

PUBLIC HEARING REPORT AND RECOMMENDATION
PROPOSED RE-CLASSIFICATION AND RE-ZONING OF COMMUNITY LAND,
(GEORGE BASS DRIVE, MALUA BAY & NORTH STREET, BATEMANS BAY)
INTEGRAL WITH RURAL LAND PLANNING PROPOSAL 2018
EUROBODALLA SHIRE COUNCIL

FINAL REPORT

November 2018

Report 18/030

PREPARED BY

ur**Plan** Consulting
Land planning : Development economics : Environmental
+61 2 4472 3545: D
+61 2 4472 9528: F
+61 488 266 425: M
urplanconsulting.com.au

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1.0 INTRODUCTION

David Seymour as principal of urPlan Consulting has been engaged by Eurobodalla Shire Council to conduct and chair a Public Hearing into the proposed re-classification of Public Land and to prepare a subsequent report back to Council. This report provides an assessment of the issues arising from the meetings and submissions received and includes a recommendation pertaining to the re-classification of the defined land.

1.1 Purpose of the public hearing report

This public hearing report has been prepared under Section 29 of the *Local Government Act 1993* (LG Act) and Section 1 Environmental Planning and Assessment Act 1979 (EP&A Act). The purpose of this report is to provide Eurobodalla Shire Council with information and advice as to the submissions made in relation to a public hearings held on 17 October 2018 regarding the proposed re-classification of land currently listed within Natural Areas and Undeveloped Reserves Plan of Management (Malua Bay) and Developed Reserves and Facilities Plan of Management (Batemans Bay), in the Eurobodalla Local Government Area.

The re-classification is being undertaken in concurrence with the Rural Lands Planning Proposal currently under consideration by Department of Planning and Environment for 'Making' by the Department Secretary. This re-classification process is being undertaken in accordance with the Department Practice Note PN 16-001 issued October 2016. The purpose of this practice note is to provide guidance on classifying and re-classifying public land through an amendment to the applicable Local Environmental Plan (LEP).

Subsequent to the Hearing date and prior to finalisation of this report, the author was advised that Council was wishing to redact the land re-classification component of the Rural Lands Planning Proposal. However, at the time of report finalisation, this amendment to the Planning Proposal had not been formalised through Council.

1.2 Defined land for re-classification

This Public Hearing report addresses the proposed re-classification of community land in accordance with the requirements of the *Local Government Act 1993* and Regulations 2005. This report and the detailed land mapping will accompany a future Council staff report to Eurobodalla Shire Council with a recommendation as to whether the re-classification of the lands and removal from the respective Plans of Management (POM), should proceed.

The Land parcels affected by the re-classification and to be removed from the existing POM's are listed in the table below and described in the following mapping. Supporting documents, including maps of the proposed re-classified land will accompany this Public Hearing report. The proposed actions and the requirement for the Public Hearing are part of the recommendations within the report to Council (PSR186/069) Council meeting 28 August 2018. The land re-classification forms part of the much greater Rural Lands Planning Proposal.

Table 1.2 Land descriptors for the proposed re-classification and removal from POM's

POM ID	PARCEL ID	STREET ADDRESS	CATEGORY	POM
3622.400	574 / 32008 (part)	George Bass Drive, Malua Bay	Natural Bushland (NB)	Natural Areas & Undeveloped Reserves.
1846.100	21 / 547034	North Street, Batemans Bay	General Community Use (GO)	Developed Reserves & Facilities.



Map 1 Lot 574 DP 32008 Malua Bay - defined area for re-categorisation, (source LPI SiX maps 2014)



Map 2 Lot 21 DP 547034 Batemans Bay, defined area for reclassification: (source Near Map 2018)

1.3 Legislative requirements

Land owned by Council may be classified as either 'community' or 'operational land'. Community land is defined as land that must be kept for the use of the general community, and must not be sold. Categorisation of community land determines the way in which the land will be managed. In accordance with Section 36(4) of the Local Government Act, community land is to be categorised as one or more of the following:

- Natural Area;
- Sportsground;
- Park;
- Area of Cultural Significance, or
- General Community Use.

Land that is categorised as a 'natural area' is to be further categorised as one or more of the following under Section 36(5) of the Act:

- Bushland;
- Wetland;
- Escarpment;
- Watercourse, or
- Foreshore.

The land located at Malua Bay is categorised as Natural Area – Bushland. The land located at Batemans Bay is categorised as General Community Use – Open.

Guidelines and core objectives for the various categories of community land, which set out Council's intentions for the use and management of land in each category, are prescribed by legislation, including the *Local Government Act 1993* (LGA) and the *Local Government (General) Regulation 2005* (LG Regulation). Council must categorise community land according to these guidelines, and manage the community land according to these core objectives. Any additional Council objectives for the land must comply with the core objectives established within the Act. The importance of the prescribed core objectives is to ensure that any uses or developments of the land are consistent with the core objectives for that category of land.

In consideration of the re-classification of the described parcels of land, it is worth noting the guidelines for classifying/categorising community land as set-out in the Department of Local Government's revised *Practice Note on Public Land Management* (Department of Local Government, 2000). The Practice Note stated:

"Council must have regard to the guidelines in determining a category (cl.9) but are not required to adopt any category merely because the land fits the description in the guidelines. Council should look at all the circumstances of the land in making a decision as to categorisation. For example, a piece of land may seem to satisfy the guidelines for more than one category. Council has a discretion in this case to look at the land in context, taking into account all relevant material before determining a category. It is important that Council be able to justify a decision."

1.4 Requirement for Public Hearing

Under Section 29 of the *Local Government Act 1993*, Councils are required to hold a public hearing into the proposed re-classification of community land and the resulting amendment to respective POM's. Public Hearings need to be conducted by an independent chairperson under Section 47G of the Act.

1.5 Proposed re-classification of Community Land to Operational Land.

Where a re-classification proposal identifies the removal of 'Public Land' status or discharge any interests affecting public land, the re-classification must seek the Governor's approval, s30 of The Act. The recommendation to initiate the re-categorisation amendment process was adopted by Council at Ordinary Council meeting 28 August 2018, (report PSR186/069). The assessment of the proposal exhibition and public hearing will assist Council in its considerations of the proposed re-classification.

The purpose of a public hearing is to provide Council with an understanding as to whether the community supports or has concerns in respect to the proposed re-classification. To assist Council and the community in understanding the intent and desired outcome for the proposed action, the Department has provided guidelines and required statements that must accompany the Council report back to the Department. These required statements are listed below:

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

1.6 Public Hearing details

A Public Hearing was held on Wednesday 17 October 2018 within Council Chambers, to receive verbal submissions on the proposed re-classification of the community land. A notice of Meeting was provided via local print media on Wednesday 26 September 2018. The exhibition of proposed affected land was available together with the current Rural Lands Planning Proposal documentation which was on exhibition from 9 May 2018 through to 22 June 2018.

1.7 Proposal and Hearing notification

Where it is proposed that the reclassification of Public Lands will run concurrently and together with a proposed amendment to the Eurobodalla Local Environmental Plan 2012, the requirement for public consultation must comply with Schedule 1 of the Environmental Planning and Assessment Act 1997. The minimum (mandatory) period for exhibition is 28 days.

Although the proposed re-classification was incorporated with the Rural Lands Planning Proposal, the Council provided specific mailed notice of the exhibition and notice of the Hearing to affected landowners and neighbouring properties. Also Council advised of the re-classification via print media advertisement and copies of documents were available for public viewing at Council Administration Offices, Batemans Bay and Moruya libraries.

As part of the overall Rural Lands Planning Proposal, all relevant material including the defined re-classification material was available on Council's website. The information material and affected land mapping was available at the Public Hearing. The notification notices informed the community that they could make a submission about the proposal by:

- making a written submission no later than the conclusion of public exhibition either on-line, by email or by post.
- speaking at the Public Hearing.

1.8 Attendance at Public Hearings

As required under Section 47G of the Local Government Act, Council appointed an independent chairperson to attend and chair the hearing. For the Hearing, David Seymour of urPlan Consulting officiated as chair. Eurobodalla Council made available Mr Nathan Farnell, Strategic Planner if required to attend the hearing. The chair and staff were available at the designated Hearing venue, however possibly because of the relatively non-contentious nature of the proposed re-classification the Hearing was unattended by members of the public.

1.9 Written submissions

During the period of exhibition, formal written submissions had not been received by Council, however a neighbouring property owner had advised Council via E-mail of their inability to attend and had included their issue of concern with that E-mail. This E-mail arriving at Council subsequent to the exhibition dates.

1.10 This report

This report details the issues (if any) arising from the Public Hearing and in consideration of those issue raised will offer a recommendation as to the intended action of re-classification. It must be stressed that the Act does not direct Council to concur or to act in accord with the recommendation of this report.

2.0 SUMMARY OF SUBMISSIONS

This section identifies and summarises all submissions (both written and verbal) that were received by Council during the notified period of exhibition and E-mail correspondence. The Public Hearing was unattended by any community members, so verbal discussion issues were not raised.

The following table identifies the issues raised in an E-mail addressed to Council subsequent to the exhibition period but was provided as the Community member was unavailable to attend the Hearing.

Table 1 Submission summary Batemans Bay land, lot 21 DP 547034

DATE	SUBMISSION TYPE	SUBMISSION ISSUE	DISCUSSION/MATERIAL CONTEXT
11 October 2018	E-mail submission	What is the benefit to Council (arising from the re-classification)?	The purpose of the re-classification is not to create a benefit to Council. Due to past CBD development activity, the pathway has been incorporated into vehicle and pedestrian through-block access and it is intended that this purpose be retained.
11 October 2018	E-mail submission	Any action to secure the land as a continuing public pathway into the future?	Under existing arrangements for public access in respect to overall shopping centre approvals, the described land forms part of through-block pedestrian access. The re-classification action and possible sale of the land cannot subjugate that condition.
11 October 2018	E-mail submission	Who is responsible for on-going maintenance including sub-surface infrastructure?	If the described land is transferred in ownership to another owner, all responsibility for maintenance will reflect that changed ownership. Sub-surface infrastructure will remain the responsibility of Council or maintenance by the responsible utility agency.
11 October 2018	E-mail submission	Who is responsible for any damage to infrastructure and adjacent property structures (i.e. fences)?	If the described land is transferred in ownership to another owner, all responsibility for damage to adjoining property structures will be borne by the new owners.
16 October 2018	E-mail submission	Effect of possible future traffic arrangements including existing entry/exit laneways for adjacent properties?	The current arrangements providing vehicle access for adjoining properties will remain. The action relating to the re-classification is not intended to alter these access arrangements, (refer to location map as follows).



Map 3 Existing laneway providing access to adjoining properties – Batemans Bay CBD

3.0 DISCUSSION AND ASSESSMENT

The Council had chosen to run the re-classification process in conjunction with a Planning Proposal amendment to the Eurobodalla Local Environmental Plan 2012, including a brief description of the possible sale and transfer of title to adjoining property owners following the proposed re-classification. Although having given exposure to the preferred end-use intent, this approach should not compromise the impartiality of dealing directly with the re-classification as described in the prior Council report and exhibition material. The process of assessing the community value and acceptability should not be influenced by the merit or otherwise of land ownership or possible end use. Therefore, this assessment and the tenor of the following discussion, deals directly with the re-classification of the land to 'Operational Land' and the assumption that the proposed classification will lead to a more beneficial and resource sustainable outcome for both the community and Council, irrespective of eventual ownership or possible end-use.

The Public Hearing did not attract participation by members of the public, however there were some issues raised particularly in respect to the described land located at Batemans Bay. These issues mainly related to the intended sale of the land once the action of re-classification had occurred. The range of issues and expressed concern related to the end-use and responsibility of possible future ownership of the defined land.

In respect to both defined land parcels located in Malua Bay and Batemans Bay CBD, it is reasonable to assume that without the possibility of land ownership transfer subsequent to the process of re-classification, it would be unlikely that the re-classification would be instigated. Although the process of re-classification and later intended action should be viewed independently, it is understandable that the community members will be more focussed on the latter use eventuality.

3.1 Batemans Bay Land submissions

The issues of concern raised in submissions related mainly to the perceived long-term end use of the land (Batemans Bay property) and also to the ownership responsibilities for management of the land and imposed structures. Whilst the land remains under the control of the Council there is a perception that the use of the land in its form as a pedestrian pathway is secure, irrespective of how well founded that perception may be. The use of the land for a pathway does not in practical terms, benefit the immediate adjacent property and there is no direct access (vehicle or pedestrian) onto the adjacent property. There may be some wider community benefit for retaining the pathway use, however there are alternate through-block access points that equally serve this same purpose. There would appear to be no immediate threat to the continued use of the land as pedestrian access that could arise from the re-classification of this land.

3.2 Malua Bay land submissions

Council had not received any written submissions in respect to the Malua Bay land. Upon inspection, it would appear that this land had already been subject to localised use disturbance and natural vegetation either removed or heavily modified by slashing and mowing. Also, sections of the land is currently being used for storage of building materials. As a consequence of this disturbance the value of the small area in retention as native bushland is now questionable.

3.3 Re-classification notification and exhibition submissions

The legislative process of amending statutory documents is rigorously regulated within the sections of the Local Government Act 1993 and the Environmental Planning and Assessment Act 1979. The form and dispersal of notification is quite detailed as to the minimum requirements and how those requirements are carried out. Certainly in the instance of the reporting and notification of the proposed re-classification affecting the defined land at Malua Bay and Batemans Bay, these requirements have been observed by Council. Some elements of the notification such as the period of exhibition and the availability of access to a public hearing, has provided additional opportunities for community input to the process. The divergence of 'expectation' by the community as to fairness in these legislative processes can be challenging to get the balance right. Although the community response in this instance was minimal, there was local awareness and recognition of the Public Hearing had not gone un-noticed by those in the community who value the opportunity to interact with Council procedures.

The following table lists the individual issues that had been raised through the few written submissions and provides a response, particular in explanation.

Table 2 Assessment and response to submission issues

ISSUE	RECOGNISED IN SUBMISSIONS (No)	ASSESSMENT/RESPONSE
Questioning the benefit to Council in effecting the re-classification.	1	There is no direct benefit to Council in undertaking the re-classification. However, if the land is reclassified to Operational Land and the land is transferred in ownership to private ownership, the long-term responsibilities inferred by that ownership will fall to the new owners.
Will the land (Batemans Bay) be retained as public pathway?	1	Prior to recent shopping centre re-development the land was providing protection and isolation for sub-surface infrastructure, however some of this infrastructure has been relocated. As a requirement of the re-development arrangements, a component of the rearranged car park access was to include through-block pedestrian access. The land was included for that purpose. Any change in that requirement would generate a reappraisal of that original consent.
Who is responsible for on-going maintenance including sub-surface infrastructure?	1	The process of re-classification will not affect existing maintenance responsibilities. However, if the described land is transferred in ownership to another owner, all responsibility for maintenance will reflect that changed ownership. Sub-surface infrastructure will remain the responsibility of Council or maintenance by other utility agency.
Who is responsible for any damage to infrastructure and adjacent property structures (i.e. fences)?	1	If the described land is transferred in ownership to another owner, all responsibility for damage to adjoining property structures will be borne by the new owners. This does not change from the present arrangement under Council ownership.
Effect of possible future traffic arrangements including existing entry/exit laneways for adjacent properties?	1	The current arrangements providing vehicle access for adjoining properties will remain. The action relating to the re-classification is not intended to alter these access arrangements.

4.0 RECOMMENDATION

4.1 Public Hearing recommendation

The action of re-classification of Community Land to Operational Land as it relates to the defined land (lot 574 DP 32008 in part and lot 21 DP 547032), should be assessed in light of the gained overall benefit delivered to the community as a result of that process. The assessment should include in equal measure, societal, economic and environmental consequences. It is not the purpose of this report to consider or presage, the action of Council in the future ownership, lease or use of the land, but to assess the benefit of the re-classification in terms of the implied community benefit.

Although the Public Hearing and preceding notification did not elicit a desired level of community participation, the assessment should not consider this a message of arbitrary acceptance. The genesis for the action in respect to both parcels of land, contains valid argument for the instigation of the process, but these reasoning's are based in localised existing use behaviour which may or may not be valid on a more disburse effect evaluation.

As mentioned in the assessment section above, the expressed concerns as brought forward in written submission in respect to the Batemans Bay land, can be managed through application of planning, legislative and title controlled conditioning solutions. Therefore, understanding that the likely future use of the re-classified land will not be dissimilar to the current use, assists in ensuring that the action will not result in activities that the community and importantly neighbours, would find unacceptable. On balance therefore, it is my recommendation that the re-classification of the community land to Operational Land currently forming part of lot 574 DP 32008 Malua Bay and lot 21 DP 547032 Batemans Bay should proceed.

4.2 Individual property re-classification recommendation

My recommendation arising from the submissions and Public Hearing to Eurobodalla Shire Council in respect to the separate and individual defined land parcels, is to:

- re-classify the mapped area (127m2) within lot 574 DP 32008 George Bass Drive, Malua Bay from Community Land (Natural Bushland) to Operational Land;
- re-classify the full allotment area of lot 21 DP 547032, 4 North Street, Batemans Bay from Community Land (General Community Use) to Operational Land;
- in due course to update the respective Plans of Management to reflect the amendments to the land identification.

4.3 Reporting

In accord with the Local Government Act 1993, the Council is required to make a copy of this report and associated material available for inspection by the public. It is recommended therefore that Council:

- Advise the receipt of the Public Hearing report to the community members who made a written submission;
- Provide a copy of the Public Hearing report for inspection at Councils' Administration Centre;
- Provide an electronic copy of the Public Hearing report on Council's website.

4.4 Adoption of proposed re-classification

The action and recommendation of the Public Hearing must be individually reported to Council and Council must agree and adopt the proposed re-classification (if so moved) and minute accordingly. As the re-classification process has been part of the larger Rural Lands Planning Proposal the adoption could be integral and consistent with the on-going process of that Planning Proposal.

A handwritten signature in black ink, appearing to read 'David Seymour'.

David Seymour RPIA (Fellow)
BSc (Build) Melb, BU&R Plan (Hons) UNE.

1 November 2018

APPENDIX A

Public notice as issued in local print media 26 September 2018

Notice of Public Hearing 26 September 2018

PUBLIC HEARING –

RECLASSIFICATION OF LANDS:

- 1. GEORGE BASS DRIVE, MALUA BAY; and**
- 2. LANEWAY VIA NORTH STREET, BATEMANS BAY**

Pursuant to Schedule 1, Clause 4 of the *Environmental Planning & Assessment Act 1979*, notice is hereby given of a public hearing relating in part to the planning proposal to reclassify part of Lot 574 DP 32008 on George Bass Drive, Malua Bay to operational land and rezone the portion of land R2 Low Density Residential; and reclassify the laneway of Lot 21 DP 547034 to operational land.

The purpose of the amendment is to enable the sale and amalgamation of the subject lands to the adjoining land owners to facilitate more appropriate land management.

The Public Hearing for the planning proposal will be chaired by an independent consultant and held in Council's Chambers at Moruya on **Wednesday 17 October 2018 at 2pm**.

Until this time relevant details of the reclassification of lands will be available at Council's Moruya Administration Centre, Bateman's Bay and Moruya libraries and online at Council's website, <http://www.esc.nsw.gov.au/inside-council/project-and-exhibitions/public-exhibition>.

To make representation to the hearing, you must register with Council by email to council@esc.nsw.gov.au or in writing to PO Box 99, Moruya NSW 2537.

APPENDIX B

Rural lands Planning Proposal – re-classification items

Appendix 25 – Justification for Item No. 25

Name of item	Intended Outcome
Amend Schedule 4 and Height of Buildings Map	Reclassify a laneway in Batemans Bay to operational and provide for an 18m maximum building height.

For further details of the proposed reclassification, see the table below.

Lot and DP	Address	Suburb	Area	Identified through Recreation Strategy	Interests Changed	Intention
Lot 21 DP 547034	4 North Street	Batemans Bay	69.6m ²	No	No	To enable the sale of the land to an adjoining owner.

Section A – NEED for the PLANNING PROPOSAL

1. Is the planning proposal a result of any strategic study or report?

The planning proposal is not the direct result of any strategic study or report, but is in response to a development consent that provides for alternative pedestrian access to the subject laneway (see Figures 25-1 and 25-2).

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

There is no alternative means to achieve the objective of the planning proposal.

Section B – RELATIONSHIP to STRATEGIC PLANNING FRAMEWORK

3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy

The planning proposal is not inconsistent with any element of the South East and Tablelands Regional Plan.

4. Is the planning proposal consistent with the Council's local strategy or other local strategic plan

The planning proposal is consistent with Council's Community Strategic Plan by ensuring planning is responsive to the environment and community needs.

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

State Environmental Planning Policies and Aims/Objectives	Consistency of Planning Proposal
SEPP71 Coastal Protection To further implement the NSW Government's coastal policy.	Consistent See below.

An assessment of applicable State Environmental Planning Policies against the planning proposal is provided below.

SEPP 71 – Coastal Protection

SEPP 71 provides the following matters for consideration for development in coastal areas:

- (l) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,
- (o) likely impacts of development on the water quality of coastal waterbodies.

Consistent: The subject land is within the coastal zone but is not in a sensitive coastal location. The proposed amendments will have no impact on the coastal zone.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Applicable Ministerial Directions and Objectives	Consistency of Planning Proposal
1.1 Business and Industrial Zones To encourage employment growth in suitable locations, protect employment land in business and industrial zones and support the viability of identified strategic centres.	Consistent See below.
2.2 Coastal Protection To implement the principles in the NSW Coastal Policy.	Consistent See below.
3.4 Integrating Land Use and Transport To ensure efficient and viable transport options, reduce dependence on cars, support public transport and provide for the efficient movement of freight.	Consistent See below.
5.10 Implementation of Regional Plans To give legal effect to regional plans.	Consistent See above.

An assessment of applicable s.117 Directions against the planning proposal is provided below.

1.1 Business and Industrial Zones

This direction states that a planning proposal must:

- (a) give effect to the objectives of this direction,
- (b) retain the areas and locations of existing business and industrial zones, and
- (c) not reduce the total potential floor space area for employment uses and related public services in business zones.

Consistent. The planning proposal retains existing business zoning and does not reduce total potential floor space for employment and related uses. Improved access arrangements have been provided for through the issue of development consent for redesign of car parking and vehicular and pedestrian access.

2.2 Coastal Protection

This Direction states that a planning proposal must include provisions that are consistent with the *NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997*, the *Coastal Design Guidelines 2003* and the *NSW Coastline Management Manual 1990*.

Consistent. The subject land is within the coastal zone but is not in a sensitive coastal location. The proposed amendments will have no impact on the coastal zone.

3.4 Integrating Land Use and Transport

This Direction states that a planning proposal must include provisions that give effect and are consistent with *Improving Transport choice – Guidelines for planning and development* (DUAP 2001) and *The right Place for Business and Services – Planning Policy* (DUAP 2001).

Consistent. The planning proposal retains existing business zoning and does not reduce total potential floor space for employment and related uses. Improved access arrangements have been provided for through the issue of development consent for redesign of car parking and vehicular and pedestrian access.

Section C – ENVIRONMENTAL, SOCIAL and ECONOMIC IMPACT

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

No.

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

No.

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

The proposal will have positive social and economic effects through the closure of a narrow and sight-restricted laneway and its replacement with safer and more convenient pedestrian access arrangements.

Section D – STATE and COMMONWEALTH INTERESTS

10. *Is there adequate public infrastructure for the planning proposal?*

While the planning proposal will result in the closure of a public laneway, it will be replaced with safer and more convenient pedestrian access arrangements.

11. *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?*

Council will consult with all relevant State and Commonwealth Agencies when the planning proposal is placed on public exhibition and will take into consideration any comments made prior to finalising the proposal.

Mapping

Figure 25-1: Subject land



Figure 25-2: Approved alternative access arrangements

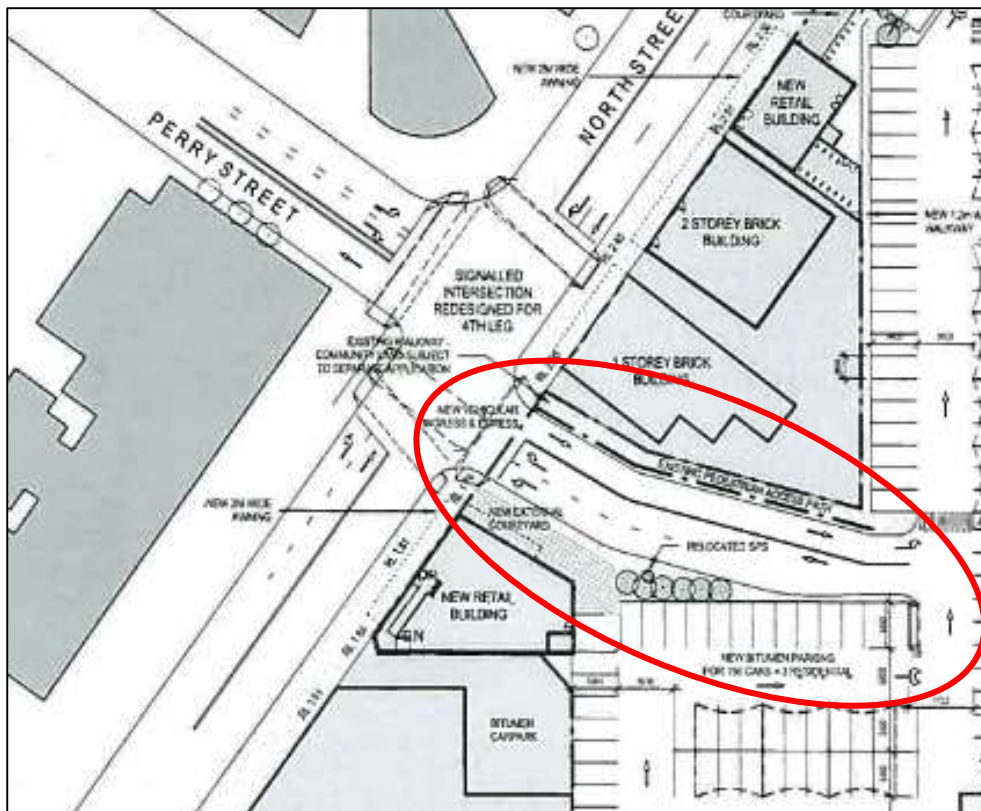


Figure 25-3 Existing Maximum Height of Buildings Map



Figure 25-4 Proposed Change to Maximum Height of Buildings Map



Appendix 26 – Justification for Item No. 26

Name of item	Intended Outcome
Amend Schedule 4, Land Zoning Map, Lot Size Map and Height of Buildings Map	Reclassify land at George Bass Drive, Malua Bay to operational, rezone the land R2 Low Density Residential, provide for a minimum lot size of 550m ² and a maximum building height of 8.5m.

For further details of the proposed reclassification, see the table below.

Lot and DP	Address	Suburb	Area	Identified through Recreation Strategy	Interests Changed	Intention
Lot 574 DP 32008	George Bass Drive	Malua Bay	127m ²	No	No	To enable the sale of the land to an adjoining owner.

Section A – NEED for the PLANNING PROPOSAL

1. Is the planning proposal a result of any strategic study or report?

The planning proposal is not the direct result of any strategic study or report, but is in response to a request from an adjoining land owner.

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

There is no alternative means to achieve the objective of the planning proposal.

Section B – RELATIONSHIP to STRATEGIC PLANNING FRAMEWORK

3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy

The planning proposal is not inconsistent with any element of the South East and Tablelands Regional Plan.

4. Is the planning proposal consistent with the Council's local strategy or other local strategic plan

The planning proposal is consistent with Council's Community Strategic Plan by ensuring planning is responsive to the environment and community needs.

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

State Environmental Planning Policies and Aims/Objectives	Consistency of Planning Proposal
SEPP71 Coastal Protection To further implement the NSW Government's coastal policy.	Consistent See below.

An assessment of applicable State Environmental Planning Policies against the planning proposal is provided below.

SEPP 71 – Coastal Protection

SEPP 71 provides the following matters for consideration for development in coastal areas:

- (m) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,
- (p) likely impacts of development on the water quality of coastal waterbodies.

Consistent: The subject land is within the coastal zone but is not in a sensitive coastal location. The proposed amendments will have no impact on the coastal zone.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Applicable Ministerial Directions and Objectives	Consistency of Planning Proposal
2.1 Environment Protection Zones To protect and conserve environmentally sensitive areas.	Inconsistent See below.
2.2 Coastal Protection To implement the principles in the NSW Coastal Policy.	Consistent See below.
3.1 Residential Zones To encourage a variety of housing types, ensure access to appropriate infrastructure and services and minimise impacts on the environment and resource lands.	Consistent See below.
3.4 Integrating Land Use and Transport To ensure efficient and viable transport options, reduce dependence on cars, support public transport and provide for the efficient movement of freight.	Consistent See below.
5.10 Implementation of Regional Plans To give legal effect to regional plans.	Consistent See above.

An assessment of applicable s.117 Directions against the planning proposal is provided below.

2.1 Environment Protection Zones

This direction states that a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. Further, it states that a planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land.

Inconsistent, but of minor significance. While this planning proposal proposes the rezoning of a small corner of a public reserve currently zoned E2 Environmental Conservation to the R2 Low Density Residential zone, the subject area contains no native vegetation (see Figure 26-1). Rezoning the land will have no detrimental impacts on the natural environment and the inconsistency with the Ministerial Direction is considered justified on the grounds that it is minor in nature.

2.2 Coastal Protection

This Direction states that a planning proposal must include provisions that are consistent with the *NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997*, the *Coastal Design Guidelines 2003* and the *NSW Coastline Management Manual 1990*.

Consistent. The subject land is within the coastal zone but is not in a sensitive coastal location. The proposed amendments will have no impact on the coastal zone.

3.1 Residential Zones

This Direction states that a planning proposal must contain provisions that encourage a variety and choice of housing types, make efficient use of existing infrastructure and services and minimise impacts of residential development on the environment and resource lands.

Consistent. The planning proposal will have no detrimental impacts of housing choice, infrastructure and services or the environment. The planning proposal is considered consistent with this direction.

3.4 Integrating Land Use and Transport

This Direction states that a planning proposal must include provisions that give effect and are consistent with *Improving Transport choice – Guidelines for planning and development* (DUAP 2001) and *The right Place for Business and Services – Planning Policy* (DUAP 2001).

Consistent. The planning proposal will have no detrimental impacts of transport choice or accessibility. The planning proposal is considered consistent with this direction.

Section C – ENVIRONMENTAL, SOCIAL and ECONOMIC IMPACT

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

No.

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

No.

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

The planning proposal will have no social or economic effects.

Section D – STATE and COMMONWEALTH INTERESTS

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

The planning proposal will have no impact on public infrastructure.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Council will consult with all relevant State and Commonwealth Agencies when the planning proposal is placed on public exhibition and will take into consideration any comments made prior to finalising the proposal.

Mapping

Figure 26-1: Subject Land



Figure 26-2: Existing Zoning Map



Figure 26-3: Proposed Change to Zoning Map

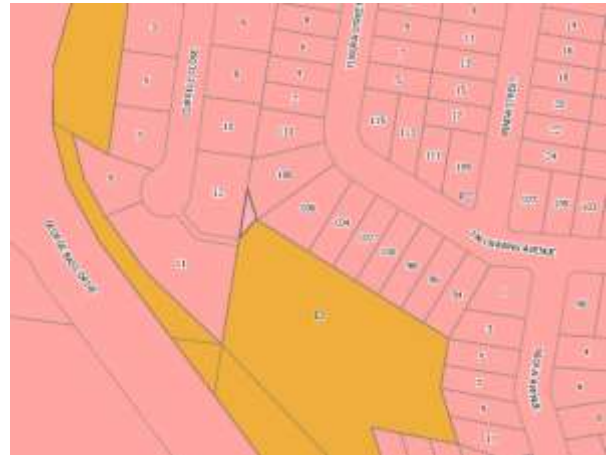


Figure 26-4: Existing Minimum Lot Size Map



Figure 26-5: Proposed Change to Lot Size Map



Figure 26-6: Existing Maximum Height of Building Map



Figure 26-7: Proposed Change to Maximum Height of Building Map

