

ITEM 07.22.279 PREPARATION OF A PLANNING PROPOSAL TO RECLASSIFY LAND CONSISTING LOT 1 & 2 DP1270948 TO 'OPERATIONAL' LAND

Meeting	Council	13 December 2022
Directorate	Environment & Planning	
Prepared by	Strategic Planner, Jasmine Oakes	
Reviewed by	Director Environment & Planning, Adam Cameron	
Attachments	A. Confidential - Contract of Sale (Separate Cover) (Confidential)	

SUMMARY

This report seeks Council endorsement for the preparation of a planning proposal to reclassify Lot 1 and 2 DP1270948 from 'community' to 'operational' land at the Police Citizens Youth Club (PCYC) in Grafton. This is to complete a boundary adjustment and consolidation with Lot 21 DP712604 to enable the transfer of ownership of the land from Council to the PCYC commenced in 2019. PCYC manages the sporting complex on the lot.

OFFICER RECOMMENDATION

That Council:

1. Authorise and allocate funds for the preparation of a planning proposal under section 3.33 of the *Environmental Planning and Assessment Act 1979* to amend Schedule 4 of the *Clarence Valley Local Environmental Plan 2011* (CVLEP) to reclassify Lot 1 and 2 DP1270948 from 'community' to 'operational' land and to secure an independent consultant to undertake a public hearing into the reclassification;
2. Delegate authority to the General Manager to:
 - (a) Execute all documentation associated with the local plan making functions;
 - (b) Submit the planning proposal to the Department of Planning and Environment seeking a Gateway determination;
 - (c) Seek to be the local plan-making authority;
3. In the event a Gateway determination is issued, publicly exhibit the planning proposal and engage an independent consultant to undertake a public hearing in accordance with legislative requirements, notifying Council intention to reclassify the land;
4. Subject to no submissions or objections being received requiring further consideration by Council:
 - (a) Finalise the CVLEP to reclassify the land as 'operational' land;
 - (b) Finalise consolidation of the lots with Lot 21 DP712604; and
 - (c) Transfer ownership of the resultant new land parcel to the Police Citizens Youth Club (PCYC) Grafton
5. Note that in the event submissions or objections regarding the reclassification are received during the hearing and exhibition process, a report will be brought back to Council for further consideration.
6. Note that the contract for sale includes a clause to ensure that if PCYC Grafton opt to dissolve ownership of the facility it will return to Council ownership.

COUNCIL RESOLUTION - 07.22.279

Novak/Whaites

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- 7.

Voting recorded as follows

For: Clancy, Day, Johnstone, Novak, Pickering, Smith, Tiley, Toms, Whaites

Against: Nil

CARRIED

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6. Note that the contract for sale includes a clause to ensure that if PCYC Grafton opt to dissolve ownership of the facility it will return to Council ownership.

LINKAGE TO OUR COMMUNITY PLAN

Theme Infrastructure

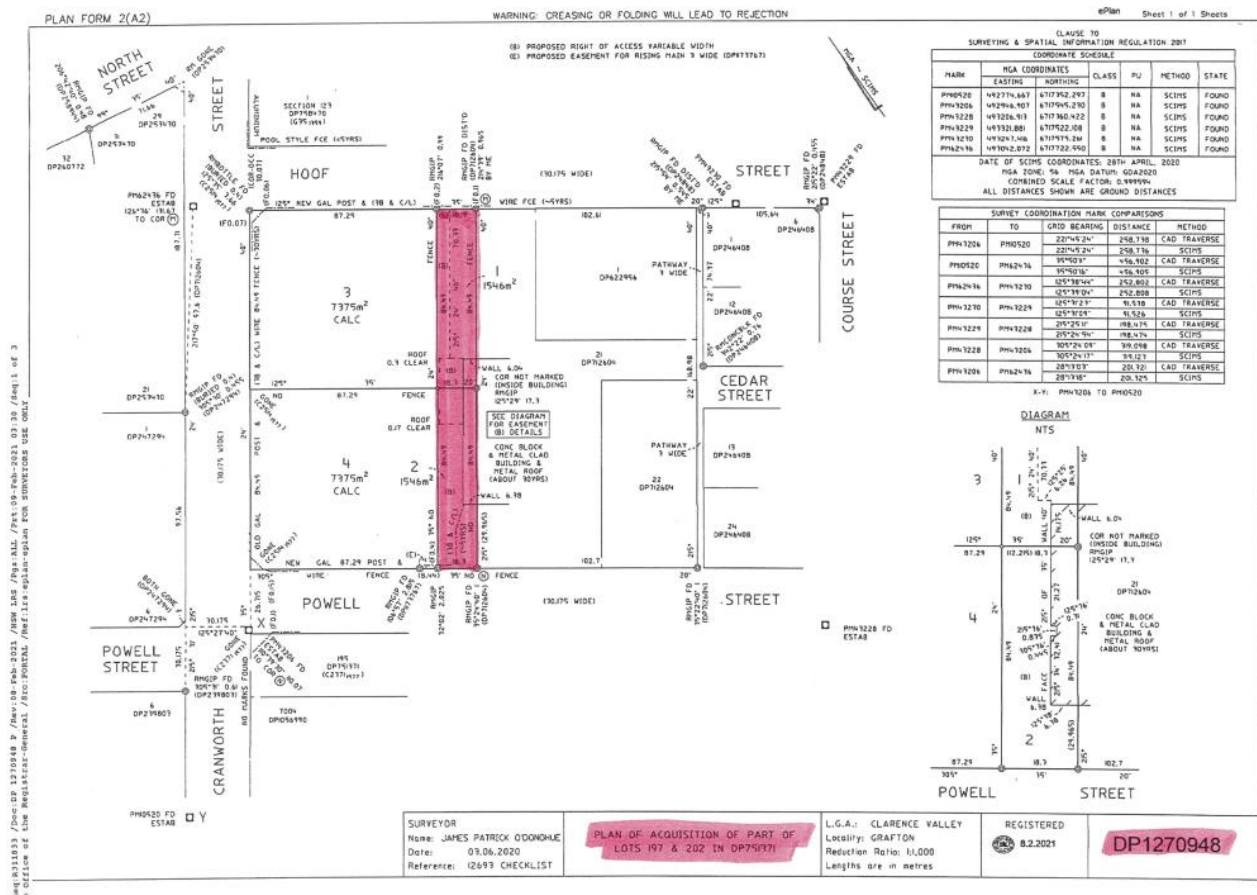
Objective We will have communities that are well serviced with appropriate infrastructure

KEY ISSUES

Council has been negotiating the acquisition of part of Lots 197 and 202 DP 751371 (being Crown Reserve 95853 known as Frank McGuren Park) with the NSW Department of Planning and Environment - Crown Lands Division (Crown Lands) for numerous years to rectify the encroachment of the sports complex building from Lot 21 DP712604 currently being occupied as the Police Citizens Youth Clubs NSW (PCYC) to facilitate the transfer of the property to their ownership.

Acquisition commenced in 2021 with a Plan of Acquisition of part of Lots 197 and 202 DP 751371, which created Lot 1 and 2 DP1270948, surveyed and registered on 8 February 2021. Crown Lands consented the

acquisition by agreement in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* in April 2021. The registered survey plan of acquisition plan has been included for reference below.

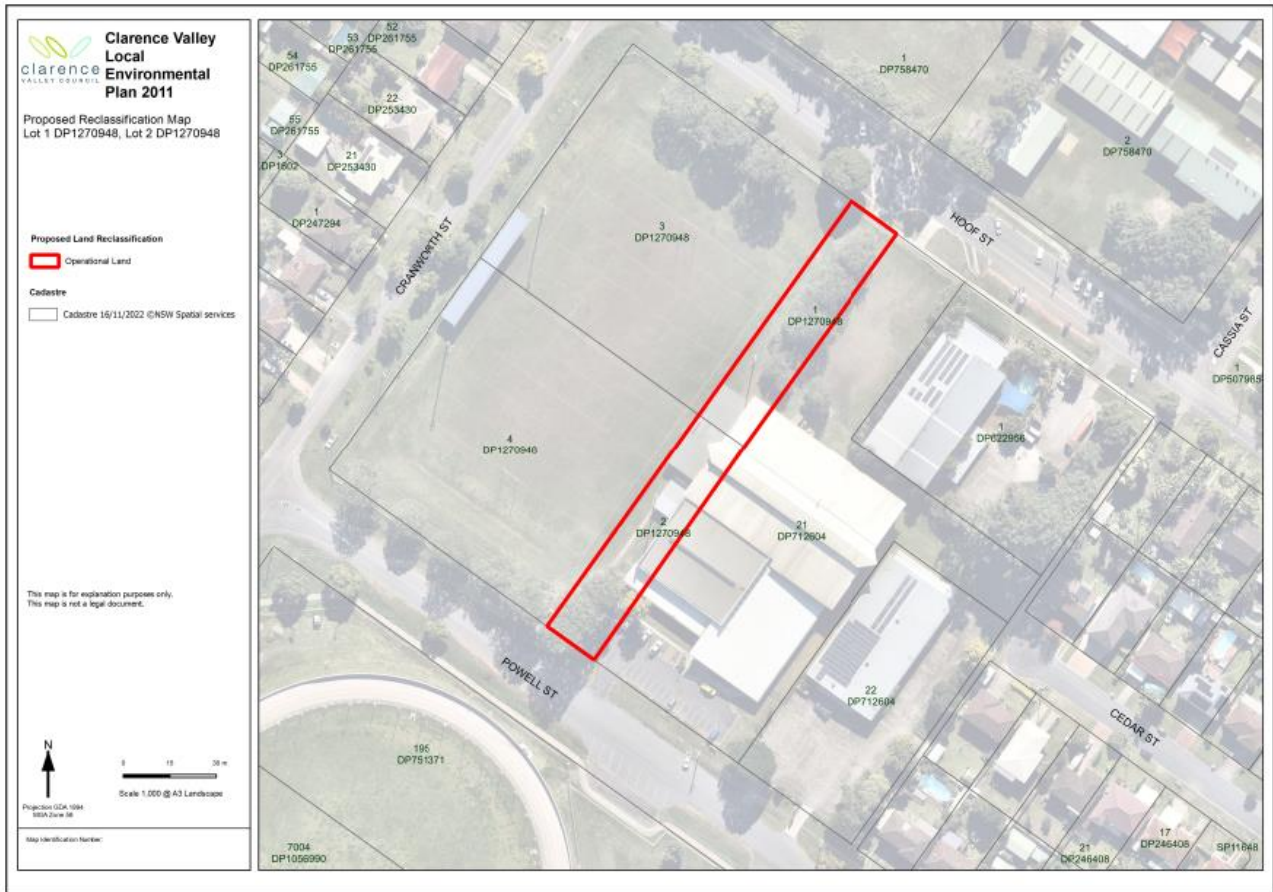


Council acquired Lots 1 and 2 DP1270948 via an agreed compulsory acquisition process from Crown Lands on 30 March 2022 with notification given on the NSW Government Gazette on 8 April 2022.

Prior to the finalisation of the property purchase, Council resolved 'that the land is to be classified as operational land' on 28 July 2020 (item 6a.20.025) and 'Classify the land as operational land' on 30 March 2021 (item 6a.21.014), however there is no evidence that Council publicly exhibited its intention to classify the land as 'operational' prior to its meeting held on 30 March 2021 in accordance with the provisions of the *Local Government Act 1993* (the Act). As a consequence, the land by default is classified as 'community' land (s.31[2A] of the Act).

Council is now required to reclassify Lots 1 and 2 DP1270948 via a planning proposal prepared under the provisions of section 55(a)-(e) of the *Environmental Planning and Assessment Act 1979* from 'community' to 'operational' land by amending Schedule 4 of the *Clarence Valley Local Environmental Plan 2011* (CVLEP).

The site plan below shows the property boundaries of Lot 1 and 2 DP 1270948 to be reclassified to 'operational' land. (Note: Lot 21 DP712604, land occupied by the PCYC, was previously classified as 'operational' by the former Grafton City Council on the 28 June 1996 [GG, Issue No.77, p3542]).



BACKGROUND

The *Local Government Act 1993* (the Act) requires that all public land owned and / or managed by Council must be classified as either ‘community’ or ‘operational’ land under Sections 25 and 26 of the Act.

The process to be followed by councils in classifying and reclassifying public land is detailed at Division 1, Part 2, Chapter 6 of the Act.

Generally speaking, ‘community’ land is to be managed by Council for the benefit of the community, consistent with a number of community land categories. The use of community land is to be directed by a plan of management. Importantly, ‘community’ land cannot be sold or leased for a period greater than 21 years (without Ministerial consent).

‘Operational’ land is more akin to normal land ownership, where land can be sold, leased or used by Council like a private landowner. Under s.45 of the Act a council has no power to sell, exchange or otherwise dispose of community land.

Under the Act, the classification of land can occur before a council acquires the land, or within 3 months after it is acquired (s.31[2]). The process to classify land also requires a council to give public notice of a proposed resolution to classify or reclassify public land and allow a period of not less than 28 days during which submissions may be made to the council on the proposed resolution to classify (or reclassify) the land (s.34).

Councils must classify their land within 3 months otherwise the land by default is classified as ‘community’ (s.31[2A]).

When Council intends to reclassify ‘community’ land as ‘operational’ land, they must also arrange a public hearing in respect of any proposal to reclassify land (s.29).

Council resolution 6a.20.025 – 28 July 2020

That Council:

1. Proceed with the compulsory acquisition of the land described as proposed Lot 1 being part of Lots 197 & 202 DP 751371 for the purpose of resolving the existing encroachment of a Council owned building on

Crown Land in accordance with the requirements of the Land Acquisition (Just Terms Compensation) Act 1991.

2. *Apply to the State of NSW to complete the acquisition by agreement under Section 29 and 30 of the Land Acquisition (Just Terms Compensation) Act 1991 for an agreed value no more than that identified in the confidential Valuation report attached.*
3. *Council make an application to the Minister and the Governor for approval to acquire proposed Lot 1 being part of Lots 197 & 202 DP 751371 by compulsory process under section 186(1) of the Local Government Act 1993.*
4. *That the land is to be classified as operational land.*

Council resolution 6a.21.014 – 30 March 2021

That Council:

1. *Proceed with the compulsory acquisition of the land described as Lots 1 and 2 DP 1270948 being part lots 197 and 202 DP 751371 for the purpose of resolving the existing encroachment of a Council owned building on Crown land in accordance with the requirements of the Land Acquisition (Just Terms Compensation) Act 1991.*
2. *Agree to the acquisition by agreement in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 for an agreed value of \$78, 300.00 (including GST)*
3. *Make an application to the Minister and the Governor for approval to acquire Lots 1 and 2 DP 1270948 being part of lots 197 and 202 DP 751371 by compulsory process under section 186(1) of the Local Government Act 1993*
4. *Classify the land as operational land.*

COUNCIL IMPLICATIONS

Budget/Financial

The Council report from 30 March 2021 detailed the acquisition of the property to be costed to FP 995005 – Property Managed from RA10520 Strategic Building Reserve.

Council will engage an independent consultant to undertake a public hearing into the land reclassification (and report back to Council in the event submissions and / or objections are received regarding the reclassification) which will be costed to the aforementioned Strategic Building Reserve.

The preparation of the planning proposal and the processing and finalisation of the CVLEP be undertaken within the existing Strategic Planning operational budget.

Public exhibition of the planning proposal and associated documentation will be coordinated through Council's 'On Exhibition' webpage and 'Noticeboard' platforms and will not incur additional budgetary considerations.

Asset Management

Council currently leases the former Grafton Sports Centre (Lot 21 DP712604) to the PCYC while the matter of the acquisition of Lot 1 and 2 DP1270948, and now the reclassification of this land, is resolved. The PCYC is fully responsible for the maintenance and upkeep of the asset.

The reclassification of the property (Lot 1 and 2 DP1270948) to 'operational' land will enable the property to be consolidated with the adjoining Lot 21 DP712604 (which was classified as 'operational' by the former Grafton City Council on the 28 June 1996 [GG, Issue No.77, p3542]) to facilitate the transfer of the sporting complex asset to PCYC ownership.

In the event that PCYC Grafton opt to dissolve ownership of the facility it will return to Council ownership.

Policy and Regulation

Local Government Act 1993

Land Acquisition (Just Terms Compensation) Act 1991

Environmental Planning and Assessment Act 1979

Clarence Valley Local Environmental Plan 2011

Consultation

The planning proposal will be submitted to the Department of Planning and Environment requesting a Gateway determination. The Gateway, if issued will detail the public authorities that need to be consulted and public exhibition requirements.

If the Gateway is silent on these matters, Council will publicly exhibit the planning proposal and associated documentation on Council's 'On Exhibition' webpage and 'Noticeboard' for a minimum of 28 days in accordance with section 34 of the *Local Government Act 1993* (the Act) and Schedule 1 of the EP&A Act.

A public hearing into the reclassification will be undertaken by an independent consultant in accordance with Section 29 of the Act. In the event that submissions are received, or concerns / objections are raised during the hearing and exhibition period a report will be brought back to Council.

Council's Strategic Planning officers have consulted Council's property officers about the land reclassification process and legal requirements prior to finalising the transfer of property ownership to PCYC.

Legal and Risk Management

Council has entered into a contract of sale with PCYC Grafton for the transfer of ownership of the property, however this cannot be executed until the reclassification of Lot 1 and 2 DP1270948 as 'operational' land is finalised.

All public reserve status and interests of Lot 1 and 2 DP1270948 were discharged during the agreed compulsory acquisition process from NSW Crown Lands to Council.

Climate Change

N/A