

13 May 2014

Cabramatta Business Association
Attention: Mr Keith Howlett (Secretary)

I refer to the resolution of the JRPP meeting held at Council Chambers on Thursday 8 May, 2014.

I refer also to your e-mail to Council dated 12 May 2014 where you specify the additional information that you wish to have provided.

Accordingly, the requested information is attached as follows;

- a copy of the independent assessment pertaining to the reclassification process;
- a copy of a memorandum from Council's Traffic Engineer relating to a parking survey.

Please be advised that the status of the Cabramatta T-Map is presently as a working document still in draft form. It is currently being reviewed and is the subject of further analysis and review.

The Cabramatta T-Map was a requirement of the RMS following Council's consultation on a Draft LEP and DCP for Cabramatta and surrounding areas which proposed significant increases in density.

It principally deals with the traffic and transport implications arising from the Draft Planning document. Once finalised, it will be used to inform Council's decision on these planning proposals.

Currently the status of the T-Map is as a working document that is still to be finalised and is in draft form. Accordingly, it is not a document that can be provided at this time.

I trust that this information is of assistance.

Regards,



GEORGE VLAMIS
MANAGER DEVELOPMENT PLANNING

From: Simon Cai
Sent: Monday, 17 March 2014 1:34 PM
To: Philip Saverimuttu
Cc: Michael Oliveira
Subject: Dutton Lane car park inspection on Saturday, 15 March 2014

Hi Philip,

Further to our meeting with Paul last Friday, a parking survey was undertaken on Saturday, 15 March 2014 between 11.30am – 12.30pm (weekend peak period) to ascertain the usage off-street parking spaces in Dutton Lane at-grade car park and multi-storey car park. The car parks are currently over-utilised at weekend peak times. This information is being sent to you for records as it will help answer the question in regard to the parking requirements as specified in Council's Development Control Plan. The results are as follows:

Time	Dutton Lane at grade car park	Dutton Lane multi-storey car park
11.30am	100% utilisation with eight (8) cars circulating in the car park searching for a vacant space	All parking spaces were observed to be 100% utilised except the roof top car parking. Fourteen (14) parking spaces were found to be vacant at the top level of the car park.
11.45am	100% utilisation with four (4) cars circulating in the car park searching for a vacant space	All parking spaces were observed to be 100% utilised except the roof top car parking. Seven (7) parking spaces were found to be vacant at the top level of the car park.
12.00pm	100% utilisation with three (3) cars circulating in the car park searching for a vacant space	All parking spaces were observed to be 100% utilised except the roof top car parking. Eleven (11) parking spaces were found to be vacant at the top level of the car park.
12.15pm	100% utilisation with eight (8) cars circulating in the car park searching for a vacant space	All parking spaces were observed to be 100% utilised except the roof top car parking. Only three (3) parking spaces were found to be vacant at the top level of the car park.
12.15pm	100% utilisation with six (6) cars circulating in	All parking spaces were observed to be 100%

	the car park searching for a vacant space	utilised except the roof top car parking. Only two (2) parking spaces were found to be vacant at the top level of the car park.
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Also, it was observed that there is a number of vehicles waiting for a vacant space at different levels of the Dutton Lane multi-storey car park, particularly closer to the upper levels of the car park. If you have any further enquiries regarding this matter, please let me know.

Regards

Simon Cai

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Fairfield Local Environmental Plan

Draft Amendment No. 94

**Reclassification of Dutton Lane Car Park
(Cabramatta Town Centre)
from community to operational land**

Assessment by John Mant MAPI

Mant Consulting Pty Ltd

26B Caledonia Street

Paddington 2021

Fairfield Local Environmental Plan

Draft Amendment No. 94

Reclassification of Dutton Lane Car Park (Cabramatta Town Centre) from community to operational land

Assessment by John Mant MAPI

Introduction

The *Local Government Act 1993* (the LGAct) provides for Council's public land to be categorised into community land or operational land.

Under the provisions of the LGAct, land that has not been specifically classified is presumed to be community land.

The process for making a classification or reclassification is a local environmental plan (LEP) made under the provisions of the *Environmental Planning and Assessment Act 1979* (the EP&A Act).

The practice is that where a Council is making an LEP that affects its own land an independent assessment is to be undertaken by an appropriately qualified expert.

This assessment concerns the land that is owned by Council and consists of the land used for the Dutton Lane Car Park in the centre of the Cabramatta Town Centre. The assessment is made by John Mant, a practicing urban planner and a Member of the Australian Planning Institute.

Background

Legal Provisions

Under the provisions of the LG Act, land that has not been specifically classified is presumed to be community land.

At its commencement in 1993, the LG Act under Schedule 7, cl 6(2) permitted Council, in certain circumstances, by resolution to make a classification of parcels of its public land as operational land without having to use the process of an LEP.

Council purported to classify the land of the Dutton Car Park as operational land using the 1993 process.

Later questions were raised as to the validity of this process.

As the High Court stated in *Bathurst City Council v PWC Properties Pty Ltd* (1998)HCA

However, if the subject land comprised "land subject to a trust for a public purpose" under cl 6(2), it was not open to the Council to reclassify it in exercise of the power conferred by cl 6(3). Reclassification of community land as operational land could be achieved only by a local environmental plan, pursuant to s 27(1) of the Act.

To achieve certainty, Council has decided to reclassify the land as operational using the LEP process as provided in Section 27(1) of the LG Act.

Section 27

How are the classifications made?

- (1) *The classification or reclassification of public land may be made by a local environmental plan.*
- (2) *The classification or reclassification of public land may also be made by a resolution of the council under section 31, 32 or 33.*

Section 30 of the LG Act states:

Section 30

Reclassification of community land as operational

- (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 the land is by operation of the plan discharged from any trust, estates, interests, dedications, conditions, restriction and covenants affecting the land or any part of the land, except for (reservations in the Crown Grant)*
- (2) *A provision referred to in subsection (1) has effect according to its tenor, but only if the Governor has, before the making of the local environmental plan, approved of the provision.*

The Land

The land consists of 22 separate lots that make up Dutton Car Park area (the area) (see the Draft Amendment for details of the parcels). This area consists of a structured car park, a surface car park and access ways that are roadways and footpaths. The access ways presently provide access to the car parking and enable service to the rear of buildings fronting onto Hughes, Hill and John Streets. Access into the site is from Hughes Street and Dutton Lane. (See copy of plan of the Draft Amendment)

Instructions from the Council are that:

The parcels of land except for one were compulsorily acquired for the purpose of constructing car park facilities. The dedication referred to actual roads dedicated to the public.

No Section 94 funds used.

The transfer document shows that LOT 2 DP548450 was sold to Council in 1971 for \$1 with the proviso that the land would only be used for free public parking.

I note that Lot 2 DP 548450 is the rear portion of a parcel that fronts onto Hill Street. It is this parcel that could have been held on trust for a public purpose and therefore needs to be reclassified in accordance with the provisions of Section 27 if those trust (if any) are to be extinguished.

Assessment

Council has made proposals to redevelop the area. It is intended to renew or redevelop the car parking structure, possibly constructing a building on part of what is presently an open car park. It is not the intention of Council to alter the 3(b) District Business Centre under the Fairfield Local Environmental Plan or to reduce the amount of car parking available in the area.

Under the zoning, car parking and a range of other uses are permitted subject to consent.

Council has received real estate advice that the classification of the land as operational would enhance the opportunities of obtaining a satisfactory proposal to redevelop the area and improve its functioning as an important part of the Cabramatta Town Centre.

Objectives of the LG Act

The primary objective of the classification process for the *LG Act* was, on the one hand, to protect unique parcels of land for but, on the other hand, to enable land that could be properly considered 'assets presently in the form of real estate' to be subject to market valuations and be freely transferable.

The opposite ends of this classification are easy to appreciate. There are, however, some categories of land that are not in the nature of a reserve for conservation purposes but more in the nature of land intended to be used for some form of public benefit. The legislation clearly attempts to restrict the sale or other long term disposal of land which has been acquired under the provisions of Section 94 of the *EP&A Act* for the provision of a public benefit, *unless* it can be shown that the land is unsuitable and that the money obtained from the sale of the land is reinvested to serve the same objective.

In other words land for parking obtained under Section 94 should not be sold for some other purpose unless the money received is spent on replace the parking provisions in a similar location.

I note that none of the land the subject of the draft LEP was obtained under Section 94 and that the limitations of the *EP&A Act* do not apply. In any event it is the intention of Council that parking of at least similar amount to that which exists will be retained in the area. That is, any money obtained from a sale of the land will be reinvested to achieve the same or a closely allied purpose. Clearly limiting the use of the land to car parking would severely limit the range of design solutions for the area and accordingly the land will either be used for car parking or is be shown to be unsuitable for car parking which should be located elsewhere in the development.

In this case therefore, it is not the unique qualities of the land but rather the continuation in an appropriate form of the purpose for which the land was acquired that is the issue. In my view that is the intention. Indeed the status of the land as

operational will enhance the potential to obtain offers from the private sector to substantially improve the quality of the area and the associated parking.

Consultations

The draft LEP has been exhibited in accordance with the EP&A Act. I am instructed that Council has received no written objections.

On 20 October 2003 a Public Meeting was held in accordance with the requirements of the LGAct. No member of the public attended the Meeting. Annexed to this report are the Minutes of that Public Meeting.

The lack of objections and the non-appearance of anyone at the Public Meeting would seem to demonstrate that there is no community objection to the reclassification of the land.

Conclusion

In my opinion the proposed reclassification of the subject land is appropriate and within power. I note that there appears to be no public objection to the reclassification.

I consider:

- The reclassification of the land, being the 22 parcels shown in the exhibited plan will facilitate the redevelopment of the car parking provision as part of the total redevelopment of the area.
- The reclassification of the land as operational land will give flexibility in the design of the redevelopment and should improve the opportunities for financing the redevelopment.
- Council should resolve that any redevelopment of the area should ensure that the level of car parking available in the area should not be reduced from the level provided on the land the subject of the draft LEP.

I accordingly recommend that the rezoning proceed.

Signed

John Mant, MAPI

Minutes of the Public Meeting held on Thursday, 20 October 2003, commencing at 5.40 pm to provide the Public with an opportunity to express their views or obtain more information on the proposed reclassification of land known as the Dutton Lane Car park.

PRESENT:

Mr John Mant – Independent Assessor

Mr Gilbert de Chalain – Fairfield City Council

APOLOGIES:

Nil.

1. Meeting opened

Mr Mant opened the meeting at 5:40 pm

2. Observations Made

Mr Mant made the following observations:

- Other than the Council officer, there was nobody present at the meeting.
- Having inspected the Council file and signage installed at the Council Administration Centre, he was satisfied that the process of advertising, and exhibiting the proposed reclassification had been completed in accordance with the legislation and that the signage advising of the public meeting was adequate.
- The proposed reclassification had been advertised and exhibited on two (2) occasions and that no objections to the Draft LEP had been received.

3. Meeting Closed

Seeing that there was nobody present the meeting was brought to a close at 5:50pm.

4. Notes

Signage advising of the public meeting remained in place until 6:40 pm and Mr Mant and Mr de Chalain remained in the meeting room until 7:15pm. No one from the public attended this meeting.