**Initial Council Report for Reclassification of Various Sites - 2022 Roads Amendment to LMLEP 2014**

Executive Summary

The thirteen parcels of Council-owned land referred to in this report are classified as community land under the *Local Government Act 1993* (LG Act 1993). Each parcel of land forms part of a road, but administrative processes which would usually have been undertaken to classify the land as operational and dedicate it as road were not completed.

The use of community land is strictly governed by the LG Act and, generally, the use of community land as road is not permitted. In order to reflect the use of the land as road, the land needs to be reclassified as operational land and subsequently dedicated as road pursuant to the *Roads Act 1993* (NSW) (‘Roads Act’).

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| Recommendation  Council authorises:   1. reclassification of the following Council owned sites from Community land to Operational land for the purpose of road dedication:   Item 1 - 460C Lake Road, Argenton Lot 24 DP 1110828  Item 2 - 59C Clydebank Road, Balmoral Lot 1 DP 361413  Item 3 – Part 49C Haig Street, Belmont Part Lot 42 DP 1115062  Item 4 - 9C The Parade, Belmont Lot 1 DP 209843  Item 5 - 4C Hendrick Street, Cardiff Lot 2 Sec C DP 4143  Item 6 - 39D Macquarie Road, Cardiff Lot 3 DP 559007  Item 7 - 14C Milson Street, Charlestown, Lot 1 & 2 DP 350691  Item 8 - 216C Pacific Highway, Charlestown, Lot B DP 399059  Item 9 - 14C Pacific Highway, Gateshead, Lot 1 DP 432780  Item 10 - 23A Emily Street, Marks Point, Lots 1 & 2 DP 371792  Item 11 - 94C Main Road, Speers Point Lot 1 DP 181190  Item 12 - 2C Wood Street, Swansea Lot 1 & 2 DP 329284  Item 13 - 0 Dobell Drive, Wangi Wangi Lot 343 DP 848273   1. a Planning Proposal, for the purpose of reclassification of the land referred to in recommendation A above, to be forwarded to the Minister for Planning for a gateway determination to be made pursuant to section 3.34 of the *Environmental Planning and Assessment Act 1979* (NSW) (‘EP&A Act’); and 2. the implementation of any actions required to give effect to a gateway determination made by the Minister for Planning under section 3.34 of the EP&A Act in relation to the Planning Proposal. |

Discussion

In 1993 changes were made to the *Local Government Act 1993* which required Councils to identify all land owned by the Council and classify the land as either Operational or Community land. Operational land is land used by the Council for operational purposes e.g. depots, quarries, commercially leased land etc. Community land, is land being used by the public for community uses e.g. parks, bushland, community halls etc.

Any land not identified as Operational land automatically defaulted to Community land. Due to the large volume of land owned by Council at the time (1993), many small parcels of land may have been missed or not seen as they had roads constructed over them. This report has identified fourteen such parcels which contain constructed roads upon them.

Pursuant to section 47F of the *Local Government Act 1993* Community land may not be dedicated as public road, unless it is a current road widening. Accordingly, in order to dedicate these parcels of land as road, Council now has to undertake a reclassification of the land from Community to Operational land. This process is governed by Division 3.4 Part 2 of the *Environmental Planning and Assessment Act 1997*.

Once the land is classified as Operational land, the roads can then be dedicated subject to Division 1 Part 2 of the *Roads Act 1993*.

A Planning Proposal, which explains the intended effect and justification of the reclassification, has been prepared for submission to the Department of Planning, Industry and Environment for Gateway Determination and to commence the public notification process. The Planning Proposal discusses each individual parcel of land in more detail and a summary of the justification has been provided in Attachment 1.

Upon completion of the public notification and public hearing, a further report will be submitted to Council addressing any submissions received and proposals going forward.

Assessment of options

This report recommends proceeding with the reclassification of the lands and the public notification process. The draft Planning Proposal will rectify the classification of the land and enable it to be dedicated as road, for which it is currently being used. If the Planning Proposal does not proceed, the land will remain inappropriately classified for its current use as a road.

Community engagement and internal consultation

As part of the process to determine if the reclassification should commence, the matters are submitted to Council’s Rezoning Advisory Panel (RAP). RAP is made up of representatives from relevant Council departments and considers proposals based on the expertise of each department, and the merits of the proposal. Individual remarks are recorded and included in reports pertaining to the proposed reclassification, giving a balanced overview of the matter.

All the land the subject of this report, were considered by RAP at its meetings on 2 December 2020, 2 and 25 August 2021, with no issues or objections being raised.

Council’s Corporate Legal Office was also consulted in the preparation of this report.

Community engagement, including a public hearing, will commence once Gateway approval has been given by the Department of Planning, Industry and Environment.

Key considerations

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| **Economic impacts** | None |
| **Environment** | As the land already contains existing constructed roads over them, there will be no environmental impact. |
| **Community** | None |
| **Civic leadership** | The exhibition of the Planning Proposal and subsequent public hearing, will satisfy statutory requirements and ensure consultation with the community and stakeholders. |
| **Financial** | Costs associated with advertising and registering the proposed lots as roads will be met by Council, funds are available in the 2021/2022 and 2022/2023 budgets. |
| **Infrastructure** | No cost or work required to the existing infrastructure. However, the roads will now be correctly classified so future maintenance works can be undertaken. |
| **Risk and insurance** | Risks associated with preparation of a reclassification are minimised by following due processes under the *Environmental Planning and Assessment Act 1997,* the *Local Government Act 1993 a*nd Council procedures, as noted. Additionally, this action is covered by Council’s professional indemnity insurance as a standard activity. |

Legislative and policy considerations

*Environmental Planning and Assessment Act 1997*

*Local Government Act 1993*

*Roads Act 1993*

Local Environmental Plan Making Guideline, Dec 2021 - Department of Planning, Industry and Environment

Council’s Amending Local Environmental Plan to Reclassify Land Procedure

Attachments

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| 1. | Summary of Planning Proposal - Maps & Justification - 2022 Roads Amendment to LMLEP 2014 |  | D10557317 |