



MikeSvikisPlanning
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Report on a Public Hearing into the Proposed Reclassification of Various Parcels of Council Land

Land the subject of this public hearing is outlined in BSCPP15/001

Prepared for Ballina Shire Council
by MikeSvikisPlanning
8 March 2016

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Introduction

Mike Svikis (Principal Planner at MikeSvikisPlanning) was engaged by Ballina Shire Council as an independent chair for a public hearing into the proposed reclassification of seventeen parcels of land located in Ballina, East Ballina, West Ballina, Lennox Head, Skennars Head and Alstonville.

The public hearing was held on 1 March 2016 at Ballina Shire Council Chambers, Ballina. Matthew Wood attended to represent the Council. A single verbal submission was made on land in West Ballina. This report documents that submission and provides a recommendation to Council on each parcel.

Council will consider this report in making its deliberations on the subject land.

In preparing this report I have also reviewed the information that Council placed on public exhibition and the written submissions to the exhibition. With Council officers, I inspected the various parcels of land on 9 February 2016.

Objectives of the Public Hearing

The objectives of this public hearing are to:

- Satisfy legislative requirements relating to public land reclassification
- Provide an opportunity for any person to make a verbal submission
- Enable those submissions to be considered by an independent chairperson who can then prepare a report and make recommendations on those issues to Council.

'Public land' is any land (including a public reserve) vested in, or under the control of, Council (with some exceptions such as roads). 'Community land' is public land that is generally open to the public, eg parks, reserves or sports grounds. 'Operational land' is public land that may be used for other purposes, eg a works depot or held as a temporary asset. All public land is either Community or Operational (NSW DoP Practice Note PN 09-003).

Changing land from one classification to another can be undertaken through a planning proposal under the Environmental Planning and Assessment Act 1979. When it is changed, the classification status of the land is recorded in a schedule in the Local Environmental Plan. When Community land is proposed to be reclassified as Operational land, a public hearing must be held at some time after the close of the exhibition period of the planning proposal.

The Independent Chairperson

The public hearing must be chaired by an independent person. The Local Government Act 1993 states in relation to this:

47G Public hearings

- (1) *In this section, **public hearing** means any public hearing required to be arranged under this Part.*
- (2) *The person presiding at a public hearing must not be:*
 - (a) *a councillor or employee of the council holding the public hearing, or*



- (b) a person who has been a councillor or employee of that council at any time during the 5 years before the date of his or her appointment.*
- (3) Not later than 4 days after it has received a report from the person presiding at the public hearing as to the result of the hearing, the council must make a copy of the report available for inspection by the public at a location within the area of the council.*

This public hearing was chaired by Mike Svikis who is not a Councillor or an employee of Ballina Shire Council now or at any time in the past.



Background

The planning proposal for the subject land was commenced by Ballina Shire Council at its Ordinary meeting of 23 July 2015. A Gateway Determination was issued by the NSW Department of Planning and Environment on 23 September 2015, and it was publicly exhibited from 16 December 2015 until 29 January 2016. During the exhibition, ten written submissions were received which relate to four of the sites.

Council proposes that all of the various parcels of land should change from Community to Operational under the Local Government Act 1993 (LG Act). A change of zoning was proposed for eight of the seventeen sites but this is not the subject of the public hearing and is not addressed in this report.



Public Hearing

The public hearing was held on 1 March 2016 in the Ballina Shire Council chambers at Ballina. It commenced at 5:30 pm and closed at 6:30 pm.

Mike Svikis chaired the public hearing. Matthew Wood represented the Council. Only one person (Viv Miller) attended regarding a site in Westland Drive, West Ballina. Her comments are included below in relation to Site 8.

Matthew Wood opened the hearing and introduced the presiding officer. Mike Svikis advised how he would manage the hearing. He advised that he would be primarily listening to the issues raised and then reporting on those issues to Council within one week of the hearing. Council would place his report on its web site within one week of receiving it.

Site 1: Lots 1–2 DP 598548, Pine Avenue, East Ballina

No speakers. One written submission.

These two narrow lots are located at the rear of the East Ballina reservoir site and were acquired to allow construction of the main storage facility. The site is fully fenced and not open to the public.

A written submission from immediate neighbour to the south (S Enright, 30 Pine Avenue, East Ballina) queries the long-term classification of Lot 3 Sec 91 DP 758047 (which has most of the actual reservoir on it) and the Deferred Matter that is behind his land to the west (Lot 3 DP 598548). Lot 3 Sec 91 DP 758047 is Crown land and is not the subject of the proposed Community to Operational amendment. It is managed by Council but remains owned by the Crown. It is also proposed to be zoned SP2 (Water Supply System). The Deferred Matter (Lot 3 DP 598548) is Crown land that is not managed by Council. This land is heavily vegetated and was mooted for inclusion in an environment protection zone in an earlier draft version of Ballina LEP 2012. It was deferred from LEP 2012, and the long-term zone and use of this land are yet to be resolved. The Department of Planning and Environment has recently issued a S117 Direction to provide guidance to Council about the reinstatement of environmental zones into Ballina LEP 2012, but this will be dealt with as a separate matter at some time in the future. It is not part of this planning proposal.

Recommendation:

I consider that the use and function of Lots 1 and 2 as a water reservoir (and curtilage), and its restricted access to the public make it appropriate for an Operational classification as exhibited.

Site 2: Lot 1 DP 632176, Suvla Street, East Ballina

No speakers. No written submissions.

This site is occupied by the Richmond Hill Reservoir and multiple telecommunications towers and installations, but it is also open to the public. It contains a public viewing platform.

Recommendation:

I consider that the use and function of Lot 1 primarily as a water reservoir (and curtilage), and the multiple telecommunications towers and installations make it appropriate for an Operational classification as exhibited.



Site 3: Lot 47 DP 240657, 3 Basalt Court, Lennox Head

No speakers. No written submissions.

This site is occupied by the Basalt Court Reservoir and multiple telecommunications towers and installations. It is fenced and not open to the public.

Recommendation:

I consider that the use and function of Lot 47 primarily as a water reservoir (and curtilage), and the multiple telecommunications towers and installations make it appropriate for an Operational classification as exhibited.

Site 4: Lot 2 DP 604567, opposite 15 Regatta Avenue, Ballina

No speakers. No written submissions.

This site is a very small lot (approximately 50 m²) located on the edge of Regatta Avenue. It contains an underground sewage pump station protected from vehicle access by bollards.

Recommendation:

I consider that the use and function of Lot 2 primarily for an underground sewage pump station makes it appropriate for an Operational classification as exhibited.

Site 5: Lot 1 DP 856703, Hutley Drive, Lennox Head

No speakers. No written submissions.

This site contains an above ground sewage pump station with vehicle access and parking, and has no other use or purpose.

Recommendation:

I consider that the use and function of Lot 1 for an above ground sewage pump station makes it appropriate for an Operational classification as exhibited.

Site 6: Lot 43 DP 1168665, 8 Seamist Place, Lennox Head

No speakers. No written submissions.

This site contains an underground sewage pump station with vehicle access and parking, and has no other use or purpose. It is fenced but not gated.



Recommendation:

I consider that the use and function of Lot 43 primarily for an underground sewage pump station makes it appropriate for an Operational classification as exhibited.

Site 7: Lot 104 DP 871675, 34–36 Links Avenue, East Ballina

No speakers. No written submissions.

This site is fenced off and totally occupied by the outdoor play area of the Good Start Child Care Centre at East Ballina. It no longer serves a purpose related to public access or use. The child care centre leases the land and it is unlikely it could operate without exclusive use of this land for its outdoor play requirements.

Recommendation:

I consider that the use and function of Lot 104 primarily for a child care centre makes it appropriate for an Operational classification as exhibited.

Site 8: Lot 1 DP 850774, Pt Lot 52 DP 842077, Pt Lot 2 DP 850774, Lot 179 DP 879355, Westland Drive, Barlows Road, Sunset Avenue, West Ballina

One speaker. Three written submissions.

One speaker – Viv Miller (1/26 Westland Drive, West Ballina). Viv was concerned about what Council thought it was going to do with the land behind her house. It is irregularly maintained, but she does not want to be forced to buy it herself as she can't afford it. Viv also made a written submission.

Matt Wood explained that once the land was classified as Operational it could be sold to a private person, but this was not inevitable. No one could be forced to acquire the land. As a long, thin area of land with many properties adjacent to it, it may not be possible to sell it to anyone without creating "landlocked" pieces. Council does not have an end use in mind for the entire area.

Council currently leases Lot 1 DP 850774 exclusively to the Seeds Childcare Centre. This area is fenced and not available for public access. It provides an outdoor play space for the centre. The balance of the subject land contains a stormwater drain of varying width and depth. The subject land has minimal access, recreation or environmental value.

A written submission from the Seeds Childcare Centre supported the transfer of Lot 1 to Operational, and suggested the centre would like to purchase the land.

A written submission from M and P Southall (1/44 Westland Drive, West Ballina) suggested they would prefer that the land at the rear of theirs remain as is. They have no interest in purchasing it in any case. They provided no further information.

Recommendation:

I consider that the use and function of Lot 1 primarily for a privately run child care centre makes it appropriate for an Operational classification as exhibited.



I consider that the use and function of Lot 179, Part Lot 52 and Part Lot 2 primarily as a drainage reserve makes it appropriate for an Operational classification as exhibited.

Site 9: Lot 1 DP 853747, Johnstons Road, Alstonville

No speakers. No written submissions.

This site contains a wastewater treatment plant with vehicle access, parking and sheds. It has no other use or purpose.

Recommendation:

I consider that the use and function of Lot 1 for a wastewater treatment plant makes it appropriate for an Operational classification as exhibited.

Site 10: Lot 1 DP 831017, North Creek Road, Skennars Head

No speakers. No written submissions.

This site contains a wastewater treatment plant with vehicle access, parking and sheds. It has no other use or purpose, although there may be a fringe of native vegetation on its northern edge.

Recommendation:

I consider that the use and function of Lot 1 for a wastewater treatment plant makes it appropriate for an Operational classification as exhibited.

Site 11: Lot 41 DP 1149233, Macleans Street, Skennars Head

No speakers. No written submissions.

This site contains a stormwater detention device and a sewage pump station with vehicle access and parking. It has no other use or purpose.

Recommendation:

I consider that the use and function of Lot 41 for a stormwater detention device and a sewage pump station make it appropriate for an Operational classification as exhibited.

Site 12: Lot 47 DP 1012769, Daintree Drive, Lennox Head

No speakers. No written submissions.

This site contains a stormwater detention device and an artificial wetland. It is fully fenced and has no public access. It may have some value as freshwater wetland habitat (albeit artificial).



Recommendation:

I consider that the use and function of Lot 47 for a stormwater detention device makes it appropriate for an Operational classification as exhibited.

Site 13: Lot 28 DP 864257, Karalauren Court, Lennox Head

No speakers. One written submission.

This narrow site contains a stormwater pipe discharging to a neighbouring area of farm land and an underground sewage pump station. It has a sealed road access that is open to the public.

A written submission from immediate neighbours, S Rezai-Smyth and R Smyth (29 Karalauren Court, Lennox Head), suggested the reclassification would have serious impact on their standard of living because it would allow Council to sell or lease the land. It would impact on residents' rights to have a say in changes to the land, and changes to infrastructure could impact neighbours with noise, smell and access. They object to the reclassification.

This objection is not well founded. A narrow piece of land that contains both stormwater and sewer pipes and pumps is entirely suited to the Operational classification. It is highly unlikely it will be sold to a third party as it contains important Council infrastructure. No changes to the rights of objectors or third parties are created by a change in classification. Adverse impacts from pollution are dealt with under the Protection of Environment Operations Act 1997, regardless of land classification.

Recommendation:

I consider that the use and function of Lot 28 for stormwater infrastructure and a sewage pump station and pipes make it appropriate for an Operational classification as exhibited.

Site 14: Lot 1 DP 781542, 23 Compton Drive, East Ballina

No speakers. No written submissions.

This site has a history of being used by the adjacent restaurant (currently closed) for storage and outdoor seating. It is not currently leased, but it may be at some time in the future. The adjacent land owner may also be interested in acquiring the site.

It was noted at a site inspection that stairs which link Coogee Street to Compton Drive appear to be located on the subject land. A survey has confirmed that they are partly built across the site (Appendix A). The land on which the stairs are located should remain in Council ownership and control. This can be achieved as either Community or Operational land.

Recommendation:

I consider that the use and function of Lot 1 for storage and outdoor seating for the adjacent use make it appropriate for an Operational classification as exhibited. The Coogee Street stairs should remain under Council ownership and control should the site be leased or sold.

Site 15: Lot 9 DP 716371, Wayside Place, Ballina

No speakers. No written submissions.

This site is a small cul-de-sac that provides vehicle access to eight dwellings. It also provides pedestrian access to the North Creek foreshore. The site also contains underground services. Although retained as a private road for some time, it was transferred to Council in 2005. The road and path are now public infrastructure.

Recommendation:

I consider that the use and function of Lot 9 for a road, path and underground infrastructure make it appropriate for an Operational classification as exhibited.

Site 16: Lots 1–5 DP 781641, adjacent to 25–27 Dress Circle Drive, Lennox Head

No speakers. Five written submissions.

This site is made up of five irregular shaped lots that are located in proximity to 25, 26 and 27 Dress Circle Drive, Lennox Head. It is not clear why they were created or why they came into Council ownership. They appear to link Dress Circle Drive with the Coast Road, but the topography at this point does not facilitate pedestrian access and the Coast Road has a busy roundabout at this location with no footpaths.

A written submission from D Matthews (owner of 25 Dress Circle Drive) indicates that he maintains the subject land next to his lot and wants it to remain as a buffer to the Coast Road. He has no interest in acquiring the land and supports it remaining as Community land. He acknowledges that the land has no practical public access or purpose.

A written submission from C McIntosh (owner of 2/27 Dress Circle Drive) objects to the reclassification as they maintain the subject land and are happy to continue to do that. They acknowledge that the land has no practical public access. They do not want it sold.

A written submission from D Lee (1/27 Dress Circle Drive) objects to the reclassification as they maintain the subject land and are happy to continue to do that.

A written submission from C Leahy (23A Dress Circle Drive) objects to the reclassification as there is a possibility that the subject land affects their driveway. It is maintained by the residents and the land should stay as Community land.

A written submission from R Miller (29 Dress Circle Drive) supports the reclassification as they maintain the land already and would like to acquire it should it become available for purchase.

The subject land does not provide useful public access or serve any public recreation or other purpose. It is maintained by adjacent owners and appears to be privatised by its location and attributes. It is possible that driveways and landscaping affect parts of the site.

Recommendation:

I consider that the shape and size of Lots 1 to 5 and the existing restricted access to the public make it appropriate for an Operational classification as exhibited.



Site 17: Lot 29 DP 230062, adjacent to 74 Grant Street (cnr Marsh Avenue), Ballina

No speakers. No written submissions.

This narrow site (approximately 5 metres wide) in Marsh Avenue is located in front of two dwellings and serves as an extension to their front yards. Other houses along Marsh Avenue do not have the same narrow reserve, and it is not clear why it was created in this location. Its size and shape make it unsuitable for active recreation and it is not required for access.

Recommendation:

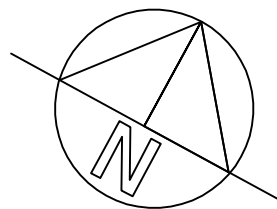
I consider that the location and size of Lot 29 limit its use for public purposes, making it appropriate for an Operational classification as exhibited.



Appendices

Appendix A: Site 14 survey, Lot 1 DP 781542, Compton Drive





LOT 11
DP21531

LOT 1
DP781542
BALLINA SHIRE COUNCIL

14.08m

11.8m

11.4m

COOGEE STREET
(Not Formed)

OUTDOOR AREA

14.08m

OUTDOOR AREA

RAMP

AMMENITIES

STAIRS

PP

STAIRS

SMH

STAIRS

STAIRS

COMPTON

DRIVE

APPENDIX A

SCALE 1:100 @ A3

LOCATION OF
STAIRS AT
COOGEE STREET