

# AMENDED REPORT



**Item No:** 4.4  
**Title:** Response to Notice of Motion - Reclassification  
**Department:** Governance

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9 December 2019 Ordinary Council Meeting

Trim Reference: F2019/00041-003 - D13733303  
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## Report Purpose

To provide a progress report and recommendations in relation to the proposal to reclassify 32 properties from operational to community land in resolution 874/18 dated 27 August 2018.

## Summary

This report recommends that:

- 18 properties be reclassified from operational to community land and that public notification of the proposed resolution under section 34 *Local Government Act 1993* is commenced as soon as practicable
- 11 properties be reclassified from operational to community land and that public notification of the proposed resolution is commenced after a Plan of Management is adopted for those properties; and
- 3 properties remain classified as operational land.

## Recommendation

**1 That Council propose to reclassify the following land from operational to community land ('Proposed Community Land):**

- **2-18 Newbridge Road, Berkeley Vale**
- **38W Wombat Street and 19W Marlborough Place, Berkeley Vale**
- **151W – 153W Wyong Road, Berkeley Vale**
- **75 Panorama Avenue, Charmhaven**
- **2W Bundeena Road, Glenning Valley**
- **13W Palm Springs Avenue, Glenning Valley**
- **30W and 32 Sandra Street, Jiliby**
- **231 Hue Hue Road, Jiliby**
- **1W Merro Close, Lake Haven**
- **105W Woodbury Park Drive, Mardi**

- **50 Wilfred Barrett Drive, Norah Head**
  - **60W Burns Road, Ourimbah**
  - **40W Coachwood Drive, Ourimbah**
  - **1 Teralba Street and 1W Pacific Highway, Ourimbah**
  - **102W Yermaba Road, Summerland Point**
  - **7 Wyong Road, Tuggerah**
  - **11W Molsten Avenue, Tumbi Umbi**
  - **1W Britannia Drive Watanobbi**
- 2 That Council give public notice of the proposed resolution to reclassify the Proposed Community Land from operational to community land in accordance with s.34 Local Government Act.**
- 3 That on completion of the public notification process, Council approval is sought to reclassify the Proposed Community Land from operational to community land and, if necessary, to prepare a planning proposal to remove the Proposed Community Land from Schedule 4 of Wyong Local Environmental Plan.**
- 4 That Council propose to reclassify the following properties from operational to community land but that public notice of the proposed resolution is not given until after a Plan of Management has been adopted by Council in relation to those properties:**
- **Chittaway Point Hall, 72-76 Geoffrey Rd, Chittaway Point**
  - **Chittaway Bay Hall and oval 91 Chittaway Rd, Chittaway Bay**
  - **1-3 Berkeley Road, Berkeley Vale**
  - **36-38 Kitchener Road, Long Jetty**
  - **1W Wolseley Avenue, Tacoma**
  - **7W Sir Joseph Banks Drive, Bateau Bay**
  - **19-21 and 29 Keren Avenue, Berkeley Vale**
  - **15W Footts Road, Ourimbah**
  - **8 Titania Avenue, Tuggerah**
  - **375 Pacific Highway Wyong**
  - **40-50 Pollock Avenue Wyong**
- 5 That the following properties remain classified as operational land:**
- **23 Shirley Street, Ourimbah**
  - **309 Old Maitland Road, Mardi**
  - **10 Summerland Road, Summerland Point**

#### **Context**

Council at its meeting held on 27 August 2018 resolved as follows:

874/18 *That Council request the Chief executive Officer give public notice in compliance with Section 34 of the Local Government Act of the proposal to reclassify the following properties from operational to community:*

- *Chittaway Point Hall, 72-76 Geoffrey Rd, Chittaway Point*
- *Chittaway Bay Hall and oval 91 Chittaway Rd, Chittaway Bay*
- *1-3 Berkeley Road, Berkeley Vale*
- *36-38 Kitchener Road, Long Jetty*
- *1W Wolseley Avenue, Tacoma*
- *7W Sir Joseph Banks Drive, Bateau Bay*
- *19-21 and 29 Keren Avenue, Berkeley Vale*
- *2-18 Newbridge Road, Berkeley Vale*
- *38W Wombat Street and 19W Marlborough Place, Berkeley Vale*
- *151W – 153W Wyong Road, Berkeley Vale*
- *75 Panorama Avenue, Charmhaven*
- *2W Bundeena Road, Glenning Valley*
- *13W Palm Springs Avenue, Glenning Valley*
- *30W and 32 Sandra Street, Jilliby*
- *231 Hue Hue Road, Jilliby*
- *1W Merro Close, Lake Haven*
- *105W Woodbury Park Drive and 309 Old Maitland Road, Mardi*
- *60W Burns Road, Ourimbah*
- *40W Coachwood Drive, Ourimbah*
- *15W Footts Road, Ourimbah*
- *23 Shirley Street, Ourimbah*
- *1 Teralba Street and 1W Pacific Highway, Ourimbah*
- *50 Wilfred Barrett Drive, Norah Head*
- *10 Summerland Road, Summerland Point*
- *102W Yermaba Road, Summerland Point*
- *1W Wolseley Drive, Tacoma*
- *8 Titania Avenue, Tuggerah*
- *7 Wyong Road, Tuggerah*
- *11W Molsten Avenue, Tumbi Umbi*
- *1W Brittania Drive, Watanobbi*
- *375 Pacific Highway, Wyong*
- *40 – 50 Pollock Avenue, Wyong*

Council at its meeting held on 12 November 2019 resolved as follows:

1114/19 *That Council request staff to provide a progress report and recommendations for the 9 December Ordinary Council meeting, in relation to resolution 874/18 relating to a proposal to reclassify the properties listed in that resolution from operational to community land.*

### **Current Status**

Council staff have completed their due diligence into each of the 33 properties affected by the reclassification proposal, to determine whether it is appropriate for the properties to be reclassified from operational to community land and to ensure there are no unintended consequences from a legal and property management perspective.

There are 2 key issues to be considered:

**1 Whether the land should be reclassified as community land, from a legal and land use perspective.**

Staff have reviewed the current land use and considered the most appropriate land classification, having regard to the relevant categories for community land in the *Local Government Act 1993 (LG Act)* and the core objectives for each category. It is considered that it is appropriate to reclassify 30 of the 33 properties from operational to community land. These properties are used for community purposes or are natural areas.

It is considered that the following 3 properties should remain classified as operational land, for the following reasons:

Property Address	Reason for retaining as operational land
<b>23 Shirley Street, Ourimbah</b>	This land appears to be affected by private encroachments which need to be resolved before the land can be reclassified as community land.
<b>309 Old Maitland Road, Mardi</b>	This land forms part of the Mardi Water Treatment Plan and public access is restricted. It is not appropriate to classify as community land from a legal perspective as there is no relevant community land category in the <i>Local Government Act</i> .
<b>10 Summerland Road, Summerland Point</b>	This land was resumed for the purpose of the Wyong Shire Sewerage Scheme in 1998. The land forms part of the Gwandalan Sewer Treatment Plant and public access is restricted. It is not appropriate to classify as community land from a legal perspective as there is no relevant community land category in the <i>Local Government Act</i> .

**2 Whether a Plan of Management needs to be in place before the land is reclassified.**

Leases and licences (including short term casual licences and licences for bush care groups) cannot be granted over community land unless expressly authorised in a Plan of Management (**POM**) that has been adopted for the land (s45 and s46 LG Act). Plans of Management ceased to apply to the properties when they were reclassified from community to operational land (s42(2)(a) LG Act). Staff have reviewed current and future use and tenure arrangements for the properties and are of the view that 12 of the properties require a POM to be adopted before they are reclassified, otherwise the reclassification will have the unintended consequence of preventing these properties from being used as they are currently, for community purposes.

Council is preparing new POMS for both Crown land that it manages (in accordance with the new statutory requirements under the *Crown Land Management Act 2016*) and Council owned community land. The 12 properties that require a POM to be adopted

#### **4.4 Response to Notice of Motion - Reclassification (contd)**

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before they are reclassified as community land will be included in the new POMS, which are expected to be completed in 2021.

#### **Recommendations**

It is appropriate for the following **18** properties to be reclassified from operational to community land as soon as practicable:

- *2-18 Newbridge Road, Berkeley Vale*
- *38W Wombat Street and 19W Marlborough Place, Berkeley Vale*
- *151W – 153W Wyong Road, Berkeley Vale*
- *75 Panorama Avenue, Charmhaven*
- *2W Bundeena Road, Glenning Valley*
- *13W Palm Springs Avenue, Glenning Valley*
- *30W and 32 Sandra Street, Jilliby*
- *231 Hue Hue Road, Jilliby*
- *1W Merro Close, Lake Haven*
- *105W Woodbury Park Drive, Mardi*
- *60W Burns Road, Ourimbah*
- *40W Coachwood Drive, Ourimbah*
- *1 Teralba Street and 1W Pacific Highway, Ourimbah*
- *50 Wilfred Barrett Drive, Norah Head*
- *102W Yermaba Road, Summerland Point*
- *7 Wyong Road, Tuggerah*
- *11W Molsten Avenue, Tumbi Umbi*
- *1W Britannia Drive Watanobbi*

It is appropriate to reclassify the following **11** properties from operational to community land after a Plan of Management has been adopted for those properties:

- *Chittaway Point Hall, 72-76 Geoffrey Rd, Chittaway Point*
- *Chittaway Bay Hall and oval 91 Chittaway Rd, Chittaway Bay*
- *1-3 Berkeley Road, Berkeley Vale*
- *36-38 Kitchener Road, Long Jetty*
- *1W Wolseley Avenue, Tacoma*
- *7W Sir Joseph Banks Drive, Bateau Bay*
- *19-21 and 29 Keren Avenue, Berkeley Vale*
- *15W Footts Road, Ourimbah*
- *8 Titania Avenue, Tuggerah*
- *375 Pacific Highway Wyong*
- *40-50 Pollock Avenue Wyong*

The following **3** properties should remain classified as operational land:

- *23 Shirley Street, Ourimbah*
- *309 Old Maitland Road, Mardi*
- *10 Summerland Road, Summerland Point.*

### **Statutory mechanism for reclassifying the land**

Under the LG Act, land can be reclassified from operational to community land either by local environmental plan (LEP) or by Council resolution. LEP Practice Note PN 16-001 dated 5 October 2016 states that Councils are encouraged to classify or reclassify land by council resolution where suitable.

The properties may be reclassified by resolution under section 33 of the LG Act, however as noted in LEP Practice Note PN 16-001 Wyong Local Environmental Plan 2013 will need to be amended by a planning proposal to remove the reclassified properties from Schedule 4.

Under section 34 of the LG Act, 28 days' public notice must be given of the proposed resolution to reclassify the land, during which submissions may be made to Council. On completion of the public notification period, a further resolution will be required to reclassify the land after submissions have been considered by Council.

### **Consultation**

Staff have consulted with relevant internal stakeholders in relation to each of the properties affected by the reclassification proposal.

### **Options**

If the properties are not reclassified, they will remain classified as operational land. Operational land is not subject to the same statutory restraints on sale, leasing and licensing as community land and is not required to be managed in accordance with a POM.

### **Financial Impact**

There are no significant financial impacts arising from the recommendations above, other than staff time required to implement the recommendations and public notification costs.

### **Link to Community Strategic Plan**

Theme 4: Responsible

### **Goal G: Good governance and great partnerships**

R-G4: Serve the community by providing great customer experience, value for money and quality services.

### **Attachments**

*Nil.*