

ITEM NO: 10

SUBJECT: RECLASSIFICATION OF COUNCIL OWNED LAND

FILE NO: F15404 - 24/92486

---

**Delivery Program Link**

*Principal Activity:* Live

*Service:* City Wide Strategic Planning Service

---

**Recommendations:**

1. *That Council notes the outcome of planning investigations into the fifteen (15) sites previously identified for potential reclassification from Community Land to Operational Land, and endorse the subsequent planning recommendations, being to:*
    - a) *Proceed with the reclassification of four (4) sites, as detailed in the report;*
    - b) *Further investigate five (5) sites to resolve planning matters such that these sites may be reclassified at a future date*
    - c) *Not proceed with the reclassification of five (5) sites due to the environmental sensitivity of these land parcels;*
  2. *That, for those sites recommended for reclassification at this time, the Council endorses the draft Planning Proposal for Blue Mountains Local Environmental Plan 2015 Amendment 21 (Reclassification of Council Owned Land) to be submitted to the Department of Planning and Environment (the Department) requesting a Gateway Determination in accordance with the Environmental Planning and Assessment Act 1979;*
  3. *That the Council notes the advice provided by the Local Planning Panel (Attachment 2) on the draft Planning Proposal for Blue Mountains Local Environmental Plan 2015 Amendment 21 (Reclassification of Council Owned Land) as included within this report;*
  4. *That the Council processes the Planning Proposal in accordance with the Gateway Determination issued under the provisions of Section 3.34 of the Environmental Planning and Assessment Act 1979;*
  5. *That the Council receives a report, subject to Gateway determination, at the conclusion of the public exhibition period and public inquiry to enable consideration of submissions made to Blue Mountains Local Environmental Plan 2015 (Amendment 21); and*
  6. *That the Council delegates to the CEO or her delegate the authority to make minor amendments to the adopted draft Blue Mountains Local Environmental Plan 2015 (Amendment 21) that may arise after the formal adoption by the Council of this planning proposal, subject to such amendments maintaining the policy intent of the draft proposals.*
-

**Report by A/Director Environment & Planning Services:****Reason for report**

This report informs Council of the outcomes of planning investigations into the proposed reclassification of fourteen (14) underutilised parcels of Council land and one (1) drainage reserve, from Community Land to Operational Land in accordance with Section 27 and Section 30 of the Local Government Act 1993.

The report also seeks the Council's endorsement of the Planning Proposal prepared for those parcels of land recommended as suitable for reclassification at this time.

**Background**

At its meeting of 27 September 2022, Council considered a report on the reclassification of Council land and resolved:

1. *"That the Council endorses the reclassification of fourteen (14) under-utilised sites identified in this report from Community Land to Operational Land in accordance with section 27 and section 30 of the Local Government Act 1993;*
2. *That the Council approves to prepare a planning proposal in accordance with Division 3.4 of the Environmental Planning & Assessment Act 1979, for the reclassification of the following Council sites from Community Land to Operational Land:*
  - *Lot 32 DP 8464 at 21 Kenny Street, Mount Victoria;*
  - *Lot 132 DP 7386 at 107 Great Western Highway, Blackheath;*
  - *Lot 133 DP 7386 at 108 Great Western Highway, Blackheath;*
  - *Lot 134 DP 7386 at 109 Great Western Highway, Blackheath;*
  - *Lot 146 DP 13813 at 29 Springfield Crescent, Springwood;*
  - *Lot 46 DP 218261 at 62-64 Singles Ridge Road, Winmalee;*
  - *Lot 8 DP 201146 at 16 Birdwood Avenue, Winmalee;*
  - *Lot 3 DP 730388 at 23-25 Endeavour Drive, Winmalee;*
  - *Lot 52 DP 1117055 at 585 Great Western Highway, Faulconbridge;*
  - *Lot 2 DP 776552 at 19P Ross Street, Glenbrook;*
  - *Lot 99 DP 16449 at 75 Godson Avenue, Blackheath;*
  - *Lot A DP 435187 at 16 Miles Avenue, Katoomba;*
  - *Lot 312 DP 1122778 at 36 Great Western Highway, Wentworth Falls; and*
  - *Lot 8 DP 711773, Lot 1 DP 822262 and Lot 9 DP 711773 at 18-26 Power House Lane, Katoomba; and*
3. *That, upon completion of Planning Proposal, the Council will receive a report for consideration and endorsement prior to proceeding to the Gateway Determination process as per section 3.34 of the Environmental Planning and Assessment Act 1979."*

[Minute no. 262]

It is noted that a correction is required to the street address of Lots 132, 133 and 134 in DP 2786 Blackheath. The street address of each of these lots is 107-111 Great Western Highway. A correction is also required for 585 Great Western Highway, Faulconbridge. This property is Lot 51 in DP 1117055. The corrected details are used in the remainder of this report.

Council also separately considered a report on the reclassification of a Council drainage reserve at 20A The Appian Way Woodford at its meeting of 23 October 2023, and resolved:

1. *"That the Council submits an application to the Minister for Planning and Public Spaces for the reclassification of Council's community land known as 20A The Appian Way, Woodford being Lot 27 in DP 9972 to operational land as per Option Two (2) outlined*

*in this report, subject to the owner agreeing to meet all reasonable application fee, survey and legal costs associated with this matter;*

2. *That the Council upon successful reclassification of Council land at 20A The Appian Way, Woodford grants an easement, via a Section 88B instrument under the Conveyancing Act 1919, in favour of the landowners of 22 Oakura Avenue, Woodford; and*
3. *That the Council authorises the Chief Executive Officer (or her delegate) to negotiate and finalise the details of an easement, via a Section 88B instrument under the Conveyancing Act 1919 and authorises the affixing of the Common Seal or execution of all relevant documents relating to this matter under Power of Attorney.”*

[Minute no. 219]

Option Two (2), as referenced in Minute no. 219 (1), proposed that the reclassification of 20A The Appian Way Woodford proceed via submission of an application under Section 3.22 of the *Environmental Planning and Assessment Act 1979*, (EP&A Act). This section allows for amendments of Environmental Planning Instruments (including a *Local Environmental Plan*) of a minor nature. However, the Department of Planning, Housing and Infrastructure advised that the proposed reclassification would not be considered a minor amendment under section 3.22 of the EP&A Act. Therefore, the reclassification of 20A The Appian Way, Woodford will now be pursued via Planning Proposal as included in this report.

### **Planning Investigation Process**

The fifteen (15) land parcels proposed for reclassification under the above-mentioned resolutions were subject to further planning investigations, to ensure that all legislative requirements were considered, and the land was fit for purpose for the intended future land use. These investigations included:

- Flora and Fauna assessments, where recommended by the initial independent Land Use Study.
- Supplementary planning assessments.
- Assessment against State Government Planning Proposal criteria and the LEP Practice note PN 16-001 – Classification and Reclassification of public land through a local environmental plan.

The recommendations from this planning investigation are that:

- Four (4) parcels are suitable for reclassification at this time.
- Five (5) parcels are potentially suitable if the identified planning issues can be resolved.
- The remaining 6 land parcels are unsuitable to proceed to reclassification, primarily due to the environmental constraints identified on these sites.

Attachment 1 provides a more detailed outline of the planning investigation results and recommended outcomes for each of the parcels.

### **Land Identified as Suitable for Reclassification and Draft Planning Proposal**

The following parcels have been identified as suitable for reclassification from Community to Operational land:

- 75 Godson Avenue, Blackheath (Lot 99 DP 16449)
- 36 Great Western Highway, Wentworth Falls (Lot 312 DP 1122778)
- 19P Ross Street (Glen Lane), Glenbrook (Lot 2 DP 776552)
- 20A The Appian Way, Woodford (Lot 27 DP 9972)

A draft Planning Proposal has been prepared to amend Blue Mountains LEP 2015 (LEP 2015) to reclassify the above parcels of land, and is included at Enclosure 1 to this report.

With reference to the land at 36 Great Western Highway, the following additional changes and amendments are included in the draft planning proposal:

- Removal of the public reserve status, and
- Rezoning of the land from RE1 Public Recreation to C4 Environmental Living under LEP 2015.

As part of the rezoning of 36 Great Western Highway, Wentworth Falls, the following consequential LEP amendments are also proposed for that land as part of the draft Planning Proposal:

- a minimum subdivision lot size development standard of 1200m<sup>2</sup> is proposed to be applied to the site, via an amendment to the LEP 2015 Lot Size Map. This minimum subdivision lot size is consistent with that applied to the surrounding sites which are zoned C4 Environmental Living.
- The Lot Averaging provisions of Clause 4.1F in LEP 2015, which currently apply to surrounding C4 zoned lands, are proposed to be extended to include the site, through an amendment to the LEP 2015 Lot Averaging Map, to include the site within land mapped as *Area G – Clause 4.1F*.

#### **Local Planning Panel advice**

As required by section 9.1 of the *Environmental Planning and Assessment Act, 1979*, the draft Planning Proposal was referred to the Blue Mountains Local Planning Panel (the Panel) for advice. The Panel considered the matter at its meeting of 24 June 2024.

The Panel supported the proposed reclassification of the five nominated parcels of land, as well as the proposed removal of public reserve status and rezoning of 36 Great Western Highway, Wentworth Falls, noting also that the public exhibition process will seek views from the public on the recreational expectations of these sites. The panel also advised that the Planning Proposal should more specifically highlight the consistency of the proposal with the planning framework, including an emphasis on how the proposal fulfils the housing supply requirements.

The Planning Proposal has been updated to include the additional information recommended by the Local Planning Panel. The full Panel advice is provided at Attachment 2 to this report.

#### **Timeline for LEP Amendment**

Should the Council endorse the draft Planning Proposal, a Gateway Determination will be sought from the Department of Planning, Housing and Infrastructure.

It is expected that the public exhibition is likely to occur in November-early December 2024. A Public Hearing regarding the reclassification is also required, which is then likely to take place in late January-February 2025.

It is therefore anticipated that the final report back to Council outlining the results of the public exhibition and the public hearing would occur in mid-2025.

#### **Land Parcels Requiring Further Planning Investigation**

Of the fifteen (15) land parcels the subject of planning investigations for potential reclassification, the following land could not proceed as part of the current Planning Proposal, until planning issues identified during the current phase of the reclassification project are resolved.

- Lot 132 DP 7386 at 107-111 Great Western Highway, Blackheath;
- Lot 133 DP 7386 at 107-111 Great Western Highway, Blackheath;
- Lot 134 DP 7386 at 107-111 Great Western Highway, Blackheath;

- 585 Great Western Highway, Faulconbridge (Lot 51 DP 1117055)
- Lot 46 DP 218261 at 62-64 Singles Ridge Road, Winmalee;

The three lots comprising site at 107-111 Great Western Highway, Blackheath were considered for both reclassification from Community to Operational Land and rezoning to permit residential development. However, to enable rezoning for residential purposes, the site must be able to comply with the bushfire requirements set out in Ministerial Direction 4.3 *Planning for Bushfire Protection*. Further investigation is required to confirm whether compliance can be achieved.

The site at 62-64 Singles Ridge Road, Winmalee was also proposed for both reclassification from Community to Operational Land, and rezoning to C4 Environmental Living. However, the site adjoins an active quarry and is mapped under LEP 2015 as an Extractive Transition Area. Rezoning for residential use is unlikely to comply with the applicable requirements of the *State Environmental Planning Policy (Resources and Energy) 2021*. This is a complex site, and while it has long been the Council's intention to dispose of this surplus land, further investigations into alternative land use options are required before this site could proceed to reclassification and rezoning.

The site at 585 Great Western Highway, Faulconbridge was proposed for reclassification from Community to Operational Land. However further negotiation with Transport for NSW is required, to resolve future use opportunities, before this site can proceed to reclassification.

These sites have therefore not been included in the draft Planning Proposal.

#### **Land Identified as Unsuitable for Reclassification**

Five of the fifteen land parcels, following a detailed planning investigation, are not considered appropriate for reclassification from Community to Operational Land, due to the environmental sensitivity of these sites. These sites include:

- 21 Kenny St, Mount Victoria
- 29 Springfield Avenue, Springwood
- 16 Birdwood Avenue, Winmalee
- 23-25 Endeavour Drive, Winmalee
- 18-26 Power House Lane, Katoomba
- 16 Miles Avenue, Katoomba

These sites have therefore not been included in the draft Planning Proposal. Given the sensitivity of these sites, the land use planning recommendation is to rezone most of these land parcels to C2 Environmental Conservation. Such rezonings do not form part of the current Planning Proposal and can be considered at a future date.

It should be noted that 16 Miles Avenue, Katoomba is a deferred matter under LEP 2015. Any reclassification or rezoning of this site should be part of a future translation of the remaining deferred lands from LEP 2005 into LEP 2015.

**Sustainability assessment**

Effects	Positive	Negative
Environmental	The sites proposed to proceed to reclassification have been assessed as resulting in an acceptable environmental impact as outlined in the planning proposal and Attachment 1. Removal of the identified highly environmental sensitive sites from the reclassification proposal ensures there is no adverse impact. Those sites requiring further assessment will only proceed where the environmental impact is acceptable.	Nil
Social	Proceeding with the Planning Proposal allows for a higher use of the identified sites, including the provision of additional housing on some sites. The Ross Lane reclassification allows for legal access to private land. Reclassification of the drainage reserve at 20A The Appian Way enables legal access to an existing dwelling house.	Nil
Economic	Reclassification of the selected sites to operational will allow Council to divest or manage the sites resulting in potential income.	Nil
Governance	Reclassifying the selected sites to operational land will give the Council the ability to deliver on its strategic and economic outcomes. Reclassification processes will be carried out in accordance with the EPA&A Act 1979 and Local Government Act 1993.	Nil

**Financial implications**

There are no financial implications for the Council in adopting the recommendations in this report. The preparation and processing of planning proposals to keep the Council's local planning framework up to date is covered under the current budget.

**Legal and risk-management issues for the Council**

There are no foreseeable legal issues or risks associated with the reclassification of the sites.

**External consultation**

This report recommends endorsing the draft Planning Proposal for draft Amendment 21 to LEP 2015 to be submitted for Gateway Review to proceed to public exhibition. Community consultation will be undertaken in line with the requirements of the Council's Community Participation Plan and the Gateway Determination. Further, as required by the LG Act 1993, the proposed reclassification will be subject to a public hearing.

**Alignment with Delivery Program and/or Operational Plan**

The recommendations in this report are consistent Delivery Program 2022–2026 - Key Direction 4, Strategy 4.1: 4.1a *Foster appropriate investment and development to support revitalisation of towns, villages and key visitor destination sites.*

**Conclusion**

This report presents the findings of the planning investigation over 15 land parcels to determine the planning merit in reclassification of these sites from Community to Operational land. In accordance with the results of this investigation, a draft Planning Proposal (LEP Amendment) has been prepared to proceed with the reclassification for four (4) of these land parcels. Further investigation is required to determine whether other listed land parcels are appropriate for future reclassification.

It is recommended that the Council endorse the draft Planning Proposal – Amendment 21 to LEP 2015 to be submitted to the NSW Department of Planning, Housing and Infrastructure for Gateway Review. Subject to a favorable Gateway Determination, the Planning Proposal will be placed on public exhibition in line with Council's Community Participation Plan and the Gateway Determination conditions. Following public exhibition and a public hearing being held, a report will be brought back to Council on the outcomes of exhibition and the steps required to finalise the LEP amendment.

**ATTACHMENTS/ENCLOSURES**

<b>1</b>	Council Meeting Version 1.2- Draft PLANNING PROPOSAL - LEP 2015 amendment 21 - reclassification of council owned land(4)	24/138083	Enclosure
<b>2</b>	Attachment 1 to Council Report	24/138056	Attachment
<b>3</b>	Attachment 2 - Final LPP Determination - Reclassification Planning Proposal - 24 June 2024	24/138058	Attachment

\* \* \* \* \*

## Attachment 2 - Attachment 1 to Council Report

## Attachment 1 - Reclassification proposals – planning assessment and outcomes.

Tranche 1 - No significant planning concerns – Proceed with Reclassification					
<ul style="list-style-type: none"> <li>Initial tranche of reclassifications</li> <li>Planning Proposal Prepared</li> </ul>					
Parcel Of Land	Flora & Fauna study	Land use (DA) advice	Outcome of Further Investigations	Outcome	
19P Ross Street, Glenbrook	N/A	Not Obtained	Complies with all land use planning requirements for reclassification. Refer to Planning Proposal for further details.	Proceed with Planning Proposal.	
75 Godson Avenue, Blackheath	Suitable for development – no significant vegetation or other ESL features	Suitable for residential development	Complies with all land use planning requirements for reclassification. Refer to Planning Proposal for further details.	Proceed with Planning Proposal.	
36 Great Western Highway, Wentworth Falls	N/A	Not Obtained	Complies with all land use planning requirements for reclassification. Refer to Planning Proposal for further details. Note – also requires referral to WaterNSW as part of preparation of the Planning Proposal	Proceed with Planning Proposal.	
20A The Appian Way, Woodford	N/A	Not Obtained	Complies with all land use planning requirements for reclassification. Refer to Planning Proposal for further details.	Proceed with Planning Proposal.	



Tranche 2 – Further Investigation required				
<ul style="list-style-type: none"> <li>Likely to proceed to planning proposal when issues are addressed</li> <li>Short-Medium Term</li> </ul>				
Parcel Of Land	Flora & Fauna study	Land use (DA) advice	Outcome of Further Investigations	Outcome
107-111 Great Western Highway, Blackheath (3 parcels comprising Lots 132, 133 and 134 in DP 7386)	Not obtained	Not obtained	Additional investigations required in relation to additional bushfire protection requirements and service supply.  Will likely require lot consolidation and 2 lot subdivision (reoriented to Chelmsford Avenue) to meet bushfire requirements.  Next step is the preparation of the bushfire assessment and environmental assessment.	Further Investigation. Outstanding matters likely to be able to be resolved in a timely manner and progressed to planning proposal.
585 Great Western Highway, Faulconbridge	N/A	Not Obtained	Complies with all land use planning requirements for reclassification. However, further negotiation is required with Transport for NSW to confirm future use opportunities, prior to proceeding with a reclassification.	Further Investigation. Outstanding matters likely to be able to be resolved in a timely manner and progressed to planning proposal.
Tranche 3 – Further Investigation required – Complex site(s)				
<ul style="list-style-type: none"> <li>Outcomes Less Certain</li> <li>Longer term</li> </ul>				
Parcel Of Land	Flora & Fauna study	Land use (DA) advice	Outcome of Further Investigations	Outcome
62-64 Singles Ridge Road, Winmalee	Not obtained	Not obtained	Unsuitable for residential development as the site adjoins an active quarry and serves as the only buffer between the quarry and adjoining residential properties. The site is mapped in LEP 2015 as an extractive transition area. and. unlikely to comply with s2.19 of SEPP (Resources and Energy) 2021; Further investigations into alternative land use options required.	Further Investigation – Long term as complex issues to be resolved

NOT PROCEEDING				
Parcel Of Land	Flora & Fauna study	Land use (DA) advice	Outcome of Further Investigations	Outcome
21 Kenny St Mount Victoria	Significant environmental constraints	May have limited development potential. Further assessment required	Significant environmental constraints on the site, limiting ability to achieve appropriate Retain as community land and investigate rezoning to C2 Environmental Conservation.	Reclassification Not Proceeding
29 Springfield Avenue Springwood	Significant Environmental Constraints.	Residential development inappropriate. Retain for conservation	Unsuitable for development due to significant environmental constraints. Retain as community land and investigate rezoning to C2 Environmental Conservation	Reclassification Not Proceeding
16 Birdwood Avenue, Winmalee	Unsuitable for development	Potential for low impact residential development	Unsuitable for development due to significant environmental constraints. Retain as community land and investigate rezoning to C2 Environmental Conservation	Reclassification Not Proceeding
23-25 Endeavour Drive, Winmalee	Significant environmental constraints	Residential development inappropriate. Retain for conservation	Unsuitable for development due to significant environmental constraints. Retain as community land and investigate rezoning to C2 Environmental Conservation	Reclassification Not Proceeding
16 Miles Avenue, Katoomba	N/A	Not obtained	Land is zoned under LEP 2005, contains protected area (slope) and the development potential highly constrained. To be considered in future translation of LEP 2005 LC zone into LEP 2015. However, rezoning for residential development not supported. Need to look at alternative options for use of the site.	Reclassification Not Proceeding
18-26 Power House Lane, Katoomba	N/A	obtained	Entire site is Environmentally Sensitive land, and unsuitable for development Investigate rezoning all land to C2 Environmental Conservation.	Reclassification Not Proceeding

## Attachment 3 - Attachment 2 - Final LPP Determination - Reclassification Planning Proposal - 24 June 2024

Reference: F15567  
Determination

Blue Mountains Local Planning Panel (LPP) 27 May 2024

### 2.4 PLANNING PROPOSAL – Blue Mountains Local Environmental Plan 2015 – Draft Amendment 21 – Reclassification of Council Owned Lands, Including Removal of Public Reserve Status and Rezoning of One of the Reclassified Sites.

**Site inspected** No

**Relevant considerations**

- (a) the provisions of—
  - (i) any environmental planning instrument, and
  - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
  - (iii) any development control plan, and
  - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
  - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

Refer to Council's assessment report for details.

**Material considered**

1. Council report for Planning Proposal - Blue Mountains Local Environmental Plan 2015 – Draft Amendment 21
2. Draft Planning Proposal – LEP 2015 Amendment 21

**Council recommendation**

That the Blue Mountains Local Planning Panel supports the Draft Planning Proposal Amendment 21 to the Blue Mountains Local Environmental Plan 2015 reclassifying various parcels of Council owned land from Community to Operational.

Reference: F15567  
Determination

Blue Mountains Local Planning Panel (LPP) 27 May 2024

## DETERMINATION

### Panel decision –

That the Blue Mountains Local Planning Panel supports the Draft Planning Proposal Amendment 21 to the Blue Mountains Local Environmental Plan 2015 reclassifying various parcels of Council owned land from Community to Operational, and the rezoning of one of these parcels from R1 Public Recreation to C4 Environmental Living.

### Panel advice

The Panel considered and discussed issues for each site relating to recreation use, community expectations, bushfire protection, flora & fauna significance, Aboriginal artefacts and other issues. The Panel considered the Council's processes to date were thorough and satisfactory.

The Panel considered that the Planning Proposal has local merit and is consistent with regional and local strategies and plans.

The Panel advises the following:

- a) The Council continue its processes to seek reclassification of the following sites from Community to Operational Land in accordance with Section 27 and 30 of the Local Government Act 1993:
  - 75 Godson Avenue, Blackheath (Lot 99 DP 16449)
  - 36 Great Western Highway Wentworth Falls (Lot 312 DP 1122778)
  - 585 Great Western Highway, Faulconbridge (Lot 51 DP 1117055)
  - 19P Ross Street, Glenbrook (Lot 2 DP 776552)
  - 20A The Appian Way, Woodford (Lot 27 DP 9972)
- b) Remove the Public Reserve status and rezone the following sites from RE1 Public Recreation to C4 Environmental Living:
  - 36 Great Western Highway Wentworth Falls (Lot 312 DP 1122778)

The background and justification for this draft LEP amendment is provided in the Planning Proposal (Attachment 1).

The Panel further advises:

- Council should highlight and emphasise how this planning proposal fulfils the housing supply requirements of the State Government.
- The public exhibition process will seek views from the public on the recreational expectations of these sites
- Council should further emphasise the local and strategic merit in the Planning Proposal. The wording of the consistency with the planning framework should be less generic and more specific to the individual sites.
- Council should add any qualitative or quantitative information on the recreational use of the sites to the Planning Proposal which in turn justifies that reclassification is appropriate.

**Advice date** 24 June 2024

**Votes** N/A

Reference: F15567  
Determination

Blue Mountains Local Planning Panel (LPP) 27 May 2024

## 1. DETERMINATIONS AUTHORISED BY PANEL

**Determinations  
authorised by Panel**



Panel Chair – Julie Savet Ward

Linda McClure

Linda Gosling

Claire O'Neill

\*\*\*\*\*