



IRF22/3870

Gateway determination report – PP-2022-3766

Reclassification of Community Land - Forbes Shire
Council

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Draft Planning Proposal – Forbes Shire Council (Amended Submission via email 06/12/2022)
Council Meeting Report – 20 October 2022
Council Meeting Minutes – 20 October 2022
Recreation and Open Space Strategy 2021-2031

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Forbes
PPA	Forbes Shire Council
NAME	Reclassification of Community Land 2022
NUMBER	PP-2022-3766
LEP TO BE AMENDED	Forbes Local Environmental Plan 2013 (FLEP)
ADDRESS	Multiple sites – Refer to Section 1.4.
DESCRIPTION	Multiple sites – Refer to Section 1.4.
RECEIVED	25/10/2022
FILE NO.	IRF22/3870
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal
DWELLINGS/JOBS	6/18 (approximate)

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to dispose of excess recreational land identified in Council's Recreation and Open Space Strategy (ROSS) by reclassifying four (4) public land parcels from 'community' to 'operational'. The subject land will remain as zone R1 General Residential and minimum lot size (MLS) of 550m².

The intentions of the objective will enable Council to greater rationalise resources to high quality and accessible public open space and provide opportunities for appropriate infill development.

The objective of this planning proposal is clear and adequately explains the intent of the proposal.

1.3 Explanation of provisions

The planning proposal seeks to amend Forbes Local Environmental Plan 2013 (FLEP 2013) by amending Schedule 4 Classification and reclassification of public land. The amendments will result in the reclassification of four (4) Council owned land from 'community' to 'operational' land for the purposes of the *Local Government Act 1993* by being inserted in Part 2 Land classified, or reclassified, as operational land—interests changed of Schedule 4.

Alma Sharp Park (Site 1, Figure 1) is subject to flood constraints. Council proposes to retain the land for Council operational purposes, however should Council wish to dispose of the land Council advise that it intends to impose a restriction on title to ensure dwelling houses on areas identified as High Hazard Flood Storage are not permissible – this is not part of this proposal.

In accordance with section 30 of the *Local Government Act 1993*, the approval of the Governor is required when a reclassification proposal requires the removal of any public reserve status and/or discharge any interests affecting public land. Council has clarified by email that it is requesting for the public reserve status and interests to be discharged for all four (4) parks. A Gateway determination condition is recommended requiring the planning proposal to be amended prior to exhibition to address details required for the approval of the Governor as stated in LEP practice note PN 16-001 Classification and reclassification of public land through a local environmental plan.

The planning proposal adequately explains its provision on how the objectives will be achieved.

1.4 Site description and surrounding area

The planning proposal applies to the following Council owned sites, which are located throughout Forbes LGA:

Table 3 Subject sites

Site No.	Property Name	Lot and DP	Address	Land Zoning and MLS	Potential Dwellings / future intentions
Site 1 / Figure 1	Alma Sharp Park	Lot 79 DP 251269 (Area 7134m ²)	Kent Street, Forbes	R1 General Residential and MLS 550m ²	Nil, flood prone land – Retained by Council for Council operations.
Site 2 / Figure 2	Eloora Place Park	Lot 31 DP 791180 (Area 2289m ²)	6 Eloora Place, Forbes	R1 General Residential and MLS 550m ²	2-3 – to be sold
Site 3 / Figure 3	Gale Street Park	Lot 38 DP 215546 (Area 461.6m ²)	Gale Street, Forbes	R1 General Residential and MLS 550m ²	Nil, undersized lot – to be sold - potential consolidation with adjoining lots.
Site 4 / Figure 4	Paul Wenz Park	Lot 28 DP 835295 (Area 1534m ²)	Hettie Place, Forbes	R1 General Residential and MLS 550m ²	2-3 – to be sold

Site 1

Alma Sharp Park is located adjacent to the undeveloped Prince Street to the south and is within vicinity to dwelling houses to the north and vacant land previously used for agricultural purposes to

the south, east and west. The land is identified to be designated Low Hazard Flood Fringe and High Hazard Flood Storage in accordance with the Forbes Flood Study 2020. Council advises that at this time it intends to retain the land and use it for operational purposes. Should Council wish to dispose of the land Council needs to control development in the area identified as High Hazard Flood Storage.



Figure 1: Alma Sharp Park outlined in blue (Source: Nearmap, 20 September 2022)

Site 2

Eloora Place Park is an irregularly shaped lot consisting of mature trees and fronts Eloora Place. The lot is surrounded by dwelling houses and is within vicinity to Forbes North Public School along the northern side of Thomson Street.



Figure 2: Eloora Place Park outlined in blue (Source: Nearmap, 20 September 2022)

Site 3

Gale Street Park is a triangular shaped and undersized lot consisting of mature trees and is surrounded by dwelling houses. The lot fronts a water tower reservoir to the west.



Figure 3: Gale Street Park outlined in blue (Source: Nearnmap, 20 September 2022)

Site 4

Paul Wenz Park is an irregularly shaped lot fronting Hettie Place consisting of mature trees. The lot is surrounded by dwelling houses and adjoins a child care centre to the west. A Gateway determination condition is recommended requiring Council to clarify its future intentions of the park's adjoining Council laneways from Farnell Street (south-west) and Brenner Street (north-east).



Figure 4: Paul Wenz Park outlined in blue (Nearmap, 20 September 2022)

1.5 Mapping

The planning proposal does not require amendments to FLEP maps.

1.6 Background

Forbes Shire Council adopted the Forbes Shire Council Recreation and Open Space Strategy 2021-2031 (ROSS) on 19 August 2021. The ROSS identified multiple Council properties as surplus parkland and recommended these to be disposed. Subsequent Council meetings were held on 15 September 2022 and 20 October 2022 and resolved the subject sites to be changed from 'community' to 'operational' land through a planning proposal. The current zone of R1 General Residential and MLS of 550m² will be retained. The public reservation interests will be removed from the land and this requires the approval of the Governor.

2 Need for the planning proposal

Q1. Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

The planning proposal is the result of Council's *Recreation and Open Space Strategy 2021-2031* (ROSS) undertaken to identify surplus parklands. The ROSS has recommended the subject lots to be disposed as the lots are either too small, poorly accessible, underutilised and/or could be best utilised for other forms of development.

In accordance with section 25 of the *Local Government Act 1993*, all publicly owned land must be classified as either 'community' or 'operational'. Community land is generally for public access and use, so it cannot be sold (section 45), leased for more than 21 years without Ministerial consent (section 47) or be without a plan of management (section 35). Operational land is not subject to such restrictions and is generally used by Council to carry out its functions and/or generate income. Reclassifying the subject sites from 'community' to 'operational' land will enable Council to achieve the intentions of the ROSS.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

In accordance with section 27 of the *Local Government Act 1993*, reclassification of public land can be made by either a local environmental plan, or by Council resolution (subject to conditions). The subject sites do not meet the criteria for reclassification via Council resolution and therefore the only means in achieving the intended outcome is through a planning proposal.

3 Strategic assessment

3.1 Regional Plan

The planning proposal was lodged prior to the Central West and Orana Regional Plan 2041 being finalised on 2 December 2022. The Department's assessment of this planning proposal has considered both the Central West and Orana Regional Plan 2036 and 2041.

The planning proposal is generally consistent with both regional plans given it is local and administrative in nature and does not affect land use permissibility.

It is noted that Strategy 6.3 of the Central West and Orana Regional Plan 2041 consist of matters for consideration when LEP amendments involve reclassification of public open space. The planning proposal and Council's ROSS adequately addresses these matters.

As the planning proposal refers to the draft Central West and Orana Regional Plan 2041, a Gateway determination condition is recommended requiring the planning proposal to be amended to reflect the final provisions of the Central West and Orana Regional Plan 2041.

3.2 Local

The proposal is not inconsistent with the Forbes Local Strategic Planning Statement 2040 (LSPS). The LSPS consisted of an action which requires Council to undertake a Recreation and Open Space Strategy (ROSS). The ROSS report recommended that the subject surplus parkland be disposed of.

3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions (as from 1 March 2022) is discussed below:

Table 4 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	The planning proposal is consistent with both the Central West Orana Regional Plan 2036 and 2041. Refer to Section 3.1 above.

4.1 Flooding	Consistent	<p>Alma Sharp Park currently zoned as R1 General Residential is identified as flood prone land and is subject to be designated Low Hazard Flood Fringe and High Hazard Flood Storage in accordance with the Forbes Flood Study 2020.</p> <p>Should Council dispose of the land in future it will need to control development in the area identified as High Hazard Flood Storage.</p> <p>As Alma Sharp Park is flood prone land, Council proposes to retain the park for operational purposes at this time. Council advised that Alma Sharp Park could be used for Council operations (e.g., depot & vehicular storage) that is permitted under Division 10A and 12 of Part 2.3 of SEPP (Transport and Infrastructure) 2021 (clause 2.73(3)(viii)).</p>
4.4 Remediation of Contaminated Land	Consistent	<p>The planning proposal is consistent with this Direction as it is administrative in nature and does not seek to rezone land.</p> <p>The Department notes that consideration of contamination is required in the assessment of any future development on the subject sites.</p>
5.2 Reserving Land for Public Purposes	Inconsistent, but justified.	<p>The planning proposal is inconsistent with this Direction because it is proposing to remove public reserve status. The delegate of the Secretary can be satisfied that the removal and disposal of the land is justified by Council's ROSS report. No further work is required in relation to this Direction.</p>
6.1 Residential Zones	Consistent	<p>The planning proposal consists of four (4) sites zoned as R1 General Residential. The proposal is consistent with this Direction as it is administrative in nature and does not seek to change the permissible residential density of the subject sites.</p>

3.4 State environmental planning policies (SEPPs)

The relevant SEPPs for consideration are as follows:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021

The planning proposal is generally consistent with the abovementioned SEPPs and do not have provisions which would interfere with its implementation.

The proposed changes to FLEP 2013 are administrative only and do not seek to facilitate any change in land use or other controls.

4 Site-specific assessment

4.1 Environmental

The planning proposal will not result in any significant adverse environmental effects. The planning proposal is administrative in nature and does not seek to facilitate any significant change in the existing land use. Council is required to consider the likely environmental impacts and suitability of

future development as required by the Act when assessing subsequent development applications for the subject sites.

4.2 Social and economic

The planning proposal will generate minimal social and economic impacts to the subject lots and locality. With exception to Site 1 – Alma Sharp Park, the ROSS identified the disposal of the subject sites will not significantly impact the surrounding residential lots as they will still have adequate access to other existing recreation and sport parks within a 500m (or 5 minute) walking radius catchment area.

The Department raised concerns to Council that the disposal of Alma Sharp Park will result in its surrounding locality not having access within a 500m walking radius to an existing recreation and sport park, and that there may be opportunities for future residential development to be benefited by the park. Council responded to the concerns with an amended planning proposal proposing to retain Alma Sharp Park for operational uses. In addition, Council advised that future development to the west of Edward Street will provide access to parkland as proposed in the draft Housing Strategy.

Council is required to consider the likely social and economic impacts of future development as required by the Act when assessing subsequent development for the subject sites.

4.3 Infrastructure

The planning proposal, in itself, will not result in increased demand for public infrastructure. The proposed changes are administrative in nature and do not facilitate any significant change in land use. The reclassification of the subject sites will formalise the operational nature of their use. The current zone and MLS are not proposed to change.

Any further requirement to increase infrastructure demand will be considered when assessing subsequent development for the subject sites. Council's anticipated dwelling numbers will not result in a significant increase in demand for infrastructure in the future and could be addressed during the assessment of any subsequent subdivision development application.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days, consistent with LEP practice note PN 16-001 Classification and reclassification of public land through a local environmental plan. The community consultation period is appropriate and forms the conditions of the Gateway determination.

LEP practice note PN 16-001 requires a public hearing to be held in accordance with section 29 of the *Local Government Act 1993* and section 3.34(2)(e) of the *Environmental Planning and Assessment Act 1979*.

5.2 Agencies

Council did not specifically raise which agencies will be consulted. Agency consultation is not required given the minor and administrative nature of the planning proposal.

6 Timeframe

Council proposes a six (6) month time frame to complete the LEP. However, a timeframe of 6 months would likely overlap with close-down periods in December 2022 and January 2023.

To account for delays caused by close-down periods and for the community consultation and public hearing, a timeframe of nine (9) months is recommended.

A requirement to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

As the planning proposal involves the reclassification of significant open space, it is recommended that the Department be the Local Plan-Making Authority in accordance with LEP Making Guideline and LEP practice note PN 16-001 as the approval of the Governor is required.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- It is generally consistent with the relevant local, regional and State legislation and policies.
- It is not expected to result in adverse environmental, social, economic and infrastructure impacts.
- It is consistent with Council's Recreational and Open Space Strategy (ROSS); and
- The planning proposal process is a transparent mechanism in reclassifying Council owned land to reflect Council's intended uses.

Based on the assessment outlined in this report, the proposal requires minor amendments prior to community consultation as demonstrated in section 9 below.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions – Direction 5.2 Reserving Land for Public Purposes is justified.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation, the planning proposal is to be amended to address the following matters:
 - Address the details required in Attachment 1 of LEP practice note PN 16-001, including criteria for the approval of the Governor;
 - Confirm that the public reserve status and interests of the subject sites are being changed, and is reflected on the correct part of the proposed Schedule 4 provisions of FLEP 2013;
 - Ensure the information relating to the retention of Alma Sharp Park for Council operational purposes is consistent throughout the planning proposal;
 - Clarify Council's future intentions of the laneways adjoining Paul Wenz Park; and
 - To reflect the final provisions of the Central West and Orana Regional Plan 2041 finalised on 2 December 2022.

The amended planning proposal is to be submitted to the Department prior to community consultation.

2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. A public hearing is required in accordance with section 29 of the *Local Government Act 1993* and section 3.34(2)(e) of the *Environmental Planning and Assessment Act 1979*.

4. Consultation with public authorities is not required.
5. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
6. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



_____(Signature)

19 December 2022 (Date)

Wayne Garnsey

Manager, Western Region



_____(Signature)

22 December 2022 (Date)

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