

PLANNING

I N G E N U I T Y

APPLICATION FOR A PLANNING PROPOSAL

Reclassification of Lot 2 and Part of Lot 1 (DP1200178) to 'Operational Land'

Taylor's Reserve
Lugarno

Prepared for: Georges River Council

REF: 0245/16
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EXECUTIVE SUMMARY

This application for an amended Planning Proposal seeks to amend the provisions of the Hurstville Local Environmental Plan, 2012 (HLEP 2012) for part of the land at Taylors Reserve, Lime Kiln Road and Woodlands Avenue, Lugarno. The objective of the amended Planning Proposal is to change the classification of Lot 2 and part of Lot 1 under the *Local Government Act 1993* from 'Community Land' to 'Operational Land'. The Community Land classification restricts Council from formalising the existing on ground access arrangements, whereby vehicle access is currently provided to a number of residences. The reclassification to 'Operational Land' will enable Council to have greater flexibility to manage the site and will formalise the historical informal access and encroachments by enabling the operational land to be formally made a public road at a later stage.

The proposed reclassification is consistent with the historic use of the land, the physical attributes of the land, the capacity of infrastructure, services and facilities, and the safe continued operation of Taylors Reserve as public recreational space.

This is an amended Planning Proposal following Gateway Determination of the previous Planning Proposal to reclassify Lot 2 to Operational Land, issued on 14 September 2017. The Gateway Determination provided consent for the Planning Proposal to proceed to community consultation and a public hearing. The public exhibition ran from 15 November to 13 December 2017 and received 2 x submissions. On March 28 2018 a public hearing supported the reclassification of Lot 2. It should be noted that the original planning proposal sought only reclassification of the land for Right of Way and Easement purposes only, however in Council meeting dated 26 November 2018 it was resolved for the land to be a public road.

The amended Planning Proposal is necessary as it has been established that part of Lot 1 will also be required to be reclassified to 'Operational Land' to allow for the construction of a public road to required standards. The Department of Planning and Environment (DPE) has indicated that this amended Planning Proposal can be submitted as a request to alter the previous Gateway Determination, rather than being submitted as a new planning proposal. This application is consistent with the local, regional and state planning strategies for Georges River LGA and with the former Hurstville Council's Resolution No.359 of 2013 which was:

"RESOLVED THAT Council resolves to prepare a plan of subdivision consolidating Taylors Reserve and identifying land for Taylor Avenue;

THAT Council resolved to prepare a site specific Plan of Management for Taylors Reserve and amend the Generic Plan of Management – Parks.

THAT Council resolves to prepare a planning proposal to reclassify part of Taylors Reserve from Community Land to Operational Land.

THAT Council create a right of carriageway for access across Taylors Reserve to provide formal legal access to properties that require access from the existing sealed road – Taylor Avenue.

FURTHER THAT Council advise adjoining and adjacent landowners surrounding Taylors Reserve of its decision."

In addition, Council further resolved at its meeting on 26 November 2018 that:

Option C as outlined in the report 'Property Matter – Provision/Construction of Private Vehicular Access to Residential Properties across Taylors Reserve Lugarno – Supplementary Information', being the construction

of a public road at no cost to the residents, be endorsed.

The amended Planning Proposal is consistent with the aforementioned Council resolutions in that it will allow for the construction of a public road to be carried out, as per Councilor's preferred option.

Following Council meeting dated 26 November 2018, it was resolved:

That Option C as outlined in the report 'Property Matter – Provision/Construction of Private Vehicular Access to Residential Properties Across Taylors Reserve Lugarno – Supplementary Information', being the construction of a public road at no cost to the residents, be endorsed.

This is consistent with resolution No.359 of 2013 which included:

THAT Council create a right of carriageway for access across Taylors Reserve to provide formal legal access to properties that require access from the existing sealed road – Taylor Avenue.

The creation of a public road will, by virtue provide formal legal access to properties that require access from the existing sealed road.

This application for an amended Planning Proposal has been prepared in accordance with Section 3.33 of the Environmental Planning and Assessment Act, 1979 as well as the NSW Department of Planning and Environment's publications "A Guide to Preparing Planning Proposals" and "A Guide to Preparing Local Environmental Plans" and the directions contained in the LEP Practice Note PN16-001 'Classification and reclassification of public land through a local environmental plan' (Attached at Appendix A).

1. INTRODUCTION

This application for an amended Planning Proposal has been prepared by Planning Ingenuity Pty Limited on behalf of Georges River Council.

This application is a request to seek a Gateway Determination under the provisions of Section 3.34 of the *Environmental Planning & Assessment (EP&A) Act, 1979*.

The primary intent of the application is to amend a current Planning Proposal to reclassify part of Taylors Reserve, being Lot 2 and part of Lot 1, in Deposited Plan 1200178 from Community Land to Operational Land by:

- Amending Part 2 to Schedule 4 of HLEP 2012 to include Lot 2 and part of Lot 1 in Deposited Plan 1200178;
- Adding a new map to HLEP 2012 titled 'Land Reclassification (Part Lots) Map - Sheet RPL_003' which identifies part of Lot 1 in Deposited Plan 1200178 outlined in red as 'Operational Land'; and,
- Discharging the existing Scout lease over any parts of Lot 1 and 2 which are proposed to be reclassified.

This approach is required as on registration of DP1200178 (on 1 June 2015) a Statement of Intention was included, which stated *'it is intended to dedicate Lot 1 to the public as a public reserve'*. As a result, Lot 1 was dedicated as a public reserve under S49 of the Local Government Act.

The construction and use of a public road on such land would be inconsistent with Lot 1 being a public reserve as per the Statement of Intention. By reclassifying the land under Part 2 of Schedule 4 of the LEP, the land will cease to be a public reserve (and is discharged from all trusts, estates, interests etc). This means that the Statement of Intention would then be irrelevant,

The building occupied by the Scout Association of Australia (Scout Building) is wholly located on Lot 1 and is outside that part of Lot 1 proposed to be reclassified and dedicated as a public road. Therefore if the Scout Lease remains on the part of Lot 1 not being reclassified, it will continue to authorise the occupation of the Scout Building.

However, the Scout's Lease (as far as it relates to the reclassification of parts of Lot 1 and all of Lot 2) is inconsistent with Council's intended future use of the Land solely as a public road. By inserting the Land into Part 2 of Schedule 4 of the HLEP 2012 the Scout lease will be discharged over the parts of Lot 1 and 2 being reclassified.

This application for an amended planning proposal has been prepared in accordance with Section 3.33 of the Environmental Planning & Assessment Act, 1979, as well as the NSW Department of Planning and Environment publications "*A Guide to Preparing Planning Proposals*" and "*A Guide to Preparing Local Environmental Plans*" and the directions contained in the LEP Practice Note PN16-001 '*Classification and reclassification of public land through a local environmental plan*'

This report is divided into sections including a locality and site analysis, the proposed draft amended Planning Proposal and a conclusion.

2. LOCALITY AND SITE ANALYSIS

2.1 Site Identification and Description

The site is Lot 2 and part of Lot 1 in Deposited Plan 1200178. The site is located to the north of Woodlands Avenue and between residential properties with frontages to Lime Kiln Road and Woodlands Avenue. Lots 1 and 2 in Deposited Plan 1200178 together form Taylors Reserve. Both Lots 1 and 2 are in the care, control and ownership of Georges River Council. Taylors Reserve is outlined in red in the locality map in Figure 1. Lots 1 and 2 are outlined separately on the aerial photo in Figure 2. An extract from the Deposited Plan 1200178 is included in Figure 3 and indicates the surveyed boundaries of Lots 1 and 2.





Lot 2 contains an access route which links Woodlands Avenue to Lime Kiln Road. The path is mostly bitumen sealed but has not been constructed to any recognised standard. The path is used by pedestrians and vehicles for access through Taylors Reserve and for access to and from properties which share a boundary with Lot 2. The access route also includes drainage structures and landscaping beds which appear to have been installed by the owners of adjoining residential properties. Lot 2 also contains several mature trees of high aesthetic, amenity and urban ecological value.



Figure 2: Aerial photograph of Taylors Reserve and surrounds (Source: www.maps.six.nsw.gov.au)

Lot 1 contains a children's playground and a Scout Hall close to the Lime Kiln Road frontage, public toilets to the west of the Scout Hall, a large level grassed area in the centre, an area for car parking in the southern portion of the lot and scattered mature trees along the eastern boundary and on the southern part of the lot. These trees have high aesthetic, amenity and urban ecological value.

There is a low pine log fence which separates motorised vehicles from accessing the grassed area in the centre of Lot 1.

Essential utilities and services are connected to the Scout Hall building and public toilets within the reserve and there are electricity poles and wires within Lot 2.

Photographs of Lots 1 and 2 are included in Annexure B.





Figure 4: Neighbourhood shops in Lime Kiln Road

Adjoining Lot 2 to the north and west are residential properties with frontages to Forest Road, Woodlands Avenue or the reserve. Figure 5 indicates those properties which share a boundary with Lot 2, and have pedestrian and vehicle access to Lot 2 via an informal arrangement. The former Hurstville Council approved dwellings and garages and alterations to these structures which have exclusively relied upon access to and from Lot 2. There is no legal right of carriageway over Taylors Reserve nor is the access route a public road and therefore no legal arrangement currently exists for granting access to adjoining residential properties. The properties which are adjacent to Lot 1 do not have direct access to the reserve, and none is proposed. Only properties adjoining Lot 2 have existing informal access to the reserve and will benefit from the amended Planning Proposal (which will facilitate the construction of a public road and therefore formalise access arrangements).

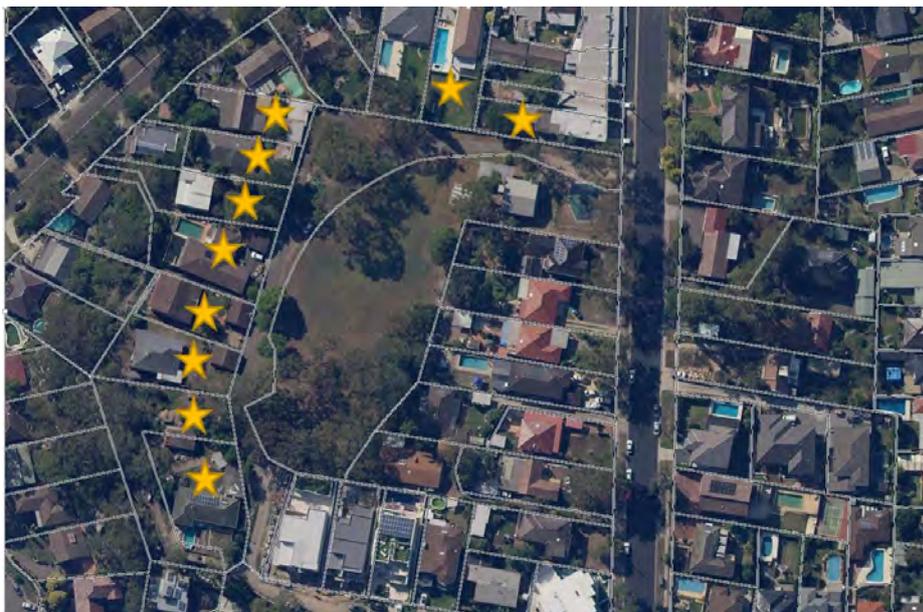


Figure 5: Neighbouring properties currently with vehicle and/or pedestrian access to Lot 2 (Source: Six-maps [basemap])

2.3 Background and History

2.3.1 Land Holdings

The history of the site was reported in Agenda Item CCL299-13 to the Ordinary Council Meeting of 18 September 2013. Prior to 1955, the land comprising Taylors Reserve was part of a poultry farm holding of 8.5 acres owned by the Taylor family. The land was subdivided in November 1959 creating lots in Deposited Plan 30229 which included Lots O, P and Q which were dedicated as ‘Public Garden and Recreation Space’ extending through to the Georges River. The current Taylors Reserve is contained within the former Lot Q.

Additional land has since been added to the eastern edge of Lot Q as land has been subdivided along Lime Kiln Road. Additional lots were:

- Lot 13 DP 529415 (registered on 21 March 1968);
- Lot 3 DP604100 (registered on 10 August 1979);
- Lot 3 DP 397811;
- Lots B and C DP 385449; and
- Lot 3 DP 399328.

On 1 June 2015 the current Deposited Plan was registered to consolidate multiple allotments into Lots 1 and 2 DP 1200178 as shown in Figure 3. The deposited plan is registered with a Statement of intention to “dedicate Lot 1 to the public as public reserve” in accordance with Section 88B of the *Conveyancing Act, 1919*. This application for an amended Planning Proposal is not consistent with that Statement of Intention.

Section 30 of the LG Act provides that a local environmental plan that reclassifies community land as operational land may provide that 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 (other than reservations in the Crown grant and reservations of minerals).

Clause 5.2 of the HLEP 2012 relates to the reclassification of land and provides that:

27.2 land included in Part 2 of Schedule 4 ceases to be a public reserve and is discharged from all trusts, estates, interest etc, subject to any stated exclusions (and reservations in the Crown grant and reservations of minerals).

Therefore, the land is proposed to be reclassified by inclusion in Part 2 of Schedule 4 of the LEP, and will cease to be a public reserve, as such, the Statement of Intention would become irrelevant. This will require the existing Scout lease on Lots 1 and 2 to be discharged over parts of those lots which are being reclassified.

2.3.2 Access Route

Agenda Item CCL-299-13 to the Ordinary Council Meeting of 18 September 2013 reports that, since the 1960s, an access route extending from Woodlands Avenue through Taylors Reserve was used by Council for maintenance purposes and by adjoining landowners for vehicle and pedestrian access to the rear of properties with a frontage to Forest Road. Agenda Item CCL299-13 also reports that Council has subsequently granted development consent and building approvals for subdivisions, dwellings, outbuildings, alterations and additions on adjoining residential properties which rely upon the access route though Taylors Reserve as the only means of practical access to a public road.

The access route through the reserve has been variously upgraded by *ad hoc* Council maintenance work to a mostly sealed bitumen surface which is currently used for Council contracted waste service vehicles, Council maintenance vehicles, private vehicles and pedestrians.

The access route is part of Taylors Reserve. It is not a dedicated public road. It does not appear to meet any relevant standards for road construction.

Council's Generic Plan of Management for Parks includes the following statements with regard to management of access to and within public reserves:

"None of the city's parks have off street car parking. This is responsive to the fact that they are principally locally used, and accessed by foot or bicycle. Any off street car parking would encroach on the available open space area, compromising both the aesthetics and recreational functions of the land, contrary to the core objectives for the management of parks and creating an alienating and unsustainable land use. Generally, adjacent and non-metered on street car parking is available for those accessing the parks by motor vehicle. However parking arrangements within and adjacent to some parks can occasionally cause disturbance to surrounding residential areas and due care should be exercised.

Vehicular access onto parks is restricted to maintenance and emergency vehicles except where consent is obtained from Council for a specific purpose. Permits to obtain permanent vehicular access to private property over community land will not be granted, in accordance with Section 46 of the Local Government Act, 1993."

The Plan of Management goes on to explain that access for people with a disability will be provided where possible and subject to ongoing funding and staging of works. The Plan of Management also acknowledges that all access pathways through parks need to be constructed to safe standards, compatible with the natural and built features of a park and that after hours use of parks will be controlled by closing of gates and entry points where possible.

In light of the above, the access track within Lot 2 is not consistent with the adopted Plan of Management. This application for an amended Planning Proposal seeks to achieve a reclassification for Lot 2 and part of Lot 1, which is more suited to the on-ground situation.

The informal accessway has, over time, been constructed in an ad-hoc manner and is in a poor state of repair, it is currently used by the property owners as the only means of practical vehicular access to their properties.

The residential parcels of land adjoining the reserve and fronting Forest Road, Lugarno were subdivided in/after 1973. It is unclear why the subdivision was permitted considering there was no practical vehicle access to Forest Road and no formal access requirements were ever established by Council through the Reserve.

In addition to the subdivision, the former Hurstville City Council approved a number of buildings (garages) on the adjoining residential properties without any requirement to secure a formal easement for vehicles to service the subject buildings.

The informal accessway is effectively used as a public road at present, and there could be legal implications to Council if its informal use were continued. The amended planning proposal allows for the existing practical use to be formally acknowledged through the reclassification of part of the reserve to operational land and for the construction of a public road.

The construction of a public road will allow for the established use to continue in a formalised manner, removing existing safety issues and poor quality, and significantly lessening legal risks to Council.

2.3.3 Council Resolutions and Planning Proposals

On 22 March 2000 Hurstville Council resolved to advertise intentions to consider dedication of the track as a public road. This resolution was not implemented.



On 16 August 2000 Hurstville Council resolved to create a right of carriageway 6m wide and variable width over the alignment of the access track to benefit adjoining private properties which require access from the track. This resolution was not implemented.

On 18 September 2013 Hurstville Council resolved to create a right of carriageway for access across Taylors Reserve to provide formal legal access to properties that require vehicle access from the current access way

On 7 August 2017 the now Georges River Council resolved to proceed with the reclassification of Lot 2 DP1200178 from Community Land to Operational Land.

On 11 August 2017, Council referred a Planning Proposal to reclassify Lot 2 to Operational Land to the Department of Planning and Environment (DPE) for a Gateway Determination.

On 14 September 2017 a Gateway Determination was issued by the DPE providing consent for the Planning Proposal to proceed to community consultation and a public hearing.

The Planning Proposal was placed on public exhibition from 15 November to 13 December 2017. Two submissions were received which did not require amendments to the Planning Proposal to be made.

On 28 March 2018 a public hearing was independently chaired by Michael McMahon from M.E McMahon & Associates. The report of the hearing supported the reclassification of the Reserve.

On 12 November 2018 Council held a meeting to consider methods of funding the proposed road construction. Council resolved to continue with the Planning Proposal to reclassify the land and that a supplementary report into the cost, potential funding sources, planning and legal implications of creating a public road rather than a private road with rights of carriageway be brought back to the next Council meeting.

On 26 November 2018 the requested supplementary report was considered by Council. The report identified, amongst other issues, that:

The creation of a public road would result in the loss of additional open space (approximately 323m² within Lot 1 of Taylors Reserve), and 5 mature trees.

Upon review of the supplementary report, which included details on funding and legal implications (not relevant to this amended Planning Proposal), Council resolved that:

Option C as outlined in the report 'Property Matter – Provision/Construction of Private Vehicular Access to Residential Properties across Taylors Reserve Lugarno – Supplementary Information', being the construction of a public road at no cost to the residents, be endorsed.

As such, this amendment to the previous Planning Proposal is prepared independently for Council in accordance with the Resolution dated 26 November 2017 (CCL074).

2.3.4 Plan of Management

The Local Government (LG) Act requires community land to be managed in accordance with a Plan of Management (PoM). That PoM must identify the category of the land (s36 LG Act). On 27 June 2007 Hurstville City Council adopted a Generic Plan of Management for Parks . That PoM therefore applies to Taylors Reserve.

The LG Act does not require operational land to be managed in accordance with a PoM, and a PoM ceases to apply to land if it is reclassified as operational land (s42 LG Act).

The POM will therefore not be required for the parts of the land reclassified as operational land.

As stated in Section 1.2 to the POM:



“Community Land is defined for the purposes of the Act to be any land that is retained by Council for use by the general public such as parks, playing fields, playgrounds, bushland, and other areas of open space accessible to the public.”

And

“Operational land comprises that land which serves a commercial or operational function (e.g. A depot or car park), or land which is being retained for strategic reasons.”

Lot 2, and the part of Lot 1 which are required for the use of the public road, more appropriately fit the definition of ‘Operational Land’ than ‘Community Land’.

Taylors Reserve is currently categorised as a ‘Park’ which is defined by Section 104 of the Local Government (General) Regulation, 2005 as follows:

“Land should be categorised as a park under section 36 (4) of the Act if the land is, or is proposed to be, improved by landscaping, gardens or the provision of non-sporting equipment and facilities, for use mainly for passive or active recreational, social, educational and cultural pursuits that do not unduly intrude on the peaceful enjoyment of the land by others.”

The access track within Lot 2 and part of Lot 1 is not consistent with the definition of a ‘Park’.

Therefore, once the Land is reclassified to operational land, it will not be subject to categorisation by any PoM, and Council is not required to categorise it under the LG Act or Regulations.

Furthermore, once the Land is dedicated as a public road, it is not public land under the LG Act at all and therefore is no longer operational land.

This will not compromise the ongoing availability, maintenance and use of the remaining (and significant) part of Lot 1 as ‘Community Land’ and as a ‘Park’ and for continued public access to Taylors Reserve (see Section 2.4 for more details).

2.4 Matters Specific to Future Ownership, Maintenance and Use of Taylors Reserve

2.4.1 Site Contamination

The site has a long history of use for public recreation. The former use of the site for a poultry farm prior to the 1960s indicates that there may have been some potential for agricultural activities with contaminating impacts. However, there does not appear to be any visual evidence or environmental indicators (such as unhealthy vegetation, odours or unusual seepage or runoff) which would indicate the presence of contaminants. The proposed reclassification of the land is not intended to substantially change the current practical operation of Lot 2 and part of Lot 1 or change the nature or degree to which humans are likely to interact with the land. For these reasons a detailed contamination assessment is considered unnecessary to support this application.

2.4.2 Geotechnical

The site is not known to be subject to landslip or instability. The reclassification of Lot 2 and part of Lot 1 does not include excavation or filling of the land or change the potential range of activities and uses permissible on the land as prescribed by applicable planning instruments. For these reasons it is considered that geotechnical studies are not required to support this application for an amended Planning Proposal.

2.4.3 Flooding and Stormwater Management



The site is not affected by flooding. Stormwater management provisions have been implemented on an *ad hoc* basis to manage stormwater runoff through Lot 2 and particularly the runoff from the surface of the access track. Any future formalisation of the access arrangements and status of the access track for use by private landowners is anticipated to account for the ongoing management and direction of stormwater through Lot 2 and integration with the constructed stormwater infrastructure and/or the natural catchment in accordance with Council's requirements. No concept stormwater management plans are required for this application.

2.4.4 Heritage and Archaeological

The heritage maps to HLEP 2012 show there are no heritage items or heritage conservation areas within or in close proximity to the reserve. Therefore no heritage impact assessment is required to support this application.

2.4.5 Acid Sulfate Soils

The site is not affected by Acid Sulfate Soils (ASS). The reserve is within 500m of land with ASS Class 5, 2 and 1 to the south. However, this application for an amended Planning Proposal does not propose works which would trigger the need for an ASS Management Plan and does not propose to change the provisions of Clause 6.1 to HLEP 2012 which specify requirements for the assessment of impacts to ASS.

2.4.6 Traffic and Parking

This application for an amended Planning Proposal is an essential step in changing the various statutory provisions that apply to Lot 2 and part of Lot 1 in a manner which is more appropriate for the on-ground situation. This application will not result in an increase in vehicle traffic within the reserve or a change to the existing parking arrangements. For these reasons a Traffic and Parking Impact Assessment is not required to support this application.

2.4.7 Streetscape and Compatibility with Surrounding Land Uses

As described in 2.2 above, the locality is characterised by residential properties and a group of neighbourhood shops. This application does not propose to change the practical operation of the reserve nor the way in which Lot 2 and part of Lot 1 is compatible with surrounding properties. In fact, this application is an essential process to change the statutory provisions applying to Lot 2 and part of Lot 1 to formalise access and use arrangements between Council and adjoining private property owners.

2.4.8 Rights and Interests

A Title Search of Lot 1 and Lot 2 demonstrates that the land is not affected by any trusts, estates, dedications, conditions, restrictions or covenants with the exception of the universally applicable second schedule Item No.1 which is "*1. Reservations and Conditions in the Crown Grant(s)*". Lot 1 is also affected by an interest listed in the second schedule as "*2. The land within described is Public Reserve*" and "*3. Lease to the Scout Association of Australia NSW Branch. Expires 31/12/2021*".

Similarly, Lot 2 is affected by an interest in the second schedule as "*2. Lease to the Scout Association of Australia, NSW Branch. Expires 31/12/2021*".

The Scout Association of Australia (Scout Building) is wholly located on Lot 1 and is outside that part of Lot 1 proposed to be reclassified and dedicated as a public road. Therefore if the Scout Lease remains on the part of Lot 1 not being reclassified, it will continue to authorise the occupation of the Scout Building.

However, the Scout's Lease (as far as it relates to the parts of the land proposed to be reclassified) is inconsistent with Council's intended future use of the Land solely as a public road.

Accordingly, it is proposed to insert the land into Part 2 of Schedule 4 of the HLEP2012, which will have the effect of discharging the Scout Lease over the parts of Lot 1 and Lot 2 that are proposed to be reclassified.



This application for an amended Planning Proposal does not propose to significantly alter the practical operation of the reserve, however a large part of its formal classification will change to operational land and then to a public road.

This application is part of a series of actions identified in Council Resolutions and reviews of supplementary reports which recommend that a public road is constructed on Lot 2 and Part of Lot 1.

Therefore, in accordance with the LEP Practice Note PN16-001 this amendment to Schedule 4 must be included in Part 2 to that Schedule as interests are to be changed.





3. EXISTING AND PROPOSED PLANNING PROVISIONS

3.1 Hurstville Local Environmental Plan 2012 (HLEP 2012)

HLEP 2012 came into effect on 7 December 2012 and applies to the site. The provisions of the LEP that currently apply to the site are summarised as follows:

- **Zone RE1 Public Recreation;**

Zone Objectives:

- “• *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.”*

Permitted without consent:

Environmental facilities, Environmental protection works, Roads

Permitted with consent:

Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Information and educational facilities; Kiosks; Markets; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes

Prohibited:

Any development not specified in item 2 or 3

- Height of buildings control – None;
- Floor Space Ratio (FSR) control – None; and
- Minimum lot size - None.

This application for an amended Planning Proposal does not seek to change the manner in which any of the clauses or maps to HLEP 2012 apply to Lot 2 or part of Lot 1.

An extract of the zone map from HLEP 2012 for the Site is provided in Figure 6. Taylors Reserve zoned RE1 - Public Recreation, the surrounding lands are zoned R2 – Low Density Residential and B1 – Neighbourhood Centre



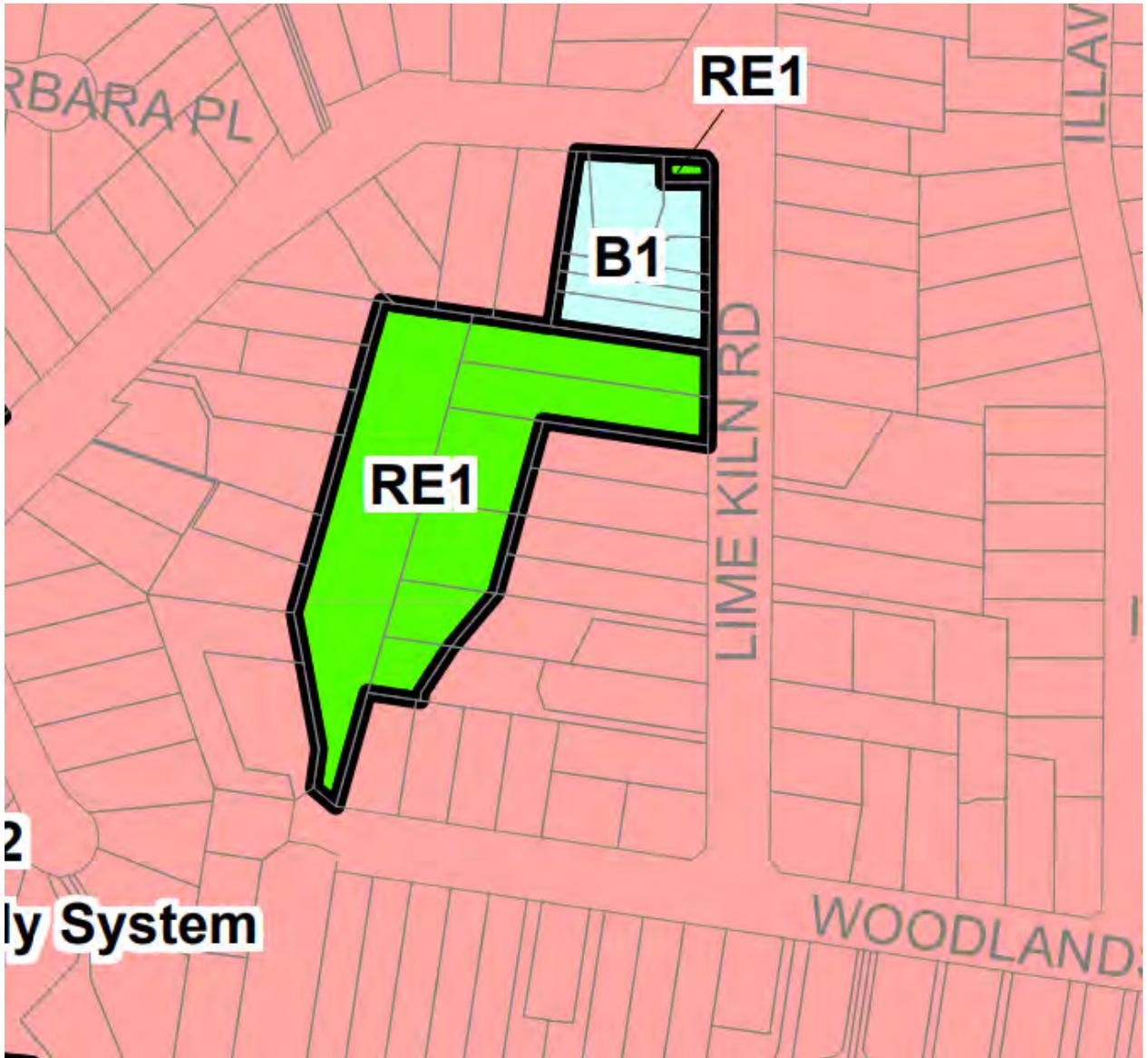


Figure 6: LEP Land Zoning Map (Source: Hurstville LEP Maps - 'Land Zoning Lots) Map - Sheet LZN_03)

3.2 Hurstville Development Control Plan No.1

This application does not propose to change the provisions of Hurstville Development Control Plan No.1.

4. DRAFT PLANNING PROPOSAL

4.1 Proposed Amendments to Current Planning Provisions

This application seeks to amend Schedule 4 to HLEP 2012 to include Lot 2 and part of Lot 1 in DP 1200178 as follows:

Schedule 4 Classification and reclassification of public land

| Column 1 | Column 2 | Column 3 |
|-----------------|--|---|
| Locality | Description | Any trusts etc not discharged |
| Lurgarno | Lot 2, DP 1200178 Part of Lot 1, DP1200178 | Reservations to the Crown Grant and minerals |

It is also proposed to add a new map to HLEP 2012 titled 'Land Reclassification (Part Lots) Map - Sheet RPL_003' which identifies part of Lot 1 in Deposited Plan 1200178 outlined in red as 'Operational Land'.

An indicative plan demonstrating the proposed location of Operational Land within Taylors Reserve is shown below as Figure 7. Lot 2 is proposed to be entirely classified as Operational Land. With only part of Lot 1 being classified as Operational Land.

The Scout's lease is to be discharged on the entirety of Lot 2 and any parts of Lot 1 which are to be reclassified as it is inconsistent with the classification as a public road.

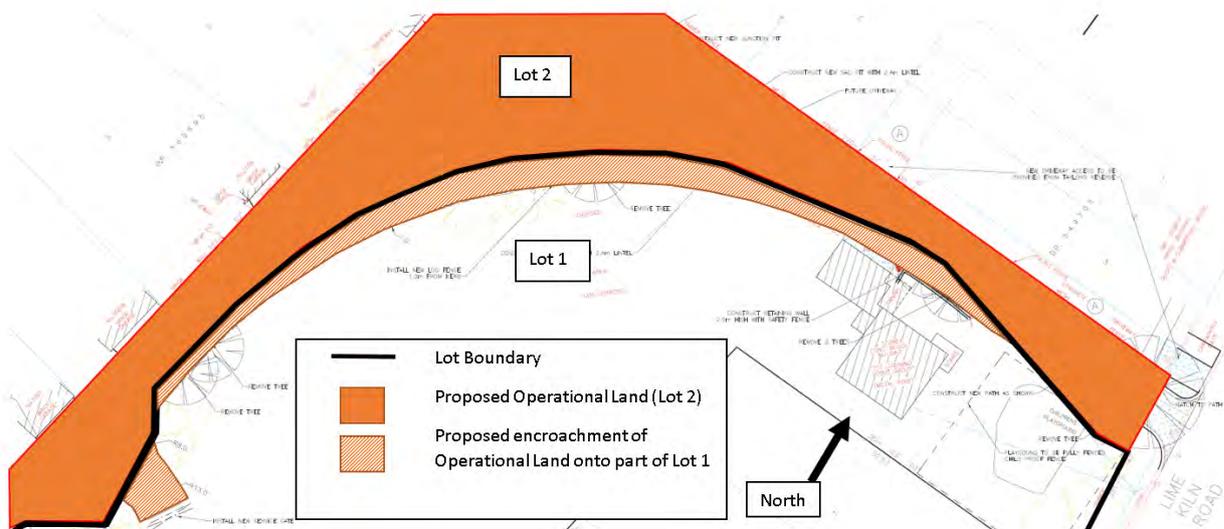


Figure 7: Operational Land Map (Source: Georges River Council [Basemap])

5. PLANNING PROPOSAL

5.1 Part 1 - Objectives or Intended Outcomes

5.1.1 Intended Outcomes

The purpose of this application for an amended Planning Proposal is to apply statutory provisions to Lot 2 and part of Lot 1 which accurately reflect the on-ground situation. That is, Lot 2 and part of Lot 1 more appropriately fit the definition of Operational Land than Community Land as explained in Section 2.3.4. The reclassification also allows for the construction of a public road to Australian Standards in future.

This application for an amended Planning Proposal does not seek to change the manner in which all other provisions of HLEP 2012 apply to Lot 2 or part of Lot 1.

5.1.2 Objectives

The objective of this application for an amended Planning Proposal is to enable the application of statutory provisions to Lot 2 and part of Lot 1 which will permit legal access for residential properties adjoining the reserve in a manner which reflects the on-ground situation. The amended Planning Proposal will also allow for the future construction of a public road to Australian Standards as per Council Resolutions outlined above in this report.

5.2 Part 2 - Explanation of Provisions

It is proposed to amend HLEP 2012 in the following specific ways:

- Amend Schedule 4 Part 2 to include Lot 2 and part of Lot 1 in DP 1200178; and
- Add a Map titled 'Land Reclassification (Part Lots) Map - Sheet RPL_003' which identifies part of Lot 1 in Deposited Plan 1200178 outlined in red as 'Operational Land'.

5.3 Part 3 - Justification

SECTION A – Need for the planning proposal

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

The request for an amended Planning Proposal is not the result of a specific strategic planning study. The application is a result of Hurstville Council's Resolution of 18 September 2013 Minute No.359 which states as follows:

"RESOLVED THAT Council resolves to prepare a plan of subdivision consolidating Taylors Reserve and identifying land for Taylor Avenue;

THAT Council resolved to prepare a site specific Plan of Management for Taylors Reserve and amend the Generic Plan of Management – Parks.

THAT Council resolves to prepare a planning proposal to reclassify part of Taylors Reserve from Community Land to Operational Land.

THAT Council create a right of carriageway for access across Taylors Reserve to provide formal legal access to properties that require access from the existing sealed road – Taylor Avenue.



FURTHER THAT Council advise adjoining and adjacent landowners surrounding Taylors Reserve of its decision.”

All of the abovementioned steps in Minute 359 are required to implement statutory changes that appropriately reflect the on-ground situation.

In addition, proceeding Council meetings have been held and Supplementary Reports produced assessing various options of delivering legal access, funding mechanisms, planning and legal considerations. These have resulted in additional Council Resolutions, including on 26 November 2018 where it was resolved that:

Option C as outlined in the report ‘Property Matter – Provision/Construction of Private Vehicular Access to Residential Properties across Taylors Reserve Lugarno – Supplementary Information’, being the construction of a public road at no cost to the residents, be endorsed.

As such, this amended Planning Proposal is required to address this recent resolution in addition to the previous resolutions.

This is consistent with resolution No.359 of 2013 which included:

THAT Council create a right of carriageway for access across Taylors Reserve to provide formal legal access to properties that require access from the existing sealed road – Taylor Avenue.

The creation of a public road will, by virtue provide formal legal access to properties that require access from the existing sealed road.

The informal accessway has, over time, been constructed in an ad-hoc manner and is in a poor state of repair. It is currently used by the property owners as the only means of practical vehicular access to their properties.

The residential parcels of land adjoining the Reserve and fronting Forest Road, Lugarno were subdivided in/after 1973. It is unclear why the subdivision was permitted considering there was no practical vehicle access to Forest Road and no formal access requirements were ever established by Council through the Reserve.

In addition to the subdivision, the former Hurstville City Council approved a number of buildings (garages) on the adjoining residential properties without any requirement to secure a formal easement for vehicles to service the subject buildings.

The informal accessway is effectively used as a public road at present, and there could be legal implications to Council if its informal use were continued. The amended planning proposal allows for the existing practical use to be formally acknowledged through the reclassification of part of the reserve to operational land and for the construction of a public road.

The construction of a public road will allow for the established use to continue in a formalised manner, removing existing safety issues and poor quality and significantly lessening legal risks to Council.

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

A Planning Proposal is required to change the classification of Lot 2 and part of Lot 1 from Community to Operational Land. In accordance with LEP Practice Note PN16-001 Councils are encouraged to reclassify land through the Local Government Act, 1993 (LG Act, 1993) when circumstances conform to Sections 31, 32 or 33 of that Act.

Section 31 to the LG Act 1993 applies to classification of land acquired after 1 July 1993. Lot 1 and 2 were dedicated to Council in 1960 and therefore Section 31 does not apply.





Section 32 to the LG Act 1993 applies to the reclassification of land dedicated in accordance with Section 7.11 to the EP&A Act, 1979 and therefore does not apply.

Section 33 to the LG Act, 1993 applies to reclassification of operational land as community land and does not apply to this case.

Therefore, Lot 2 and part of Lot 1 cannot be reclassified in accordance with Sections 31, 32 or 33 of the LG Act, 1993 and therefore requires a Planning Proposal.

3. Is there a net community benefit?

The matter of community benefit is not required to be addressed in the latest version of “*A Guide to Preparing Planning Proposals*”. However, there is a net community benefit from the amended Planning Proposal as follows:

- The on-ground situation will no longer be inconsistent with the adopted Plan of Management and classification of the land;
- Facilitates the opportunity for Council to consider creating legal access for adjoining properties which are dependent upon the access track for vehicle and/or pedestrian access;
- Facilitates the opportunity for Council to consider creating legal access for adjoining properties which do not currently have access to Lot 2 and thereby creates an equitable arrangement for all adjoining property owners;
- Creates statutory conditions which allow Council and interested parties to construct and maintain the access track to a suitable standard;
- Does not change public access and use arrangements to Taylors Reserve; and
- Allows for the future construction of a public road to Australian Standards, thereby resulting in improvements to pedestrian and driver safety.

Whilst there will be a loss of open space of approximately 323.7m² on part of Lot the practical operation of the reserve will not be significantly altered. The minor loss of open space, which as it is adjacent to the existing informal accessway is of a low quality, is considered to be outweighed by the practical community benefits outlined above.

Various methods of funding the road construction were assessed by Council, however it was deemed most practicable for Council to fund the works. Therefore, those who will benefit the most (those being the dwellings which currently access Lot 2 informally) will not be required to contribute to the cost of works. There will be private benefits to these properties including an estimated increase in the value of these properties by a minimum 10% (as per valuation advice prepared for Council).

SECTION B – Relationship to strategic planning framework

1. 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 Greater Sydney Region Plan – A Metropolis of Three Cities

The Greater Sydney Region Plan contains planning principles, directions and priorities for subregions, strategic centres and transport gateways. Lugarno is not identified in the Plan for any specific strategic role. The Plan includes goals to improve access to parks and open spaces, increase connectivity of open space and make existing open spaces more appealing for healthy lifestyles and biodiversity and ecological functions.



The relevant objectives of the plan are:

- Objective 1, Infrastructure supports the tree cities: This objective seeks to provide the spatial foundation for more effective and efficient planning for city-shaping infrastructure and enhanced utilisation of infrastructure. It sets out the broader approach to infrastructure for the proposed '3 cities' within the Greater Sydney region to support a 30-minute connection to each respective city centre. The amended Planning Proposal does not provide for 'city-shaping infrastructure', it is for relatively modest upgrade works of an existing informal accessway and therefore seeks to improve existing infrastructure, which will have overall benefits. It is not antipathetic to Objective 1.
- Objective 2, Infrastructure aligns with forecast growth: this objective seeks to support areas that are forecast to experience significant residential and employment growth with appropriate infrastructure investment. The amended Planning Proposal seeks to allow for upgrade works to an existing informal accessway to a public road. A source of funding from within Council has been identified, given the wider public and private benefits this is considered to be an appropriated funding mechanism. Objective 4, Infrastructure use is optimized: This objective calls for better utilization of existing assets to increase infrastructure capacity to better support communities. The amended Planning Proposals will ensure that existing infrastructure is upgraded to applicable Australian Standards, it will allow for improved and safer access to the reserve and surrounding properties which currently only have an informal access arrangement.
- Objective 30, Urban tree canopy cover is increased: This objectives calls for the expansion of tree cover in the public realm. The amended Planning Proposal will see 5 trees removed, given the wider public benefits and improved access to the reserve this is considered acceptable in this instance. In addition, it is Council's intention to replace the trees with appropriate species within the reserve. As a result there will be no net loss of trees within the Council area as a result of this amended Planning Proposal.
- Objective 31, Public open space is accessible, protected and enhanced: This objective seeks to maximise the use of existing open space and to protect, enhance and expand public open space by a number of means. The amended Planning Proposal will improve access to the reserve by allowing for the construction of a formalised public road built to Australian Standards.

There will be no change to the zoning of the land for public recreation and the establishment of a legal access for adjoining properties will not prevent continued public access to Taylors Reserve because the access track must remain open at all times and the interests of public access will need to be considered in any future terms of access negotiated between Council and adjoining landowners to ensure that the interests and rights of the public to use Taylors Reserve are unchanged (see Section 2.4.8 for more details regarding public access).

South District Plan

The South District Plan provides a detailed layer of planning considerations in relation to the broad objectives outlined in The Greater Sydney Region. The South District includes the Local Government Areas of Sutherland, Georges River and Canterbury-Bankstown.

The promotion of a sustainable city is a key priority of the South District Plan. Sydney's Green Grid, which is feature of the South District Plan, contributes to the improvement of the city's sustainability. A key theme throughout the South District Plan is the provision of open space that will meet the needs of residents. In particular, the plan supports the provision of safe and healthy places for residents, in turn creating a healthy built environment.

The proposal will not change the practical operation of the site as part of a public reserve and the site will continue to contribute towards targets for Public Open Space and provide a contribution to Sydney's green grid, which in turn will support a sustainable city. Whilst there will be a net loss of 320.7m² of open space, the improved access to the reserve and existing properties accessible via Lot 2, with the wider public and private benefits are considered to outweigh this

loss. It is inevitable that across the South District area trees will need to be removed for various reasons, but with a suite of policies, controls and standards aimed at increasing tree canopy cover being applied there will, over time, be a net increase in tree cover.

The amended planning proposal is therefore broadly consistent with strategic planning framework that is set down by the South District Plan. Inconsistencies regarding tree canopy cover is of minor significance and the amended planning proposal achieves the overall intent of the plan to improve accessibility to public open spaces.

2. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

GEORGES RIVER COMMUNITY STRATEGIC PLAN 2018-2028

The Georges River Community Strategic Plan 2018-2018 (CSP) has been effective from 25 June 2018. The CSP was developed around six themes or pillars which were identified in the consultation process as important to the community, as follows:

The CSP is addressed below:

| <u>GEORGES RIVER COMMUNITY STRATEGIC PLAN 2018-2028</u> | | | |
|--|---|---|--|
| <i>Theme/Pillar</i> | <i>Goal</i> | <i>Strategy</i> | <i>Comment</i> |
| A protected environment and green open space | 1.3 Everyone has access to beautiful parks and open spaces. | 1.3.1 Ensure all public parks and open spaces are accessible, well-maintained and managed to meet the recreational needs of current and future residents. | The amended Planning Proposal will allow for the provision of a public road to Australian standards. This will improve accessibility to the reserve and to private properties which currently have an informal access arrangement. The management of the parts of the reserve which are not being reclassified will continue as per existing arrangements. |
| | | | <i>Measurement of success - Increase local tree canopy above the baseline 23.1%</i> The construction of a public road to Australian Standards will result in the removal of 5 trees. This is unavoidable as the trees are adjacent to the existing accessway and a public road cannot be made narrower than proposed. The wider community and private benefits, addressed above, are considered to outweigh the loss of the trees. |
| Quality, well planned development | N/A | N/A | N/A |



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| Active and accessible places and spaces | 3.2 Roads, footpaths and cycleways are safe, accessible and free of congestion | <p>3.2.2 Implement a program of capital and maintenance to meet the needs of current future users of Council's infrastructure assets.</p> <p>3.2.3 Everyone, including people with a disability, navigates the LGA in safety.</p> | <p>The amended Planning Proposal will allow for the construction of a public road to Australian Standards. This will ensure that the existing non-compliant accessway is made safe and accessible for everyone, including those with a disability.</p> <p>Council has established a source of internal funding for the project.</p> <hr/> <p><i>Measurement of success – Increased resident satisfaction with the condition of local roads, footpaths and cycleways</i></p> <p>The existing accessway is in a current state of repair and has been constructed and repaired over time in an ad-hoc fashion, making use of left-over materials from other Council projects.</p> <p>The amended Planning Proposal will ensure that the accessway has a formal mechanism by which it can be lawfully upgraded, and maintained, as a public road.</p> |
| A diverse and productive economy | N/A | N/A | N/A |
| A harmonious and proud community with strong social services and infrastructure | 5.4 Diverse, vibrant community facilities and spaces are connected, well maintained and accessible. | 5.4.3 Provide a range of affordable and accessible facilities for community-based activities. | <p>As noted throughout this proposal, upgrade works to a public road will improve accessibility to the reserve.</p> <hr/> <p><i>Measurement of success – Increased resident satisfaction with the provision of parks, playgrounds, reserves and sporting fields.</i></p> <p>The practical operation of the reserve will not change as a result of the Planning Proposal. It will allow for a lawful mechanism to upgrade the accessway thereby improving both the appearance and access to the reserve.</p> |
| Leadership and transparency | 6.2 Open, informed and transparent decision-making supports the | 6.2.1 Make all reports to Council Meetings public wherever possible under the Local Government Act 1993 or provide open and closed reports where | The decision making process at all stages leading up to the submission of this amended Planning Proposal has been in accordance with these goals. |





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| | interests of the community. | <p>necessary.</p> <p>6.2.2 Undertake effective risk management to provide greater certainty and security over the management of Council resources and services.</p> <p>6.2.3 Ensure procurement policies and practices demonstrate best-practice in probity assurance and legislative compliance.</p> <p>6.2.4 Provide timely access to Council information, in accordance with legislation, policy, public interest considerations, proactive disclosure and the respect for individual privacy.</p> <p>6.2.5 Use the Audit, Risk and Improvement Committee to independently advise Council on good governance, audit matters, business improvement and risk management controls.</p> <p>6.2.6 Ensure compliance with Section 232(1) of the Local Government Act and processes adopted in Council policies.</p> | |
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Draft Open Space Recreation and Community Facilities Strategy 2018-2036

Council’s draft Open Space Recreation and Community Facilities Strategy 2018-2036 does not make specific mention of Taylors Reserve. However, the reserve fits the category of a ‘Passive General Parkland at Level 2 (Neighbourhood)’ scale and Council’s general responsibilities for this type of reserve are mowing, rubbish removal, cleaning and protection of existing trees.

This application for an amended Planning Proposal will not change the capacity of Council to continue to implement the adopted strategies and works programs for public open space throughout the LGA. The CSP and Delivery Plan



also indicates that funds have been committed to ongoing maintenance of public open space including Taylors Reserve.

Nevertheless, The Department of Planning & Environment has issued a practice note (PN 16-001) which provides guidance on classifying and reclassifying public land through a local environmental plan (LEP). A planning proposal to classify or reclassify public land will need to be prepared in accordance with the practice note and the additional matters specified in Attachment 1 to this practice note. An assessment against the practice note and its attachment is as follows:

TABLE 1: PRACTICE NOTE PN16-001 – CHECKLIST FOR PROPOSALS TO CLASSIFY OR RECLASSIFY PUBLIC LAND THROUGH AN LEP

| | |
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| The current and proposed classification of the Land. | The subject land is classified as community land. It is proposed to reclassify the land to operational land. |
| Whether the land is a 'public reserve' (defined in the LG Act). | Yes |
| The strategic and site specific merits of the reclassification and evidence to support this. | The reclassification will facilitate the creation of a public road with lawful access to properties with existing informal access over Lot 2 and create an appropriate statutory framework which reflects an on ground situation in terms of private and public access to land. |
| Whether the planning proposal is the result of a strategic study or report. | The request for an amended Planning Proposal is not the result of a specific planning study. The request is to implement statutory changes that appropriately reflect the on-ground situation. |
| Whether the planning proposal is consistent with council's Community Plan or other local strategic plan. | The request for an amended Planning Proposal is consistent with Council's Community Plan and other strategic plans. The amended Planning Proposal's intent is to implement statutory changes that appropriately reflect the on-ground situation, which is to create public road, upgrading the existing informal accessway The public road will formalise the current 'informal' arrangement and provide certainty into the future over the management of the accessway and access to Taylor Reserve. |
| A summary of council's interests in the land, | Prior to 1955 the land comprising Taylor Reserve formed part of an 8.5 acre poultry farm owned by |



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| <p>including:</p> <ul style="list-style-type: none"> - 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. | <p>the Taylor family. Subsequently the land was subdivided and dedicated to Council who named Taylor Reserve in 1960.</p> <p>After the 1960's an access track in from 2B Woodland Ave, through the reserve, began to be used by Council for reserve maintenance, and additionally it was used by residents as a track to the rear of a number of properties that fronted Forest Road. Since then Council has approved a number of subdivisions, dwellings, outbuildings, alterations and additions that rely on the access track as the sole physical access.</p> <p>Over the years the gravel track has been gradually sealed by Council with the placement of left-over/part loads of hotmix from Council projects. The partially sealed track provided access for Council's garbage trucks, vehicular access for the community to the reserve and vehicular access for the residents predominately on the western side of the reserve.</p> |
| <p>Whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why.</p> | <p>The existing Scouts lease on all of Lot 2 and the parts of Lot 1 to be reclassified will be discharged.</p> <p>The existing Scout building is wholly located on Lot 1 and is outside of the part of Lot 1 proposed to be reclassified. Therefore, if the Scout lease remains on the part of Lot 1 not being reclassified, it will continue to authorise the occupation of the Scout building.</p> <p>The Scouts lease (as far as it relates to the land surrounding the building of which parts are to be reclassified) is inconsistent with the intended future use of the land as a public road.</p> <p>The Roads Act provides for the short-term lease of unused public roads only.</p> <p>The effect of the amended Planning Proposal will be to discharge the Scout lease over the parts of Lot 1 and Lot 2 being reclassified. This will not impact upon the leasing of the Scout building or any parts of the land currently leased which are not being reclassified.</p> |
| <p>The effect of the reclassification (including, the loss of public open space, the land ceases to be a public</p> | <p>There will be a loss of 320.7m² of public space,</p> |





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| reserve or particular interests will be discharged). | <p>which will become part of the formal public road.</p> <p>However, the practical operation of both the reserve and access road will remain as existing.</p> |
| 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). | <p>Deposited Plan 1200178 ('Plan') contains a statement of Intention that, 'it is intended to dedicate Lot 1 to the public as public reserve'.</p> <p>As a result of the Statement of Intention, on registration of the Plan, Lot 1 was dedicated as a public reserve (see s49 LG Act).</p> |
| Current use(s) of the land, and whether uses are authorised or unauthorised. | <p>The current accessway through the reserve (wholly on Lot 2) is unauthorised but has become the sole vehicular access to numerous properties which surround Lot 2.</p> <p>The parts of Lot 1 which are subject to this amended Planning Proposal are used as a park and are authorised by virtue of the Statement of Intention on the land referred to above.</p> |
| Current or proposed lease or agreements applying to the land, together with their duration, terms and controls. | Both Lot 1 and Lot 2 have a Scout Lease registered on the title. The leases on both Lots expires on 31/12/2021. |
| 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). | <p>No agreements have been made. One of the resolutions of the Council at its Meeting held 18 September 2013 is to create a right of carriageway for access across Taylor Reserve to provide formal legal access to properties that require access from the existing informal accessway.</p> <p>A further resolution on 26 November sought to reclassify the land to allow for the construction of a public road to Australian Standards.</p> |
| Any rezoning associated with the reclassification (if yes, need to demonstrate consistency with an endorsed Plan of Management or strategy). | No. The Site is currently zoned RE 1 Public Recreation under HLEP 2012 (refer to Figure 6). Roads are permitted without consent, under the RE1 zone. However, as the land is not classified as Road under the Roads Act 1993, there is currently no formally recognised access over the Site to a number of allotments directly adjacent to the boundary of the Site. |
| How council may or will benefit financially, and how | The proposed public road is to be constructed at |





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| these funds will be used. | no cost to the residents who currently benefit from informal access over Lot 2. Council will fund the project as per Council resolution in November 2018. |
| 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. | The proposed public road is to be constructed at no cost to the residents who currently benefit from informal access over Lot 2. Council will fund the project as per Council resolution November 2018. |
| 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. | The entirety of Lot 2 DP1200178 is to be reclassified. Part of Lot 1 DP1200178 is to be reclassified. Part of Lot 1 being reclassified is to be shown on the Land Reclassification (Part Lots) LEP map. As the whole of Lot 2 is being reclassified it does not need to be mapped. |
| Preliminary comments by a relevant government agency, including an agency that dedicated the land to council, if applicable. | No comments lodged with Council to date. The amended Planning Proposal has been exhibited and submission received. As this is an amended Planning Proposal, comments will be sought during another formal exhibition. This is in accordance with advice sought from the DPE on whether a new PP is required, or an alteration to the Gateway determination. |

3. *Is the planning proposal consistent with applicable state environmental planning policies?*

There are no State Environmental Planning Policies (SEPPs) or known Draft SEPPs that would prohibit or restrict the amended planning proposal. An assessment against relevant SEPPs is provided in Table 2 (note SEPPs that are not relevant to the proposal have not been included in the table):

| TABLE 2: RELEVANT STATE ENVIRONMENTAL PLANNING POLICIES | | | |
|---|--|-------------|---|
| SEPP | Relevance | Consistency | Comments |
| SEPP 21 Caravan Parks | SEPP 21 applies to all land in the State. It aims to provide caravan parks for both short and long term stays for social and economic welfare and protection of the environment. | Yes | The application for an amended Planning Proposal does not change the current provisions of HLEP 2012 applying to caravan parks. |
| SEPP No 55- Remediation | Introduces state-wide planning controls for the | Yes | The land has a consistent history of use as a poultry farm prior to 1960. |





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| of Land | remediation of contaminated land. | | <p>However, there is no visible evidence of contamination from that historic use. The long term use and maintenance of the reserve as public open space by Council has not revealed any evidence that the land is contaminated based on information contained in Council's historic property file. There is no reason to indicate that the land is contaminated.</p> <p>In any case this application for an amended Planning Proposal will not change the manner in which the land is currently used or permitted to be used in the future and will not result in any activities which would be likely to expose humans or the environment to risks of contamination.</p> |
| SEPP (Exempt and Complying Development Codes) 2008 | This SEPP defines types of development for which development consent is not required. | Yes | This application does not change the way in which the SEPP applies to the site. |
| SEPP (Infrastructure) 2007 | This Policy aims to facilitate the delivery of new infrastructure and protect the safe and efficient operation of existing infrastructure. | Yes | This application does not change the way in which the SEPP applies to the site. |
| Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment | This Policy aims to protect the catchment of the Georges River including maintaining and improving water quality, environmental quality and to achieve consistency in planning assessments and controls throughout the catchment. | Yes | This application does not change the way in which the Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment applies to the site. |

4. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

The proposal is consistent with all applicable Ministerial Directions under Section 9.1 of the *Environmental Planning & Assessment Act, 1979*. An assessment against the applicable directions is provided in Table 3 as follows:



TABLE 3: S.9.1 MINISTERIAL DIRECTIONS

| Ministerial Direction | Relevance | Consistency | Implications |
|--|--|-------------|--|
| 6. Local Plan Making | | | |
| 6.1 Approval and Referral Requirements | <p>A planning proposal must:</p> <ul style="list-style-type: none"> • minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, • not identify development as designated development unless the relevant planning authority has obtained the approval of the Director-General of the Department of Planning | Yes | The application for an amended Planning Proposal does not introduce additional concurrence requirements or identify the development as designated development. |
| 6.2 Reserving Land for Public Purposes | <p>The objectives of this direction are:</p> <p>(a) to facilitate the provision of public services and facilities by reserving land for public purposes, and</p> <p>(b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.</p> <p>A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).</p> <p>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that: with respect to a request referred to in paragraph (7), that further information is required before appropriate planning controls for the land can be determined, or the provisions of the planning proposal that are inconsistent with the terms of this direction are of minor significance.</p> <p>Note: Paragraph (7) of 6.2 states: <i>“When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal to rezone and/or remove a reservation of any land that is reserved for public purposes</i></p> | Yes | <p>This application does not change the manner in which Taylors Reserve is available for public purposes. Council intends to create a formal public road within Taylors Reserve without changing the zoning of the land as Zone RE1 Public Recreation and without changing the conditions under which the public can access and use Taylors Reserve.</p> <p>There will be a loss of 320.7m² of public open space as a result of the reclassification and following construction of a public road. Given the improvements to public and private accessibility resulting from a formal public road the loss is considered acceptable.</p> <p>This application for an amended Planning Proposal will not change existing zonings or reservations for land for public purposes.</p> <p>Therefore the application is consistent with the terms of Direction 6.2.</p> |

because the land is no longer designated by that public authority for acquisition, the relevant planning authority must rezone and/or remove the relevant reservation in accordance with the request.

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| 6.3 Site Specific Provisions | <p>A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</p> <ul style="list-style-type: none"> (a) allow that land use to be carried out in the zone the land is situated on, or (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended. | Yes | <p>This amended Planning Proposal seeks an amendment to HLEP 2012 which is specific to the site. It seeks to facilitate the construction of a public road to Australian Standards to allow for formalised access to the properties adjacent to Lot 2 and to minimise financial risk to Council. The amendment seeks to create a statutory framework to better reflect the on-ground circumstances of an access track on public open space used for access to private property. Any future public road construction will be permitted within the RE1 zone.</p> <p>Council has resolved to create a public road over Lot 2 and part of Lot 1. This does not require development consent as 'Roads' are a land use which are permitted without consent in the RE1 zone.</p> |
| <p>A Planning Proposal must not contain or refer to drawings that show details of the development proposal.</p> | | | <p>For these reasons the application for an amended Planning Proposal is considered to be consistent with the requirements of Direction 6.3.</p> |

7. Metropolitan Planning

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| 7.1 Implementation of A Plan for Growing Sydney | <p>This Direction applies to all Planning Proposals in nominated Local Government Areas and seeks to give legal effect to the planning principles, directions and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.</p> <p>A Planning Proposal must be consistent with the Plan unless the inconsistency is of minor significance and the planning proposal achieves the overall intent of the Plan.</p> | Yes | <p>A Plan for Growing Sydney has been Superseded by the Greater Sydney Region Plan. The amended Planning Proposal has been assessed against the plan above and has minor inconsistencies with the plan in relation to urban tree cover as 5 trees will be removed.</p> <p>It is considered that this inconsistency is of minor significance and the amended planning proposal achieves the overall intent of the plan to improve accessibility to public open spaces.</p> <p>Council's wider policies within the Community Strategic Plan are for increases in tree cover across the area. It is inevitable that over such a large area trees will, at times, have to be removed for various reasons. But as there is a general trust in Council policy to see increased tree cover, developments throughout Georges River will be required to provide additional trees, thereby resulting in a net increase over time.</p> |
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SECTION C – Environmental, Social and Economic Impact

5. 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 site does not contain critical habitat or habitat for threatened species, populations or endangered ecological communities. The amendment to the LEP is not likely to have a negative impact on such habitats.

6. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no environmental impacts from this application. The application seeks to establish statutory provisions which are more appropriate for the existing on-ground situation.

7. Has the planning proposal adequately addressed any social and economic effects?

The social and economic effects of the LEP amendment have been considered in the context of net community benefit analysis in Section 5.3(3). The Community Engagement process and the public hearing will allow direct input from the community and may raise matters requiring further examination as the amended Planning Proposal evolves and progresses.

The ongoing maintenance of the access track will require additional funding from Council. The potential costs of the creation of a public road have been quantified within the Supplementary Report produced for the Council meeting on 26 November 2018 (Entitled *'Property Matter – Provisions/Construction of Private Vehicular Access to Residential Properties Across Taylors Reserve Lugarno – Supplementary Information'*). The report estimates that the cost would be in the region of \$550,000. This is anticipated to be sourced from Council's General Reserves or at the expense of another capital project. Regardless of this, the amended Planning Proposal only seeks to facilitate the delivery of a future public road through reclassifying land as 'operational land', the formal funding of any future scheme will need additional consideration and ratification by Council.

SECTION D – State and Commonwealth interests

8. Is there adequate public infrastructure for the planning proposal?

The DPE's 'A guide to preparing planning proposals' document advises that typically this question applies to Planning Proposals that:

- Result in residential subdivisions in excess of 150 lots.
- Substantial urban renewal.
- Infill development.
- Development that would result in additional demand on infrastructure (such as public transport, roads, utilities, waste management and recycling services, essential services such as health, education and emergency services).

This amended Planning Proposal is for minor reclassification of land to allow for an existing informal accessway to, essentially, be upgraded to a public road. It is not considered that this question is applicable.

9. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway Determination?

It is not considered necessary for any State or Commonwealth public authorities to be consulted in relation to this amended Planning Proposal as it is for minor reclassification of land to allow for an existing informal accessway to, essentially, be upgraded to a public road. It is not considered that this question is applicable.

5.4 Part 4 - Mapping

Updated LEP maps are provided in accordance with Part 12.11 Land Reclassification (Part Lots) (RPL) of the Standard Technical Requirements for Spatial Datasets and Maps V2.0 published by the Department of Planning and Environment. The technical requirement states that:

Land reclassification (part lots) maps should show the operational and community land as polygons. If a land reclassification applies to the whole lot, then no map will be required.

As the whole of Lot 2 and only part of Lot 1 is to be reclassified a map showing the reclassification of part of Lot 1 is provided. The map within HLEP 2012 titled 'Land Reclassification (Part Lots) Map - Sheet RPL_003' is to be updated to identifies part of Lot 1 in Deposited Plan 1200178 outlined in red as 'Operational Land'.

This is shown in Figure 8 below.



Figure 8: Land Reclassification (Part Lots) Map Extract, area outlined in red to be reclassified as 'Operational Land' (Basemap Source: LEP 'Land Reclassification (Part Lots) Map – Sheet PRL_003')

5.5 Part 5 - Community Consultation

In accordance with Section 3.34(2) of the EP&A Act, 1979, the Minister for Planning must approve the form of the planning proposal, as revised to comply with the gateway determination, before community consultation is undertaken.



Public exhibition is likely to include a newspaper advertisement, display on the Council's web-site and written notification to adjoining landowners. The gateway determination will specify the level of public consultation that must be undertaken in relation to the planning proposal. A copy of the LEP Practice Note PN16-001 is required to be included in the public exhibition material.

As the amended Planning Proposal relates to land in the care, control and ownership of Council a Public Hearing is required to be conducted. LEP Practice Note PN16-001 requires that the Public Hearing be held after the close of the exhibition period. The public hearing is to be conducted in accordance with Section 3.34 to the EP& A Act, 1979 and Sections 29 and 47G to the LG Act, 1993. A public notice of the hearing is to be published a minimum of 21 days prior to the date of the hearing.

Pursuant to Section 3.34 of the EP&A Act, 1979 the Responsible Planning Authority must consider any submissions made concerning the proposed amendment to HLEP 2012.



6. CONCLUSION

This application is consistent with the overall intent of adopted and endorsed local, regional and State strategic plans. Where there are inconsistencies they are considered to be of minor significance and are outweighed by the public and private benefits of improved access to the reserve and private dwellings that will entail. This application for an amended Planning Proposal demonstrates the reclassification of Lot 2 and part of Lot 1 in DP 1200178 from Community Land to Operational Land can only be achieved through amendment to HLEP 2012 by way of a Planning Proposal.

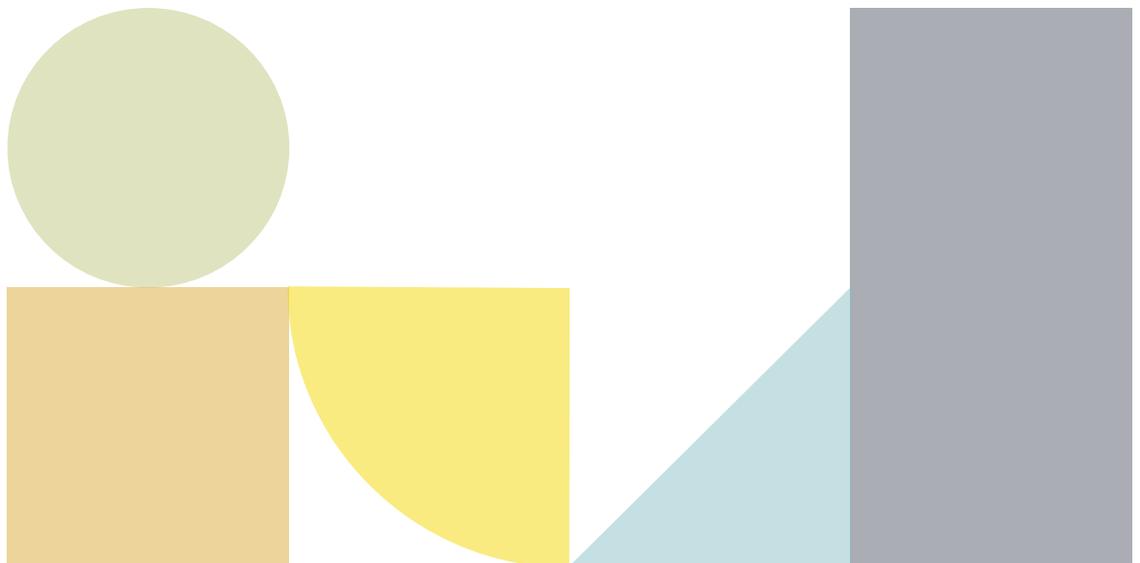
This application will facilitate the appropriate statutory framework for the future creation of a public road over the existing access track to formalise access to adjoining properties.

This application is not consistent with the Statement of Intention on the Deposited Plan to “dedicate Lot 1 DP 1200178 to the public as public reserve” in accordance with Section 88B of the *Conveyancing Act, 1919*. However, by inserting the Land into Part 2 of Schedule 4 of HLEP 2012 the land ceases to be a public reserve and is discharged from all trusts, estates, interest etc subject to any stated exclusions (pursuant to clause 5.2 of HLEP 2012). The Statement of Intention therefore becomes irrelevant.

The proposed amendments to HLEP 2012 will not in themselves result in any changes to the practical operation of Lot 2 part of Lot 1, in DP 1200178, but will facilitate upgrade works to improve the existing poor quality track to a public road built to Australian Standards. The LEP amendments will not change the use of Taylors Reserve for public open space and recreation, whilst there would be a reduction of 320.7m² of open space (once the proposed public road is constructed), it is space which is adjacent to the existing accessway and is generally of poor quality. In addition, the greater benefits of improved access for all, and formalised access to existing dwellings is considered to outweigh the modest loss of outdoor space. The amendment is necessary to enable the proper and orderly management and use of Lot 2 and part of Lot 1 in DP 1200178 to provide legal access to adjoining properties. For these reasons the application is worthy of Council’s support to forward the request to the Minister for a Gateway determination.

ANNEXURE A

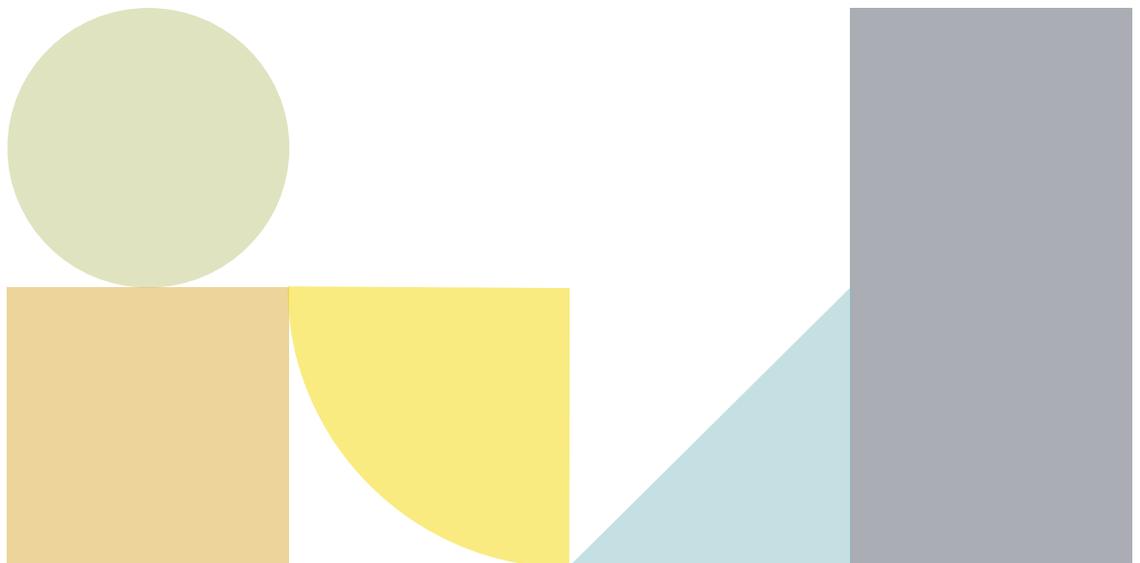
LEP Practice Note PN-001 (Classification and reclassification of public land through a local environmental plan)





ANNEXURE B

Photos of Lots 1 and 2





Looking south over Lot 1



Informal vehicular access to rear of properties fronting Lot 2





Informal vehicular access to rear of properties fronting Lot 2



Informal vehicular access to rear of properties fronting Lot 2



Looking north over the reserve



ANNEXURE C

HLEP 2012 Land Reclassification Map





LEP Land Reclassification (Part Lots) Map – RPL_003