

**REPORT OF THE PUBLIC HEARING  
OF 4 MAY 2023 INTO THE PROPOSAL  
BY EUROBODALLA SHIRE COUNCIL TO  
RECLASSIFY 11 PARCELS OF  
COMMUNITY LAND.**

*Garret Barry MP/A CPP  
Garret Barry Planning Services Pty Ltd  
13 August 2023.*

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## **1 Introduction**

Eurobodalla Shire Council has resolved to exhibit a proposal to reclassify 11 parcels of Public Land from Community Land to Operational Land.

Details of the land proposed for reclassification are included in the planning proposal document.

Public exhibition of the Planning Proposal was effected between 8 March and 5 April 2023.

In accordance with the requirements of Section 29 of the Local Government Act 1993, a public hearing is required to be held into a Council's proposal to reclassify Community Land as Operational Land.

The hearing in relation to these 11 parcels was held on Thursday 4 May 2023, commencing 10 am in Council's Chambers, Vulcan St, Moruya.

I, Garret Barry, consultant town planner of Tathra, NSW, presided at the hearing. I confirm I am a person qualified to conduct such a hearing in accordance with Section 47G (2) of the Local Government Act.

Approximately 40 people were counted to be in attendance. Council officers Angie Radford and Nardi Arnold also attended.

As chairperson, I gave a summary of the purpose of the hearing and the proposed method for hearing submissions.

Staff had commenced preparation of a list of persons wishing to address and an invitation was extended to all present to add their names to the list. Several further people took that opportunity. A total of 27 persons present at the meeting registered to address. The people who addressed and a summary of the issues they raised is contained in Section 3.

One address was general to all 11 parcels proposed for reclassification. Six parcels were the subject of a specific address to the hearing.

My brief from Council was to conduct the public hearing in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and Local Government Act 1993.

A total of 25 written submissions were provided to the hearing. Almost all persons addressing the hearing either had made prior written submission or handed up speaker notes at the conclusion of their address.

A separate volume of these written submissions is provided as an appendix.

The following 5 parcels were not the subject of any specific submission to the hearing:

Parcel number In Planning Proposal report	Lot and DP	Street	Suburb
3	Part Lot 32 DP 618340	4 Bimbular St	Dalmeny
5	Part Lot 2 DP 1014254	George Bass Dr	Batehaven
8	Part Lot 2 DP 1260850	Ridge St	Catalina
9	Lot 5 DP 520413	Beach Rd	Batehaven
10	Lot 56 DP 84895	Blair's Rd	Long Beach

As such they are not assessed in this report in any detail beyond general comment.

Note that this report focuses solely on those submissions made to the hearing. Separate written submissions have also been made to Council as part of the wider exhibition of the planning proposal. Council staff will report on these submissions as part of the general report back to Council on the whole process.

Section 4 contains my analysis and recommendations.

The hearing concluded at 3.07 pm.

## **2 Executive Summary**

### **The Intent of the Planning Proposal**

Council advises the intent of the Planning Proposal is to reclassify 11 Parcels of Community land it has assessed as either underutilised and surplus to Council's needs or where there is a proposal to regularise community land with adjoining freehold.

Sections of this land, if reclassified to Operational, would be sold or leased with the income being available for investment in other Shire assets which Council considers would be of more benefit to the public.

### **The Need or Request for the reclassification of the 11 Parcels**

Seven parcels (Nos. 3 to 9) are the subject of requests from adjoining neighbours to purchase.

One site (No. 10) comprises a reservoir site which would not be sold but better meets objectives as operational land given the existing Council infrastructure.

Council's Recreation and Open Space Strategy 2018 (ROSS) has Identified the remaining 3 parcels (Nos. 1,2 and 11) as surplus to public needs and warranting consideration for reclassification and disposal for private freehold uses.

Section 4 contains my more detailed analysis, but the following is an executive summary of the more significant points.

- The issue of sale of parts of public lands to adjoining owners is complex and fraught with risks of creating undesirable precedence. Council might benefit from producing written guidelines as to the circumstances and tests that might apply when adjoining owners request purchase of public lands. I provide some possible suggestions in Section 4.1.
- Two of the parcels proposed for sale for urban development appear to have greater biodiversity values than suggested in the ROSS. NSW Biodiversity Conservation Division have called for greater expert assessment of these values before a decision is made that almost certainly will result in the ultimate clearing of most existing native vegetation on these two parcels. I agree further assessment is warranted and indeed a more detailed assessment of ultimate development potential to assist Council in establishing likely return, extent of clearing and impacts on neighbours.
- Local community objection to the 3 sale parcels (Nos. 1,2 and 11) seems quite strong with frequently expressed concerns in the hearing at perceived inadequate consultation and lack of local involvement in the assessment process.

- The following is a grouping, for ease of reference, of my recommendations for each parcel where there was submission. My reasoning behind the recommendations is detailed in section 4:

**Recommendation for Parcel 1, Illabunda Drive, Malua Bay**

Retention of the land as reserve seems to have low strategic value under the current strategy of focusing on more centralised facilities.

The sale will benefit Councils resources for general reserve improvements but at some cost to the immediate neighbourhood- in particular view impact on immediate neighbours.

If Council considers this view impact acceptable, then reclassification and sale of the land is open to Council to so resolve.

**Recommendation for Parcel 2, Village Road, South Durras.**

I understand staff are seeking further biodiversity assessment as to the impacts clearing for a dwelling may generate. I agree this is important before any final decision is made.

If the biodiversity impacts of clearing most of the lot are acceptable, then disposal seems justified given the likely net income to Council for other reserve improvements and relatively low value of other community use.

However, if the local biodiversity values are considered significant, then the current classification appears appropriate.

**Recommendation for Parcel 4. Beach Road, Batehaven**

That the conversion of the land in Area 4 to operational land be supported.

However that Council then offer a long term lease of the land to the adjoining caravan park at commercial rates so that the option to return the land to the reserve in the long term, might be preserved.

**Recommendation for Parcel 6. Fauna Ave, Long Beach.**

This site, in isolation, seems to raise few issues if it were disposed of as presented in the planning proposal. However, I feel the proposal fails to pass the justification tests for allowing neighbours to buy small pieces of Council reserves. As such the land should remain community land.

**Recommendation for Parcel 7. Catalina Drive, Catalina.**

The proposed reclassification of Area 7 is supported, provided Council is satisfied the rectification of the encroachment is justified and alternatives in the applicant's lands are not practical. Further that Councils full costs of addressing the rectification can be met by the applicant.

**Recommendation for Parcel 11. 9 Moir PI, Broulee.**

The parcel seems to have at least moderate biodiversity values and at least some passive recreational value. Disposal will not likely reduce Council's maintenance burden, nor is there any surety of a profitable sale of the 2 parcels of proposed operational lands.

I consider the parcel should remain community land.

### 3 Submissions

#### 3.1 Submissions in overview

This section attempts to summarise data from addresses made at the hearing. No attempt is made in this section to draw conclusions or make recommendations. My analysis is contained in Section Four.

#### 3.2 Persons making submission to the Hearing.

Of the 27 people who made submission to the hearing, two spoke on general matters wider than any specific parcel and the remaining 25 spoke to a specific parcel.

Each person who made submission is listed below, grouped by parcels. I have then recorded my dot points of the issues raised in submissions. Where hard copies of their address notes were provided, these are included in the attachment.

##### 3.2.1 General matters

###### 3.2.1.1 Lei Parker and Dr. Brett Stevenson

- They question concept of “surplus to need” and feel income for Council and added development sites is driving the process too much. Consider the process not transparent in regard to what is driving it and the justification for disposal.
- Question what seems to be a Council approach of minimising minor local reserves with people having to drive to district parks and such like. Consider local open space important and that this philosophy of minimising local parks is not in accord with the ROSS objective of people being able to participate within their neighbourhoods.
- Too little consideration of passive open space values and biodiversity.
- Early planners achieved many small local reserves which are valued by the locals.
- Strong local feeling that these reserves are gifted for perpetual use.
- Question the research value of the ROSS, consider the survey methods to determine use flawed. Specific examples given of the underrating of reserves like Walker Park.
- Council’s budget restrictions not helped by the high level of investment/ supply of expensive recreational equipment. Consider it would be better to invest in maintaining what is there first.
- Several detailed concerns about the ROSS:
  - Little detail or consistency of method to demonstrate “surplus to need”.
  - The statements of “no conservation value” are considered wrong. Consider many of the sale parcels are essentially native forest remnants and often parts of fauna corridor linkages.



- Consider ROSS dated and overtaken by the major outcomes of the 2019 bushfires and Covid pandemic. Consider there is a shift back to local, low-key reserves so there is open space near/ in all neighbourhoods.
- Consider Council has failed to adequately assess the multiple use values of community land. That there is too much focus on active recreational areas at the expense of cultural, environmental, social and educational uses and the passive enjoyment often associated with these uses.
- Most of the sale parcels seem to conflict with the objectives of Council's biodiversity strategy work.

### **Comment on General Matters**

Of recent decades, a majority of Councils seem to have shifted their focus in supply of recreational need from many small scattered local reserves and playlots to supply of numerically fewer district level facilities with higher investment in public recreation infrastructure.

There are positives in this approach and the community generally seems to make good use of these more elaborate Childrens play and adult exercise facilities.

But change is on the way again. Low density subdivision has to decline as a percentage of living opportunities given cost and limited coastal land left for development. Also communities are being encouraged to localise activities to reduce transport impacts and to promote local exercise. As such some need for more "local low key " reserves may evolve. A matter for Council's to contemplate in future strategic reviews?

The ROSS process acknowledges that, while recommending some community lands be disposed of, the final decision should only occur after Council's careful assessment of a planning proposal. Some statements in the ROSS are preliminary. For example Item 2 (Village Road, South Durras) clearly has some biodiversity value while the ROSS suggests not enough to warrant conservation- but provides no detail. The level of that value needs to be determined before any decision on disposal to make sure there are some prospects of development. (If there were to be limitations on clearing, the site may well not be possible to develop).

### **3.2.2 Site 1 Illabunda Drive, Malua Bay**

3.2.2.1 Brett Norton, Tony Preston-Stanley, Denis Lovell, Kerrie Wilson, Cathy Norton, Cath Norton for Gill Fergie and Gwen Slater, John Macintyre, Bede Webster-submissions of objection:

- Understand the land was reserved to Council as part of the original subdivision.
- Object to the statement that it is surplus to community needs. Consider it is well used and appreciated by most local residents:
  - Regular neighbourhood gatherings, Christmas parties ...etc. (photos of events supplied)

- The Pretty Point beach is not compensation for the loss of this reserve. Pretty Point has very limited area for active use.
- The offered alternatives of MacKenzie's beach and Malua Bay are not local reserves but require over a 1 km steep walk.
- ROSS states residents should have adequate open space within 400 metres of a residence.
- Concerns about process, consider not consulted enough and worried process is a rubber stamp to achieve a cash sale for Council.
- Motion carried for Council maintenance but little evidence of such.
- Neighbouring owners bought in the knowledge it was a handy local reserve and designed their view corridors accordingly. Future development, if sold will impact view amenity considerably. Consider up to 2 x 2 storey houses may end up on the land.
- Advise there have been numerous attempts to "sell it off" going back to 1995 and previous attempts resisted by community and rejected by past Councils.
- No guarantee sale funds would be spent in the locality. Being asked to lose considerable amenity for not necessarily any benefit.
- The ROSS provides no detailed justification as to why the land is "surplus".
- No other reserve in this southern section of Malua Bay.
- Council's lack of maintenance and facilities creates a self-fulfilling prophesy of perceived low use.
- Used as a gathering point in emergencies like the 2019 fires.
- 2019 petition of approximately 500 signatures calling for retention. Advise this represents about 30% of local residents.
- ROSS superficial in its research and already out of date. Small local cluster points are now sought after by the community.
- Large local seniors population who find it challenging to walk the hills to the other reserves in the district. Council is forcing car travel for recreation access.
- Has Council assessed the constraints of the overhead power lines?
- Growing demand by locals and visitors for coastal access means this land can only become more useful in time, including for additional road edge parking.

- The adverse impact on near neighbours is so significant a legal challenge as to process and lack of consideration of local use may result if Council proceeds with the reclassification.

### 3.2.3 Site 2 Village Road, South Durras

3.2.3.1 Dale Inabinet, Bill Inabinet, Dale Inabinet on behalf of Michelle Andringa and Mark Small, Tim Nicholson, Brett Norton, Greg Moore, Geoff Bartram, Joycelyn Van Der Moolen, Virginia Young, Bede Webster, Christopher and Susan Soames- objected to the proposal.

- Nicholson family adjoining neighbours and have enjoyed the reserve for 43 years.
- Consider it is an important biodiversity corridor linking the freshwater wetlands to the east.
- Consider the ROSS flawed, inaccurate and contradictory with respect to the subject land. Consider the statement of no conservation values to be totally incorrect. Consider no detail is provided to prove the claim that the reserve is surplus to public needs.
- Considered part of the South Durras heritage, having been a reserve enjoyed for over 55 years.
- A wide range of wildlife including endangered species, such as gliders, have been observed in the reserve.
- Consider some of the reserve functions as a drainage reserve and consider some stormwater piping may be within the reserve.
- The clearing necessary for development will adversely impact all nearby residents.
- For several people, the reserve was a feature in their purchase decision.
- A detailed written submission of 30 pages, including input from environmental scientists has also been made to the exhibition of the planning proposal with extensive detail on the value of the reserve. This submission is considered to establish high biodiversity values.
- 2018 Council assured us there would be local preliminary consultation before any planning proposal, but advise this did not occur.
- Regular use as an accessway.
- Consider the assessment to date ignores the importance of remnant vegetation in the context of climate change and as a refuge for species in times of wildfire, as was the case in 2019.
- Council ignoring its strategic aim of improving wildlife corridors.
- Consider the alternative recreation opportunities in the immediate estate are minimal.

- Pedestrian safety enhanced by lessening reliance on walking the roads.
- Sale and development will remove most of the vegetation given the 10/50 RFS rule and DA bushfire requirements for dwellings in fire prone land.
- The village is low density and this seeks a higher level of density.
- Inadequate assessment of the loss of amenity of nearby residents.
- Has value as a community meeting space, perhaps with minor public furniture.

### 3.2.4 Site 4 Beach Road, Batehaven

#### 3.2.4.1 Renee Carver- submission in support of behalf of potential purchaser:

- Consider the proposal will not lessen public foreshore access.
- Proponent does not intend to place new cabins closer to shore than existing ones.
- The proposal allows for accessible cabins.
- Council considered to receive net funds from the sale for other reserve improvements.
- Proponent has been seeking purchase since June 2018. The delay is causing adverse impacts for the existing caravan park operator.

### 3.2.5 Site 6 Fauna Ave, Long Beach

#### 3.2.5.1 Glen Smith, Len Glasser- objections

- Should not reduce reserve areas for private neighbour gains.
- Very concerned as to precedent. Why one owner and not others. Can anyone apply to purchase adjoining public land?
- The wider parcel contains valuable habitat especially for birds. The C2 zoning and definition as a Natural Area is warranted.
- Good wildlife corridor. Consider the reserve is used by several threatened species.
- Current purchaser may not want to develop but zoning change and reclassification allows later purchasers to develop, for example clear the parcel for a granny flat.
- Disposal area would have minimal maintenance liability for Council ie no real cost in retaining the area as reserve.

#### 3.2.6 Catherine Nagel- submission of support. Catherine was unable to attend but provided a written submission to the hearing)

- She is an adjoining neighbour who seeks to purchase.

- First inquired 2019.
- Her and her husband have been maintaining the triangle of land for many years including mowing and clearing.
- Seek to lawfully expand backyard for grandchildren use.

### 3.2.7 Site 7 Catalina Drive, Catalina

#### 3.2.7.1 Mike Wallace, objection:

- Near-by resident
- Concerned the proposal may open the door to a past subdivision proposal of about 50 lots.
- Concerned that the Land remain community.

### 3.2.8 Site 11 Moir Place, Broulee

#### 3.2.8.1 Debbie Pakis, Broulee Community group, Tim Pakis, Shirley Noy- objected to the proposal:

- Concerned there seems to be no approach from the adjoining owners to buy.
- Noy family adjoin in Pacific Street, have resided there 55 years and make regular use of the reserve and carry out maintenance as volunteers.
- Advise Council does no maintenance and that neighbourhood manages- so no real cost to Council to retain.
- Concerned the proposal will result in clearing of most of the existing native vegetation.
- Consider consultation too limited. Advises only immediately adjoining neighbours notified.
- The parcel was dedicated as reserve from the creation of the estate and is valued locally.
- Consider the biodiversity values are high.
- Walkway is popular not just for access but to admire the bushland.
- No guarantees the income will come back to Broulee. Consider similar sale in Iluka Street, saw nothing returned to local community.
- Range of photos supplied.

## 4 Analysis and Recommendations to Council

This section contains my analysis of submissions to the hearing and recommendations for Council's consideration as to the process from here.

The focus of this report is on assessment of the 6 parcels that were the subject of an address to the hearing and issues raised spanning more than one parcel.

### 4.1 Decision making tools

There appear to be 3 different types of land in the proposals before the hearing:

1. Lands containing infrastructure that better function as part of Councils operational land structure. Parcel 10 (water reservoir) is the only example in this planning proposal. No submission was made to the hearing on this parcel and it is normal for Councils to have their infrastructure on operational lands to signify the business content.
2. Lands requested or intended to be offered to adjoining private owners. Here the tests might include:
  - a. What justifies the transfer of public land to a specific owner?
  - b. If the transfer has some justification, is it possible to have competition for the proposed sale?
  - c. Are there particular financial benefits the owner may get from the additional land and if so is it reasonable Council on behalf of the community, receive some of that value in the sale?
  - d. Will Council's costs of the transfer process be covered and, if not, is that reasonable for Council to fund?
  - e. Is the transfer area truly of minimal public use
3. Lands surplus to community land needs to be disposed of. Here the tests might include:
  - a. Is the land surplus to community requirements? And ensure this test considers the wider community and environmental needs.
  - b. Is the cost to Council of processing for disposal and the anticipated net return on sale, worth the effort?
  - c. If the land is no longer needed as community land, what is its best and highest use?
  - d. Are the impacts of the reclassification on neighbours reasonable?

## 4.2 Issues of process -observations and comments

### 4.2.1 Compliance with statutory requirements.

While no submission raised issues of Council not complying with statutory process, there was comment in few submissions to the effect they were concerned at the process.

I have reviewed the process Council has followed to date and it appears all statutory requirements relating to the planning proposal, exhibition and public hearing appeared to have been complied with.

Beyond the regulatory requirements are guidelines such as “Local Environmental Plan Making Guideline, 2021”- in particular page 65 which details special requirements for reclassification of public land. Again, from the information available to me, it appears Council has complied with this guideline.

One of the main suggestions of the guideline is that Councils effect a strategic review of community lands before proceeding to reclassifications. Council has produced the Recreation and Open Space Strategy 2018 which is the background to three of the parcels recommended for reclassification and appears to meet the guideline requirements. Some people making submission took issue with the strategy and considered it dated but these aspects are now open for review by this planning proposal process and Councils coming formal consideration of the planning proposal.

Some people making submissions felt they had not received sufficient notice or participation in the process and that the process could have been more widely publicised. I consider Council has complied with the statutory requirements and seems to have gone further than merely complying with the essential notification. At least in the case of the 6 parcels the subject of submissions, it is clear nearby residents are now aware of the proposals.

Staff also gave undertakings at the hearing to notify those making submissions once the date of the report to Council on this matter is known, in case they wanted to seek to make further submissions.

## 4.3 General issues relating to more than one parcel

### 4.3.1 Private acquisition of community lands

In section 4.1, I outline possible tools to help Council make informed decisions relating to supporting or not supporting a request from a resident to buy a parcel of community land. Without some publicly available guidelines and tests, there is a risk of inconsistencies and of Council setting unintended precedents.

Neighbours of reserves should generally not benefit from encroachments. And if a sale adds development opportunities to a private parcel, then there are issues of ensuring the best return to the Community (which may require competition) and of Council being fully satisfied the proposed sale parcel has minimal community and environmental use value.

#### 4.3.2 Balancing commercial and public needs

A strong theme from the Hearing submissions related to balancing the commercial needs of Council with the public needs and aspirations.

- NSW Councils struggle with numerous financial imposts not fully in their control:
  - Rates are pegged by state level and usually at a level below inflation.
  - A whole raft of risk management, maintenance standards and other management requirements in the legislation mean ongoing significant maintenance costs for even general reserves let alone intensively used playlots and similar. Several people making submission advised they were carrying out maintenance on adjoining reserves- commendable, but a risk for Council reliability and insurance in the event of accident.
  - So, it is challenging for Councils to take on more community lands and they have to rationalise the existing community assets. Some community lands can be found to not be required for community purposes. Of those some may represent a potential for profitable redevelopment for Council. Others may even cost Council to dispose of in the short term but create maintenance savings in the long term that justify the short term cost.
  - It seems evident that the community is not prepared to pay significant additional rates to fund a higher level of community asset.
- Balancing the position of cash strapped local government, is the concept of adequate services and amenity for residents.
  - All residents deserve some access to community land. However Shires such as Eurobodalla, with its many scattered settlements face greater costs and challenges in servicing public land needs than compact local government areas with one or only a few settlements. (For example a shire with only 1 town may need only one sports ground, whereas a shire with 20 villages and towns has a bigger challenge!).
  - When considering disposal of community lands, careful assessment needs to be made to balance the following tests:
    - Reasonable expectations of neighbours who perhaps bought on the understanding that land would remain community. For example, might have built their home to view over that “reserve”.
    - In disposing, will Council achieve real savings or income to justify the disposal. If doubtful, then it may actually be



cost effective just to retain the land as community and manage as best Council can afford.

- Overall is sufficient other community land available locally to compensate for the disposal.
- Community needs are complex and a range of community land types are required. This is acknowledged by the community land classification types in the Local Government Act, which span diverse natural, cultural and sports uses. Just because there is not a large amount of active use of a community land parcel does not mean it is not appreciated for, say, its natural values by many in a community.

#### 4.4 Assessment of the 6 parcels subject of an address to the hearing

I have heard the oral submissions and read all written submissions provided to the hearing. I effected desktop evaluation of the parcels which were the subject of submission at the hearing and in most cases carried out some preliminary field inspection of those parcels.

My assessment follows in numeric order as listed in the planning proposal.

##### 4.4.1 Parcel 1: Part lot 1110 DP 236653, 35-37 Illabunda Drive, Malua Bay

Eight people made submission specifically on this parcel. All objected to the reclassification. Most provided their address notes which are included in the Appendix.

I inspected the land and the part proposed for reclassification seems mostly cleared and of minimal biodiversity value. The part proposed to be retained community land has native vegetation and forms a drainage line.



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**Figure 1 Subject land**



**Figure 2 the parcel from Merinda Street**



**Figure 3. the parcel from Illabunda Drive**

**Assessment of issues:**

- Surplus to community requirements.

There was doubt raised as to the value, extent of research and objectivity of the ROSS report from which the conclusion of surplus to requirements is drawn. The report does analyse the district context of the land and demonstrates either existing or potential lands for core community needs and the subject parcel does not seem to have strategic significance in the context of the current Council model of focus on more regional/ district parks with extensive facilities.

- What is the private potential of the land.

Before Council makes a determination on this parcel, it is reasonable its private potential be assessed. The part proposed for sale is about 1061 m<sup>2</sup>. The proposal is to zone the land R2 with a lot size of 550 m<sup>2</sup>.

In theory the highest private use this might allow could be a 2 storey, dual occupancy development. However there are sewer mains traversing the land that may constrain the development to one large house footprint or a duplex.

I am advised there are no servicing or access constraints to bar such use.

As such it is highly likely disposal of the land will net several hundred thousand dollars for Council to put towards other Shire recreational facilities.

- **Impact on immediate neighbours**

The immediate neighbour to the west would be significantly affected regarding loss of coastal views if a 2 storey large building was approved on the site. However some view sharing may be possible with sensitive DA assessment of the future development.

Several other neighbours would have some building appear within what is now a largely unobstructed view of natural coastline.

**Assessment:**

The parcel probably has low district and Shire significance with regard to wider community needs and use. But it has some local values. There is a small active coastal reserve area to the immediate east but, as the submissions point out, it is small and quite constrained by services. Natural constraints make further expansion of this coastal reserve challenging for active recreation.

Longer term use as a local park may be desirable. There are few low key neighborhood reserve parcels in the Malua Bay area with reference to the ROSS mapping (page 106).

It is likely the ongoing maintenance cost of this parcel is not large but all the same an additional cost re a need for regular mowing and, in time, perhaps minor public facilities.

It is likely Council will get a reasonable net return from the sale. The processing costs are unlikely to exceed \$50,000 and the land value of such a lot is obviously some hundreds of thousands. Such return is not required to be expended locally.

There is an equity argument in that some neighbours will almost certainly suffer some loss of view over what they thought would be an ongoing public reserve. There is no absolute guarantee in NSW that a public reserve remains such, but no escaping the fact some immediate neighbours will be adversely impacted with respect to views and there will be some loss of amenity for the wider neighbourhood.

**Recommendation for parcel 1**

Retention of the land as reserve seems to have low strategic value under the current strategy of focusing on more centralised facilities.

The sale will benefit Councils resources for general reserve improvements but at some cost to the immediate neighbourhood- in particular view impact on immediate neighbours.

If Council considers this view impact acceptable, then reclassification and sale of the land is open to Council to so resolve.

**4.4.2 Parcel 2: Lot 84 DP 259212, Village Road, South Durras**

Thirteen people made submission specifically on this parcel. All objected to the reclassification. Most provided their address notes which are included in the Appendix.

I inspected the land and as detailed in the submissions and the planning proposal, the parcel is undeveloped and in reasonable natural condition subject to signs of some understory and general bushfire maintenance.





**Figure 5** view from the centre north of the parcel showing forested condition. Note drainage pit.



**Figure 6** parcel frontage to Village Road.

## Analysis

The land without sewer seems inappropriate and inadequate for on-site effluent disposal. Or at least most vegetation might need clearing for sufficient sunlight exposure for a reasonable transpiration area for one dwelling. The planning proposal recognises this and suggests the land should not be disposed of until sewerage is provided to the village which is not anticipated before 2028.

The lot appears to have a good cover of native vegetation and while South Durras is well endowed with natural values, the submission points as to corridor value may have merit and a more detailed assessment is warranted. Maximum potential development of the lot would require perhaps significant clearing of about 80% of the existing native vegetation, once measures for adequate bushfire protection were applied. Conversely, even if retained as community land, a degree of bushfire hazard reduction will periodically be required, but not to the level of impact of 2 dwelling lots.

The land has little potential for active recreation given the natural values. It seems to have some minor use as a pedestrian access to shorten access to the coast but perhaps of value to less than a dozen homes? As the planning proposal details, the road network provides acceptable pedestrian access.

If the land was not under native vegetation, disposal as a homesite seems justifiable.

Putting aside the biodiversity values for the moment, and assuming availability of sewerage, with an area of approximately 1250 m<sup>2</sup> and R2 zoning with a 550m<sup>2</sup> lot size, 2 dwelling lots seem possible and in theory a dual occupancy up to 2 storeys might be considered on each. Given the topography, the impact on views of neighbours would not seem great. However the privacy of the immediately adjoining neighbours would be moderately lessened and there is the issue they had some expectation of that privacy given the public land status.

The above development potential would seem to indicate a sound net return to Council from the reclassification, assuming the biodiversity values can be addressed and sewerage provided.

However as a small natural reserve, the annual maintenance cost to Council would appear minor and if the biodiversity is considered significant it seems retention as current classified as natural reserve is appropriate.

### **Recommendation for parcel 2**

I understand staff are seeking further biodiversity assessment as to the impacts clearing for a dwelling may generate. I agree this is important before any final decision is made.

If the biodiversity impacts of clearing most of the lot are acceptable, then disposal seems justified given the likely net income to Council for other reserve improvements and relatively low value of other community use.

However, if the local biodiversity values are considered significant, then the current classification appears appropriate.

#### 4.4.3 Parcel 4: Part lot 2 DP 570760 and Part lot 4 DP572585, Beach Road Batehaven.

One person made submission in support of this proposal on behalf of the applicant to purchase the land.

The area proposed to be sold totals 1125 m2. It is grassed waterfront land and appears to have minimal native vegetation. It would appear much of the proposed sale area is already under informal use and maintenance by the caravan park.

The planning proposal advises the coastal reserve at this point is approximately 27 metres wide and the proposal is to reduce this by 4 metres to 23.

If successful, the sale evidently enables redevelopment of the front row of cabins to more modern and accessible cabins that can comply with the current regulation requirement of a 3 metre setback from the boundary. Evidently some of the existing cabins encroach up to 1 metre onto the reserve.

The submission was in support but raised some mild concern as to the time it was taking to resolve the request, which evidently obtained in principle support of Council in June 2019.



Figure 7 Subject land.



## Assessment.

Sale of public lands, especially valuable coastal lands, for private commercial use should only proceed if justified on the special circumstances of the case.

There seems no debate, in the absence of this request, the reserve as it is would be retained as worthwhile public coastal space. Ie the land is not surplus to public requirements. It also appears the coastal reserve either side of the park is wider- ie the existing caravan park lot already protrudes into the reserve.

The sale would not seem to create a physical limitation to public enjoyment of this section of the coast. However, sea level rise and related events now seem accepted as inevitable in the coming century and as such coastal reserve buffers in public ownership are of value. That said, the caravan park use is removeable as most development comprises transportable buildings.

The planning proposal suggests, but without detail, that the current front cabin row of the park development is in compliance with the Local Government Act approval required to operate the caravan park. I inquired further as to whether the front row of cabins was in compliance with the existing approval. I have been advised Council considers the current front row of cabins in compliance with approval requirements with the exception of the encroachments onto the reserve of up to 1 metre as detailed in the planning proposal.

It is not reasonable to see the front row sites to be redeveloped and the encroachments not rectified. This means one of three actions is required:

- The owner relocate so that there is no encroachment. This would have significant financial impacts as it is likely to require loss of park sites. This option is not supported because the impact on the proponent would be unreasonably harsh given, apart from a relatively minor encroachment onto the reserve, Council considers the park to be in compliance with its approval.
- Lease the area to address the encroachment.
- Sell the encroachment area as detailed in the planning proposal.

Coastal frontage lands are important. Many areas have previously been acquired for the public through the past Coastal Lands acquisition schemes, often at considerable public expense.

As such there could be merit in a long term commercial lease. That preserves the option in the long term future for this public coastal land to return to the reserve, while allowing the developer to modernise the front row cabins and utilise them for their economic life.

Sale of the subject land is an option open to Council. I don't prefer it to lease give the precedent it may set.

## **Recommendation for Area 4.**

That the conversion of the land in Area 4 to operational land be supported.

That Council then offer a long term lease of the land to the adjoining caravan park at commercial rates so that the option to return the land to the reserve in the long term, might be preserved.

#### 4.4.4 Parcel 6: Lot 170 DP 569136, Fauna Ave, Long Beach.

Two people made submission of objection to this proposal.

The area proposed to be sold comprises all of lot 170 which has an area of approximately 165 m<sup>2</sup>. Lot 170 appears to have come from a subdivision including residential lot 171 to the north. The subdivisions relating to creation of the reserve and adjoining lots date back to the 1970s and Council was not able to locate any of the original reasoning for the creation of lot 170. The original subdivision that created the public reserve had lots 170 and 171 as one residential lot but subsequently it appears that original lot was subdivided and lot 170 added to the reserve.

The planning proposal advises the land is substantially cleared and is being mown by an adjoining owner. It is proposed to sell the land to that owner.

The main issues from the submissions centre on the value of the reserve and question sale of sections of public reserves to neighbours.



Figure 8 Subject land.

#### Assessment

This small area of land, considered in isolation, is not likely significant for the public reserve needs and, if already lawfully cleared, would seem to not have significant biodiversity value.

However the principle test remains that sale of public reserve land should only proceed where there is specific justification.

- While possibly not of high public or biodiversity value, it seems doubtful the area is any great maintenance burden to Council. It seems the reserve as a whole is considered needed for community benefit, all be it passive and natural value needs. Earlier air photography seems to indicate the land was more heavily vegetated which may raise issues of legal clearing of Council reserve? Conversely as a natural area in an urban setting there are legitimate issues of adequate bushfire asset protection areas.
- It seems the proposed purchaser may get potential from the acquisition to develop a secondary dwelling.
- The net return to Council from the processing and sale is likely to be minor.
- It possibly raises questions such as competition. There may be other neighbours prepared to bid on the land.
- There is the broader issue that Council reserves have hundreds of freehold neighbours and many might desire to acquire some of the adjoining reserve. As such perhaps Council need to develop a set of criteria to ensure such sales only occur because they meet a specific justification. No specific justification seems to be offered in the information to date beyond the fact the intending purchaser evidently mows the site.

### **Recommendation on area 6**

This site, in isolation, seems to raise few issues if it were disposed of as presented in the planning proposal. However, I feel the proposal fails to pass the justification tests for allowing neighbours to buy small pieces of Council reserves. As such the land should remain community land.

#### **4.4.5 Parcel 7: Part lot 109 DP 244150, Catalina Drive Catalina.**

One submission was received on this parcel. In the main the submission centered on concerns that in the past there had evidently been a proposal for a residential subdivision of a great part of the land.

The proposal before Council is not related to such a subdivision. All that is proposed at this time is the conversion of a small triangle of land to operational land to rectify an encroaching driveway on the reserve. While no area is given in the planning proposal, I estimate the small triangle at about 100m<sup>2</sup>.

#### **Assessment.**

The planning proposal identifies the justification as addressing an encroachment of a driveway. It also states the sale will return funds to Council for other reserve improvements, however such a small area is not likely to return any significant sum to Council.

Rectification of the encroachment is a reasonable justification for the conversion and sale of this piece of public land in this case. I am advised by Council that the alternative

of requiring a new access solely in the applicant's land would greater environmental impacts such as tree clearing and earthworks.

### **Recommendation for area 7**

The proposed reclassification of Area 7 is supported.

#### **4.4.6 Parcel 11: Part Lot 74 DP 776541, 9 Moir Place, Broulee.**

Three people made submission of objection on this parcel.

The proposal would see lot 74 (which has a total area of 659 m2) subdivided into 3 parcels:

- A southern parcel of about 140 m2 to be converted to operational land allowing sale to an adjoining landowner.
- A central parcel of about 160 m2 to be retained as community land for services and pedestrian access.
- A northern parcel of about 350 m2 to be converted to operational land allowing sale to an adjoining landowner.

The land appears reasonably covered with native vegetation although the planning proposal advises there is some mowing and related maintenance action occurring from neighbours.

A sewer main is central in the parcel proposed for retention.

The submissions made the following points:

- They consider the biodiversity is of importance and evidently a blackbutt remnant.
- Too important to clear.
- Wildlife refuge in the 2019 fires and fire egress.
- Important access for north Broulee.
- Parking already limited in holiday season and concerned as to extra development.
- Question net return to council
- No surety if adjoining owners will want to buy or will pay a worthwhile price.
- Consider a minimal cost reserve for Council to maintain.



**Recommendation for Parcel 11**

The parcel seems to have at least moderate biodiversity values and at least some passive recreational value. Disposal will not likely reduce Council's maintenance burden, nor is there any surety of a profitable sale of the 2 parcels of proposed operational lands.

I consider the parcel should remain community land.

## **5 Appendix One – Written submissions handed up to the hearing.**

(see separate document)

