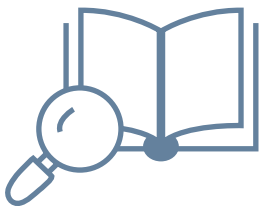
Alternatively, please contact Council on 1300 087 004 during normal business hours, or email admin@murrayriver.nsw.gov.au and advise that you would like the opportunity to address the forum.

Registrations to present at the Hearing will be open until 4pm Wednesday 2nd February 2022.



Public Hearing

Reclassification of Lot 1 DP1267277
Gonn Road, Barham



What happens after the Public Hearing?

Council must make a copy of the report regarding the outcomes of the public hearing available for inspection by the public no later than four days after it has received the final report from the person presiding at the public hearing. This report will be presented to Council for their information when it considers reclassifying community land as part of the process of adopting the Planning Proposal. A copy will also be provided to DPIE for their consideration. We note that there will not be a separate consultation period regarding the findings of the hearing.

Recording of the Hearing and the capture of photographs

We may be recording the Hearing to ensure we have captured everyone's comments accurately. This recording will not be made available to the public at any point and is purely for accuracy, and Council's records. We may also be taking photographs throughout the evening, however you can opt out of being in any photos if you wish.

Questions

For any queries, please all feel free to contact Council on 1300 087 004 and ask to speak with Melanie Squires regarding the proposal.

References

- i See Sections 29 and 47G of the *Local Government Act 1993*
- ii See Division 1 of Part 2 of Chapter 6 of the *Local Government Act 1993*
- iii See Section 45 of the *Local Government Act 1993*
- iv See Sections 27-33 of the *Local Government Act 1993* and Division 3.4 of the *Environmental Planning and Assessment Act 1979*
- v See Section 3.34(e) of the *Environmental Planning and Assessment Act 1979*
- vi See Practice Note PN 16-001 included as part of the Proposal documents
- vii Section 47G of the *Local Government Act 1993*



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ATTACHMENT 2

PUBLIC HEARING ATTENDANCE LIST

Attendance List

Wakool LEP 2013 – Planning Proposal – Reclassification of Lot 1 DP1267277 Gonn Road Barham

Name	Contact details (email / postal address)	Speaking	In Favour / Against	Made a Submission to PP
John Boyd		Yes	Unknown	No
Paul Boyd		Yes	Unknown	No
Jason Telford		Yes	Unknown	No
Maree Telford		Yes	Unknown	No
Gen Campbell		Yes	Against	No
Lauren Mathers		Yes	In Favour	No
Lisa Eagle		Yes	In Favour	No
Ian Sampson		Yes	In Favour	No
Russell Green		Yes	Against	Yes
Anne-Maree Green		Yes	Against	Yes

Attendance List

Wakool LEP 2013 – Planning Proposal – Reclassification of Lot 1 DP1267277 Gonn Road Barham

Name	Contact details (email / postal address)	Speaking	In Favour / Against	Made a submission
Bianca Shepherd		Yes	In Favour	No
Blair Flight		Registered but chose not to speak	Unknown	No
Kylie Berryman		Yes	Unknown	No
Alan Mathers		Yes	In Favour	No
Ken Shiell		Yes	Against	No
Sandra McGowan		No	Unknown	No
Lloyd Polkinghorne (media - Barham Bridge)		No	Unknown	No
P Hauyl (unclear handwriting)		No	Unknown	No
Verniece Dick		No	Unknown	No
Donald Hearn		No	Unknown	No
Glen McDonald		No	Unknown	No
Leigh Fletcher		No	Unknown	No
Peter Hird		No	Unknown	No
Col Barnes		No	Unknown	No
John Lolicato		No	Unknown	No
Tony Shannon		No	Unknown	No

Rod Croft

Melanie Squires

Christopher O'Brien

Alex Green

Christian Austin

No

No

No

No

No

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Murray River Council

No

No

No

No

No