

Submissions Report: Planning Proposal, ELEP 2012 Amendment No. 19 – Reclassification of Community Land

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Introduction

Eurobodalla Shire Council prepared, received a Gateway Determination and publicly exhibited a draft Planning Proposal to reclassify certain lands from community to operational. For some of the lots, the planning proposal also proposed changes to zoning, minimum lot size and height of buildings, and where part of a lot is to be reclassified, changes to the Part Lot Reclassification Map were proposed.

Public exhibition of the planning proposal took place from 8 March to 5 April 2023. During this time, a total of 126 submissions were received. Two late submissions were also received. All submissions have been reviewed and all issues raised are addressed in this report.

Council also engaged with State Agencies in accordance with the requirements of the Gateway Determination and responses were received from the NSW Rural Fire Service and the Department of Planning and Environment – Biodiversity and Conservation Division.

In accordance with the requirements of the Local Government Act 1993, a public hearing was also held on 4 May 2023. A separate report from the consultant who ran the public hearing addresses the issues raised at the public hearing.

This report contains three parts, as follows:

Part A addresses common issues raised in most submissions relating to a number of the subject lands.

Part B addresses specific issues raised in relation to specific sites.

Part C addresses submissions from Agencies.

Part A: Common Issues Raised in Submissions

Common issues raised that apply to some or all of the identified lands were:

1. Opposition to the sale of community land / the land is not surplus to community needs.
2. Doubt about the economic benefits of the proposal.
3. Lack of consultation.

For each of the above issues, specific points made in submissions are provided below along with a response to those points.

Issue 1 – Council should not propose the sale of community land / the land is not surplus to community needs

- The land was gifted to the community. Why does gifted land ever have an option to be reclassified for the profit of council?
- Previous Councils have told residents that the land would not be reclassified for sale.
- The original 1988 plans we have state the land is a public reserve.
- The reserve is not surplus to community needs.
- The ROSS report 2018 was totally flawed in its findings for the so-called surplus land in South Durras when it concluded that Lot 84 possessed “no recreation or conservation value”.
- The proposal involves the reclassification of public land to allow it to be sold into Private hands. Haven’t we learnt enough about the idiocy of privatisation?
- Dubious council legislative manoeuvre to sell community owned land for the financial benefit of the council and any developer of the land.
- It is not up to Council to provide landowners with open space for private use.
- Open space plays a major role in improving community health, both physical and mental, stimulating economic growth and influencing property values.
- We need more public space, not less.
- Land that is classified as C2 should not be sold into private hands or reclassified except where there is an imperative case of benefit for the greater good of the community.
- Selling once piece of community property to a landowner next door is totally unacceptable. Leave our community spaces with the community.

Response

The Local Government Act 1993 provides for Councils to propose the reclassification of community land for sale. Council is following the requirements of the relevant legislation in relation to the preparation of a planning proposal relating to the reclassification of land. A final determination will be made following consideration of community input.

Issue 2 – Doubt about the economic benefits of the proposal.

- The ‘justification’ that proceeds from the sale of Lot 84 will be spent to enhance community open space is a poor one for this community because South Durras will lose a valuable reserve and the money raised will be spent elsewhere in the shire.
- Council’s argument ‘Funds from the sale of the land would be reinvested back into the open space network’ is misleading. We have not seen any benefit to the northern end of Broulee from the sale of a block of land in Iluka Street, as promised!
- The proposal is simply revenue raising.
- ‘Funds from the sale’ of the land would be a one-off meagre cash injection that would be absorbed by legal fees from the strong response that would absolutely occur should this proposal proceed.
- Funds raised will be offset by reduced rates revenue due to reduced home values in the immediate vicinity.
- The proposal will not generate sufficient revenue to cover the costs outlined in the Recreation and Open Space Strategy.
- Revenue from the sale of the Lot 84 public reserve will have a minute impact on the ESC economy and will negatively impact residents and visitors to South Durras.
- The Council justifies the sale to support re-investment into other open space and recreational facilities. This general statement is made without any consultation or a cost-benefit analysis to understand what further facilities the communities require on open space land.

Response

- It is a requirement of Council’s Recreation and Open Space Strategy that funds from the sale of land identified in the Strategy as surplus to community needs be reinvested back into the open space network. Funds from the sale of other parcels of land will be allocated to future Council projects.
- Council will be seeking fair market price for the lands.
- Revenue from the sale of surplus land is only one means of funding the actions in the Recreation and Open Space Strategy. Other funding sources include rates revenue and grant funding.
- There is no evidence to support the claim that the sale of the land would reduce property values in the area.
- Council has undertaken the reclassification process in accordance with relevant legislation including the *Environmental Planning and Assessment Act 1979* and the *Local Government Act 1993*.

Issue 3 – Lack of consultation

- Lack of transparency – no recent and relevant community consultation to assess and clarify community needs.
- How was this land deemed to be surplus to community needs for recreation and open space. Were surveys taken? Was data collected on usage of this space? Were residents sent out a questionnaire? How was the decision made?

Response

Council has followed the requirements of the relevant legislation in relation to the preparation and community consultation of a planning proposal. Engagement was undertaken in accordance with Council's adopted [Community Engagement Strategy](#), Section 29 of the *Local Government Act 1993*, Section 3.33(2) of the *Environmental Planning and Assessment Act 1979* and the NSW Government's gateway determination.

Public exhibition of the planning proposal was from 8 March to 5 April 2023. A public hearing was held on Thursday 4 May 2023.

Notification about the public exhibition and public hearing for this planning proposal included:

- Information on Council's website and the Planning Portal
- Letters to landholders adjoining the land proposed to be reclassified (this includes landholders immediately across the road)
- Emails to community associations in the vicinity of sites e.g. Broulee Mossy Point Community Association
- Emails to previously interested stakeholders, including everyone who contacted Council when the report was considered and endorsed at a Council meeting on 23 August 2023
- Emails to landholders that requested to purchase sites from Council
- Notification in the Bay Post-Moruya Examiner and Narooma News
- Emails to DPE Biodiversity and Conservation Division, NSW Rural Fire Service and Telstra.

Council also implemented a wide-ranging community engagement process in 2016 to inform the Recreation and Open Space Strategy (ROSS), including community workshops; general sporting and recreational group surveys; school visits; school principal surveys; and discussions with relevant Council committees and divisions. Over 400 individuals and 20 sporting and community groups provided information and feedback in this way.

A further round of targeted consultation with relevant external and internal stakeholders was undertaken by Council staff in 2017 to explore the consultant's initial findings, including onsite meetings with several community groups.

The Strategy was placed on public exhibition from 27 September to 24 October 2017. At the Council Meeting on 24 October 2017 Council extended the exhibition period for a further 21 days to maximise the opportunity for community input. The exhibition period closed on 14 November 2017 with 173 public and 16 internal submissions being received. To further understand and report accurately on the submissions and enquiries received, staff conducted a further eleven community meetings with sporting organisations, Chambers of Commerce, community groups and local school staff between November 2017 and January 2018. Council received further items of correspondence relating to the Strategy outside of the exhibition period. All submissions and related correspondence, including those received after 14 November 2017, were acknowledged and the writers informed of the Council meeting date and processes.

Part B: Specific issues raised in relation to each parcel of land

The following sections address the specific issues raised in relation to each parcel of land in the planning proposal.

Area 1 – Illabunda Drive, Malua Bay – 48 Submissions



The key issues raised in submissions in relation to Area 1 are:

1. Loss of green space / alternative open space is not comparable to justify the loss
2. Environmental impact
3. Impact on coastal amenity, character and views

Issue 1 – Loss of green space / alternative open space is not comparable to justify the loss

- Disappointment at the loss of green space.
- Pretty Point Beach does not provide the same level of amenity as the reserve proposed to be reclassified. This land has an area of 250 square metres and an effective usable area somewhat less. It is in no way a suitable replacement.
- Pretty Point Beach is subject to high tides and seaweed coverage making it difficult to use reliably for recreation purposes.
- A potential house on the open space will have major social impacts on the residents and our usage opportunities. We value our ability to have 'passive recreation' of our choosing on the site and flatly refute that it is 'rarely used'.
- Local residents have a current total of 1568 sqm of open space available (the subject site), excluding the beachfront reserves, and the proposal is to reduce that to 507 sqm of unusable land.
- The loss of the land is not supported by ROSS's own investigations, which found a future deficiency of 5 ha of open space and recreation land in the area.

Responses

- The proposed reclassification for sale of the land is consistent with the recommendations of Council's Recreation and Open Space Strategy.
- The planning proposal acknowledges that the grassed area is occasionally used for passive recreation in the summer holiday months.
- It is acknowledged that no two open space areas are the same or provide the same level of amenity. However, as demonstrated by the photo below, it is considered that the two open space areas in question provide a similar level of amenity and, while the Pretty Bay Beach area

is smaller in size, it can be used for similar purposes. It is therefore considered that the social impacts of the proposal are minor.

- While the current and potential impacts of coastal inundation are acknowledged, the periods during which some or all of Pretty Point Beach may be unusable for recreation purposes would be relatively infrequent.
- Beachfront reserves are a valuable form of open space that should be considered in determining the level of access to open space. The planning proposal identifies the retention of the vegetated drainage line as “community land”, meaning it will be retained in public ownership. This land is to be retained for environmental purposes not community use purposes.
- The analysis of land for recreation open space in Malua Bay, Lilli Pilli, Rosedale and Guerilla Bay Villages in the ROSS stated these areas combined will have a deficiency of 5ha due to population growth by 2036. It also identifies that 35-37 Illabundra Drive, Malua Bay does not have recreation or conservation value and that funds from rationalisation can be reinvested back into the open space network. In this way, Council is able to invest in land for recreation open space in other more suitable locations that have greater district and shire-wide benefits.



Photo of the subject land (left) and the Pretty Point Beach reserve (right)

Issue 2 – Environmental impact

- Building a house in place of ambient and recreational open space which is abundant with bird and animal life will not conserve and celebrate bushland and water ways.
- The claim that the proposal will have no significant impacts on housing choice, infrastructure and services or the environment is also false, all these things will be impacted, especially the environment.

Response

The proposed reclassification does not include the area of the land containing bushland and a watercourse, which will remain as community land and be conserved as such.

Issue 3 – Impact on coastal amenity, character and views

- The claim that the proposal will have no effect on coastal amenity and existing views is entirely false and both amenity and views will be heavily impacted.
- The impact on existing coastal views, amenity and value of the adjacent property to the west will be serious.
- While any future development of the lot would be subject to planning approval, the requirements of the LEP and BASIX and other design matters are just building hoops for the developer to jump through (or around).
- While the planning proposal states that the site is not large enough to subdivide, a developer could propose strata subdivision or Council could approve a variation to the lot size.
- What guarantee is there that only one dwelling would be built on the land?
- Building a house in place of ambient and recreational open space will not enhance the distinctive character and heritage of Malua Bay.

Response

- The planning proposal states that future development can be undertaken with minimal impacts on coastal processes, coastal amenity and existing views from the coastline.
- The planning proposal also acknowledged that future residential development on the site is likely to have some impact on existing coastal views from the adjacent property to the west and that assessment of such impacts will be undertaken at the development application stage.
- Council also has the power at the subdivision stage (to excise the reclassified land from the area to be retained as community land) to impose restrictions on development of the land, such as in relation to the number of dwellings, maximum building height or by defining a building envelope, to ensure a reasonable sharing of views.
- The planning proposal states that future development of the land can be undertaken in a manner that enhances the character of the place. It is acknowledged that the future development of the land will change its appearance as compared to open space, however this does not mean that the overall character of the place will be changed significantly. The impact of any proposed development on the character of the place will be assessed at the development application stage.

Other Issues

- The land provides a buffer zone for families to safely access the beach across the road. Having residential houses on this block will make this beach access hazardous especially with an expected increase in walkers on the upgraded coast trail.

Response – Illabunda Drive and other local streets used to access the beach are relatively narrow roads with relatively low traffic volumes.

Suggestions

- The land could have a memorial to all that lost homes in the 2019 bushfires and the wonderful people that worked to save us all.
- The land should have a playground and/or picnic tables.

Response – Noted. For Council's consideration as a separate matter.

Area 2 – Village Road, South Durras – 51 Submissions



The key issues raised in submissions in relation to Area 2 are:

1. Loss of habitat and wildlife corridor and other environmental impacts
2. Loss of pedestrian connection
3. Impact of development on adjoining land
4. Loss of Asset Protection Zone / the area is a high bushfire risk area

Issue 1 – Loss of habitat and wildlife corridor and other environmental impacts

- The land is not simply a vacant grassed block on a typical suburban street. Durras village as a whole and Village Road in particular are by design sympathetic to the nearby national park with many mature trees, Burrawangs and a "bush" feel.
- We understand there have long been restrictions on fences between properties and in many cases the bush is largely continuous around and between houses.
- This corridor of land includes a number of *Allocasuarina Littoralis* trees commonly known as black she-oak or river black oak which are difficult to establish outside of native bushland. They are important because Glossy Black-Cockatoos which feed almost exclusively on the seeds of these trees are often seen feeding on the she-oaks in this wildlife corridor and public walkway.
- Lot 84 Village Road is core habitat for Greater Gliders and Yellow-bellied Gliders. It is the only viable east/west corridor between Village Road and Banyandah Street in this area. There are Yellow-bellied Glider sap feeding trees nearby to Lot 84 Village Road. Yellow-bellied Gliders and Greater Gliders have been observed crossing Village Road to utilise Lot 84 Village Road. Greater Gliders have been observed occupying tree hollows nearby to Lot 84 as well.
- A conversion of Lot 84 Village Road to operational land and its subsequent disposal would likely result in the removal of most and probably all of the trees located on Lot 84. Given the Gliding possum species high dependence on forests, any habitat loss and fragmentation will result in the contraction of suitable habitat. Fragmented populations of Gliders will have a reduced ability to recolonise suitable habitat and are at risk of genetic decline.
- Further ecological evidence is required to address the potential impact on threatened species and the value of the land as a wildlife corridor and haven.
- For 50 years since Village Road was originally developed Lot 84 has acted as a wildlife corridor (the only undeveloped east-west link in the precinct) and continuous tree canopy helping to connect the national park to the small lake behind Beagle Bay/Cookies Beach (DPI094556).

- There is a great deal to be gained for the Durras community and visitors to it, by protecting our native animals' movement, minimal fencing, retention of natural bushland, providing opportunities for observation of a recreational, scientific and educational nature and there is no great benefit to be gained by the community, that would compensate it for the loss, if it is developed.
- The sale appears to contradict the vision for "protecting and enhancing our natural environment" captured in the Our Eurobodalla 2024 Community Strategic Plan.
- Development of the Lot 84 public reserve will undermine the ESC Biodiversity Strategy.
- The land slopes towards an important wetland. Any development of the land could lead to severe environmental degradation, with potentially disastrous consequences for our local waterways.
- With potential climate change and sea level rise, the community may lose low lying reserves. Therefore, maintaining reserves on higher ground is even more important.

Response - An environmental assessment report was provided to Council in August 2023. The assessment found that:

- The vegetation on the land consisted of PCT 3271- Shoalhaven Spotted Gum-Blackbutt Moist Forest. This vegetation type is not listed as a Threatened Ecological Community.
- The vegetation is in a somewhat disturbed state as the site is modified for Asset Protect Zone bushfire compliance which removes leaf litter and structural elements as well as floristics in patches across the lot. A walking track also occurs through the land though it is not substantial. The lot has some weed burden but it is not considered high.
- No significant impact would occur to any entity listed under the NSW Biodiversity Conservation Act 2016 or the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.
- Within the South Durras village, canopy connectivity is more scattered than in surrounding forested areas. Distances between patches of trees within the village were measured from aerial photos in regards to gliding distances for Greater and Yellow-bellied Gliders and none were considered unachievable for either species, most gaps being under 50m. Canopy connectivity in South Durra is shown in the image below.



Issue 2 – Loss of pedestrian connection

- The use of this reserve as pedestrian access is important because it allows valuable recreation of an observational and educational nature; completely different to walking down a bitumen road without any footpaths.
- Removing this pedestrian link will encourage more people to drive, increasing the potential for roadkill.
- While the Lot 84 reserve is close to public space and roads provide alternate access, the reserve is a pedestrian link actively used by residents and by visitors exploring the area and accessing the beach. The reserve adds interest and amenity to the village.
- At peak holiday times, the reserve provides a refuge from the tourists and a safe path of travel for people and animals through the area.

Response – The planning proposal acknowledged that the site is used as a pedestrian link. However, it is considered that there are sufficient alternative and direct pedestrian connection options available to residents and there are also sufficient alternative opportunities for residents and visitors to observe nature in and around South Durras.

Issue 3 – Impact of development on adjoining land and the character of the place

- Lot 84 is a long narrow strip, more narrow than surrounding blocks (typically 24m frontage) and clearly never planned for development. It seems likely that any building would need to be built close to the boundary and/or built to the maximum allowable height thus negatively impacting the privacy, shade, solar access and visual character of adjacent landowners - landowners who purchased their properties for a price understanding that the lot would remain as a public reserve.
- The block is narrow and sloping, requiring a large number of trees to be removed. It appears possible stormwater infrastructure would also need to be relocated.
- Clear impracticality of proposal to develop the land for accommodation, car parking and water management.
- Development of the land would increase stormwater flows and impacts.
- The Planning proposal does not acknowledge the existing stormwater pit and pipe near the northern boundary of the land. Due to the narrow lot width, this would restrict development to be close to the southern boundary of the lot.
- This corridor represents the natural flow of waterways in the area and should not be built on. It would adversely affect properties downhill below it: potential flooding of diverted waterway.
- Creation of a narrow house block in place of a vegetation covered wildlife corridor cannot conceivably be characterised to the community as an action consistent with the requirement that the 'development of the land can be undertaken in a manner that enhances the character of South Durras'.
- Developing the lot would likely result in the removal of scores of mature trees and negatively impact wildlife and streetscape character.
- Residents who purchase in Durras self-select for a less developed, "living close to the bush" lifestyle.

Response

- The land has a frontage of 15m to both Village Road and Banyandah Street. The slope of the land is similar to adjoining land that contains dwellings. The cost of tree removal is dependent on the nature of any future development proposed and the number of trees to be removed.

Relocation of stormwater infrastructure is not necessarily required. As there is a shortage of vacant land in South Durras, it is anticipated that demand will be high resulting in a good price for the land.

- The planning proposal states that future development of the land can be undertaken in a manner that enhances the character of the place. It is acknowledged that the future development of the land will change its appearance as compared to open space, however this does not mean that the overall character of the place will be changed significantly. The impact of any proposed development on the character of the place will be assessed at the development application stage.

Issue 4 – Loss of Asset Protection Zone / the area is a high bushfire risk area

- Lot 84 is listed as an asset protection zone in the 2018 Bushfire Protection Map for South Durras. The reserve provides an alternative route to safety for residents and visitors, and ease of access for fire fighters.
- It is also significant in fire management planning, allowing entry for fire fighting services as well as access to static water reserves - important, given the absence of reticulated water in South Durras.
- The Proposal's claim that the area "is not considered a high fire risk area, being approximately 160m from the nearest hazard" is laughable considering the RFS classify all of South Durras as a "high risk area". Evidence from the 2019–20 bushfires is that a 160m buffer would be meaningless.
- The Proposal is contradicting Council's own policy of restricting higher density development in high fire risk areas which was enacted in this very location in the 1990s, when subdivision of a block of land in Murramarang Crescent was denied because of high fire risk.

Response

- A Bushfire Protection Assessment of the land was provided to Council on 28 August 2023. The report concluded that development of the land can comply with Planning for Bushfire Protection 2019 with a BAL rating of 12.5.
- Development of the land would result in the land continuing to be managed as an asset protection zone by the future land owner(s) in accordance with the requirements of Planning for Bushfire Protection 2019.
- Council currently undertakes fire mitigation on this land and some other lands included in this planning proposal, at an annual cost of approximately \$3,500 (across the whole of Eurobodalla, the cost of fire mitigation works annually is greater than \$500,000).
- The proposal is not seeking to allow high density development of the land.

Other Issues

- The proposal requires the Council to amend the Eurobodalla LEP 2012 to accommodate totally inappropriate lot sizes and building heights not previously considered appropriate for building lots.

Response

The proposed minimum lot size and maximum building heights for the land are the same as for surrounding residential land in South Durras.

Other Issues

- Under “Justification Summary”, every point made implies that it is public open space or access to recreation space as if this lot fulfills either of those objectives, which clearly it does not, nor ever has. The notion of families sitting down for a picnic on this land is so implausible as to be meaningless.

Response

Public open space comes in many forms and has many functions. The Planning Proposal identifies that the land is listed in Council’s Natural Areas and Undeveloped Reserves Plan of Management, with a primary reserve category of General Community Use – Undeveloped and a secondary category of Natural Bushland.

Other Issues

- The only identified interests pertaining to the land are those specific to residents and Recreation and public open space, whereas in fact the major interest is pertinent to the environmental concerns that are now being ignored.

Response

The term “interests” is a legal term relating to the reasons (as stated on the title of the land) for the land being public land (in this case as a public reserve) and to any restrictions identified on the title of the land.

Other Issues

- The Planning Proposal states that the land would not be sold until water and sewer services are available in South Durras, predicted to be in 2028, however Council has recently stated that it is not projected to happen in the immediate future if at all due to lack of funding and community support.

Response

- In the Integrated Water Cycle Management Strategy (IWCMS) endorsed by Council in September 2023, council has not included providing a sewer service at South Durras in the 30 timeframe of the plan. This decision will be reviewed in every revision of the plan which is on a 5-8 year cycle. The 2028 timeframe has been removed in the planning proposal.

Other Issues

- Further evidence of how future development of the site will contribute to inclusive, safe and healthy communities, contribute to housing choice and encourage housing affordability is warranted.

Response

In a place like South Durras where there is limited development potential and about 51% of dwellings unoccupied at the time of the 2021 census, any opportunity for additional housing has the potential to make a difference to the community in terms of inclusiveness, community health and housing affordability.

Submission in support

No objection to the proposed reclassification for the following reasons:

- I have personally never used Lot 84 as a through pass or thoroughfare of any kind.
- The site does not provide any kind of improved beach access from the Village roadside to the Banyandah street side. The point of ejection at Banyandah street provides no further access point through public land to the reserve opposite Lot 84 (that contains a large body of standing water which eliminates any potential access to the beach via this route anyway).
- It is easier to travel on foot along Village Road to crossroads for access to the beach.
- The sites adjoining Lot 84, that back onto one another, running up both Banyandah street and Village Road are, for the most part, unfenced. Allowing wildlife to move freely through the area.
- In terms of the potential for native trees and canopy structure to be removed, given the number of large trees throughout the village I don't see this as presenting an issue to the native wildlife. South Durras, by and large, has well established trees throughout the village and is landlocked by national park.
- Anyone who is lucky enough to live in the village knows what it has to offer and should be supportive of a small single block being rezoned for residential purposes for the benefit of another family to enjoy.

Response

Noted

Suggestion

To increase housing stock without destroying vegetation, Council should encourage the replacement of substandard housing and potentially allowing other land to be subdivided or allowing one substandard house to be replaced with two.

Response

Noted. For Council's consideration as a separate matter.

Area 3 – Bimbular Street, Dalmeny – 2 Submissions



Issues

- Limits future use of recreation facility.
- Part of reserve to the rear of properties on Bimbular Street is well used for access and recreation purposes.

Response

The area proposed for reclassification is very small and unlikely to limit future use options.

The area proposed for reclassification and sale is not adjacent to the rear of properties along Bimbular Street and will not affect use of or access through this area.

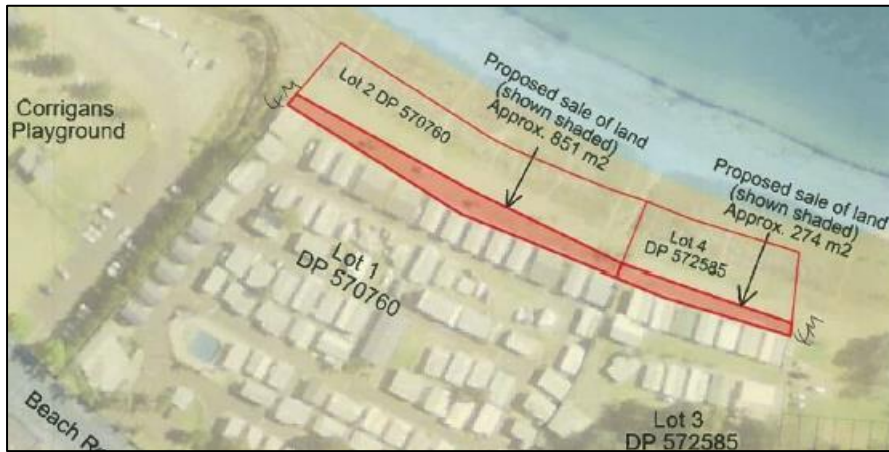
Suggestion

If sold, funds should be used to provide decent drainage of the oval.

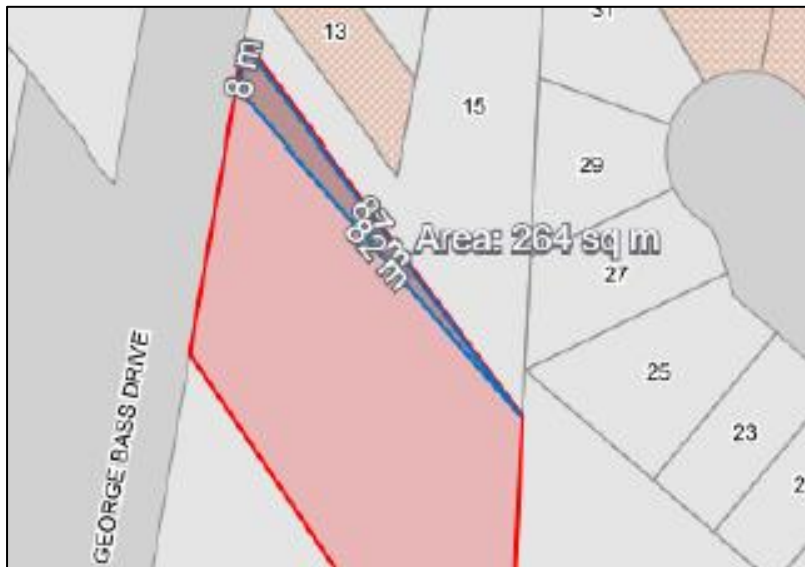
Response

Noted.

Area 4 – Beach Road, Batehaven – 0 Submissions



Area 5 – George Bass Drive, Batehaven – 0 Submissions



Area 6 – Fauna Avenue, Long Beach – 18 Submissions



The key issues raised in submission in relation to Area 6 are:

1. Loss of habitat and wildlife corridor and other environmental impacts
2. Precedence

Issue 1 – Loss of habitat and wildlife corridor and other environmental impacts

- Keep greenspace for wildlife and to reduce carbon emissions. Rezoning will lead to habitat corridor destruction.
- E2 Environmental Conservation land must be protected.
- This end of the reserve is home to a number of native animals and reptiles, including a family of echidnas, a range of frog species, and rich bird life. The reserve is a habitat corridor for these animals.
- Although small, this reserve provided essential sanctuary for wildlife during and after the 2019/20 bushfires until wildlife could return to the surrounding areas. It continues to be a unique wildlife corridor and provides essential habitat for many endangered species and endemic flora. Throughout the years I have seen gang gang cockatoos, echidnas, swamp wallabies, water dragons, tawny frog mouths, countless species of frogs and many other birds within the reserve.
- The amazing biodiversity here includes wood ducks nesting in the spotted gum hollow, a tawny frog mouth family roosting on a pittosporum tree, threatened gang gang cockatoos flying in small flocks over the canopy and stopping to rest some days in summer, flying foxes feeding on the flowering eucalypt canopy, an echidna hunting for food in the nutrient rich soil, a chorus of frogs singing before and after the rain, possibly breeding in the intermittent creek flow.
- Extending the boundaries of the proposed borders of the 49 Fauna Ave property, would have significant impact on the gully habitat, by increasing the “edge effect” of development and decreasing the available healthy habitat of a wildlife corridor.
- Post bushfires, we need to protect and regenerate as much remaining native vegetation as possible, having lost so much habitat, green space and forest in 2019/2020. We have already recently experienced the bottom part of the gully’s canopy being totally destroyed by tree poisoning and vegetation clearing.
- The reserve is an important part of already fragmented habitat and during bushfires and heatwaves provides sanctuary for plants and wildlife and provides environmental services such as storm water run-off and wind mitigation that protect nearby properties in severe weather.
- Nothing has been discussed within the proposal with respect to the biodiversity of the reserve and its significance as a local habitat and home to many noteworthy species of animals. It

further fails to consider the overall condition of the reserve that has seen significant degradation due to ingress of several problematic weed species, significant tree poisoning and erosion as well as other encroachments at the edge of the urban bush interface.

Responses

- The area proposed for reclassification and sale is quite small in size, mostly cleared and at the edge of the reserve. It is considered that the proposal will not have a significant impact on the habitat corridor.
- Council currently undertakes fire mitigation on this land and some other lands included in this planning proposal, at an annual cost of approximately \$3,500 (across the whole of Eurobodalla, the cost of fire mitigation works annually is greater than \$500,000).
- The proposal makes a relatively small change to the size of the C2 zoned area, reducing it by only 3.7%.

Issue 2 – The proposal will set a precedent for other similar requests to purchase community land

- Following reclassification, apparently Council will sell 'only' 3.7% of the reserve for private use. But inevitably, this will lead to further such proposals, which in equity Council will be poorly placed to resist.
- Whilst this sale is approx 4% of the reserve, it opens the door for more lots that adjoin Fauna reserve to start approaching the LGA around extending their boundaries into the reserve. And refusal will open the council to all kinds of claims of inequity if the current claim is approved.
- Does this set a precedent for any property owner, body corporate, organisation or other entity that sees fit to do a bit more for their neighbours and community, by mowing a public parcel or gardening a roadside verge? What about the poisoned trees at the other end of the reserve. Since these have clearly been "managed" by an interested party, does that set precedent for potential acquisition?

Response

The area proposed for reclassification and sale is already a separate lot, quite small in size and at the edge of the reserve. There are no other similar small lots in the reserve. It is therefore considered that the proposal does not set a precedent for further requests.

Other Issues

- The proposal is not based on any evidence, strategic study or impact modelling and does not address the direct environmental impacts or indirect social impacts (eg. impacts from storm damage) of the reclassification or sale.

Response

The proposal is a very small part of the reserve that contains no significant biodiversity values. It is considered unlikely that the proposed reclassification would increase risk of storm damage to surrounding properties.

Other Issues

- The proposal will further deplete native habitat, local character and heritage.
- Any potential redevelopment of the adjacent landowner's property does not necessarily enhance the character of Long Beach.

Response

The planning proposal states that future development of the land can be undertaken in a manner that enhances the character of the place. It is acknowledged that the future development of the land will change its appearance as compared to open space, however this does not mean that the overall character of the place will be changed significantly. The impact of any proposed development on the character of the place will be assessed at the development application stage.

Other Issues

- The proposal will remove direct reserve access for a number of lots on Fauna Avenue.

Response

The proposal will remove direct reserve access to the reserve to 1 property.

Other Issues

- This change will introduce potential fences, retaining walls and structures in the longer term that will intrude into the heart of the reserve space.

Response

The proposal will reduce the length of the reserve boundary in the subject location from approximately 37m to approximately 19m. This results in less fencing and potential development adjoining the reserve.

Other Issues

- There is a watercourse in the vicinity of the site that runs with significant flows during most rain events, evidenced by the erosion taking place.

Response

It is acknowledged that there is a gully that runs through the main part of the reserve. This gully is not mapped on the NSW Hydroline Spatial data that defines what is and what is not a watercourse. This proposal is unlikely to result in negative impacts to the gully.

Other Issues

- The proposal is unlikely to contribute to housing supply. The adjacent houses are among 27 of 55 houses in Fauna Avenue that are vacant except for all but 6 weeks or less a year.

Response

Noted.

Other Issues

- Concern about the potential for a secondary dwelling to be constructed on the land, which is not in keeping with the designated use of the land as Environmental Conservation.

Response

References to a secondary dwelling are simply highlighting potential development outcomes. Should the reclassification and rezoning be approved, the land would no longer be designated as Environmental Conservation.

Other Issues

- The real potential for any development would be to increase the permissible square footage for any extension or redevelopment of the existing structure.

Response

Any proposed redevelopment of the site would require development consent and the impact on the environment and amenity of the locality would be considered.

Other Issues

- If the land is reclassified, will the land be made available for sale to the general public? How will fair market value be established? Would other offers for the parcel be considered?

Response

It is likely that all of the adjoining landowners will be provided with the first opportunity to purchase some or all of the subject land. Given the site is landlocked, it is not proposed to make the land available for purchase by other persons. A valuation of the land will be prepared to assist in determining fair market value.

Other Issues

- The two houses that could benefit from this new lot are both holiday houses and aren't used all year round.

Response

Noted.

Other Issues

- The last LEP approved by council for Long Beach community clearly shows a deficit of over 6 hectares of Recreation and Open Spaces in Long Beach, making it imperative that public ownership of current C2 and Open space classified lands be retained in public hands and not developed for housing.

Response

This portion of the reserve is rarely used for public passive or active recreation purposes and is not substantially reducing access to open space.

Other Issues

- I am confused by the reference to Pretty Bay reserve as a substitute for the social and community amenity of the Fauna Ave reserve.

Response

The reference to Pretty Bay is an error and has been updated in the planning proposal.

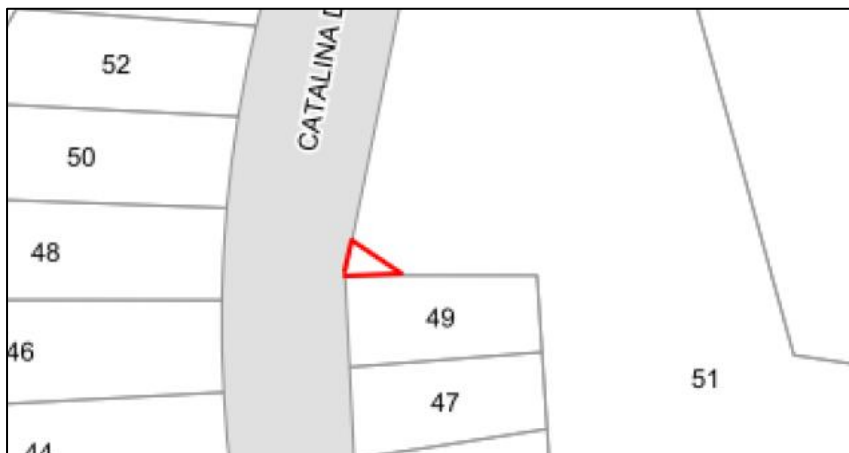
Suggestion

If in fact this property is rezoned and sold, it should be an imperative that all funds from the sale should be directly invested into the recovery of the lost canopy, control of the weeds and the general maintenance of the reserve.

Response

Noted. For Council's consideration as a separate matter.

Area 7 – Catalina Drive, Catalina – 2 Submissions



Issues

- Leave land as native bushland.
- Object to development of the reserve.

Response

The submissions suggest the whole of the reserve is to be reclassified and sold however only a small part of the reserve (0.27%) is proposed to be reclassified. The purpose of the reclassification is to rectify a driveway encroachment. No development of this small area is proposed.

Area 8 – Ridge Street, Catalina – 0 Submissions



Area 9 – Beach Road, Batehaven – 0 Submissions



Area 10 – Blairs Road, Long Beach – 2 Submissions



Issue

- Sections of this land are regularly used by members of the community to access open spaces and by native animals transiting from Cullendulla Creek to the Reedy Lagoon areas. Object to this land being fully fenced, other than for fencing for security purposes in the immediate vicinity of the telecommunication tower and water storage facilities.

Response

No fencing of the subject land is proposed.

Issue

- If council plans to dispose of the land for more than reservoir & tower, adjoining properties should be properly consulted.

Response

Council has no plans to sell this land if reclassified to operational land. Council would need resolve to sell operational land at a future Council meeting.

Issue

- It is unclear why it would cease to be a public reserve.

Response

While operational land is public land, it is not defined as a public reserve under the Local Government Act 1993.

Suggestion

Develop a Plan of Management to address excess vegetation, bushfire hazards, invasive species and how feral fauna will be controlled to avoid impacting ourselves and other adjoining properties.

Response

While a plan of management is not required for operational land it is noted, Council has a responsibility to manage land like all landholders to manages risks such as bushfire and weeds.

Area 11 – Moir Place, Broulee – 5 Submissions



The key issues raised in submission in relation to Area 11 are:

1. Loss of habitat and wildlife corridor and other environmental impacts
2. Retention of pathway

Issue 1 - Loss of habitat and wildlife corridor and other environmental impacts

- Has there been an assessment made of the current vegetation to substantiate the claim that there is no critical habitat or threatened species, populations or ecological communities, or their habitats on this land?
- The site has a number of old growth trees on the little-remaining green-scape left in Broulee. Birdlife and wildlife use the trees and shrubbery and it was a haven for them during the bushfires. Given intensive nearby developments, significant loss from the 2019/2020 bushfires, deliberate removal of other trees since the fires and excessive tree removal for roadworks, the loss of this green-scape which use to be indicative of Broulee and enjoyed by the residents and tourists who live or visit here will place more burden on the remaining trees and wildlife in Broulee and surrounds.
- Council maintains that if land is sold to adjoining landholders in the future, minimal vegetation removal is expected for future development over the zone of influence. Having an expectation that vegetation will not be removed is not the same as giving a guarantee. It is my belief that all the mature trees will be removed if these blocks are sold.

Response – An environmental assessment report was provided to Council in August 2023. The assessment found that:

- The vegetation on the land consists of PCT 3638 - South Coast Sands Bangalay Forest, which is listed as a Threatened Ecological Community- Bangalay Sand Forest of the Sydney Basin and the South East Corner Bioregion
- The vegetation is in a highly modified state with a high weed burden, minor walking tracks, cleared areas and encumbered with a infrastructure sewer pipe constraint. The vegetation is considered to no longer meet benchmarks of the EEC in canopy, mid or ground strata species diversity, in structural diversity nor many of the benchmarks for cover. The Lot is within a highly

urban area, with limited connectivity to stronger patches of the EEC known in the locality and considered to be highly susceptible to edge effects due to the small area.

- No significant impact would occur to any entity listed under the NSW Biodiversity Conservation Act 2016 or the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.
- No threatened entity would be significantly impacted by the potential future clearing of the land.
- The vegetation within the area of the communal pathway and zone of influence of the sewer line would be retained as a result of the planning proposal. Any other vegetation proposed to be removed in the future as part of a development application would need to be assessed at that time.

Issue 2 – Retention of pathway

- The community pathway on the land should be retained to ensure public access from Caitlin Crescent to Pacific Street in Broulee. Retaining the pedestrian connectivity contributes to social cohesion and walkability in Broulee.
- I would ask that Councillors are given information using the term community pathway rather than ‘informal pedestrian route’.
- Specifically where will the future ‘Community Pathway’ be located.
- Narrowing this public access (& selling either side of it) would be a high risk to human life if future fires or natural disaster were to occur. With the lack of dedicated pathways in this area of Broulee and given the beaches and creek are just a few hundred metres away, it is therefore, a high traffic area for people walking to and from the beach with carts, SUPs, surfboards, prams etc. The access corridors need to be wide enough to enable these watercraft, families and school groups to get through safely.

Response

- The planning proposal has been designed to retain the community pathway in that part of the land that will remain classified as community land.
- Three metres either side of the centreline of the sewer (6 metres in total) would not be reclassified providing sufficient room for community access needs.

Other Issues

- The Planning Proposal indicates that the adjoining properties (15 Banksia Street and 7 Moir Place) are single-storey residential dwellings. Both adjoining properties are two-storey residential dwellings.

Response

The Planning Proposal states that the land is predominantly surrounded by single-storey residential dwellings.

Other Issues

- The Planning Proposal refers to retaining the existing vegetation along the northern boundary of the property as community land and zoned C2 – Environmental Conservation. What specific existing vegetation along the northern boundary is to be retained as community land and zoned C2 - Environmental Conservation?

Response

The Planning Proposal incorrectly referred to retaining vegetation along the northern boundary and the planning proposal has been updated accordingly. The vegetation within the area of the communal pathway and zone of influence of the sewer line would be retained as a result of the planning proposal.

Other Issues

- In the Practice Note PN 16-001 checklist response, it is stated that the sale of land will be undertaken as soon as practicable. However, the objectives of the planning proposal refers to sale to adjoining landowners, if requested in the future.

Response

The term “as soon as practicable”, in this instance, relates to the timing of requests from adjoining landowners to purchase.

Other Issues

- A further objective refers to the sale of the land to adjoining landholders for private open space. Can this be clarified?

Response

Adjoining landowners may wish to purchase the land for additional private open space. This means the land may be used as garden or lawn area, or for a pool or some other private recreation purpose, in association with the existing dwellings on the lots.

Other Issues

- I note the area of the subject land is 659sqm. Do you have specifics of the proposed sqm split of the Lot for the adjoining properties?

Response

The area of the land to be reclassified are estimated as follows:

- A southern parcel of about 140 m2 to be converted to operational land.
- A central parcel of about 160 m2 to be retained as community land.
- A northern parcel of about 350 m2 to be converted to operational land.

Other Issues

- The Second Schedule of the Title Search for Lot 74 PD 776541 indicates DP739830 has restrictions on the use of the land. Can you confirm what these restrictions relate to?

Response

The restriction on title relates to consent for fencing from the owner of the land when it was subdivided. The restriction applies to the original owner of the property prior to subdivision and as such is now void.

Other Issues

- What would be the arrangements to remove any vegetation if the land is sold.

Response

The arrangements to remove vegetation, if proposed, would depend on the purpose for removing the vegetation. For example, if vegetation removal was proposed as part of a future development application, an assessment of the impact of such removal would need to accompany the development application and be considered in the assessment of the application.

Other Issues

- Have the current adjoining landholders been offered the land and if so what was the outcome.

Response

The land is currently classified as community land and cannot be offered for sale.

Other Issues

- This lot should not be rezoned for the purpose of adjoining landholders to purchase. It is not appropriate that the landholders should feel bullied or forced into buying public land? Though, should the proposal proceed, then it is only right that the neighbouring ratepayers would be given first option to buy, at a reasonable price.

Response

Should the adjoining landowners not wish to purchase the land, the land will remain in Council ownership. Council has no intention of seeking to sell the land as individual lots for residential development.

Other Issues

- Council don't even maintain this lot. The nearby residents, rate payers (the public) manage the green-scape and pathway. It costs council nothing for this donated public reserve.

Response

Noted.

Other Issues

- There are sewer pipes that run through that access. Why would a neighbouring rate payer want to purchase land that consists of sewer pipes leaving them with such-restrictive land?

Response

Adjoining landowners may wish to purchase the land for additional private open space. The easement over the sewer pipe would remain community land.

Other Issues

- Moir Place is a cul-de-sac and already filled with cars due to the surrounding units and nature of existing housing density. Another dwelling would further stress the street parking situation.

Response

The reclassification and sale of part of the subject land does not necessarily result in additional housing development. While it is possible, it would only be through a future redevelopment of the adjoining lots (if the owners of those lots choose to purchase the additional land). Council has no intention of seeking to sell the land as individual lots for residential development. An assessment of traffic and parking impacts would be undertaken as part of any future development application.

Other Issues

- This is already an open space and we enjoy our bush view which is one of the reasons we brought in Moir Place.

Response

The proposed reclassification for sale of part of the land is consistent with the recommendations of Council's Recreation and Open Space Strategy. Part of the land would be retained as community land as a pathway and vegetation in this area will be retained.

Part C: Agency Submissions

NSW Rural Fire Service

Area 1 – Illabunda Drive, Malua Bay

Agency Comment – No comment.

Area 2 – Village Road, South Durras

Agency Comment – In order to demonstrate that future development of the land has the capacity to comply with the acceptable solutions of Planning for Bush Fire Protection 2019 (PBP19) Council should undertake or commission a bush fire assessment of the site. The bush fire assessment should be completed prior to the finalisation of the Planning Proposal and where Council is subsequently satisfied future development of the land can comply with PBP19 the NSW Rural Fire Service raises no objection to the LEP amendment to reclassify to Operational, and minimum lot size and height of building amendment.

Response – A Bushfire Protection Assessment of the land was provided to Council on 28 August 2023. The report concluded that development of the land can comply with Planning for Bushfire Protection 2019 with a BAL rating of 12.5.

Area 3 – Bimbular Road, Dalmeny

Agency Comment – No objection is raised to the rezoning, reclassification, minimum lot size and height of building amended for Part Lot 32 in DP 618340 Dalmeny subject to a requirement that future residential development of the land complies with the acceptable solutions of PBP19.

Response – Noted.

Area 4 – Beach Road, Batehaven

Agency Comment – No comment.

Area 5 – George Bass Drive, Batehaven

Agency Comment – It appears no part of the lot will contain an area capable of complying with the acceptable solutions of PBP19, therefore, subject to the land being consolidated with adjoining land and used for private open space/access only the NSW Rural Fire Service raise no objection to rezoning, reclassifying, amending minimum lot size and height of buildings of Part Lot 2 DP 1014254 Batehaven.

Response – Noted.

Area 6 – Fauna Avenue, Long Beach

Agency Comment – It appears no part of the lot will contain an area capable of complying with the acceptable solutions of PBP19, therefore, subject to the land being consolidated with adjoining land and used for private open space only the NSW Rural Fire Service raise no objection to reclassification, rezoning, minimum lot size and height of buildings amendment of Lot 170 DP 569136 Long Beach.

Response – Noted.

Area 7 – Catalina Drive, Catalina

Agency Comment – It appears no part of the lot will contain an area capable of complying with the acceptable solutions of PBP19, therefore, subject to the land being consolidated with adjoining land and used for access only the NSW Rural Fire Service raise no objection to reclassification, rezoning, minimum lot size and height of buildings amendment of Part Lot 109 DP 244150 Long Beach.

Response – Noted.

Area 8 – Ridge Street, Catalina

Agency Comment – No comment.

Area 9 – Beach Road, Batehaven

Agency Comment – No comment.

Area 10 – Blairs Road, Long Beach

Agency Comment – No comment.

Area 11 – Moir Place, Broulee

Agency Comment – No comment.

Area 1 – Illabunda Drive, Malua Bay

Agency Comment - While the vegetation at the back of the subject land appears on Council's biodiversity layer, the area to be reclassified does not. Biodiversity values have been given sufficient consideration in the report.

Response – Noted.

Area 2 – Village Road, South Durras

Agency Comment – A flora and fauna assessment should be completed on this site to check for presence of threatened species, and habitat features such as hollow trees. As the change in zoning is likely to result in development on the site and vegetation removal, evidence needs to be provided that the impact on biodiversity has been assessed. "Retained where possible" is not a firm commitment to protect this vegetation, which will be at risk if the zoning is changed to make the lot developable land.

Response – An environmental assessment report was provided to Council in August 2023. The assessment found that:

- The vegetation on the land consisted of PCT 3271- Shoalhaven Spotted Gum-Blackbutt Moist Forest. This vegetation type is not listed as a Threatened Ecological Community.
- The vegetation is in a somewhat disturbed state as the site is modified for Asset Protect Zone bushfire compliance which removes leaf litter and structural elements as well as floristics in patches across the lot. A walking track also occurs through the land though it is not substantial. The lot has some weed burden but it is not considered high.
- No significant impact would occur to any entity listed under the NSW Biodiversity Conservation Act 2016 or the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.
- Within the South Durras village, canopy connectivity is more scattered than in surrounding forested areas. Distances between patches of trees within the village were measured from aerial photos in regards to gliding distances for Greater and Yellow-bellied Gliders and none were considered unachievable for either species, most gaps being under 50m.

Area 3 – Bimbular Road, Dalmeny

Agency Comment – No comments

Area 4 – Beach Road, Batehaven

Agency Comment – Although this is currently zoned C2 and is adjacent to a reserve, it appears unlikely that there are any biodiversity values present that may be affected by the change in zoning.

Response – Noted.

Area 5 – George Bass Drive, Batehaven

Agency Comment – As this is currently zoned C2 and is part of a reserve, there are likely to be biodiversity values present. However the position and shape of the proposed boundary change means the risk of harm is low.

Response – Noted.

Area 6 – Fauna Avenue, Long Beach

Agency Comment – Although this is currently zoned C2 and is part of a reserve, there appears to be minimal native vegetation present. The risk of reducing biodiversity values of the site is low.

Response – Noted.

Area 7 – Catalina Drive, Catalina

Agency Comment – As this is currently zoned C2 and is part of a reserve, there are likely to be biodiversity values present. However as the track already exists, and there are to be no further works beyond fencing, the change in zoning is unlikely to lead to further disturbance and possible clearing of native vegetation.

Response – Noted.

Area 8 – Ridge Street, Catalina

Agency Comment – Although this is currently zoned C2 and is part of a reserve, there are minimal biodiversity values present, as the site is being managed as a garden. No native vegetation removal is proposed.

Response – Noted.

Area 9 – Beach Road, Batehaven

Agency Comment – Although this is currently zoned C2 and is part of a reserve, there are likely to be minimal biodiversity values present. There is no native vegetation present on the site.

Response – Noted.

Area 10 – Blairs Road, Long Beach

Agency Comment – As the site is almost completely present on the Biodiversity Values Map, biodiversity values are definitely present. However, the zoning is not proposed to change, so there is minimal risk of impacts on existing biodiversity as a result of the planning proposal.

Response – Noted.

Area 11 – Moir Place, Broulee

Agency Comment – There appears to be native vegetation present on the site. While the lot identified does not appear on the BV map, it is surrounded by areas that do, indicating that the area has some biodiversity value. A flora and fauna assessment should be completed on this site to check for presence of threatened species, and habitat features such as hollow trees. As the change in zoning is likely to result in development on the site and vegetation removal, evidence needs to be provided that the impact on biodiversity has been considered.

Response – An environmental assessment report was provided to Council in August 2023. The assessment found that:

- The vegetation on the land consists of PCT 3638 - South Coast Sands Bangalay Forest, which is listed as a Threatened Ecological Community- Bangalay Sand Forest of the Sydney Basin and the South East Corner Bioregion.

- The vegetation is in a highly modified state with a high weed burden, minor walking tracks, cleared areas and encumbered with a infrastructure sewer pipe constraint. The vegetation is considered to no longer meet benchmarks of the EEC in canopy, mid or ground strata species diversity, in structural diversity nor many of the benchmarks for cover. The Lot is within a highly urban area, with limited connectivity to stronger patches of the EEC known in the locality and considered to be highly susceptible to edge effects due to the small area.
- No significant impact would occur to any entity listed under the NSW Biodiversity Conservation Act 2016 or the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.
- No threatened entity would be significantly impacted by the potential future clearing of the land.
- The vegetation within the area of the communal pathway and zone of influence of the sewer line would be retained as a result of the planning proposal. Any other vegetation proposed to be removed in the future as part of a development application would need to be assessed at that time.