

zenith

---

town planning

---

# REPORT OF PUBLIC HEARING

---

Planning proposal to amend  
Shoalhaven Local Environmental  
Plan 2014 (PP010)

---

Reclassification of five parcels of public land from  
community land to operational land

---

sustainable thinking

---

PO Box 591 | Moruya NSW 2537

0408258877 | [zenithplan@bigpond.com](mailto:zenithplan@bigpond.com) | [www.zenithplan.com.au](http://www.zenithplan.com.au)

This page is left blank intentionally

## **TABLE OF CONTENTS**

<b>1. Introduction</b>	<b>1</b>
<b>2. The planning proposal</b>	<b>1</b>
<b>3. The Public Hearing</b>	<b>2</b>
<b>4. Issues raised at the Public Hearing</b>	<b>3</b>
<b>5. Conclusion</b>	<b>5</b>
<b>6. Recommendations</b>	<b>6</b>

## **ANNEXURES**

### **Attachment A: Public Notices**

## **1. Introduction**

This report provides details of a public hearing held at the offices of Shoalhaven City Council, Nowra on Wednesday 16 November 2016 concerning the reclassification of five parcels of public land from community land to operational land under *Shoalhaven Local Environmental Plan (LEP) 2014*.

'Public land' is any land (including a public reserve) vested in, or under the control of, council. Exceptions include roads, land to which the Crown Lands Act 1989 applies, a common, or land to which the Trustees of Schools of Arts Enabling Act 1902 applies. 'Classification' of public land refers to the process when this land is first acquired and first classified as either 'operational' land or 'community' land. 'Reclassification' of public land refers to the process of changing the classification of operational land to community land or from community land to operational land.

Council may reclassify public land from community land to operational land by way of a planning proposal. Where this is the case, a public hearing must be held and a report provided to Council that contains details of the submissions made to the public hearing and recommendations. The public hearing must be carried out in accordance with relevant provisions of the *Environmental Planning and Assessment Act 1979* and the *Local Government Act 1993*.

## **2. The planning proposal**

Planning Proposal PP010 seeks to reclassify the following parcels of public land from community land to operational land and to extinguish any interests:

- a) Part Lot 2081 DP 216860 - Lively Street, Vincentia (land along the rear of Nos 83 – 109 Frederick Street and No. 7 Sutton Street only)
- b) Lot 21 DP 252581 - 50 Shoalhaven Heads Road, Shoalhaven Heads
- c) Lot 4 DP 550354 - Island Point Road, St Georges Basin
- d) Lot 12 DP 617101 - Bolong Road, Coolangatta
- e) Lot 3 DP597223 - Bolong Road, Coolangatta

The information given below has been taken from the Explanatory Statement that was exhibited with the planning proposal.

*When Shoalhaven Local Environmental Plan (LEP) 2014 was prepared, the subject land was reclassified from 'community' to 'operational'. While it was intended that the interests in the land be extinguished at the same time, due to a drafting error this did not occur. In addition, all of Lot 2081 DP 216860 – Lively Street, Vincentia was reclassified 'operational', when this should really only have applied to part of the lot.*

To correct these administrative errors, Council prepared and exhibited a PP which sought to:

- a) Remove the interests from sites 1 to 5; and
- b) Reclassify part of the land at Vincentia back to community.

After the PP was initially sent to the NSW Department of Planning and Environment for finalisation, Council was advised that the LEP could not be made as the Local Government Act 1993 does not allow the removal of interests from land which is already classified as 'operational'. This can only be done when land is reclassified from 'community' to 'operational'.

Consequently, Council has reclassified the land back to a 'community' classification and is now reclassifying the land to 'operational' with interests extinguished through the planning proposal process.

Part of the reclassification process requires that a public hearing be held post exhibition. The date and time of the public hearing will be notified in the local paper and on Council's website.

These reclassifications are being undertaken consistent with the Department of Planning and Environment's LEP Practice Note PN 09-003 – Classification and reclassification of public land through a local environmental plan and Best Practice Guideline - LEPs and Council Land.

The intended outcome as stated in the planning proposal to amend Shoalhaven LEP 2014 is to allow Council to explore the sale or licensing of the parcels of land once they are classified as operational land.

The planning proposal and supporting information were exhibited between 5 October 2016 and 21 October 2016. A total of 9 submissions have been received by Council.

### **3. The Public Hearing**

The public hearing was held at the offices of Shoalhaven City Council, Nowra on 16 November 2016. The notice of the public hearing is appended to this report as Attachment A.

Pursuant to section 47G of the *Local Government Act 1993*, the person presiding at the hearing, Mr Allen Grimwood of Zenith Town Planning declares that he:

- (a) is not a Councillor or employee of Shoalhaven City Council;

- (b) and has not been a Councillor or employee of Shoalhaven City Council at any time during the 5 years before the date of his appointment as chair for the public hearing.

Section 47G of the Act requires the person presiding to report on the result of the hearing.

Section 47G(3) of the Act, also requires that not later than 4 days after Council has received this report concerning the public hearing, Council must make a copy of the report available for inspection by the public at a location within the Council area.

The hearing at Shoalhaven City Council was attended by Mr Allen Grimwood as Chair, and the following Shoalhaven City Council staff - Mr Gordon Clark, Strategy Planning Manager, Ms Jenna Tague, Team Coordinator – Strategy Planning South, and Ms Anne McDonald, Strategic Planner. Council's Property Manager also attended as an observer.

Apologies were received from Councillor Patricia White, Angela and Stephen Andersson (residents) and Robyn Neeson (resident).

Site inspections were carried out on the same day prior to the conduct of the public hearing.

The hearing commenced at 5.35 pm with introductions, an explanation of process by the Chair and an overview presentation of the planning proposal by Council staff.

#### **4. Issues raised at the Public Hearing**

Four (4) persons attended the public hearing and three (3) persons made a verbal submission.

Below is a summary of matters raised in those submissions in relation to specific properties noting that only one person spoke regarding each property.

Lot 4 DP 550354 - Island Point Road, St Georges Basin

- *An adjoining owner requested that the property be subdivided into three portions and offered for sale to all three adjoining owners. Concerned that if sold to a single adjoining owner then access to the foreshore and waterway would be denied*

Lot 3 DP597223 - Bolong Road, Coolangatta

- *An adjoining owner expressed interest in purchasing the property after the reclassification is effected*

Part Lot 2081 DP 216860 - Lively Street, Vincentia

- *An adjoining owner expressed concern that the change to operational land would benefit only 7 Sutton Street which currently gains access from the community land to garages. At the time this means of access was approved the residents were persons with disabilities which justified secondary access. Ownership has since changed. Concern that the change to operational land would regularize an incorrect planning decision which has had flow-on effects such as the subject proposal to alter the land classification*
- *The submitter noted that when approval was granted for the submitter's own dwelling that car parking and access was limited to Frederick Street. Similarly, no access from the community land was allowed for the development of a tourist cabin. The submitter is willing to extinguish a right of access to a shed in the rear yard that was built in the 1960s*
- *There is a stormwater junction at the point where the community land intersects with Sutton Street causing erosion of the unsealed road that enters Jervis Bay National Park. Vehicles bottom out due to the erosion*
- *The community land is being used for overflow parking when the car park for Jervis Bay National Park Greenfields Beach is full. It is also used to gain access to holiday houses. Children cannot play within the community land which is also frequented by bristle birds, bower birds and other wildlife. There is an impact on wildlife. It should remain a fire trail*

Following submissions the Chair and Council staff reiterated that the public hearing is an opportunity for interested persons to make a submission which is then considered by the Chair when preparing a report and making recommendations to Council. The public hearing is not a forum for negotiation, decision-making or for judgements to be made.

The public hearing report is considered by Council in the same way as written submissions to the planning proposal when deciding whether to proceed with the amendment to the LEP or to make any changes to the amendment.

The hearing concluded at 6.15 pm.

## 5. Conclusion

The conduct of the public hearing satisfied the procedural requirements of the *Environmental Planning and Assessment Act 1979* and the *Local Government Act 1993*. No actions arise in response to the public hearing.

Reclassification of each parcel of community land to operational land is supported. It is noted that of the 9 submissions received by Council during the exhibition period 1 submission concerned an inaccuracy in the exhibited Explanatory Statement regarding a Council resolution about the future sale of Lot 21 DP 252581 - 50 Shoalhaven Heads Road, Shoalhaven Heads. The Explanatory Statement was subsequently amended.

The remaining 8 written submissions concerned Part Lot 2081 DP 216860 - Lively Street, Vincentia. Of these, only one supported formalising access to the rear of the Frederick Street properties but raised some issues of concern or question. Matters raised in these submissions generally reflect comments made by the submitter at the public hearing in relation to this property.

It is noteworthy that approval was granted to access the garage at 7 Sutton Street from public reserve in 1989 prior to the proclamation of the *Local Government Act 1993* which introduced land classification. Some approvals issued by Council for structures on other properties that gain access from the community land are silent on whether access is permitted from that land whereas others stipulate that access is not to be gained over the community land.

In my opinion it would be against the public interest to maintain the community land classification over Part Lot 2081 DP 216860 - Lively Street, Vincentia. Retaining the community land classification would continue to preclude use of the land to gain access to properties that front Frederick Street (other than where access has been specifically approved). Council would then need to ensure that access to these properties by way of the public reserve is prevented.

However, should Council proceed with the reclassification of Part Lot 2081 DP 216860 - Lively Street, Vincentia then it is suggested that signage be placed at the intersection with Sutton Street advising that only residents or patrons of holiday rental housing fronting Frederick Street be permitted to use the reserve for vehicular access and/or parking. The capacity of the existing stormwater system may also need attention to avoid continuing erosion. It is considered that use of the reserve, being 5 metres in width, for access would not cause an adverse impact on native fauna due to the presence and extent of the adjoining Jervis Bay National Park.

## 6. Recommendations

The following recommendations are made in response to matters raised during the public hearing:

1. The reclassification of the following properties from community land to operational land should proceed and an amendment made to *Shoalhaven LEP 2014* to include the properties in *Schedule 4 Part 2 Land classified, or reclassified, as operational land –interests changed*:
  - Part Lot 2081 DP 216860 - Lively Street, Vincentia (land along the rear of Nos 83 – 109 Frederick Street and No. 7 Sutton Street only)
  - Lot 21 DP 252581 - 50 Shoalhaven Heads Road, Shoalhaven Heads
  - Lot 4 DP 550354 - Island Point Road, St Georges Basin
  - Lot 12 DP 617101 - Bolong Road, Coolangatta
  - Lot 3 DP597223 - Bolong Road, Coolangatta
2. It is recommended that Shoalhaven City Council forward instructions to Parliamentary Counsels Office to draft the legal instrument.

Allen Grimwood MPIA (CPP)  
Principal  
Zenith Town Planning  
28 November 2016

## ATTACHMENT A: PUBLIC NOTICES

### Public Hearing – Planning Proposal (PP010) – Council Land Reclassification (Housekeeping)

The Planning Proposal to amend Shoalhaven Local Environmental Plan 2014 (PP010 – Council Land Reclassification - Housekeeping) was recently publically exhibited from 5 October to 21 October 2016 (inclusive).

The Planning Proposal seeks to reclassify Council land from 'community' to 'operational' under the *Local Government Act 1993* and extinguish Council's interests in the following land:

- Lot 21 DP 252581 – 50 Shoalhaven Heads Road, Shoalhaven Heads
- Lot 12 DP 617101 – Bolong Road, Coolangatta
- Lot 3 DP 597223 – Bolong Road, Coolangatta
- Lot 4 DP 550354 – Island Point Road, St Georges Basin
- Part Lot 2081 DP 216860 – Lively Street, Vincentia (land along the rear of Nos. 83-109 Frederick Street and No.7 Sutton Street only)

The Planning Proposal can be viewed on Council's Website as a document recently on public exhibition.

Section 29 of the *Local Government Act 1993* requires a public hearing to be held into land reclassifications when the classification of the land is changing from "community" to "operational". The Public Hearing in this regard is scheduled to take place on 16 November 2016 from 5.30pm in the Seven Mile Meeting Room at Council's Administrative Office, Bridge Road, [Nowra](#).

Enquiries to Anne McDonald on (02) 4429 3511.

### Public Hearing - Planning Proposal (PP010) Council Land Reclassification (Housekeeping)



11 days ago



The Planning Proposal to amend Shoalhaven Local Environmental Plan 2014 (PP010 – Council Land Reclassification - Housekeeping) was recently publically exhibited from 5 October to 21 October 2016 (inclusive).

The Planning Proposal seeks to reclassify Council land from 'community' to 'operational' under the *Local Government Act 1993* and extinguish Council's interests in the following land:

Lot 21 DP 252581 – 50 Shoalhaven Heads Road, Shoalhaven Heads

- Lot 12 DP 617101 – Bolong Road, Coolangatta
- Lot 3 DP 597223 – Bolong Road, Coolangatta
- Lot 4 DP 550354 – Island Point Road, St Georges Basin
- Part Lot 2081 DP 216860 – Lively Street, Vincentia (land along the rear of Nos. 83-109 Frederick Street and No.7 Sutton Street only)

The Planning Proposal can be viewed on Council's Website as a document recently on public exhibition.

Section 29 of the *Local Government Act 1993* requires a public hearing to be held into land reclassifications when the classification of the land is changing from "community" to "operational". The Public Hearing in this regard is scheduled to take place on 16 November 2016 from 5.30pm in the Seven Mile Meeting Room at Council's Administrative Office, Bridge Road, Nowra.

Enquiries to Anne McDonald on (02) 4429 3511.