

17 December 2022

Our ref EXC 227209

Dear

**Campbelltown City Council Advice on Reclassification of Land at Kanbyugal Reserve and 2 Rose St, Campbelltown**

We refer to our meeting on 2 December 2022 in respect of Council's proposed reclassification of community land at Kanbyugal Reserve and subsequent boundary adjustment with the adjoining lot at 2 Rose Street, Campbelltown for the purpose of containing the Campbelltown Animal Care Facility site *wholly* within Council's operational land.

**1. Definitions**

The following terms used in this advice are defined as follows:

**CLEP** means the Campbelltown Local Environmental Plan 2015

**Community Land** means land that is classified as community land under Division 1 of Part 2 of Chapter 6 of the LGA.

**EPAA** means the *Environmental Planning and Assessment Act 1979* (NSW).

**LGA** means the *Local Government Act 1993* (NSW).

**Lot 21** means the whole of the land contained in the Certificate of Title Folio Identifier 21/572308 located at 2 Rose Street, Campbelltown NSW 2560.

**Lot 22** means the whole of the land contained in the Certificate of Title Folio Identifier 22/572308 forming *part* of Kanbyugal Reserve.

**LRS** means NSW Land Registry Services.

**Operational Land** means land that is classified as operational land under Division 1 of Part 2 of Chapter 6 of the LGA.

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**Proposal** means Council's "*Planning Proposal – September 2022*" provided to our office on 24 November 2022.

**Proposed Boundary Adjustment** means the proposed boundary adjustment between Lot 21 and Lot 22 as set out in Figure 4 in the Proposal.

**Site** means the Campbelltown Animal Care Facility site.

**Transitional Provision 1** means clause 6(2) of Schedule 7 of the LGA.

**Transitional Provision 2** means clause 6(3) of Schedule 7 of the LGA.

## **2. Background**

- 2.1 Council is the registered proprietor of Lot 21 and Lot 22.
- 2.2 Lot 21 is zoned "IN2 – Light Industrial and is Operational Land.
- 2.3 The part of Lot 22 relevant to this advice being the area directly adjoining Lot 21 is zoned "RE1 – Public Recreation" and is Community Land.
- 2.4 As the Site is currently located on both Lot 21 and Lot 22, it is exposed to:
  - (a) two different public land classifications; and
  - (b) two different zonings.
- 2.5 Based on the Proposal, Council intends to amend the CLEP to:
  - (a) reclassify the relevant part of Lot 21 being the area directly adjoining Lot 22 the subject of the proposed boundary adjustment from Community Land to Operational Land;
  - (b) alter the zoning of the relevant part of Lot 21 from "RE1 – Public Recreation" to "IN2 – Light Industrial" to be in line with the current zoning of Lot 22; and
  - (c) implement the Proposed Boundary Adjustment.

## **3. Questions**

You have asked us to advise on:

- 3.1 The presence of any legal barriers in relation to the Proposed Boundary Adjustment of Kanbyugal Reserve to the north of the Site and Lot 21; and
- 3.2 Any particular process by which Council is to carry out the Proposed Boundary Adjustment.

#### **4. Status of Lot 21**

- 4.1 We enclose the title search of Lot 21.
- 4.2 Except for all public land that are deemed to be automatically classified as Community Land on the commencement of the LGA being 1 July 1993 pursuant to Transitional Provision 1 (ie. land comprising a public reserve), Council is to classify, by resolution, all public land as either Operational Land or Community Land pursuant to Transition Provision 2 by 30 June 1994.
- 4.3 As Lot 21 was created on the registration of DP572308 on 28 October 1974 prior to the commencement of the GLA being 1 July 1993. We assume Lot 21 was not part of any public reserve, hence, such Lot was classified as Operational Land by resolution pursuant to Transitional Provision 2.
- 4.4 Please let us know if the abovementioned assumption is inaccurate.

#### **5. Status of Lot 22**

- 5.1 We enclose the title search of Lot 22.
- 5.2 Whilst we note Council's understanding that Lot 22 forms part of Kanbyugal Reserve (ie. a public reserve), this has not been officially recorded on the title as the second schedule of the title does not contain the relevant 'KP' notification being "*The land within described is a public reserve*".
- 5.3 We also note DP572308 (copy enclosed) does not bear a statement of intention dedicating Lot 22 as a public reserve.
- 5.4 Has Council ever prepared an appropriate notification in the Government Gazette instead to dedicate Lot 22 as a public reserve?
- 5.5 If Council has prepared an appropriate notification in the Government Gazette to dedicate Lot 22 as a public reserve, Council should have subsequently lodged a Request 11R form with LRS to record such notification in the second schedule of the title. We can assist Council in this regard if Council provides us with a copy of the gazettal notice.
- 5.6 Despite the absence of the relevant notification in the second schedule of the title, Transition Provision 1 provides that land comprising a public reserve that is vested in or under the control of Council as at the commencement of Part 2 of Chapter 6 of the LGA (ie. 1 July 1993) "*is taken to have been classified as*" Community Land".
- 5.7 Please note the term "public reserve" is defined in the LGA to include a "public park". Although the term "public park" is not defined in the LGA, in our view, it certainly extends to an *unrecorded* public park that has been neither:
  - (a) notified in the Government Gazette; nor
  - (b) expressed to be a public reserve whilst bearing a relevant statement of intention in the relevant plan.

- 5.8 We assume Lot 22 was a public reserve prior to 1 July 1993. If so, Lot 22 is classified as Community Land pursuant to Transitional Provision 1.
- 5.9 Please let us know if the abovementioned assumption is inaccurate.

## **6. BP Advice**

- 6.1 In respect of Council's enquiry as to any legal barriers to the Proposed Boundary Adjustment:
- (a) We note that the Proposal is to be referred to the Minister for the Gateway determination under section 3.34 of the EPAA to amend the CLEP.
  - (b) Once the CLEP is amended to be in line with the Proposal, the CLEP that reclassifies the relevant part of Lot 22 as Operational Land can make a provision to the effect that, on the commencement of the amended CLEP, the relevant part of Lot 22 ceases to be a public reserve and is discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the relevant part of Lot 22, except for:
    - (i) any reservations that except the land out of a Crown grant relating to that land; and
    - (ii) reservations of minerals.
  - (c) The Proposed Boundary Adjustment cannot take place until the reclassification of the relevant part of Lot 22 as Operational Land under section 30 of the LGA is completed as Community Land cannot be subdivided.
- 6.2 In respect of any particular process by which the Proposed Boundary Adjustment is to be carried out:
- (a) Upon the reclassification of the relevant part of Lot 22 as Operational Land, a plan of subdivision (which includes a plan of boundary adjustment) can be prepared and lodged with the LRS.
  - (b) When the plan is lodged, a Request 11R form is generally lodged together with evidence indicating that the subject area has been reclassified as Operational Land in accordance with section 30 of the LGA (ie. a copy of the amended CLEP). This Request form is intended to remove any 'KP' notification in the second schedule of title, if any.
  - (c) As noted in paragraph 5.2 above, however, Lot 22 does not contain the relevant 'KP' notification being "*The land within described is a public reserve*" as neither the registration of DP572308 nor the publication of any relevant gazettal notice resulted in Lot 22 becoming a public reserve.
  - (d) Instead, Lot 22 is taken to have been classified as Community Land by virtue of Transitional Provision 1 and is used as a public park which constitutes a category of public reserve within the meaning of the LGA.
  - (e) Hence, it is not clear at this stage whether such Request 11R form will be required by the LRS.

- (f) We have sought clarification from the LRS in this regard and have been advised by the LRS that it will only examine the plan of subdivision as if both Lot 21 and Lot 22 were Operational Land from the inception and will disregard any amendment to the CLEP as, based on the LRS record, Lot 22 has never been recorded as a public reserve (ie. community land).
- (g) Despite the above, we strongly recommend that Council approaches the Proposed Boundary Adjustment in accordance with its statutory obligations under the LGA and section 30 of the LGA requires the CLEP be amended to that effect first prior to the Proposed Boundary Adjustment is to proceed.
- (h) Hence, we recommend the Proposed Boundary Adjustment to proceed by way of a plan of subdivision (which includes a plan of boundary adjustment) only upon the completion of the relevant amendment to the CLEP (notwithstanding the advice from the LRS referred to in paragraph 6.2(f) above).

## **7. Next Steps**

- 7.1 We note that the approximate timeline for the Minister's determination as to the Proposal is January 2023 and the amendment to the CLEP is expected to be completed in August 2023.
- 7.2 Upon completion of the amendment to the CLEP to reclassify the relevant part of Lot 22 as Operational Land, Council's surveyor can lodge a plan of subdivision of Lot 21 (which is already Operational Land) and Lot 22 to realign the boundary between the two lots.
- 7.3 We can review the plan of subdivision and the amended CLEP in due course once such are provided by Council to confirm the reclassification of the relevant part of Lot 22 as Operational Land. If the LRS changes its stance and requires a Request 11R form to be lodged with the plan of subdivision, we can prepare such dealing and lodge with the LRS.
- 7.4 Please contact our office if you have any questions or would like to discuss further.

Yours faithfully  
**Bartier Perry**