



IRF23/2987

Gateway determination report – PP-2023-2315

Reclassify Lots 1 and 2 DP 1270948, 300 Powell
Street, Grafton from Community to Operational land

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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
Planning Proposal – Reclassification of Lots 1 and 2 DP1270948, 300 Powell Street Grafton (REZ2023/0003) – September 2023
Ordinary Council Meeting – Report and Minutes – 13 December 2022

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Clarence Valley
PPA	Clarence Valley Council
NAME	To reclassify Lots 1 and 2 DP 1270948 from Community to Operational land
NUMBER	PP-2023-2315
LEP TO BE AMENDED	Clarence Valley Local Environmental Plan 2011 (CVLEP 2011)
ADDRESS	300 Powell Street, Grafton
DESCRIPTION	Lots 1 and 2 DP 1270948
RECEIVED	9/11/2023
FILE NO.	IRF23/2987
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

1.2 Objectives of planning proposal

The objectives of the planning proposal are to amend the Clarence Valley Local Environmental Plan 2011 (CVLEP 2011) to:

- Reclassify Lots 1 and 2 DP 1270948, 300 Powell Street, Grafton from community to operational land to enable consolidation with the neighbouring Lot 21 DP 712604 and transfer of ownership to the Police Citizens and Youth Club (PCYC) who currently manage the Grafton Regional Sports Complex.

The objectives and intended outcomes of this planning proposal are clear and adequate.

1.3 Explanation of provisions

Clause 5.2 Classification and reclassification of public land of the CVLEP 2011 enables Council to classify or reclassify public land as operational land or community land in accordance with the *Local Government Act 1993*.

This planning proposal seeks to amend the CVLEP 2011 to include Lots 1 and 2 DP 1270948, 300 Powell Street, Grafton within *Part 1 Land classified, or reclassified, as operational land – no interests changed of Schedule 4 Classification and reclassification of public land*.

All public reserve status and interests of Lot 1 and 2 DP 1270948 were discharged during the agreed compulsory acquisition process from NSW Crown Lands to Council.

It is not proposed to change any other provision relating to the land under the CVLEP 2011.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

The land is legally described as Lots 1 and 2 DP 1270948, 300 Powell Street, Grafton (**Figure 1**). Lots 1 and 2 have a combined area of 0.3118 hectares. The land is bound by Hoof Street to the north-east and Powell Street to the south-west.

The subject land was originally part of Frank McGuren Park (Crown Reserve 95853) which was subdivided to rectify an encroachment of the Grafton Regional Sports Complex building from the adjoining Lot 21 DP 712604, which contains the PCYC building.



Figure 1 Subject site (source: NSW Spatial Viewer)

The site is approximately 1.8km north-west of the Grafton Central Business District (**Figure 2**).



Figure 2 Site context (source: NSW Spatial Viewer)

1.5 Mapping

The planning proposal does not include (nor require) any amendments to LEP maps.

1.6 Background

The planning proposal explains that the subject land was originally part of Frank McGuren Park (formerly Lots 197 and 202 DP 751371), which was subdivided to rectify an encroachment of the Grafton Regional Sports Complex building from the adjoining Lot 21 DP 712604.

Council negotiated the acquisition of part of former Lots 197 and 202 DP 751371 with the NSW Department of Planning and Environment – Crown Lands Division (Crown Lands) over a number of years to rectify the encroachment of the sports complex building from Lot 21 DP 712604 (currently occupied by the PCYC) to facilitate the transfer of the property to their ownership.

Acquisition commenced in 2021 with a Plan of Acquisition of part of Lots 197 and 202 DP 751371, (which created Lot 1 and 2 DP 1270948) surveyed and registered on 8 February 2021. Crown Lands consented to the acquisition by agreement in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* in April 2021. The registered survey plan of acquisition is provided at **Figure 3**.

Council acquired Lots 1 and 2 DP 1270948 via an agreed compulsory acquisition process from Crown Lands on 30 March 2022 with notification given on the NSW Government Gazette on 8 April 2022.

Lot 21 DP 712604, land occupied by the PCYC, was previously classified as 'operational' by the former Grafton City Council on 28 June 1996 [Government Gazette, Issue No. 77, p. 3542].

2 Need for the planning proposal

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The proposal includes additional strategic justification for the reclassification of public land to operational land as required by the DPE *Practice Note PN 16-001 – Classification and reclassification of public land through a local environmental plan*.

The preparation of a planning proposal to amend Schedule 4 of the CVLEP 2011 to reclassify Lot 1 and 2 DP1270948 from community to operational land is the only way to achieve the objectives and intended outcomes to rectify the building encroachment, enable consolidation of Lots 1 and 2 DP1270948 with Lot 21 DP 712604 and transfer ownership of the resultant land parcel to the PCYC.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the North Coast Regional Plan 2041.

Table 3 Regional Plan assessment

Regional Plan Objectives	Justification
Objective 11: Support cities and centres and coordinate the supply of well-located employment land	The proposal is not inconsistent with this objective as the reclassification to operational land will allow for the transfer in ownership to the PCYC and provide an economic benefit for recreational and social activities.
Objective 12: Create a diverse visitor economy	The proposal is not inconsistent with this objective as it will provide for diverse social and recreational opportunities for residents and visitors.
Objective 19: Public spaces and green infrastructure support connected and healthy	<p>The proposal is not inconsistent with this objective as the reclassification of the land to operational allows Council to transfer ownership to the PCYC to provide and deliver services to the community in a more efficient manner.</p> <p>The reclassification will not change the current use for recreational and social purposes. The contract of sale includes a caveat on the land title to protect the rights of the vendor in the event that the purchaser ceases to continue to provide recreational services to the community, allowing the vendor to purchase the property for \$1.10 if the caveat terms are not met.</p>

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 4 Local strategic planning assessment

Local Strategies	Justification
Clarence Valley Council – Local Strategic Planning Statement	<p>The proposal generally aligns with Council's LSPS, particularly <i>Priority 5 – Provide for healthy, safe and well-connected communities, particularly providing social infrastructure</i>.</p> <p>The transfer of ownership from the Grafton Regional Sports Complex to the PCYC will reduce management costs (lease from Council) and enable them to operate the social youth facility more efficiently for the benefit of the community.</p>
The Clarence 2032 – Clarence Valley Community Strategic Plan	<p>The reclassification to operational land to enable the transfer of ownership to the PCYC is not inconsistent with the theme “society” and following objectives:</p> <ul style="list-style-type: none"> • “a safe and active community where healthy lifestyles and better health outcome are encouraged and supported with accessible infrastructure for residents of all ages and abilities” • “a community supportive of its young people and their safety, growth and development”
Clarence Valley Open Space Strategic Plan – May 2012	<p>The Clarence Valley Open Space Strategic Plan details the current and future direction for adequate, equitable and appropriate provision of open spaces, parks, reserves, sporting and recreation facilities and infrastructure. The proposal is not inconsistent with the strategic plan as the reclassification will not change the current use for recreational and social purposes.</p>
Plan of Management Community Land, Crown Reserves and other Public Places – September 2023	<p>Frank McGuren Park is identified as a district sportsground, with a gazetted purpose for public recreation. The proposal is not inconsistent with the Plan of Management as the reclassification will not change the current use for recreational and social purposes.</p>

3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 5 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.1 Flooding	Justifiably inconsistent	<p>This Direction applies to a planning proposal that alters a provision that affects flood prone land.</p> <p>The planning proposal does not include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy, the principles of the Floodplain Development Manual 2005, the Considering Flooding in Land Use Planning Guidelines 2021 or any adopted flood study and or floodplain risk management plan.</p> <p>The inconsistency is of minor significance as the proposal to reclassify the land to operational is of an administrative nature and does not propose to rezone the land, change the current use, increase development capacity or density of the land, or contain provisions that will permit any development specified under Direction 4.1.</p> <p>The proposal indicates that in the event of flood, emergency evacuation of the facility will be undertaken in compliance with the Clarence Valley Local Flood Plan (2023) – Sub Plan, however it is considered that the establishment will not be operational in the event of a flood in excess of 2% AEP.</p>
4.5 Acid Sulfate Soils	Justifiably inconsistent	<p>This Direction applies as the subject lands are mapped class 4 acid sulfate soils.</p> <p>The proposal does not include consideration of the <i>Acid Sulfate Soils Planning Guideline</i> as required by the Direction.</p> <p>The inconsistency is of minor significance as the planning proposal to reclassify the subject lands to operational is of an administrative nature, with no additional works, intensification or land zoning changes proposed in relation to this proposal.</p> <p>The proposal indicates that in the event that future works are proposed on the land, an ASS management plan will be provided with the development application.</p>

5.2 Reserving Land for Public Purposes	Justifiably inconsistent	<p>The planning proposal is inconsistent with this Direction as it seeks to reduce existing reservations of land for public purposes without the approval of the Planning Secretary.</p> <p>However, this inconsistency is of minor significance as the subject land was acquired from Crown Lands and Water Division under section 19 of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i>, which was approved by Her excellency the Governor of NSW on 30 March 2022 and removed all public land reservations.</p> <p>In addition, this proposal does not propose to rezone the land or effect a change in the current use. The sole purpose is to rectify an encroachment of the Grafton Regional Sports Complex building so the land and complex can be sold to the PCYC who currently manage the facility.</p> <p>The proposal relates to a small area of land (0.3118 hectares) to be consolidated with land used for public purposes and will provide for improved community outcomes.</p>
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3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs.

4 Site-specific assessment

4.1 Environmental

The planning proposal is of administrative nature, as such it is unlikely that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the planning proposal. This is due to:

- the planning proposal will enable consolidation of Lots 1 and 2 with the neighbouring Lot 21 DP 712604 so that ownership may be transferred to the Police Citizens and Youth Club (PCYC);
- the planning proposal does not propose to change any provisions relating to the land particular development; and
- the land having previously been cleared and developed with public infrastructure.

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 6 Environmental impact assessment

Environmental Impact	Assessment
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Flooding	<p>This proposal to reclassify the land to operational is of an administrative nature and does not propose to rezone the land, change the current use, increase the development capacity or density of the land.</p> <p>The proposal indicates that in the event of flood, emergency evacuation of the facility will be undertaken in compliance with the Clarence Valley Local Flood Plan (2023) – Sub Plan, however it is considered that the establishment will not be operational in the event of a flood in excess of 2% AEP.</p>
Acid sulfate soils	<p>The subject land is mapped as containing Class 4 acid sulfate soils. The planning proposal to reclassify the subject lands to operational are of an administrative nature, with no additional works or land zoning changes proposed in relation to this proposal.</p> <p>In the event that future works are proposed on the land, an ASS management plan will be provided with the development application.</p>

4.2 Social and economic

The proposal will facilitate positive social outcomes through sport and recreation, strengthening social networks and community character. Sport and recreation also support improved physical and mental health outcomes. No adverse economic impacts are anticipated.

4.3 Infrastructure

The proposal does not give rise to any increase in public infrastructure requirements.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

Pursuant to the Department's Local Environmental Plan Making Guideline dated August 2023, the subject planning proposal is classified as 'standard' and a period of 20 working days (Monday – Friday) is specified for proposals with this classification.

The Department's LEP Practice Note PN 16-001 Classification and reclassification of public land through a local environmental plan requires a period of 28 calendar days (Monday – Sunday), which broadly aligns with the LEP Making Guideline. Council's Community Participation Plan supports the 28-calendar day timeframe.

As such, the Gateway determination specifies 28 calendar days to ensure consistency with the practice note.

A public hearing will also be required to be held in accordance with section 29(1) of the *Local Government Act 1993*. This must occur after the exhibition has ended and at least 21 days public notice is to be given before the hearing. This allows the person chairing the hearing sufficient time to consider written submissions and all issues raised. This is specified in the Gateway determination.

The exhibition period proposed is considered appropriate and forms part of the conditions of the Gateway determination.

5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

No consultation is required with public authorities or government agencies under section 3.34(2)(d) of the Act.

6 Timeframe

Council proposes a six month time frame to complete the LEP.

A time frame of six months is considered appropriate and a condition forms part of the Gateway determination.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the site/planning proposal is minor in nature and the reclassification does not require the Governor's approval, the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

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

- The planning proposal is not inconsistent with the North Coast Regional Plan 2041;
- The planning proposal is administrative in nature to allow for the transfer of land to the Grafton PCYC; and
- The reclassification of land is considered to deliver a positive community benefit through more efficient operation of a social youth facility.

9 Recommendation

It is recommended the delegate of the Secretary:

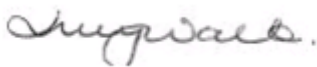
- Agree that any inconsistencies with section 9.1 Directions 4.1 Flooding, 4.5 Acid Sulfate Soils and 5.2 Reserving Land for Public Purposes are minor or justified.

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

The following conditions are recommended to be included on the Gateway determination:

1. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as standard as described in the Local Environmental Plan Making Guideline (Department of Planning and Environment, August 2023) and must be made publicly available for a minimum of 28 days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Local Environmental Plan Making Guideline (Department of Planning and Environment, August 2023).
2. No consultation is required with public authorities or government agencies under section 3.34(2)(d) of the Act.

3. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. Council must hold a public hearing when reclassifying public land from community to operational in accordance with the requirements of the Local Government Act 1993. A period of at least 28 days after the exhibition period has ended is to be given before the hearing.
4. Council must ensure that all relevant obligations in relation to the reclassification of public land through the LEP are undertaken in accordance with the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023) and *Practice Note PN 16-001 Classification and reclassification of public land through a local environmental plan*.
5. The LEP should be completed within six months from the date of the Gateway determination.



29.11.2023

____ (Signature)

____ (Date)

Lucy Walker
Manager, Northern Region



4 December 2023 (Date)

____ (Signature)

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