

15.8. RECLASSIFICATION OF COUNCIL CONSERVATION RESERVES TO COMMUNITY LAND UNDER THE LOCAL GOVERNMENT ACT

REPORT INFORMATION

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Date of Meeting	23 August 2023
Authorising Director	Paul De Szell - Director Liveable Communities

SUMMARY OF REPORT

This report seeks Council's consideration of the reclassification of three natural reserve areas from "operational" to "community" land under the Local Government Act. The reserve areas are currently owned and managed by Council for environmental conservation purposes.

RECOMMENDATION

That:

1. Council inform the community of its intention to reclassify the land identified in Attachment 1 from "operational land" to "community land" under section 33 of the Local Government Act 1993.
2. In accordance with section 34 of the Local Government Act 1993 Council gives public notice for a period of 28 days of the proposal to reclassify the land.
3. A further report be brought back to Council following the public notification period.

FINANCIAL / RESOURCE IMPLICATIONS

Nil.

LEGAL IMPLICATIONS

The relevant sections of the Local Government Act 1993 (LG Act) are reproduced below:

"33 Reclassification of operational land as community land

(1) A council may resolve that public land classified as operational land is to be reclassified as community land.

(2) (Repealed)

34 Public notice to be given of classification or reclassification by council resolution

(1) A council must give public notice of a proposed resolution to classify or reclassify public land.

(2) The public notice must include the terms of the proposed resolution and a description of the public land concerned.

(3) The public notice must specify a period of not less than 28 days during which submissions may be made to the council.

(4) (Repealed)"

RISK IMPLICATIONS

Nil.

BACKGROUND

All public land must be classified by Council as either “community” or “operational” land under the Local Government Act (LG Act). The main effect of classification is to restrict the alienation and use of the land.

Operational land has no special restrictions other than those that may apply to any piece of land. Community land is different. Classification as community land reflects the importance of the land to the community because of its use or special features. Generally, it is land intended for public access and use, or where other restrictions applying to the land create some obligation to maintain public access. This gives rise to the restrictions in the Act, intended to preserve the qualities of the land. Accordingly, Community land:

- cannot be sold;
- cannot be leased, licenced or any other estate granted over the land for more than 21 years;
- must have a plan of management prepared for it.

Under section 33 of the LG Act Council can reclassify land from operational to community by resolution. However, prior to doing this Council must give at least 28 days public notice of the proposed reclassification to allow for public submissions.

DISCUSSION

Council currently manages a number of parcels of land for conservation purposes that are classified as “operational” land under the LG Act. This is in direct conflict with the management intent of the land and Council’s commitment to protect the ecological values of these areas in perpetuity for the benefit of the community.

The Cattai Wetland and Smiths Lake Reserves were established using public funds for stormwater management, ecological restoration and conservation purposes. Substantial external environmental restoration funds have allowed the Cattai Wetland and Big Swamp restoration project to be made possible including land purchase. As a result, it is now appropriate and commensurate with the intent of the sites to reclassify the following reserves as “Community Land” under the LG Act.

Lot 1, DP 1029928 - Tulloch Road, Tuncurry

Lot 1 DP 1029928 has an area of 38.5 hectares and was transferred to the ownership of the then Great Lakes Council as part of an offset for the development of land on Tulloch Road. Council subsequently divided off the land constituting the Tuncurry Racecourse and transferred ownership of that land to Racing NSW.

Lot 1 is completely naturally vegetated, with a range of swamp forest and wet forest types. The land contains threatened ecological communities and the known habitat of threatened species, such as the squirrel glider. Almost one half of the land is mapped as Coastal Wetland under the Resilience and Hazards State Environmental Planning Policy (SEPP). Council has installed nesting boxes on the land and has undertaken bushland restoration activities consistent with its conservation values.

On 24 December 2013, Council established a permanent protection mechanism over the land, comprising a Conservation Property Vegetation Plan. This Plan restricts all land uses and the clearing of native vegetation and wildlife habitat. It permanently established the land as a conservation reserve. The land is zoned C2 – Environmental Conservation reflecting this significance and land use.

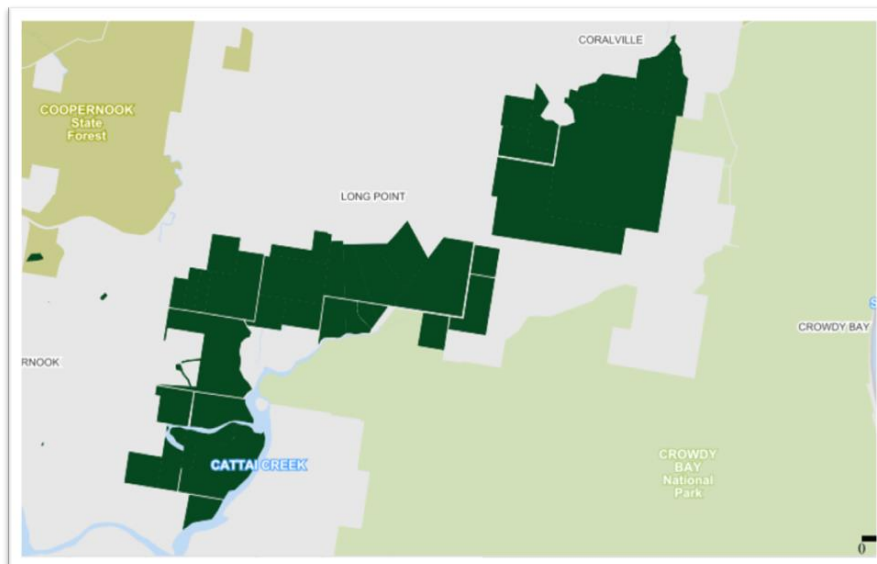


Cattai Wetlands / Big Swamp Reserves (various land parcels)

Since 2003, Council has progressively acquired a number of parcels of land as part of the Cattai Wetlands and Big Swamp projects, which primarily aim to address the broad scale rehabilitation of acid sulfate soils and the improvement of water quality within the Manning River estuary. The subject land comprising 1,191 ha also has significant biodiversity value providing habitat for numerous threatened species such as the koala and supporting a range of endangered ecological communities including freshwater wetlands and swamp sclerophyll forest on coastal floodplains.

On 30 June 2010, the former Greater Taree City Council also established a permanent protection mechanism over the Cattai Wetlands, comprising a Conservation Property Vegetation Plan, which restricts the clearing of native vegetation and permanently establishes the land as a conservation reserve.

As a large proportion of the subject land is mapped as Coastal Wetland under the SEPP, these areas are already afforded a level of planning protection and zoned C2, however the remaining rural zoned areas are also proposed to be rezoned C2 in conjunction with the new LEP.



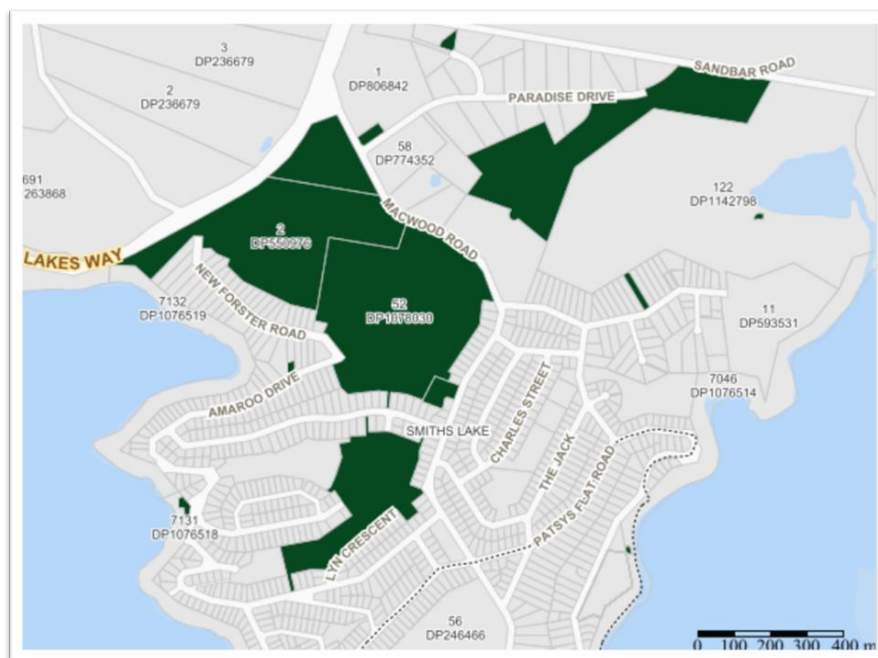
Lot 25 DP 1185155, Lot 52 DP 1078030, Lot 2 DP 550976, Macwood Rd, Smiths Lake

The three lots described above comprise a total area of 50.8 hectares and were acquired by MidCoast Council in 2020 for the purposes of nature conservation as an ecological offset, for improved bushfire management for the Smiths Lake community, stormwater management and to provide a site for a future Rural Fire Service (RFS) building for Pacific Palms.

In acquiring the land Council also resolved to classify the land as “operational” to enable Council to undertake a subdivision of the land to create the separate parcel for the RFS building and up to two residential blocks. It was also resolved to rezone the land to E2 – Environmental Conservation following this process, which will occur in conjunction with the new LEP.

Council’s Natural Systems team commissioned a planning consultant to undertake an investigation into the development of two residential lots within Lot 2 at the end of Lyn Crescent. This investigation revealed that due to the bushfire planning constraints and the level of vegetation clearing that would be required to establish the necessary asset protection zone for the development, it would unfortunately not be feasible or environmentally acceptable to create the proposed residential lots.

Further investigation during the planning of the RFS building revealed that the subdivision of the land is not required to facilitate the development. Nor does the land need to be classified as operational to facilitate this use as it is essentially for a community purpose. As a result, the land can now be classified as community land and rezoned to C2 as part of the new LEP.



In light of the very high ecological and conservation values of the lands described above, the permanent protection mechanisms that apply, the C2 Environmental Conservation zoning and the impositions of controls that prevent any clearing or land uses other than nature conservation, the areas described above should be reclassified as “Community land”.

CONSULTATION

This report was prepared in consultation with relevant staff from the Natural Systems and the Legal and Property teams.

ALIGNMENT WITH COMMUNITY PLAN/OPERATIONAL PLAN

The aim of the letter is consistent with the following outcome and strategic objectives of the MidCoast Community Strategic Plan:

Community Outcome 2 - An integrated and considered approach to managing our natural resources

2.1: We protect, manage and restore our natural environment and our biodiversity

2.1.1: Protect, maintain and rehabilitate natural areas.

TIMEFRAME

Council must give at least 28 days public notice of the proposed resolution to reclassify land from operational to community to allow for public submissions.

LIST OF ATTACHMENTS

The following attachment is available on the meeting page of Council's website under the 'Attachments to Agenda' heading:

Attachment 1 - Schedule of land to be reclassified to community under the Local Government Act 1993 (1 page)