

### 14.3 RECLASSIFICATION OF LAND - 8 TABRATONG STREET NYNGAN NSW 2825

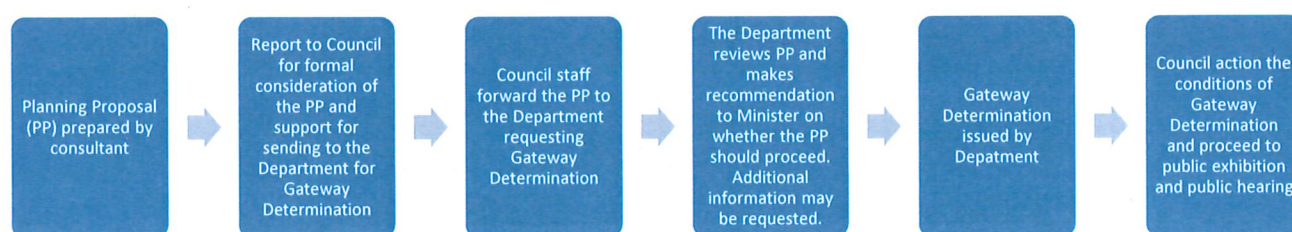
#### 1. Introduction

The purpose of this report is to seek direction from Council regarding the Planning Proposal (Attachment 1) and if it should be forwarded to the NSW Department of Planning, Housing and Infrastructure (the Department) for the purpose of seeking a Gateway Determination.

The Planning Proposal (Attachment 1) seeks to reclassify three parcels of Council-owned land from “community” to “operational”.

This report also seeks direction from Council to place the Planning Proposal on public exhibition and hold a public hearing should the Department issue the Gateway Determination.

The flowchart below shows the process up to the stage of public exhibition and public hearing.



After the public exhibition of the Planning Proposal and the public hearing are completed, a further report will be provided to Council detailing any submissions received and making a recommendation on whether to proceed with the land reclassification. Should Council decide to proceed with the land reclassification, it will formally request that the Department make an amendment to *the Bogan Shire Local Environmental Plan (LEP) 2011* to reclassify the land as ‘operational’.

#### 2. Background

The Planning Proposal relates to three parcels of land (the land) in the employment precinct of Nyngan. The land to be reclassified is:

- Lot 1 DP 102113
- Lot 2 DP 355559
- Lot 3 DP 945184

Collectively the land is identified as 8 Tabratong Street Nyngan. The land is not mapped as a public reserve and is currently vacant. A theatre was formerly located on the site but was demolished in 2020 as it was in a state of dilapidation and posed a safety risk.

## Nyngan Landfill - Disposal, Recycling and Resource Recovery

	Mixed Waste (Tonnes)	Recoverable Materials (Tonnes)			Recyclable Materials (Tonnes)		
		Organic	Masonry	Soil	Paper / Cardboard	Metal / eWaste	Other
July 2024	98.55	38.60	9.00	-	3.36	8.70	1.23
August 2024	126.59	46.32	6.00	-	3.60	14.52	0.15
September 2024	425.57	36.04	-	-	4.98	12.96	0.51
October 2024							
November 2024							
December 2024							
January 2025							
February 2025							
March 2025							
April 2025							
May 2025							
June 2025							
Total 2024/25	650.71	120.96	15.00	-	11.94	36.18	1.89
Total 2023/24	1,199.07	566.10	244.56	-	59.40	118.35	9.72
Total 2022/23	1,325.62	617.09	440.40	-	45.46	100.27	13.28
Total 2021/22	2,025.65	601.71	192.74	-	55.02	73.18	14.84
Total 2020/21	1,921.52	680.78	452.54	-	56.28	78.96	34.84

## Vouchers and Actual Resource Recovery

	Vouchers			Out for Recycling / Recovery				
	No Issued	No Redeemed	Value Redeemed	Cardboard*	Metal / eWaste	Mattresses	Tyres	Other
July 2024		181	\$ 8,888	51.75	-	3.00	3.56	-
August 2024		210	\$ 10,887	48.30	-	-	-	-
September 2024		262	\$ 13,787	44.85	-	-	-	-
October 2024								
November 2024								
December 2024								
January 2025								
February 2025								
March 2025								
April 2025								
May 2025								
June 2025								
Total 2024/25		653	33562	144.9	0	3	3.56	0
Total 2023/24		4,189	\$ 156,847	560.66	53.52	8.80	9.66	2,351.35
Total 2022/23	14,604	2,851	\$ 141,845	369.15	94.76	13.64	9.42	3,300.64
Total 2021/22	14,604	12,710.00	140,590.00	203.55	153.78	17.18	6.16	0.12
Total 2020/21	N/A	4,015	N/A	639.98	185.54	16.68	7.52	-

\* Includes from Works Depot

The Local Government Act 1993, (the Act) requires all public land to be classified as either “community” or “operational”.

Community land is land that Council makes available for use by the public and it usually includes land for parks or sports grounds.

Operational land is land that facilitates the functions of a Council and may not be open to the public.

The land classification determines the way that a Council is required to manage and deal in the land.

Community land requires a plan of management and must not be sold, exchanged or otherwise disposed of by a Council. There are no such restrictions on a Council to manage, dispose of or change the nature of operational land.

Under the Act, public land is classified or reclassified by either a Council resolution under sections 31, 32 or 33 or through an LEP amendment.

The Planning Proposal (Attachment 1) seeks to give effect to a previous council resolution (refer to Attachment A of the Planning Proposal) by pursuing an LEP amendment pathway to reclassify the land from community to operational.

Historical records show that at its Ordinary Meeting of 23 June 1994, Council resolved to reclassify “8 Tabratong Street Section 39 Lot 1 Youth Centre” from community land to operational land. As no deposited plan number was provided, it is not clear whether this refers to Lot 1 DP102113, therefore Lot 1 has been included in the Planning Proposal, along with Lots 2 and 3 for the purposes of clarity and transparency, and to ensure that the parcel of land (8 Tabratong Street), in its entirety, is legally reclassified from community to operational and that all relevant interests can be discharged.

### **3. Discussion**

Reclassification of the subject land will allow it to be considered for another purpose as it currently provides limited community benefit, being a vacant and unused parcel of land.

The land has been identified as having site-specific locational advantages for community housing. With its close proximity to the commercial area of Nyngan, it provides good access to shops, supermarkets, medical services and civic services such as the Library and Post Office. It is also close to public transport bus stops which provide services to larger centres such as Dubbo. And, most of these services are available within walking distance of the land, thereby reducing reliance upon private transport.



The location of the land is shown in Figure 1 below:



Figure 1: Location of Subject Land (Source: eplanning Spatial Viewer)

In 2019 the Nyngan Community Homes Association (NCHA) wrote to Council requesting support for an application by NCHA, to the NSW government, to provide 5 independent living units for the purpose of community housing on the land.

At its Ordinary Meeting on 28 November 2019, Council resolved (258/2019):

1. *Council provide a Letter of Support to the Nyngan Community Homes Association to accompany their application to the Building Better Regions Fund Program Round 4 for funding to construct senior's living units on the former Palais Theatre site in Cobar Street, Nyngan.*
2. *Should the Nyngan Community Homes application to the Building Better Regions Fund Program Round 4 be successful, Council will donate the land to the Association.*

The resolution was conditional on NCHA being successful with their grant application. They were not successful in that round of funding.

On 11 June 2021 Bogan Shire Council approved a development application for the construction of 5 self-care dwellings for seniors, or people with a disability, on the land (Development Application 10/2021/002/001). The approved dwellings are similar in style and character to the community housing development to the east of the subject land.

In February 2023, Council received a request from NCHA to transfer the land to the Association as a prerequisite for them to receive funding under the Community Housing Innovation Fund to construct the approved dwellings.



At its Ordinary Meeting on 23 March 2023, Council resolved the following (053/2023):

1. *Council defer a decision on whether, in principle, it wishes to dispose of (transfer ownership of) Lot 1 DP102113, Lot 2 DP355559 and Lot 3 DP 945184, until a determination on the reclassification of the land.*
2. *Council submits a planning proposal under Section 28 of the Local Government Act to reclassify Lot 1 DP102113, Lot 2 DP355559 and Lot 3 DP 945184 from Community Land to Operational Land.*

At its Ordinary Meeting on 27 June 2024, Council considered a letter from Nyngan Community Homes in which they requested transfer of ownership of the land. Council resolved as follows (134/24):

*That Council request that Nyngan Community Homes Association presents a satisfactory Business Plan and shows it has the capacity to build planned homes on the land, Council will consider an appropriate arrangement to facilitate the provision of the land which was formerly the Palais Theatre, on the basis of that plan.*

A Business Plan was received from Nyngan Community Homes Association on 1 October 2024 with a request for the Association to address Council at a future meeting.

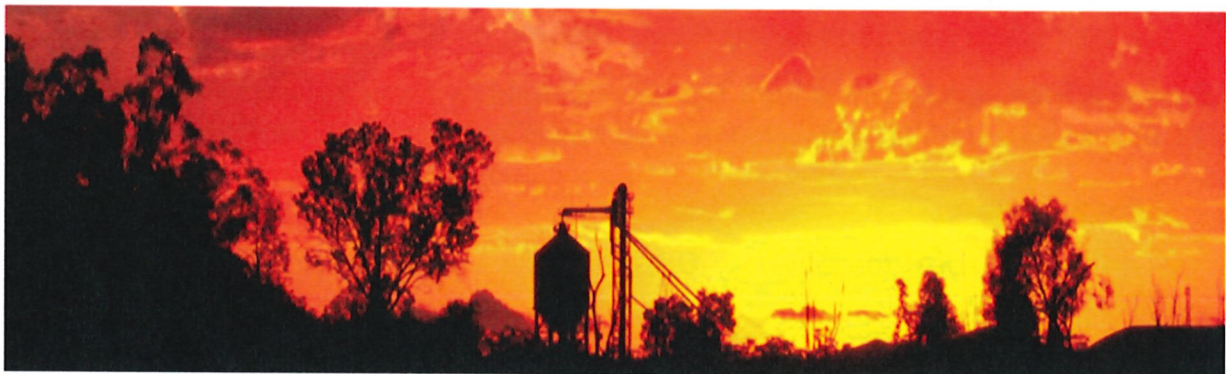
#### **4. Attachments**

1. Planning Proposal for Gateway Determination - Land Reclassification 8 Tabratong Street Nyngan

#### **5. Recommendation**

That Council resolve to:

1. Lodge the Planning Proposal to Reclassify Public Land at 8 Tabratong Street Nyngan with the Department of Planning, Housing and Infrastructure for a Gateway Determination; and
2. Undertake community consultation in accordance with the Gateway Determination.



## Planning Proposal to Reclassify Public Land

8 Tabratong Street Nyngan

October 2024

Version 1 for Gateway Determination



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Version	Purpose of Document	Author	Date
1	For Gateway Determination	LP	16 September 2024



## PART 1 OBJECTIVES AND INTENDED OUTCOMES

### 1.1 Introduction

This planning proposal has been prepared by Blue Sky Planning & Environment Pty Ltd on behalf of Bogan Shire Council. The objective of this planning proposal is to amend *Schedule 4 Classification and reclassification of public land* of the *Bogan Local Environmental Plan 2011* (the LEP).

This planning proposal seeks to reclassify three parcels of public land from “community” to “operational”. Collectively the land is identified as 8 Tabratong Street Nyngan. The land is not mapped as a public reserve and there is no Plan of Management applying to the land. Reclassification of the land will allow it to be considered for community housing.

The *Local Government (LG) Act 1993* requires all public land to be classified as either “community” or “operational”. Community land is land that council makes available for use by the public and it usually includes land for parks or sports grounds. Operational land is land that facilitates the functions of Council and may not be open to the public. Operational land often includes council works depots, pounds or the like.

The land classification determines the way that council is required to manage and deal in the land. Community land requires a plan of management and must not be sold, exchanged or otherwise disposed of by a council. There are no such restrictions on council to manage, dispose of or change the nature of operational land.

Under the LG Act, public land is classified or reclassified by either a council resolution under sections 31, 32 or 33 or through an LEP amendment. This planning proposal seeks to give effect to a previous Council resolution (Attachment A) by pursuing an LEP amendment pathway to reclassify the land from community to operational.

Section 30 of the LG Act 1993 provides that:

*(1) A local environmental plan that reclassifies community land as operational land may make provision to the effect that, on commencement of the plan, the land, if it is a public reserve, ceases to be a public reserve, and that the land is by operation of the plan discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except for—*

*(a) any reservations that except land out of a Crown grant relating to the land, and*

*(b) reservations of minerals (within the meaning of the Crown Land Management Act 2016).*

This planning proposal seeks to ensure that the land is discharged from all trusts, estates, interests, dedications, conditions, restrictions and covenants that may affect further operations and the use of the land for community housing.

## 1.2 Description of the Land and Surrounds

This planning proposal relates to three parcels of land (the land) in the employment precinct of Nyngan. The land to be reclassified is:

- Lot 1 DP102113
- Lot 2 DP355559
- Lot 3 DP 945184

The land is currently vacant. A theatre was formerly located on the site but was demolished in 2020 as it was in a state of dilapidation and posed a safety risk. Asbestos containing materials were used in the construction of the theatre and all known asbestos containing materials were removed from the building in 2020 prior to its demolition. A clearance certificate for the removal of asbestos from the building was issued on 07 April 2020.

The site is entirely cleared of vegetation and all structures and is primarily flat, draining to Council's stormwater system along Cobar Street and Tabratong Street.

The land has been identified as having site-specific locational advantages for community housing, being in close proximity to the commercial area of Nyngan and therefore providing good access to shops, medical services and civic services such as the library, as well as bus stops which provide services to larger centres such as Dubbo. Most services are available within walking distance of the land, thereby reducing reliance upon private transport.

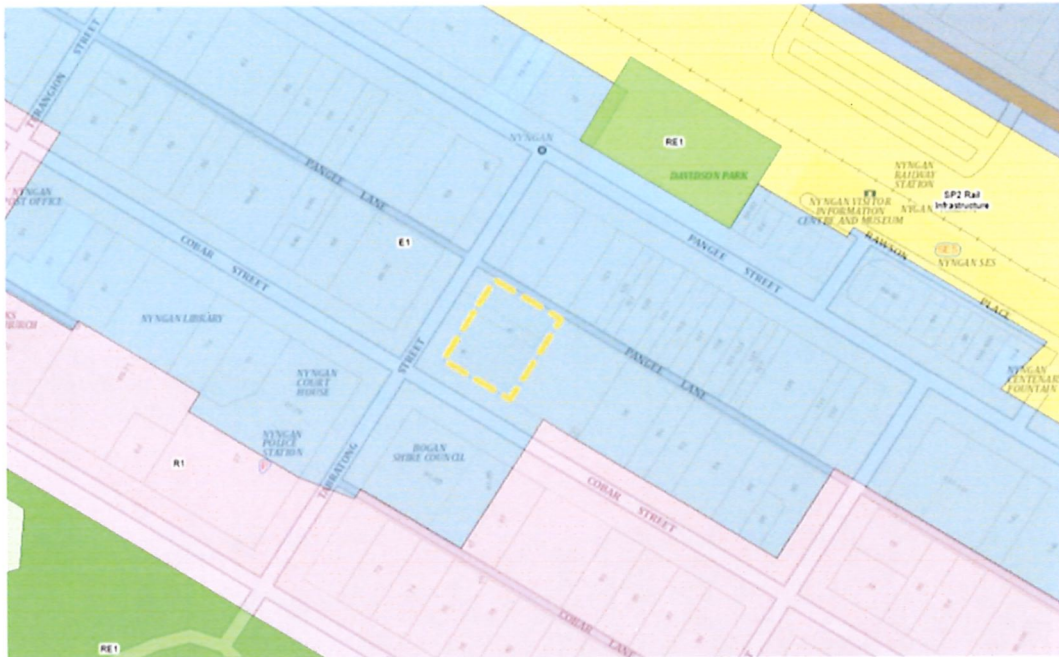
The location of the land is shown in the figure below.



**Figure 1: Location of Subject Land. Source: eplanning Spatial Viewer.**

The land is zoned E1 Local Centre as shown in the figure below. The planning proposal does not propose to rezone the land as residential accommodation is permitted with consent in the E1 zone. Any proposal to rezone the land to a residential zone will be considered as part of the Bogan Shire Local Housing Strategy which is currently under preparation.





**Figure 2: Zoning of Subject Land. Source: eplanning Spatial Viewer 2024.**

To the south the land adjoins Cobar Street, with the Bogan Shire Council administration building located on the opposite side of Cobar Street. To the west the land adjoins Tabratong Street, with a supermarket located on the opposite side of Tabratong Street. To the east the land adjoins residential development comprising five two-bedroom dwellings managed by a local community housing association, specifically for the purpose of residential accommodation for seniors or people with a disability. To the north the land adjoins Pangee Lane. On the opposite side of Pangee Lane are several commercial and retail buildings, including a bank, gymnasium and cafe. Legal access to the land would be available from Tabratong Street, Cobar Street and Pangee Lane.



**Figure 3: Aerial photo of Subject Land (prior to demolition of theatre). Source: eplanning Spatial Viewer.**



The photos below show the land and its proximity to surrounding land uses.



***Photo 1: Facing north-west from Cobar Street and showing proximity to the supermarket. Photo taken May 2024.***



***Photo 2: Facing east from Tabratong Street and showing adjoining seniors living development. Photo taken May 2024.***

### 1.3 Background and Interests

It is critical that all interests in the land are identified as part of the planning proposal so that relevant interests can be discharged. The following interests have been identified:

- a) **Right of Way:** The certificate of title lists a right of way benefitting Lot 1 and burdening Lot 2. Lot 3 also has a right of way affecting part of the land. It is not intended to extinguish the right of way as part of this planning proposal.
- b) **Covenant:** Covenant J652653 relates to a memorandum of mortgage held over the land in 1964.
- c) **Lease to a private party:** The certificate of title lists a lease to a private party that expires on 29/03/1996 with the option of a 5 year renewal. There are no current leases applying to the land.

There are no records held by Council to indicate why the land was dedicated to Council, however the certificate of title indicates that the land may have been a Crown dedication.

The certificate of title held by Council for the land is included at Attachment D.

In 2019 the Nyngan Community Homes Association (NCHA) wrote to Council requesting that support for an application by NCHA, to the NSW government, to provide 5 independent living units for the purpose of community housing on the land.

On 28 November 2019 Council resolved:

- 1. To provide a letter of support to the Nyngan Community Homes Association to accompany a grant application for funding to construct seniors living units on the land.
- 2. Should the Nyngan Community Homes grant application be successful, Council will donate the land to the Association.

The resolution was conditional on Nyngan Community Homes being successful with their grant application. They were not successful in that round of funding.

On 11 June 2021 Bogan Shire Council approved a development application for the construction of 5 self-care dwellings for seniors, or people with a disability, on the land (Development Application 10/2021/002/001). The approved dwellings are similar in style and character to the community housing development to the east.

In February 2023 Council received a request from NCHA to transfer the land to the Association as a prerequisite for them to receive funding under the Community Housing Innovation Fund to construct the approved dwellings.

At its ordinary meeting on 23 March 2023 Council resolved to defer a decision on whether to dispose of the land (i.e. donate it to NCHA) until the land was reclassified from community to operational. Council also resolved to submit a planning proposal in accordance with the LG Act section 27(1) to reclassify the land from community to operational.

The figure below shows the layout of the approved community housing on the land.



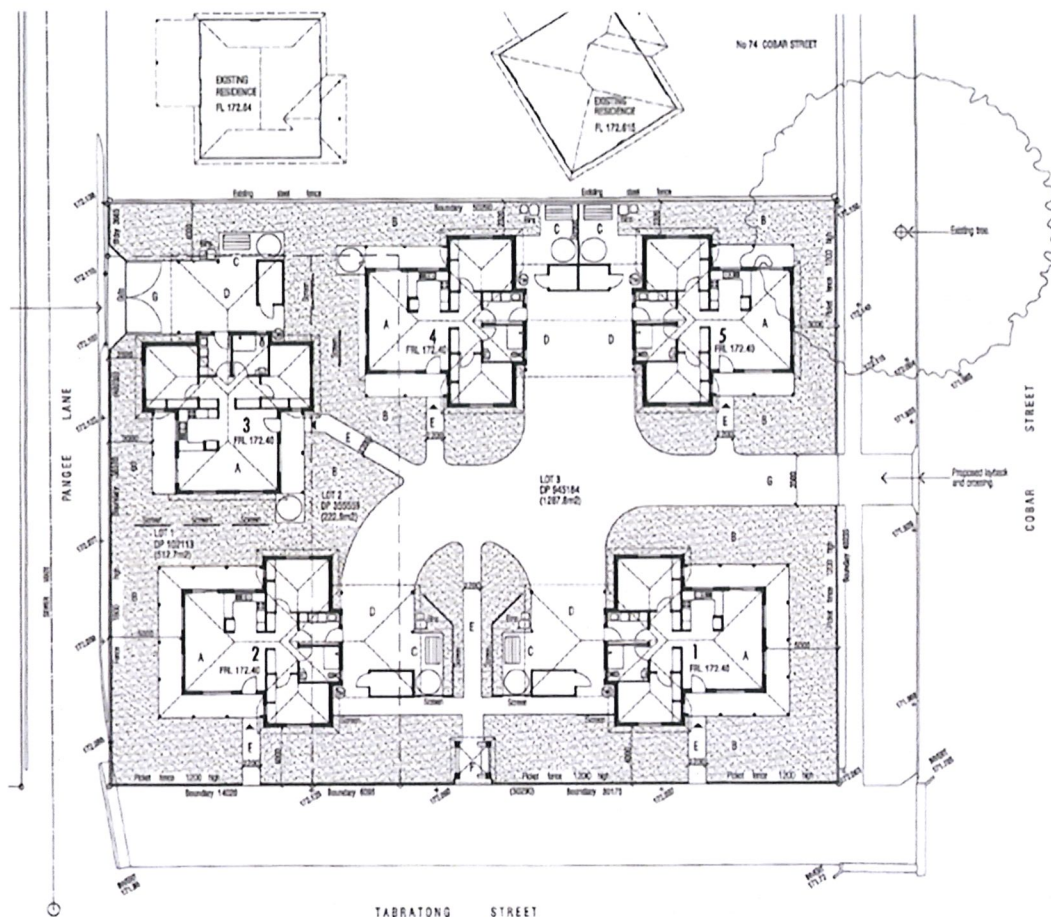


Figure 4: Layout of approved development on the land

## Part 2 - Explanation of provisions

Part 5 Clause 5.2 of the LEP enables council to reclassify public land as “operational land” in accordance with Part 2 of Chapter 6 of the LG Act 1993. This planning proposal seeks to amend the *Bogan Local Environmental Plan 2011* by listing Lot 1 DP102113, Lot 2 DP355559 and Lot 3 DP 945184 within Schedule 4 of the LEP. Should Council seek to dispose of the land it is assumed that the land would be listed in part 2 of the LEP as the interests will be changed so that Council is no longer the owner of the land.

## Part 3 - Justification

### Section A – Need for the Planning Proposal

**Question 1: Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report??**

The planning proposal has been prepared in accordance with the LG Act 1993 to reclassify public land.

The Bogan Shire Local Strategic Planning Statement (LSPS) identifies housing diversity and affordable housing provision as important to the community. Housing for an ageing population close to existing services and amenities is also identified in the LSPS as a priority.

The Bogan Shire Local Housing Strategy is currently under preparation and Council staff have advised that land appropriate for community housing is likely to be identified as a priority in that Strategy.

**Question 2: Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Section 31 of the LG Act 1993 provides that a council may resolve that the land be classified as community or operational before or within three months after it acquires the land. Bogan Shire Council did not adopt any such resolution within these designated timeframes for the entire parcel of land (though historical records indicate that a resolution may apply to Lot 1), therefore a planning proposal is currently the only way to reclassify land from community to operational and ensure that interests affecting the subject land are appropriately discharged.

## **Section B – Relationship to Strategic Planning Framework**

**Question 3: Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?**

### ***The Central West and Orana Regional Plan 2041 (Regional Plan 2041)***

The Regional Plan 2041 is the strategic framework for the region. It has been prepared in accordance with section 3.3 of the *Environmental Planning and Assessment Act 1979*. It applies to the local government areas of Bathurst, Blayney, Bogan, Cabonne, Coonamble, Cowra, Dubbo, Forbes, Gilgandra, Lachlan, Lithgow, Mid-Western, Narromine, Oberon, Orange, Parkes, Warren, Warrumbungle and Weddin.

The Regional Plan 2041 includes a set of objectives and strategies for achieving those objectives. The following Parts of that Plan are of particular relevance to Bogan Shire and have been considered in this planning proposal.

### **Part 2 of the Regional Plan 2041 – A sustainable and resilient place**

This part focusses on the region's natural resources and systems. The following objectives of the Regional Plan 2041 are relevant to this planning proposal:

**Objective 6: Support connected and healthy communities. Western NSW rivers:** The region's rivers, including the Bogan River, and their related groundwater sources face competing demands for recreation, town water supply, rural uses and environmental needs. The Regional Plan 2041 recognises the diverse landscapes in which the river systems occur, the interdependencies with human and non-human use of the land and water, and the need to protect the Bogan River.



Development pressures for residential subdivision could, if not well planned, decrease public access to rivers and waterways, decrease natural amenity and increase clearing in the river corridors, which can impact runoff and ultimately water quality.

The subject land is a "brownfield" site in the central part of Nyngan. Development of the land will not place additional pressure on the local river system.

**Objective 7: Plan for resilient places and communities:** The changing climate is increasing the impact of natural hazards on communities. Building resilient places and communities requires a consideration of shocks and stresses from a people-centred, cultural, economic, built form and environmental perspective. New development must avoid areas affected by relevant hazards or mitigate the effects of hazards within affected areas.

The subject land is not located in an area subject to any natural hazards.

### **Part 3 of the Regional Plan 2041 – People, centres, housing and communities**

This part notes that by 2041 the population of the Central West and Orana region is projected to grow to more than 324,943 people. This equates to the need for at least an additional 21,664 new homes. Existing housing stock in the region is mostly detached housing with three or more bedrooms. This housing is not well suited for the projected shift in housing demand with approximately 60% of families in the region expected to be singles or couples without children by 2041.

If Council resolves to dedicate or lease the land to a community housing provider, the use of the subject land for community housing will provide housing diversity to address the projected shift in housing demand.

**Objective 12: Sustain a network of healthy and prosperous centres.** The Regional Plan 2041 notes that while the population of some smaller centres (like Nyngan) are projected to remain relatively stable, these are dynamic communities with temporary visitors and worker populations that fluctuate at different times of the year. Smaller centres will continue to reflect the growth aspirations of their local communities, support new industries and provide housing, services, attractive lifestyles and jobs in agribusiness, mining, and tourism.

E-commerce and online access to services creates opportunities for smaller centres to reverse population decline and foster new economic opportunities. These changes, when combined with long-term trends such as the ageing of the population, provide the opportunity for councils to rethink the role and function of smaller centres and ensure their ongoing vitality. If Council resolves to dedicate or lease the land to a community housing provider, the reclassification of the land will assist in encouraging a greater mix of housing in the town centre, close to essential services.

**Objective 13: Provide well located housing options to meet demand.** The Central West and Orana region needs an adequate supply of affordable, well-designed housing in the places where people want to live.

Future residential growth will be predominantly accommodated in existing urban areas or in new development areas identified in local housing strategies. Strengthening smaller centres (like Nyngan) can also be supported through better utilisation of existing infrastructure and brownfield sites as an alternative to greenfield development.



The region's centres will support housing by making efficient use of existing infrastructure and services. This will involve identifying areas for intensification and renewal, prioritising the development of unused or underutilised land and identifying new areas for growth.

Re-using and repurposing sites where the historic land use is no longer needed, or buildings have been abandoned or destroyed, avoids the cost of developing new infrastructure. This process is important for smaller centres such as Nyngan and can be realised through the reclassification and development of the subject land for community housing, if Council resolves to dedicate or lease the land to a community housing provider.

**Objective 14: Plan for diverse, affordable, resilient and inclusive housing.** While regional NSW continues to experience economic growth and industry diversification, there is growing evidence of housing stress and homelessness. Housing affordability is becoming an increasing issue for the region. Between 2017 and 2020 average house prices in the region grew by 10%, which is above the NSW average of 6% for the same period.

People older than 65 will make up a quarter of the region's population by 2041. Housing for seniors includes independent smaller homes, specifically built to meet the needs of people as they age as well as communal independent living arrangements. Slow growth in the provision of seniors housing and infrastructure in the region may be attributed in part to economies of scale and economic viability. Smaller housing types, dual occupancy and multi-dwelling housing are filling this gap in some areas.

Increased housing affordability will result from better and more diverse housing designs, delivered in places free from hazards, close to infrastructure and community services.

Community housing assists people who are unable to access suitable accommodation in the private rental market. Modelling suggests an estimated 60% increase in homelessness in the Far West and Orana areas since early 2020. Investment into community housing can also provide a strong economic stimulus and recovery mechanism.

A range of sustainable housing choices should be provided including housing that is more appropriate for seniors, including low-care accommodation and innovative solutions for older people, multigeneration families, group housing, people with special needs or people from different cultural backgrounds.

The reclassification and availability of the subject land for community housing will make a contribution to the achievement of this objective, if Council resolves to dedicate or lease the land to a community housing provider.

**Question 4: Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?**

The Bogan Shire Local Strategic Planning Statement (LSPS) December 2019 sets the framework for Bogan Shire's economic, social and environmental land use needs over the next 20 years.

A number of priorities in the LSPS are relevant to the proposed land reclassification:

**Priority 4 – Safe and Liveable Communities:**

Providing housing choice and enough, suitably located residential land...is key to attracting and retaining a diverse population.

The following policies and actions from the LSPS are relevant to the use of the land for community housing:

- Utilise existing zoned and serviced land for a range of urban development outcomes, particularly the provision of housing for older people and affordable housing near existing services and amenities.
- Encourage a range of housing options, including affordable housing, housing for older people, family housing and temporary worker accommodation in Nyngan.
- Support ageing in place in Nyngan to make the best use of existing infrastructure and services in the town.
- Investigate the options for new housing release having regard to servicing and hazards.

**Question 5: Is the planning proposal consistent with applicable State Environmental Planning Policies?**

As the planning proposal is for the purpose of land reclassification, it is of an administrative nature and therefore has limited alignment with State Environmental Planning Policies (SEPPs).

The following SEPP is considered to be relevant:

**State Environmental Planning Policy (Housing) 2021**

The principles of this SEPP are as follows:

- (a) enabling the development of diverse housing types, including purpose-built rental housing,*
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
- (c) ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) minimising adverse climate and environmental impacts of new housing development,*
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*



(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,

(h) mitigating the loss of existing affordable rental housing.

Chapter 3 Part 5 of the SEPP deals with housing for seniors and people with a disability. The purpose of this planning proposal is to facilitate a land reclassification to allow Council to dispose of the land, or lease it, to a community housing provider, for community housing, if it so resolves.

Chapter 3 Part 5 Division 4 of the SEPP provides the site related requirements for seniors housing. The subject land complies with the site related requirements in relation to proximity to services.

**Question 6: Is the planning proposal consistent with applicable Ministerial Directions (s9.1 directions)?**

The following is a list of Directions issued by the Minister to relevant planning authorities under section 9.1(2) of the *Environmental Planning and Assessment Act 1979*.

The table below demonstrates that the planning proposal is largely consistent with the relevant Ministerial Directions. One inconsistency of minor significance has been identified. That inconsistency is well justified.

Relevant Direction	Consistency
<b>Focus area 1: Planning Systems</b>	
1.1 Implementation of Regional Plans	The planning proposal achieves the overall intent of the Regional Plan and does not undermine the achievement of the Regional Plan's vision, land use strategy, goals, directions or actions.
1.3 Approval and Referral Requirements	The planning proposal does not introduce any LEP provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority and does not identify development as designated development.
1.4 Site Specific Provisions	The planning proposal does not introduce any site specific planning controls.
1.4A Exclusion of Development Standards from Variation	The planning proposal does not propose to introduce or alter an existing exclusion to clause 4.6 of a Standard Instrument LEP or an equivalent provision of any other environmental planning instrument.

<b>Focus area 1: Planning Systems – Place-based</b>	
1.5 Parramatta Road Corridor Urban Transformation Strategy	Not applicable. The land is not in this area.
1.6 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Not applicable. The land is not in this area.
1.7 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable. The land is not in this area.
1.8 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable. The land is not in this area.
1.9 Implementation of Glenfield to Macarthur Urban Renewal Corridor	Not applicable. The land is not in this area.
1.10 Implementation of the Western Sydney Aerotropolis Plan	Not applicable. The land is not in this area.
1.11 Implementation of Bayside West Precincts 2036 Plan	Not applicable. The land is not in this area.
1.12 Implementation of Planning Principles for the Cooks Cove Precinct	Not applicable. The land is not in this area.
1.13 Implementation of St Leonards and Crows Nest 2036 Plan	Not applicable. The land is not in this area.
1.14 Implementation of Greater Macarthur 2040	Not applicable. The land is not in this area.
1.15 Implementation of the Pyrmont Peninsula Place Strategy	Not applicable. The land is not in this area.
1.16 North West Rail Link Corridor Strategy	Not applicable. The land is not in this area.
1.17 Implementation of the Bays West Place Strategy	Not applicable. The land is not in this area.
1.18 Implementation of the Macquarie Park Innovation Precinct	Not applicable. The land is not in this area.
1.19 Implementation of the Westmead Place Strategy	Not applicable. The land is not in this area.
1.20 Implementation of the Camellia-	Not applicable. The land is not in this area.



Rosehill Place Strategy	
1.21 Implementation of South West Growth Area Structure Plan	Not applicable. The land is not in this area.
1.22 Implementation of the Cherrybrook Station Place Strategy	Not applicable. The land is not in this area.
<b>Focus area 2: Design and Place</b>	This focus area was blank when the Directions were made.
<b>Focus area 3: Biodiversity and Conservation</b>	
3.1 Conservation Zones	The land does not contain any environmentally sensitive areas, conservation zones or areas otherwise identified for environmental conservation or protection in an LEP.
3.2 Heritage Conservation	The land does not contain any known items, areas, objects or places of environmental heritage significance or indigenous heritage significance.
3.3 Sydney Drinking Water Catchments	Not applicable. The land is not in this area.
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	Not applicable. The land is not in this area.
3.5 Recreation Vehicle Areas	Not applicable. The land is not located within an area used by recreational vehicles.
3.6 Strategic Conservation Planning	Not applicable. The land is not located in an area identified as avoided land or a strategic conservation area.
3.7 Public Bushland	<p>Not applicable. The land is not in a listed local government area.</p> <p>Notably, the site is entirely cleared of native vegetation and does not contain any biodiversity or habitat corridors, links between bushland, natural drainage lines, watercourses, wetlands and foreshores.</p> <p>The land does not have recreational, educational, scientific, aesthetic, environmental, ecological or cultural values.</p>
3.8 Willandra Lakes Region	Not applicable. The land is not in this area.
3.9 Sydney Harbour Foreshores and Waterways Area	Not applicable. The land is not in this area.

3.10 Water Catchment Protection	Not applicable. The land is not within a regulated catchment.
<b>Focus area 4: Resilience and Hazards</b>	
4.1 Flooding	The land is not mapped as flood prone. The land is located within the Nyngan flood levee, therefore it is unlikely to be affected by flooding.
4.2 Coastal Management	Not applicable. The subject land is not located within the coastal zone.
4.3 Planning for Bushfire Protection	Not applicable. The land is not mapped as bushfire prone.
4.4. Remediation of Contaminated Land	The land is not registered as contaminated. All known asbestos containing materials were removed from the theatre on the site prior to its demolition. A clearance certificate for the asbestos removal was issued on 07 April 2020.
4.5 Acid Sulfate Soils	Not applicable. The land is not mapped as containing acid sulfate soils.
4.6 Mine Subsidence and Unstable Land	Not applicable. The land is not located within a declared mine subsidence district.
<b>Focus area 5: Transport and Infrastructure</b>	
5.1 Integrating Land Use and Transport	<p>This Direction is not applicable as it does not propose to change a land use zone.</p> <p>Notably, the planning proposal achieves the objectives of this Direction by potentially improving access to housing in proximity to services, thus reducing travel demand.</p>
5.2 Reserving Land for Public Purposes	Not applicable. The planning proposal does not propose to reserve land for public purposes as the land is already in the ownership of Council.
5.3 Development Near Regulated Airports and Defence Airfields	Not applicable. The land is not located near a regulated airport or defence airfield.
5.4 Shooting Ranges	Not applicable. The land is not located near a shooting range.
<b>Focus area 6: Housing</b>	
6.1 Residential zones	Not applicable as it does not affect land within an existing or proposed residential zone.

	Notably, the planning proposal achieves the objectives of this Direction as it facilitates the availability of land to provide a variety and choice of housing types to provide for existing and future housing needs, makes efficient use of existing infrastructure and services and ensures that new housing has appropriate access to infrastructure and services.
6.2 Caravan Parks and Manufactured Home Estates	This Direction is not applicable as the planning proposal is not seeking to identify suitable zones, locations and provisions for caravan parks or manufactured home estates.
<b>Focus area 7: Industry and Employment</b>	
7.1 Employment Zones	<p>The planning proposal is not seeking to change an employment zone.</p> <p>The subject land is within an employment zone (E1 Local Centre). The land reclassification is proposed for the purpose of facilitating community housing on a vacant Council-owned site that is not being used for any public purpose.</p> <p>Although the objective of this direction is to protect employment land in employment zones, the land is not being used for employment purposes.</p> <p>The inconsistency is of minor significance and well justified.</p>
7.2 Reduction in non-hosted short-term rental accommodation period	Not applicable. The planning proposal will not facilitate the use of the land for short-term rental accommodation.
7.3 Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable. The land is not located in this area.
<b>Focus area 8: Resources and Energy</b>	
8.1 Mining, Petroleum Production and Extractive Industries	Not applicable. The planning proposal would not prohibit or restrict land for the purposes of mining, petroleum production or extractive industries.
<b>Focus area 9: Primary Production</b>	
9.1 Rural Zones	Not applicable. The land is not located in a rural zone.



9.2 Rural Lands	Not applicable. The land is not located in a rural or conservation zone.
9.3 Oyster Aquaculture	Not applicable. The planning proposal does not affect any oyster aquaculture area.
9.4 Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable. The land is not located in this area.

### Section C – Environmental, Social and Economic Impact

**Question 7: Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

The land is entirely cleared of native vegetation and is located in a highly urbanised area devoid of bushland connections or corridors and surrounded on all sides by either commercial or residential development or infrastructure.

No critical habitat, threatened species, populations or ecological communities or their habitats are likely to be adversely affected as a result of the proposal.

**Question 8: Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

**Stormwater:** The land generally drains in a southerly direction towards Tabratong and Cobar Streets. On-site stormwater detention would be included in the developed land to ensure that post-development flow rates from the land are not greater than pre-development flow rates, including runoff from impermeable surfaces.

**Servicing:** The land is capable of being fully serviced. The design and construction of all water and sewer infrastructure required to service the development would be undertaken by the developer in accordance with relevant standards. The developer would be responsible for the costs of design and construction of water and sewerage infrastructure required to service the development, as well as the development charges applicable at the time of development.

**Contamination:** The land is not mapped as potentially contaminated. Asbestos containing materials were used in the construction of the theatre that previously occupied the site. The asbestos containing materials were removed prior to the demolition of the theatre.

**Acoustics:** The land is surrounded by commercial land to the west and north, residential development to the east and a civic precinct to the south. There are unlikely to be any acoustic impacts as a result of the development of the land for residential purposes, or on the use of the land from surrounding land uses. The landuse zone would not permit any industrial uses likely to generate significant noise. No further consideration of acoustic impacts is required for the planning proposal.

**Landscape and Amenity:** The land currently has a low level of amenity as it presents to the street as a vacant block of land. The development of the land will comprise areas of

landscaping and will activate the site. The planning proposal is likely to result in a positive impact on landscape and amenity.

**Air Quality:** The development of the land for residential purposes has the potential to have a minor negative impact on air quality during the construction phase. Measures to minimise construction air quality issues will be a condition of any consent for development of the land. The planning proposal is unlikely to have a long-term negative impact on air quality.

**Soils:** The land is currently not vegetated and is subject to erosion during high rainfall events whilst the soil is exposed. Impacts on soils will be considered at development application stage when proposed development will be subject to erosion and sediment control. The planning proposal is unlikely to have a negative impact on soils.

**Traffic and Access:** The land has two public street frontages and a laneway frontage. It is proposed to reclassify the land to facilitate community housing. The DA approved on the land shows 5 independent living units. Although this would generate some traffic, it is not anticipated to have a negative impact on the local road system.

**Archaeology and Cultural Heritage:** The subject land does not contain any listed or potential items of European heritage significance. It is located diagonally opposite the locally listed Nyngan Courthouse, however development of the land would be unlikely to have a negative impact on the courthouse.

No Aboriginal places or items have been recorded on the site (AHIMS database search 10/07/2024). The land has been highly modified and disturbed and there are unlikely to be any items of archaeological or cultural significance on the site.

**Question 9: Has the planning proposal adequately addressed any social and economic effects?**

The planning proposal can potentially facilitate the delivery of community housing, should Council resolve to do so. Community housing is in low supply in the Shire. It makes efficient use of existing infrastructure and services and ensures that if housing is provided on the site, that it has appropriate access to infrastructure and services.

Re-using and repurposing sites where the historic land use is no longer needed, or buildings have been abandoned or destroyed, avoids the cost of developing new infrastructure. This process is important for smaller centres such as Nyngan and can be realised through the reclassification and development of the subject land.

The planning proposal is consistent with the objectives and actions of the relevant state and local strategies as they relate to the provision of housing. It will have a positive socio-economic effect.



## Section D – State and Commonwealth Interests

### Question 10: Is there adequate public infrastructure for the planning proposal?

The land is serviced by reticulated water, sewer and electricity and has two public road frontages. The development of the land would not require any public infrastructure upgrades and there is adequate public infrastructure for the planning proposal.

### Question 11: What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

A Gateway determination has not yet been issued for this planning proposal. It is not anticipated that any public authorities would need to be consulted for the planning proposal, however relevant authorities will be consulted in accordance with the requirements of the Gateway Determination and this section would be updated.

## Part 4 - Mapping

The planning proposal does not affect LEP mapping.

## Part 5 – Community Consultation

**Public Exhibition:** Council will place the planning proposal on public exhibition for a period of not less than 28 days and undertake consultation with all stakeholders in accordance with conditions of the Gateway Determination. The Department's LEP Practice Note PN 16-001 will be included with the exhibition material.

Community consultation will commence with placing a public notice in the local newspaper and on the website of Bogan Shire Council and access to all relevant documents in Council's administration office and Library in Nyngan. In addition, adjoining landowners will be notified in writing.

**Public hearing:** Councils must hold a public hearing when reclassifying public land from community to operational (LG Act s.29). After the exhibition period has ended at least 21 days public notice is to be given before the public hearing.

This section of the planning proposal will be updated upon completion of the community consultation to provide a summary and consideration of community feedback.

## Part 6 – Timeframe

An indicative timeline is provided below, which includes the tasks deemed necessary for the making of this local environmental plan amendment. The timeline will be updated after the Gateway Determination is received.



Task	Responsibility	Timeframe	Date (approximate)
Council resolution to support the Planning Proposal and to send it to the Department for a Gateway Determination	Council	Delay in timeframe due to Local Government elections and "caretaker" period.	October 2024
Lodgement of Planning Proposal for Gateway Determination	Council	-	October 2024
Gateway Determination Issued	Department	-	November 2024
Public exhibition of Planning Proposal and consultation with public authorities (if required).	Council	Minimum 28 days	November / December 2024
Public hearing	Council (appointment of independent facilitator)	28 days	February
Report to Council	Council	-	March 2025
Lodgement of Planning Proposal (with any amendments as a result of submissions)	Council	-	March 2025
Making of local environmental plan amendment	Department	6 – 8 weeks	April 2025

## Part 7 – Summary and Conclusion

The aim of the planning proposal is to reclassify the land from community to operational, to capitalise on the land's locational strengths and to activate an unused parcel of council-owned land. This will be achieved by amending *Schedule 4 Classification and reclassification of public land* of the *Bogan Local Environmental Plan 2011*.

The planning proposal is considered to have strategic merit as it:

- is consistent with the objectives and actions in the Central West and Orana Regional Plan 2041;

- is consistent with the Bogan Shire Local Strategic Planning Statement;
- would provide a significant contributor to the provision of much-needed community housing in the Shire, should Council resolve to dedicate, lease or sell it to a community housing provider;
- has distinctive site-specific locational advantages due to its proximity to the town centre, civic services and medical services; and
- activates a currently vacant and unused parcel of land.

The land is free of any hazards or constraints or can be fully serviced by reticulated systems. The reclassification of the land will have highly beneficial socio-economic impacts as it could be used for community housing (subject to Council resolution). No environmental impacts are likely as a result of the proposed land reclassification.



**ATTACHMENT A – Council Resolutions Relating to the Proposed  
Land Reclassification**



Precis of Correspondence  
Ordinary Meeting of Council Wednesday 23 February 2023

From: [nyngancommunityhomes@gmail.com](mailto:nyngancommunityhomes@gmail.com) [<mailto:nyngancommunityhomes@gmail.com>]  
Sent: Wednesday, 1 February 2023 12:08 PM  
To: Admin <[admin@bogan.nsw.gov.au](mailto:admin@bogan.nsw.gov.au)>  
Subject: Funding for Units Palais Theatre Site

Hi Derek

Nyngan Community Homes are now registered as a Community Housing Provider and will be eligible for tendering for funding in the upcoming Community Housing Innovation Fund. As part of the criteria the CHP needs to own the land the project will be built on – this needs to happen before reply back if successful with tender.

If NCH are successful with the tender would Council transfer the land to the Association, as without title of land we will not be eligible for funding, it was mentioned previously the land would be leased to NCH.

Your earliest response to this would be appreciated.

Regards

Mary Burley  
Nyngan Community Homes Association Inc.  
PO Box 385  
Nyngan NSW 2825  
Phone: 0407 919749  
Email: [nyngancommunityhomes@gmail.com](mailto:nyngancommunityhomes@gmail.com)

Minutes of the Ordinary Meeting of  
of Council held on 23 March 2023

REPORT TO THE ORDINARY MEETING OF COUNCIL – ACTING DIRECTOR  
DEVELOPMENT & ENVIRONMENTAL SERVICES

1 DEPARTMENTAL ACTIVITY REPORT

**Summary:**

*The purpose of this report is to provide Council with information that is both statistical and informative in regard to the activities of the Development and Environmental Services Department.*

**052/2023 RESOLVED** that the Development and Environmental Services Departmental Activity Report be received and noted. (Deacon/Elias)

2 RECLASSIFICATION OF LAND – 8 TABRATONG STREET

**Summary:**

*The purpose of this report is to advise Council of the process to reclassify the former Palais Theatre site and to seek direction as to whether to proceed with the process.*

It was **MOVED** that Council defer a decision on whether, in principle, it wishes to dispose of (transfer ownership of) Lot 1 DP102113, Lot 2 DP355559 and Lot 3 DP 945184, until a determination on the reclassification of the land. (Douglas/Milligan)

It was **PUT** to Council and **CARRIED**.

**053/2023 RESOLVED** that:

- 1 Council defer a decision on whether, in principle, it wishes to dispose of (transfer ownership of) Lot 1 DP102113, Lot 2 DP355559 and Lot 3 DP 945184, until a determination on the reclassification of the land. (Douglas/Milligan)
- 2 Council submits a planning proposal under Section 28 of the Local Government Act to reclassify Lot 1 DP102113, Lot 2 DP355559 and Lot 3 DP 945184 from Community Land to Operational Land. (Douglas/Jackson)





Precis of Correspondence  
Ordinary Meeting of Council Wednesday 23 February 2023

**PRECIS OF CORRESPONDENCE**

**1 NYNGAN COMMUNITY HOMES ASSOCIATION INC**

Attached is correspondence received from Nyngan Community Homes Association Inc.

General Managers Note:

Council resolved on 28 November 2019 as follows:

1. *Council provide a Letter of Support to the Nyngan Community Homes Association to accompany their application to the Building Better Regions Fund Program Round 4 for funding to construct senior's living units on the former Palais Theatre site in Cobar Street, Nyngan.*
2. *Should the Nyngan Community Homes application to the Building Better Regions Fund Program Round 4 be successful, Council will donate the land to the Association. (358/2019)*

Notwithstanding the use of the word "donate" in this resolution, the General Manager is of the recollection that it was not Council's intention to transfer ownership of the land. This is echoed by Mrs Burley's phrase in her email "It was mentioned previously the land would be leased to NCH".

In any event Council's resolution was contingent on Nyngan Community Homes Association being successful with that particular round of funding and the matter now needs to be considered afresh.

As the land is categorised as Community Land (not Operational Land) under the Local Government Act there are significant processes that Council will have to follow should it wish to transfer ownership of the land. The General Manager will provide a report to Council on this matter at the next Council meeting.

**1.1 Recommendation:** For Councils' information and noting.



Development and Environmental Services' Report to the Ordinary Meeting of Bogan Shire  
Council held on 23 March 2023

## 2 RECLASSIFICATION OF LAND – 8 TABRATONG STREET

### **Summary:**

*The purpose of this report is to advise Council of the process to reclassify the former Palais Theatre site and to seek direction as to whether to proceed with the process.*

### **2.1 Introduction**

The purpose of this report is to advise Council of the process to reclassify the former Palais Theatre site and to seek direction as to whether to proceed with the process.

### **2.2 Background**

On 28 November 2019 Council resolved as follows:

- 1. Council provide a Letter of Support to the Nyngan Community Homes Association to accompany their application to the Building Better Regions Fund Program Round 4 for funding to construct senior's living units on the former Palais Theatre site in Cobar Street, Nyngan.*
- 2. Should the Nyngan Community Homes application to the Building Better Regions Fund Program Round 4 be successful, Council will donate the land to the Association. (358/2019)*

This resolution was conditional on Nyngan Community Homes being successful with their application under Round 4 of the Building Better Regions Fund. Unfortunately, they were not successful in this instance.

At its meeting held on 23 February 2023 Council received a request from Nyngan Community Homes to transfer ownership of these lots to them as a prerequisite for them to receive funding under the Community Housing Innovation Fund.

The site of the former Palais Theatre comprising three lots, Lot 1 DP102113, Lot 2 DP355559 and Lot 3 DP 945184 at 8 Tabratong Street Nyngan is currently classified as community land under Section 25 of the Local Government Act, 1993 (the Act).



**Development and Environmental Services' Report to the Ordinary Meeting of Bogan Shire Council held on 23 March 2023**

Section 45 of the Act does not permit the disposal of community land which is intended to held intact on behalf of the community for general public use:

**45 What dealings can a council have in community land?**

- (1) *A council has no power to sell, exchange or otherwise dispose of community land.*
- (2) *A council may grant a lease or licence of community land, but only in accordance with this Division.*
- (3) *A council may grant any other estate in community land to the extent permitted by this Division or under the provisions of another Act.*

*Note -*

*The word estate has a wide meaning. See the Interpretation Act 1987, section 21(1).*

- (4) *This section does not prevent a council from selling, exchanging or otherwise disposing of community land for the purpose of enabling that land to become, or be added to, Crown managed land or to become, or be added to, land that is reserved or dedicated under the National Parks and Wildlife Act 1974.*

### **2.3 Discussion**

Should Council wish to dispose of this land to Nyngan Community Homes or any other person it will be necessary to follow the process set out in the Local Government Act to reclassify the land as Operational.

Sections 25 to 34 of the Act detail the process of classification and reclassification of public land. As such there appears to be only one option which is outlined in Section 27 of the Act namely by amending the Local Environmental Plan (LEP).

This process requires the preparation of a planning proposal under Section 28 of the Act which will require the approval of the Minister for Planning.

Funding may be available from the Department of Planning for a consultant to undertake the application.

### **2.3 Recommendation**

1. That Council determines whether, in principle, it wishes to dispose of (transfer ownership of) Lot 1 DP102113, Lot 2 DP355559 and Lot 3 DP 945184.
2. That Council determines whether it wishes to submit a planning proposal under Section 28 of the Local Government Act to reclassify Lot 1 DP102113, Lot 2 DP355559 and Lot 3 DP 945184 from Community Land to Operational Land.

**Chris Foley**

**Acting Director Development and Environmental Services**



**15.2 CORRESPONDENCE FROM NYNGAN COMMUNITY HOMES**

Attached is a copy of correspondence received from the Nyngan Community Homes.

General Managers Note:

1. Nyngan Community Homes has provided the following additional information regarding their proposed development and grant application:

*In reply to your email, Nyngan Community Homes Association Inc propose to build total of five individual units as per approved Development Application 10/2021/002/001. I have attached a copy of approval letter along with copy of plans and pictorial view of proposed development.*

*These units will be tenanted out as affordable housing to Aged Pensioners including Aged disabled and veteran pensioners, under the guidelines of our registration as a Community Housing Provider. These are the same guidelines used for our existing units at 72-74 Cobar Street. We have found over the 30 plus years of operating these units that our tenants tend to stay long term, only vacating when no longer being able to care for themselves, resulting in moving into aged care.*

*We have funds available to commence building some of the units, this is made up of our own finances and private donations.*

Councillors may obtain a copy of the site plan and business plan from the General Manager's office on request.

Council has been advised that the process to reclassify the subject land from Community to Operational could take another six to nine months.

2. At its meeting on 23 March 2023 Council resolved as follows: Resolution **053/2023** - *Council submits a planning proposal under Section 28 of the Local Government Act to reclassify Lot 1 DP102113, Lot 2 DP355559 and Lot 3 DP 945184 from Community Land to Operational Land.*

3. Provided for the information of Councillors is a copy of the report to Council that gave rise to the resolution above.

**Attachments**

1. Correspondence from Nyngan Community Homes
2. Report to Council - 23 March 2023

**Recommendation**

For Council's Consideration.

**From:** [nyngancommunityhomes@gmail.com](mailto:nyngancommunityhomes@gmail.com) <[nyngancommunityhomes@gmail.com](mailto:nyngancommunityhomes@gmail.com)>  
**Sent:** Tuesday, May 21, 2024 11:25 AM  
**To:** Bogan Shire Council <[administrator@bogan.nsw.gov.au](mailto:administrator@bogan.nsw.gov.au)>  
**Subject:** Palais Theatre Land

Hi Derek

Nyngan Community Homes Association were pleased to hear that Council is seeking change of title of the land at 8 Tabratong Street (previously Palais Theatre), to enable use for Aged Housing. We hope that Council's previous commitment to donate the land to Nyngan Community Homes still stands. This will enable us to fulfil the approved development application to erect the five individual units on the land.

Nyngan Community Homes are applying for funding in the Social Housing Accelerator Fund Project and in order for us to apply we need written assurance from Council that ownership of land will be transferred to us on change of title. (This is a requirement of the funding). Irrespective of successful outcome of the funding NCHA wish to commence building at least two (maybe more) of the units as soon as possible with finances we have on hand.

We are seeking a quick response from Council to this request for a written assurance of land being transferred to apply for the funding, and/or to take the next step in securing builder etc for progress on Units.

Regards

Mary Burley  
Nyngan Community Homes Association Inc.  
PO Box 385  
Nyngan NSW 2825  
Phone: 0407 919749  
Email: [nyngancommunityhomes@gmail.com](mailto:nyngancommunityhomes@gmail.com)

## ATTACHMENT B – Information Checklist for Proposals to Reclassify Public Land Through an LEP

Matter for consideration	Section of Planning Proposal
Current and proposed classification of the land	Part 1 Section 1.1
whether the land is a 'public reserve' (defined in the LG Act)	Part 1 Section 1.1
the strategic and site specific merits of the reclassification and evidence to support this	Part 3
whether the planning proposal is the result of a strategic study or report	Part 3
whether the planning proposal is consistent with council's community plan or other local strategic plan	Part 3
a summary of council's interests in the land, including: <ul style="list-style-type: none"> <li>- how and when the land was first acquired (e.g. was it dedicated, donated, provided as part of a subdivision for public open space or other purpose, or a developer contribution);</li> <li>- if council does not own the land, the land owner's consent;</li> <li>- the nature of any trusts, dedications etc</li> </ul>	Part 1 Section 1.3
whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why	Part 1 Section 1.3
the effect of the reclassification (including, the loss of public open space, the land ceases to be a public reserve or particular interests will be discharged)	Part 3 Section C
evidence of public reserve status or relevant interests, or lack thereof applying to the land (e.g. electronic title searches, notice in a Government Gazette, trust documents)	Part 1 Section 1.3
current use(s) of the land, and whether uses are authorised or unauthorised	Part 1 Sections 1.2 and 1.3
current or proposed lease or agreements applying to the land, together with their duration, terms and controls	Part 1 Section 1.3
current or proposed business dealings (e.g. agreement	Part 1 Section 1.2



Matter for consideration	Section of Planning Proposal
for the sale or lease of the land, the basic details of any such agreement and if relevant, when council intends to realise its asset, either immediately after rezoning/reclassification or at a later time)	
any rezoning associated with the reclassification	Part 1 Section 1.2
how council may or will benefit financially, and how these funds will be used;	Part 1 Section 1.3
how council will ensure funds remain available to fund proposed open space sites or improvements referred to in justifying the reclassification, if relevant to the proposal	Not relevant.
a Land Reclassification (part lots) Map, in accordance with any standard technical requirements for spatial datasets and maps, if land to be reclassified does not apply to the whole lot	Not relevant.
preliminary comments by a relevant government agency, including an agency that dedicated the land to council, if applicable	Not relevant.

**ATTACHMENT C – PN16-001 Classification and Reclassification of  
Public Land Through a Local Environmental Plan**

# LEP practice note

## LOCAL PLANNING

Ref No.	PN 16-001
Issued	5 October 2016
Related	Supersedes PN 09-003

## Classification and reclassification of public land through a local environmental plan

The purpose of this practice note is to update guidance on classifying and reclassifying public land through a local environmental plan (LEP). This practice note emphasises the need for councils to demonstrate strategic and site specific merit, includes a comprehensive information checklist and clarifies issues arising for public reserves and interests in land. It should be read in conjunction with *A guide to preparing local environmental plans* and *A guide to preparing planning proposals*.

### Classification of public land

Public land is managed under the *Local Government Act 1993* (LG Act) based on its classification. All public land must be classified as either community land or operational land (LG Act ss.25, 26).

- **Community land** – is land council makes available for use by the general public, for example, parks, reserves or sports grounds.
- **Operational land** – is land which facilitates the functions of council, and may not be open to the general public, for example, a works depot or council garage.

#### What is public land?

*Public land* is defined in the LG Act as any land (including a *public reserve*) vested in, or under council control. Exceptions include a public road, land to which the *Crown Lands Act 1989* applies, a common, land subject to the *Trustees of Schools of Arts Enabling Act 1902* or a regional park under the *National Parks and Wildlife Act 1974*.

#### Why classify public land?

The purpose of classification is to identify clearly that land made available for use by the general public (community) and that land which need not (operational). How public land is classified determines the ease or difficulty a council can have dealings in public land, including its sale, leasing or licensing. It also provides for transparency in council's strategic asset management or disposal of public land.

Community land must not be sold, exchanged or otherwise disposed of by a council. It can be leased,

but there are restrictions on the grant of leases and licences, and also on the way community land can be used. A plan of management (PoM), adopted by council, is required for all community land, and details the specific uses and management of the land.

There are no special restrictions on council powers to manage, develop, dispose, or change the nature and use of operational land.

#### How is public land classified or reclassified?

Depending on circumstances, this is undertaken by either:

- council resolution under ss.31, 32, or 33 (through LG Act s.27(2)), or
- an LEP under the *Environmental Planning and Assessment Act* (through LG Act s.27(1)).

Councils are encouraged to classify or reclassify land by council resolution where suitable.

**Classification** of public land occurs when it is first acquired by a council and classified as either community or operational.

**Reclassification** of public land occurs when its classification is changed from community to operational, or from operational to community.



### Reclassification through an LEP

Classification and reclassification of public land through an LEP is subject to both the local planning process in the EP&A Act and the public land management requirements of the LG Act.

A planning proposal to classify or reclassify public land, will need to be prepared in accordance with this practice note and the additional matters specified in Attachment 1 to this practice note.

Reclassification through an LEP is the mechanism with which council can remove any public reserve status applying to land, as well as any interests affecting all or part of public land (LG Act s.30).

It is critical that all interests are identified upfront as part of any planning proposal. If public land is reclassified from community to operational, without relevant interests being identified and discharged, then the land will need to be reclassified back to community (usually by council resolution under LG Act s.33<sup>1</sup>) before being reclassified in a new planning proposal to operational, to explicitly discharge any interests.

While a reclassification proposal to remove the public reserve status of land and/or discharge interests may not necessarily result in the immediate sale or disposal of the land, the community should be aware the public land in question is no longer protected under the LG Act from potential future sale once it has been reclassified to operational.

Councils should obtain their own advice when proposing to discharge any interests and be aware that this may attract a claim for compensation under the *Land Acquisition (Just Terms Compensation) Act 1991*.

Where land has been dedicated to council by a State agency for a particular purpose and a trust exists, it is advisable for council to seek the views of that agency prior to council commencing any planning proposal affecting the land.

**Public reserve** is defined in the LG Act and includes a public park and land declared or dedicated as a public reserve.

Land can be dedicated as a public reserve by either:

- registering a deposited plan with a statement creating a lot(s) as 'public reserve', or
- publishing a notification in the Government Gazette for an existing parcel.

**Interests in land** refers to property ownership as well as rights and privileges affecting land, such as leasehold, easements, covenants and mortgages.

For the purpose of reclassification through an LEP, 'interests' means trusts, estates, dedications, conditions, restrictions and covenants affecting the land.

A legal owner of land may not be the only person with an interest in the land. For example, one person may have the benefit of an easement for services, such as water, electricity or sewerage over someone else's land.

Certain interests are registered on title to ensure they are on record and cannot be disregarded if sold to a new owner. An electronic title search is generally conducted to determine the land owner, correct land description and the type of interests which may affect the land.

### Standard Instrument LEP requirements

Clause 5.2—Classification and reclassification of public land in Standard Instrument LEPs enables councils to classify or reclassify public land as operational land or community land in accordance with the LG Act. The land to be reclassified or classified is described in Schedule 4 of the LEP.

Schedule 4 is not to refer to any land already classified or reclassified.

Where there is no public land to be classified, or reclassified, through a principal LEP (i.e. the LEP applies to the whole of a local government area), Schedule 4 will appear blank.

Note: At a later stage council may lodge a planning proposal to remove previous listings in Schedule 4. This will not affect the classification status of these parcels of land.

### Department assessment

A proposal to classify or reclassify public land through an LEP must have planning merit. The Department will undertake an assessment to determine whether the proposal demonstrates strategic and site specific merit.

### Community consultation

Planning proposals to reclassify public land are to be publicly exhibited for at least 28 days.

A copy of this practice note is to be included in the public exhibition materials.

<sup>1</sup> Note: Council is required to give public notice of the proposed resolution and provide a period of at least 28 days during which submissions may be made (LG Act s.34).



## Public hearings

Councils must hold a public hearing when reclassifying public land from community to operational (EP&A Act s.57 & LG Act s.29). This gives the community an opportunity to expand on written submissions and discuss issues with an independent person in a public forum.

After the exhibition period has ended, 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.

There are specific requirements for the independence of the person chairing the hearing, their preparation of a public hearing report and council making the report publicly available (LG Act s.47G).

## Governor's approval

The Governor's approval is required when a reclassification proposal seeks to remove any public reserve status and/or discharge any interests affecting public land (s.30).

When a council reports back to the Department on the community consultation undertaken and requests the Department make the LEP, the Department will arrange legal drafting of the LEP, including recommending the Governor approve the provisions before the LEP can be legally made.

Where the Governor's approval is required, the council's report accompanying the final planning proposal must address:

- council's interests in the land;
- whether the land is a 'public reserve';
- the effect of the reclassification, including loss of open space, any discharge of interests, and/or removal of public reserve status;
- the strategic and site specific merits of the reclassification and evidence to support this;
- any current use of the land, and whether uses are authorised or unauthorised;
- how funds obtained from any future sale of the land will be used;
- the dates the planning proposal was publicly exhibited and when the public hearing was held;
- issues raised in any relevant submissions made by public authorities and the community;
- an explanation of how written and verbal submissions were addressed or resolved; and
- the public hearing report and council resolution.

## Authorisation of delegation

Local plan making functions are now largely delegated to councils.

A Written Authorisation to Exercise Delegation is issued to a council as part of the Gateway determination. However, where an LEP requires the Governor's approval, this council delegation cannot be issued. In this instance, the council must request the Department make the LEP.

A decision to classify or reclassify public land cannot be sub-delegated by council to the general manager or any other person or body (LG Act s.377(1)(l)).

## Background

On July 1, 1993 when the LG Act commenced, the following land under council ownership or control, was automatically classified as *community* land:

- land comprising a public reserve,
- land subject to a trust for a public purpose,
- land dedicated as a condition of consent under s.94 of the EP&A Act,
- land reserved, zoned or otherwise designated for use under an environmental planning instrument as open space,
- land controlled by council and vested in Corporation Sole - Minister administering the EP&A Act.

Councils must keep a register of land under their ownership or control (LG Act s.53) and anybody can apply to a council to obtain a certificate of classification (LG Act s.54).

## Further information

A copy of this practice note, *A guide to preparing planning proposals* and *A guide to preparing local environmental plans* is available at:

<http://www.planning.nsw.gov.au>

For further information, please contact the Department of Planning and Environment's Information Centre by one of the following:

Post: GPO Box 39, Sydney NSW 2001.

Tel: 1300 305 695

Email: [information@planning.nsw.gov.au](mailto:information@planning.nsw.gov.au)

**Authorised by:**  
**Carolyn McNally**  
**Secretary**

**Important note** This practice note does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this practice note.

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[www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

**Disclaimer:** While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

## ATTACHMENT 1 – INFORMATION CHECKLIST FOR PROPOSALS TO CLASSIFY OR RECLASSIFY PUBLIC LAND THROUGH AN LEP

The process for plan-making under the EP&A Act is detailed in *A guide to preparing planning proposals* and *A guide to preparing local environmental plans*.

Importantly, *A guide to preparing local environmental plans* contains the Secretary's requirements for matters that must be addressed in the justification of all planning proposals to reclassify public land. Councils must ensure the Secretary's requirements are addressed.

Councils must also comply with any obligations under the LG Act when classifying or reclassifying public land. More information on this can be found in *Practice Note No. 1 - Public Land Management* (Department of Local Government, 2000).

All planning proposals classifying or reclassifying public land must address the following matters for Gateway consideration. These are in addition to the requirements for all planning proposals under section 55(a) – (e) of the EP&A Act (and further explained in *A guide to preparing planning proposals* and *A guide to preparing local environmental plans*).

- ☐ the current and proposed classification of the land;
- ☐ whether the land is a 'public reserve' (defined in the LG Act);
- ☐ the strategic and site specific merits of the reclassification and evidence to support this;
- ☐ whether the planning proposal is the result of a strategic study or report;
- ☐ whether the planning proposal is consistent with council's community plan or other local strategic plan;
- ☐ a summary of council's interests in the land, including:
  - how and when the land was first acquired (e.g. was it dedicated, donated, provided as part of a subdivision for public open space or other purpose, or a developer contribution)
  - if council does not own the land, the land owner's consent;
  - the nature of any trusts, dedications etc;
- ☐ whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why;
- ☐ the effect of the reclassification (including, the loss of public open space, the land ceases to be a public reserve or particular interests will be discharged);
- ☐ evidence of public reserve status or relevant interests, or lack thereof applying to the land (e.g. electronic title searches, notice in a Government Gazette, trust documents);
- ☐ current use(s) of the land, and whether uses are authorised or unauthorised;
- ☐ current or proposed lease or agreements applying to the land, together with their duration, terms and controls;
- ☐ current or proposed business dealings (e.g. agreement for the sale or lease of the land, the basic details of any such agreement and if relevant, when council intends to realise its asset, either immediately after rezoning/reclassification or at a later time);
- ☐ any rezoning associated with the reclassification (if yes, need to demonstrate consistency with an endorsed Plan of Management or strategy);
- ☐ how council may or will benefit financially, and how these funds will be used;
- ☐ how council will ensure funds remain available to fund proposed open space sites or improvements referred to in justifying the reclassification, if relevant to the proposal;
- ☐ a Land Reclassification (part lots) Map, in accordance with any standard technical requirements for spatial datasets and maps, if land to be reclassified does not apply to the whole lot; and
- ☐ preliminary comments by a relevant government agency, including an agency that dedicated the land to council, if applicable.



BOX 155S  
(052984)

NEW SOUTH WALES

**CERTIFICATE OF TITLE**  
REAL PROPERTY ACT, 1900



**TORRENS TITLE**

REFERENCE TO FOLIO OF THE REGISTER	
IDENTIFIER	1/102113
EDITION	DATE OF ISSUE
1	1. 3. 1995

I certify that the person described in the First Schedule is the registered proprietor of an estate in fee simple (or such other estate or interest as is set forth in that Schedule) in the land within described subject to such exceptions, encumbrances, interests and entries as appear in the Second Schedule and to any additional entries in the Folio of the Register.

*K. Melle*  
REGISTRAR GENERAL



**LAND**  
-----

LOT 1 IN DEPOSITED PLAN 102113  
LOCAL GOVERNMENT AREA: BOGAN  
PARISH OF NYNGAN COUNTY OF OXLEY  
TITLE DIAGRAM: DP102113

**FIRST SCHEDULE**  
-----

BOGAN SHIRE COUNCIL

(T R901742)

**SECOND SCHEDULE**  
-----

1. RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
2. A81417 RIGHT OF WAY APPURTENANT TO THE PART OF THE LAND  
ABOVE DESCRIBED DESIGNATED (A) IN DP102113 AFFECTING  
THE LAND 12 FEET 0 1/4 INCHES WIDE SHOWN IN DP102113
3. J652654 COVENANT
4. 052984 LEASE TO GEORGE EDWARD LING & SALLY ANNE LING.  
EXPIRES 29-3-1996 OPTION OF RENEWAL 5 YEARS

**ATTACHMENT D – Certificate of Title for the Land**

BOX 155S  
(052984)

NEW SOUTH WALES

**CERTIFICATE OF TITLE**  
REAL PROPERTY ACT, 1900



**TORRENS TITLE**

REFERENCE TO FOLIO OF THE REGISTER	
IDENTIFIER	2/355559
EDITION	DATE OF ISSUE
1	1. 3. 1995

I certify that the person described in the First Schedule is the registered proprietor of an estate in fee simple (or such other estate or interest as is set forth in that Schedule) in the land within described subject to such exceptions, encumbrances, interests and entries as appear in the Second Schedule and to any additional entries in the Folio of the Register.

*K. Mett*

REGISTRAR GENERAL



**LAND**  
-----

LOT 2 IN DEPOSITED PLAN 355559  
LOCAL GOVERNMENT AREA: BOGAN  
PARISH OF NYNGAN COUNTY OF OXLEY  
TITLE DIAGRAM: DP355559

**FIRST SCHEDULE**  
-----

BOGAN SHIRE COUNCIL

(T R901742)

**SECOND SCHEDULE**  
-----

1. RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
2. A81417 RIGHT OF WAY APPURTENANT TO THE LAND ABOVE DESCRIBED AFFECTING THE LAND SHOWN SO BURDENED IN VOL 5687 FOL 91
3. 052984 LEASE TO GEORGE EDWARD LING & SALLY ANNE LING. EXPIRES 29-3-1996 OPTION OF RENEWAL 5 YEARS



BOX 155S  
(052984)

NEW SOUTH WALES

**CERTIFICATE OF TITLE**  
REAL PROPERTY ACT, 1900



TORRENS TITLE

REFERENCE TO FOLIO OF THE REGISTER	
IDENTIFIER	3/945184
EDITION	DATE OF ISSUE
1	1. 3. 1995

I certify that the person described in the First Schedule is the registered proprietor of an estate in fee simple (or such other estate or interest as is set forth in that Schedule) in the land within described subject to such exceptions, encumbrances, interests and entries as appear in the Second Schedule and to any additional entries in the Folio of the Register.

REGISTRAR GENERAL



**LAND**

LOT 3 IN DEPOSITED PLAN 945184  
AT NYNGAN  
LOCAL GOVERNMENT AREA: BOGAN  
PARISH OF NYNGAN COUNTY OF OXLEY  
TITLE DIAGRAM: DP945184

**FIRST SCHEDULE**

BOGAN SHIRE COUNCIL

**SECOND SCHEDULE**

1. RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
2. A81417 RIGHT OF WAY AFFECTING THE PART OF THE LAND ABOVE DESCRIBED DESIGNATED (X) IN DP945184
3. 052984 LEASE TO GEORGE EDWARD LING & SALLY ANNE LING.  
EXPIRES 29-3-1996 OPTION OF RENEWAL 5 YEARS

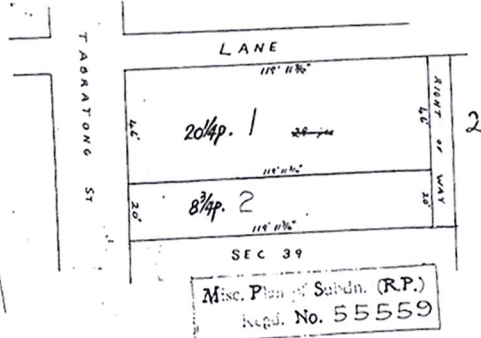


Ref: 9245844 / Doc: DP 0355559 P / Rev: 26-Nov-1992 / NSW LRS / Pys: All / Pst: 27-Jan-2021 15:23 / Seq: 1 of 1  
 © Office of the Registrar-General / Src: INFOBACK / Ref: Palala Theatre

D572084 FR355559  
 PLAN OF PROPOSED SUBDIVISION OF LAND, PART ~~Lot 1~~ <sup>Alot 1</sup>  
 SECTION 39 HAVING FRONTAGE OF 66' to TABRATONG STREET, NYNGAN  
 INTO TWO BLOCKS HAVING FRONTAGE OF 46' and 20' RESPECTIVELY.

OWNER - CECIL CARL BARRINGER.

R. Nyngan Co. Oxley



*C. Barringer*

Applicant.

The above subdivision was approved by the Council of the Municipality of Nyngan, at a meeting held on the 21st day of August, 1946.

The Common Seal of the Council of the Municipality of Nyngan was hereto affixed on the 21st day of August, 1946, in pursuance of a resolution of the Council passed at a meeting held on the 21st day of August, 1946.

*M. J. P. Town Clerk*

*L. J. Maiter Mayor*

.....

Covered by the Council Clerk's Certificate No. 9 of 1946.

*M. J. P. Council Clerk*

27 JUL 1976

CONVERSION TABLE PLACED IN DEPARTMENT OF LANDS

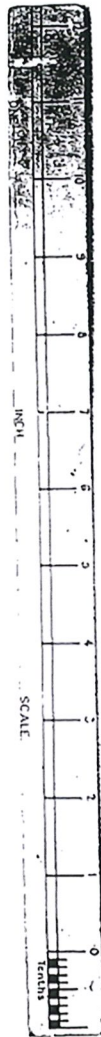
DP 355559	
FEET INCHES	METRES
20 -	6.096
46 -	14.021
119 11 3/4	36.970
AC RD P	SQ R
- - 8 3/4	221.3
- - 20 1/4	512.2

100 NUMBERS ADDED IN REGISTRAR GENERAL'S OFFICE.

I, Bruce Richard Davies, Registrar General for New South Wales, certify that this negative is a photograph made as a permanent record of a document in my custody this 10th day of August, 1976



Reg:R245845 / Doc:DP 0945184 P / Rev:30-May-2000 / NSW LRS / Pgs:ALL / Pts:27-Jan-2021 15:23 / Seq:1 of 1  
 © Office of the Registrar-General / Sec:INFOTRACK / Ref:Palais Theatre



Under the instrument  
 contains some special  
 provision by the Trans-  
 feree, his signature  
 will be deemed with  
 effect as if it were  
 signed by the Trans-  
 feree himself.

Signed in my presence by the said  
*Robert Barringer*  
 THE REGISTRAR GENERAL OF NSW

correct for the purposes of the Real Property  
 Act.

*R. Barringer*  
 Registrar

(\*The above may be signed by the holder, when the signature  
 of the transferee is not required. See note "a" in the margin.)  
 N.B.—Section 117 requires that the above Certificate be signed  
 by the Registrar or his Deputee, and makes false any person  
 who signs or impudently certifying to a penalty of \$500, and  
 is liable to imprisonment for twelve months.

A81417

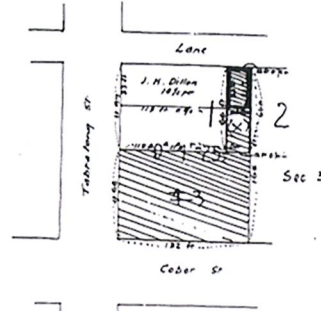
F.P. 945184 (E)

The Plan referred to

L.G.A. BOGAN

*P. Hynd*

*C. Oxley*



945184

FORM OF DECLARATION BY ATTESTING WITNESS.

Appeared before me, at \_\_\_\_\_, the  
 day of \_\_\_\_\_, one thousand nine hundred and \_\_\_\_\_  
 the attesting witness to this instrument, and declared that he personally knew  
 the person signing the same, and whose signature thereto he has attested; and that the  
 name purporting to be such signature of the said \_\_\_\_\_  
 is his own handwriting, and that he was of  
 sound mind, and freely and voluntarily signed the same.

- 1. May be made before  
 either Justice,  
 District, County,  
 Registrar-General,  
 Deputy Registrar,  
 or Commissioner for  
 Land.
- 2. Not required if the  
 instrument itself be  
 signed and acknowledged  
 before one of these  
 parties.
- 3. Name of witness and  
 residence.
- 4. Name of Transferee.
- 5. Name of Transferee.

Signature of  
 Deputy Registrar,  
 District, County, Public,  
 J.S., or Commissioner  
 for Land.

Tabrington St.

VOL.2453  
 LOT NO ADI



Req:R245843 /Doc:DP 0102113 P /Rev:06-Mar-2019 /NSW LRS /Prt:27-Jan-2021 15:23 /Seq:1 of 2  
 © Office of the Registrar-General /Src:INFOTRACK /Ref:Palais Theatre



Form 1

OFFICE USE ONLY

<b>PLAN OF</b> Part of Allot. 1 of Sec. 39.		<b>DP 102113</b>	
		Copy of Plan formerly recorded as	
		Plan in D 543032	
Mun./Shire/City Nyngan		C.A.: -	
Town or Locality Nyngan		Charting Map: Nyngan Sh.1.	
Parish Nyngan		Ref. Map: " "	
County Oxley		Scale: 30 feet to one inch	

Tabratong

(A) BENEFITED BY RIGHT OF WAY  
- A81417

	Surveyor: — Date: 30.8.1946 Standard Tracing Prepared in Registrar General's Dept.: <i>JP 26/10/64</i> Exmd.: <i>JP 26/10/64</i>
--	--

55977 344 V.C.N. High, Government Printer

PLAN AMENDED AT L.T.O. 23.11.88

J 652654


 Fees:  
 Lodgment  
 Endorsements  
 Total

 f s d  
 2 10

11.56

NEW SOUTH WALES

## MEMORANDUM OF MORTGAGE

REAL PROPERTY ACT, 1900.

JOHN CLIFTON DOUGLAS of Flat 3, 37 King Street, Waverton,  
 Service Representative, and EVELYN GLADYS DOUGLAS, his wife

(hereinafter referred to as the Mortgagor)

being registered as the proprietor of an estate in fee simple in the land hereinafter described (subject however to such encumbrances  
 liens and interests as are notified by memoranda underwritten or endorsed hereon) in consideration of One thousand  
four hundred and fifty pounds

(£1450) (hereinafter called the principal sum) lent to the Mortgagor by A.G.C. (GENERAL FINANCE) LIMITED a  
 Company duly incorporated under the laws of New South Wales and having a place of business at A.G.C. House, Phillip and  
 Hunter Streets, Sydney (hereinafter referred to as the Mortgagee) the receipt whereof is hereby acknowledged doth for the purpose  
 of securing to the Mortgagee the payment in manner hereinafter mentioned of the said principal sum and interest thereon hereby  
 mortgage to the Mortgagee.

ALL the Mortgagor's Estate and interest as such registered proprietor as aforesaid in the land comprised in the following Schedule:

Parish	County	Whole or Part	Instrument	Volume	Folio
NARRABEEN ✓	CUMBERLAND ✓	WHOLE ✓	CERTIFICATE OF TITLE	8216 ✓	152 ✓

AND for the consideration aforesaid the Mortgagor covenants with the Mortgagee

FIRSTLY—That the Mortgagor will pay to the Mortgagee the principal sum together with interest amounting to Two  
hundred and eighty-three pounds eight shillings and three pence (£ 283. 8. 0.) representing a rate of  
11.96 per centum per annum making a total amount of One thousand seven hundred and  
thirty-three pounds eight shillings and three pence (£ 1733. 8. 0.) by 35 payments of  
Forty-eight pounds three shillings and three pence (£ 48. 3. 0.) each the first of such payments to be made on  
 the 1st day of June 1967 and subsequent payments to be made on the 8th day of May 1967  
 day of each and every month and a final payment to be made on the 1st day of June 1967  
 in the sum of Forty-eight pounds three shillings and three pence (£ 48. 3. 0.).

SECONDLY—That on default being made in the payment upon the due date of any sum payable to the Mortgagee pursuant to these  
 presents whether in respect of principal or interest the Mortgagee shall be entitled to charge simple interest on that sum from the date  
 of default until the sum is paid at the rate referred to in Clause 1 hereof.

THIRDLY—That the Mortgagor will insure and keep insured all buildings now or hereafter erected on the said premises in the name  
 of the Mortgagee in the full insurable value thereof against fire and fire occasioned by explosion storm and tempest in some insurance  
 office nominated by the Mortgagee and that in the event of loss the sum recoverable on account of such insurance shall be applicable  
 either in or towards repair or rebuilding or in or towards repayment of the mortgage debt at the option of the Mortgagee, and the  
 Mortgagor will hand the policy or policies evidencing such insurance and all receipts for moneys paid and other usual evidences of  
 insurance to the Mortgagee immediately upon the issue thereof.

FOURTHLY—That the Mortgagor will during the continuance of this security whether the Mortgagee shall or shall not have entered  
 upon and taken possession of the mortgaged property make such repairs as may be necessary for keeping the messuages and buildings  
 now or hereafter to be erected on the land hereby mortgaged in good and tenable repair and condition and pay all rates, taxes,  
 charges, outgoings, and assessments (including any land or property tax) that may now or at any time be or become payable or become  
 chargeable or be assessed or become due upon or in respect of the mortgaged property or any part thereof under or in pursuance of  
 the provisions of any Statute Act or Ordinance, or any regulations thereunder now in force or that may come into operation during the  
 continuance of this security, and will at all times indemnify and keep indemnified the Mortgagee, from the payment of such rates,  
 taxes, charges, outgoings and assessments, and every or any part thereof, and from all claims and demands in respect thereof, and  
 that the Mortgagee shall at all times during the continuance of this security be at liberty with or without surveyors or others to enter  
 into and upon the mortgaged property, and view and inspect the state of repair of the buildings and improvements thereon.

AF 445(a) 10/63

FIFTHLY—That in case the Mortgagor shall at any time fail to keep the mortgaged property so insured and in good and tenable repair and condition, or to pay such rates, taxes, charges, outgoings and assessments as aforesaid, it shall be lawful for, but not obligatory upon, the Mortgagee to effect and maintain such insurance, repairs, and condition, and to pay such rates, taxes, charges, outgoings, and assessments as the case may be, and all moneys or payments so expended or made shall be repayable by the Mortgagor upon demand, and be deemed principal moneys covered by this security, and shall carry interest until such repayment at the rate chargeable on arrears pursuant to Clause 2 hereof.

SIXTHLY—That in addition to all costs and expenses which the Mortgagor may be liable at law or in Equity to pay in respect of this security or otherwise in relation thereto the Mortgagor will upon demand pay all costs and expenses incurred by the Mortgagee in consequence of any default in payment of any principal, interest, or other moneys covered by this security all of which costs and expenses shall from the time of payment or expenditure thereof respectively until repaid to the Mortgagee by the Mortgagor be deemed principal moneys covered by this security, and shall carry interest at the rate chargeable on arrears pursuant to Clause 2 hereof.

SEVENTHLY—That upon default being made in payment at the respective times and in the manner hereinbefore mentioned of the principal sum or any part thereof or of the interest thereon or any part thereof, or upon default being made in the observance or performance of any of the covenants agreements or conditions herein contained or implied whether under the provisions of the "Real Property Act, 1900" or the "Conveyancing Act, 1919" or any amendment or consolidation thereof or substitution thereof or otherwise, or if the Mortgagor's estate shall be sequestrated as bankrupt, the Mortgagee or the Mortgagee's attorney or attorneys shall (notwithstanding any omission neglect or waiver of the right to exercise all or any of such powers on any former occasion) immediately or at any time thereafter be at liberty to exercise any of the powers of a Mortgagee under the "Real Property Act, 1900," and the "Conveyancing Act, 1919," or any amendment or consolidation thereof or substitution thereof, and as between the Mortgagor and the Registrar-General or his Deputy and all persons whomsoever dealing with or accepting title under the Mortgagee, it shall be lawful for and the Mortgagor doth hereby authorise the Mortgagee and the Mortgagee's attorney or attorneys to enter into possession and management of the mortgaged property or any part thereof, and to make any lease or leases thereof or any part thereof, either with or without an option of purchase, and to exercise any of the powers of sale, entry, distress, ejectment, foreclosure, and every other power vested in Mortgagees under the "Real Property Act, 1900," and the "Conveyancing Act, 1919," or any amendment or consolidation thereof or substitution thereof in respect of the property hereby mortgaged and every part thereof immediately upon or at any time after default as hereinbefore mentioned without the necessity of giving the Mortgagor any notice or notices whatsoever as required by the said Acts or any amendment or consolidation thereof or substitution thereof or otherwise previously to exercising any of such powers, and that it shall not be necessary to prove to the Registrar-General or his Deputy that any such default has been made or continued or that the exercise of any such powers as aforesaid was necessary or required and that upon tender for registration of any instrument under the said Acts or any amendment or consolidation thereof or substitution thereof duly executed by the Mortgagee or the Mortgagee's attorney or attorneys it shall not be necessary for the Registrar-General or his Deputy to enquire whether any default has been made or continues, or whether the power of sale or any other power that may have been exercised as aforesaid has arisen or been properly exercised, or into any other matter or thing whatsoever. And the Mortgagor hereby agrees that if at any time default shall be made in the performance or observance of any of the covenants and conditions herein contained or implied or if the power of sale hereby given to the Mortgagee shall become exercisable, then, if the Mortgagee shall so elect, the principal money hereby secured shall immediately fall due and the Mortgagor will thereupon pay the same on demand, and it shall be lawful for the Mortgagee (whether the power of sale or any other power has been exercised or not) to sue for recover and receive as and for debt due under covenant not only such interest as may be due as aforesaid but also the principal sum hereby secured or so much thereof as shall then remain unpaid as if there had been a default in the payment thereof, although the time for payment of the same shall not have arrived.

EIGHTHLY—That upon sale or lease as aforesaid the mortgaged property or any part thereof may be sold or leased together with the other land in mortgage from the Mortgagor to the Mortgagee, whether under the "Real Property Act, 1900," or the "Conveyancing Act, 1919," or any amendment or consolidation thereof or substitution thereof or under the general law, by one contract and at one price or at one rent or in any other manner that the Mortgagee may deem expedient.

NINTHLY—That upon the sale, under the power of sale hereinbefore contained it shall be lawful for the Mortgagee to sell for cash or upon terms, and to allow a purchaser any time for payment of the whole or any part of the purchase money with or without interest, and either with or without security therefor.

TENTHLY—That in applying the purchase money towards satisfaction of the moneys for the time being owing on the security hereof the Mortgagee shall be credited only with so much of the said moneys available for the purpose as shall be received in cash by the Mortgagee such credit to date from the time of such receipt, and all purchase money left outstanding on credit or otherwise shall until actually received by the Mortgagee in cash be deemed a continuing unsatisfied part of the Principal moneys hereby secured and carry interest accordingly, provided that any interest paid by the purchaser shall be set off *pro tanto* against the interest hereby secured.

ELEVENTHLY—And the Mortgagor hereby irrevocably appoints the Mortgagee his attorney with full power for the Mortgagor and on the Mortgagor's behalf immediately on or at any time after default made by the Mortgagor hereunder and without giving the Mortgagor any notice whatever, to lease the whole or any part of the mortgaged property, either with or without an option of purchase, for such period or periods and upon such terms and conditions as the Mortgagee shall think fit, without any eviction or interruption by the Mortgagor or any person whomsoever and to accept surrenders and make concessions to or compromise with tenants upon terms or gratuitously and otherwise with respect to such tenancies to have all the powers of an absolute owner.

TWELFTHLY—That the Mortgagee shall, so long as any moneys shall remain due and owing on this security have and retain possession of the said Certificate of Title to the said mortgaged property and of any Certificate of Title to be hereafter issued in substitution thereof, whether to a purchaser of the equity or redemption or otherwise.

THIRTEENTHLY—That all powers rights and remedies implied in favour of or conferred upon Mortgagees by the "Conveyancing Act, 1919," shall be in enlargement and augmentation of and not in curtailment or diminution of the powers rights and remedies conferred by these presents and shall be exercisable by the Mortgagee immediately on any default whatsoever by the Mortgagor hereunder without any notice or expiration of time under that Act being necessary AND THAT none of the restrictions contained in Sub-section 2 of Section 111 of the said Act upon the exercise by the Mortgagee of the Statutory power of sale shall apply to this security AND FURTHER that Sub-sections (3) (3) (6) (7) and (8) of Section 106 of the said Act shall not nor shall any of the conditions and restrictions on a Mortgagee's power of leasing contained in the said Section apply to any lease or sub-lease granted under the powers of leasing conferred on the Mortgagee by the said Acts or by this instrument. AND ALSO that the Mortgagor shall not be entitled to exercise the Statutory power of leasing conferred by the said Section without the previous consent of the Mortgagee.

FOURTEENTHLY—That upon any Lease or Sale made under the aforesaid Powers the Lessee or Purchaser shall not be bound to see or enquire whether such Lease or Sale is consistent with the terms of this Mortgage nor be affected by notice that such Lease or Sale is made in breach thereof.

FIFTEENTHLY—That the provisions of the Moratorium Act 1932 and of any present or future Federal or State Statute or Regulation postponing payment of money or reducing rates of interest or purporting to curtail or restrict the rights powers or remedies of a Mortgagee are hereby expressly excluded from and shall not apply to this mortgage or to any renewal or extension thereof.

SIXTEENTHLY—That the Mortgagor shall not whilst any moneys remain secured hereby sell transfer or otherwise dispose of or, without the consent in writing of the Mortgagee first had and obtained, let, lease, grant any license to use, part with possession of or give any further mortgage or other security over the property hereby mortgaged or any part thereof.



SEVENTEENTHLY—That whenever any covenant for the payment of principal moneys on the part of the Mortgagor shall become merged in any judgment or order the Mortgagor shall pay simple interest upon the said principal moneys at the rate chargeable on arrears pursuant to Clause 2 hereof.

EIGHTEENTHLY—That the Mortgagor shall duly and punctually observe all the terms and conditions and covenants on his behalf contained in any mortgage noted in the Memorandum of Encumbrances hereto.

NINETEENTHLY—In exercise of the powers of sale hereby or by Statute conferred upon the Mortgagee the mortgaged premises may be sold either subject to or discharged from the mortgage debt secured by any Mortgage noted in the Memorandum of Prior Encumbrances hereto and interest and upon such terms as to indemnity against the same as the Mortgagee may determine and the Mortgagee may pass and settle the accounts of the person or persons for the time being entitled to the said Mortgage debt and interest and all accounts so passed or settled shall be binding on the Mortgagor.

TWENTYFIFTHLY—Provided always that if the Mortgagor shall produce to the Mortgagee evidence satisfactory to the Mortgagee that the Mortgagor has kept and is keeping the said premises repaired and insured and the rates taxes outgoings and assessments paid in accordance with his covenants in that behalf contained in any first Mortgage noted in the Memorandum of Prior Encumbrances hereto then the Mortgagee will accept such evidence in satisfaction of the covenants contained in Clauses 3 and 4 hereof notwithstanding that the Mortgagor may be unable to deliver or produce the said Policy or the receipts to the Mortgagee.

TWENTY-FIRSTLY—In the construction of a covenant proviso condition or other agreement contained or implied in these presents unless inconsistent with the context words importing the singular or plural number or the masculine gender shall be read as also importing and including the plural or singular number and the feminine gender as the case may require, and a covenant proviso condition or agreement in which more persons than one covenant, agree or appoint, or are deemed to covenant agree or appoint shall be deemed to bind and extend to such persons and any two or greater number of them jointly and each of them severally. Whenever a corporation shall be a party hereto either as Mortgagor or Mortgagee, the words "mortgagor," or "mortgagee," or "person" whenever herein used shall be deemed to mean and include such corporation, its successors assigns and transferees, words importing the masculine gender shall be read as importing the neuter gender, and any words dealing with the Mortgagor's bankruptcy or the sequestration of the Mortgagor's estate shall in the case of a corporation mortgagor be deemed to refer to its liquidation.

# MEMORANDUM OF PRIOR ENCUMBRANCES, &c., REFERRED TO.

Covenant in <sup>#-1-1</sup> J 652653

IN WITNESS whereof the parties have hereunto subscribed their names at the day of May in the year of our Lord one thousand nine hundred and sixty-four

Signed in my presence by the said  
JOHN CLIFTON DOUGLAS and  
EVBLYN GLADYS DOUGLAS

who are personally known to me

Signed in my presence by the said

who personally known to me

Accepted and hereby certify this Mortgage to be correct for the purposes of the Real Property Act.

Solicitor for the Mortgagee.  
whose signature cannot be obtained without difficulty and delay.

## CERTIFICATE OF J.P., ETC., TAKING DECLARATION OF ATTESTING WITNESS

Appeared before me at the day of  
one thousand nine hundred and the attesting witness to this instrument and declared that  
he personally know  
the person signing the same and whose signature thereto he has attested and that the name purporting to be such  
signature of the said is  
own handwriting, and that was of sound mind and freely and voluntarily signed the same.

**J 652654**

No. \_\_\_\_\_

**MORTGAGE**

INDEXED <input checked="" type="checkbox"/>	Particulars entered in Register Book,  21-5-1964 at 11 o'clock  <i>Lawson</i> REGISTRAR GENERAL
CHECKED <input checked="" type="checkbox"/>	
PASSED IN S.D.B.	
SIGNED <i>[Signature]</i>	

LODGED BY \_\_\_\_\_

**CLAYTON, UTZ & COMPANY**  
SOLICITORS  
130 LIVERPOOL ST.  
SYDNEY

PHONE No. \_\_\_\_\_

DOCUMENTS LODGED HEREWITH:--

1. *[Signature]* } Received Docs. Nos.  
2. \_\_\_\_\_ }  
3. \_\_\_\_\_ } Receiving Clerk

The within written mortgage was executed by the within named John Clifton Douglas and Evelyn Gladys Douglas

and on or before their execution of the same they stated to me that they knew the effect of and approved of the insertion in the said mortgage of the covenants to pay the principal and interest moneys secured by the within mortgage AND I CERTIFY that I am not the Solicitor or Conveyancer for the mortgagee.

Signature *[Signature]*

Address *66 Kensington Rd Sydney*

*D/M*  
*K 459266*

**FORM OF DISCHARGE**

DISCHARGE No. \_\_\_\_\_

Discharge lodged by \_\_\_\_\_

Phone No. \_\_\_\_\_

RECEIVED from the within Mortgagor this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_,  
the sum of all moneys, being in full satisfaction and discharge of the within obligation.

Signed in my presence for the said Mortgagor by its Attorney \_\_\_\_\_ who hereby states that he has no notice of the revocation of the Power of Attorney Registered No. \_\_\_\_\_ Miscellaneous Register under the authority of which this document is executed and who is personally known to me.

**A.G.C. (GENERAL FINANCE) PTY. LIMITED** by its Attorney: \_\_\_\_\_

Mortgagee.