

PROPOSED RE-CLASSIFICATION OF DRAINAGE RESERVE
LANDS TO OPERATIONAL

PUBLIC HEARING REPORT

SUBMITTED TO CITY OF CANTERBURY-BANKSTOWN
COUNCIL

12 APRIL 2017

1.0 INTRODUCTION

The City of Canterbury Bankstown Council (“Council”) has a proposal (“the proposal”) to re-classify various land, being “public land” within the meaning of the *Local Government Act 1993* (NSW) (the “LG Act”), from “Community Land”, within the meaning of that Act, to “Operational Land”, again within the meaning of the LG Act.

In accordance with the dual requirements of both the LG Act and *Environmental Planning and Assessment Act 1979* (NSW) (the EP& A Act) I was engaged to chair an independent public hearing held in relation to the proposed reclassification of the subject lands.

This report seeks to document the events of that public hearing and make recommendations to Council with regard to the proposal.

2.1 SUBJECT SITES

The subject sites comprise various land parcels that serve the purposes of Council drainage reserves.

- **13A Denman Avenue, Wiley Park** The land is zoned R4 High Density and comprises a single parcel of land identified as Lot 106 in Deposited Plan 6480. The property has a total land area of approximately 123.8 m².
- **71A Denman Avenue, Wiley Park** The land is zoned R4 High Density and comprises a single parcel of land identified as Lot

107 in Deposited Plan 6480. The property has a total land area of approximately 122.7 m².

- **61A Beauchamp Street, Wiley Park** The land is zoned R3 Medium Density and comprises a single parcel of land identified as Lot 35 in Deposited Plan 10980. The property has a total land area of approximately 206.65m².
- **66A Beauchamp Street, Wiley Park** The land is zoned R3 Medium Density and comprises a single parcel of land identified as Lot 36 in Deposited Plan 10980. The property has a total land area of approximately 255.96 m².
- **1A Calbina Road, Earlwood** The land is zoned R3 Medium Density. This site comprises a single parcel of land identified as Lot 110 in Deposited Plan 10987 with a total land area of approximately 1300 m². This drainage reserve adjoins 26 parcels of private land. A number of either current or former adjoining owners have, at some stage in the past, annexed (by fencing) the Council land to, and for use in conjunction with, their existing property.
- **13a Ryrie Road, Earlwood** The land is zoned R3 Medium Density. This site comprises a single parcel of land identified as Lot 111 in Deposited Plan 10987 with a total land area of approximately 840 m². This drainage reserve adjoins 14 parcels of land. A number of either current or former adjoining owners have, at some stage in the past, annexed (by fencing) the Council land to, and for use in conjunction with, their existing property.
- **44A Cornelia Street, Wiley Park** This site comprises a single parcel of land identified as Lot 170 in Deposited Plan 7298 with a total land area of approximately 102.2 m².

3.0 EXISTING AND PROPOSED CLASSIFICATION

Pursuant to section 25 and 26 of the LG Act the subject site is currently classified as “community land”. Council is now seeking to reclassify the subject site “operational land” pursuant to Section 30 of the LG Act.

By virtue of section 27 of the LG Act, any reclassification of the subject land must proceed by way of a Local Environmental Plan made under the EP& A Act.

The relevant Planning Proposal – Amendment to Canterbury LEP 2012 – dated May 2016 has been publicly exhibited and aims to reclassify the subject land.

The effect of section 29 of the LG Act is that Council must arrange a public hearing under section 57 of the EP & A Act in respect of its proposal to reclassify the subject land as operational land.

4.0 THE PUBLIC HEARING

The public hearing was convened at Canterbury Council Chambers at 6pm on the 29th March 2017. A full list of meeting attendees is provided below:

- Mr Milton Kodos of 112 Bexley Road Earlwood – Spoke at the meeting
- Mr Elias Liatsos of 118 Bexley Road Earlwood
- Mr John Liatsos of 160 Russell Ave Dolls Point spoke on behalf of owner of 118 Bexley Road Earlwood
- Ms Lisa Caltabiano of 160 Russell Ave Dolls Point spoke on behalf of owner of 118 Bexley Road Earlwood

- Mr S & Mrs T Ceravolo of 116 Bexley Road Earlwood – Mrs Teresa Ceravolo spoke at the meeting
- Mr Frank Ceravolo of 17a Bridge Street Tempe spoke on behalf of owner of 116 Bexley Road Earlwood

5.0 SUMMARY OF PROCEEDINGS

I opened the meeting, welcomed all those present at the public hearing, introduced myself, and briefly outlined the purpose of the public hearing, referring to the relevant applicable statutory regime. I spoke of the steps that had been taken to date as well as the options available to Council.

Mr Nagel, who is a property consultant for City of Canterbury Bankstown Council then outlined the background to the matter in greater detail, including the reasons for Council advancing the proposal.

I then invited attendees of the hearing to ask questions of the Council officers or make submissions on the subject matter.

Several queries were then raised from hearing attendees with regard to procedural matters of the hearing and the broader re-classification process.

Five members of the public then made oral submissions.

All of these submissions were made in relation to one parcel of land, being 1A Calbina Road, Earlwood, and the respective adjacent land parcels owned by the respective landowners on Bexley Road.

There were also some further questions of a more generic nature and comments made by community members throughout the public hearing.

6.0 THE ISSUES

The primary issue raised by the two written submissions and all oral submissions received, was a concern that the reclassification of the land may result in the subsequent sale of the drainage reserve lands and as consequence may lose both access and tenure of Council owned land.

In this regard, the five oral submissions discussed the length of time they have enjoyed tenure over that land, whether it be through licence or informal arrangements with Council officers. Further, they indicated that during this time they had invested significant money and time into those land parcels and had often done so with both the encouragement and 'approval' of Council officers.

Accordingly, if the land were to be re-classified, then there was a concern that the land could then be disposed of on the open market and then its ownership may transfer to either unknown parties or developers.

On this basis all people making a submission objected to the proposed re-classification.

7.1 COMMENTS & RESPONSE

As part of the preparation of this report I have once more reviewed the *Public Land Management – Practice Note No.1* (Revised 2000) prepared by the Department of Local Government.

Having regard to this document and the submissions made at the public hearing, in the case of the present proposal, the following factors need to be kept in mind and contribute to form the basis of my recommendation:

1. Typically a drainage reserve function of land by itself would not warrant a “community land” classification of that land.
2. Rather, classification of land as “community land” should reflect the importance of that land to the community because of its use or special features.
3. The subject land, whilst of great value to individuals, is currently of no great importance or value to the broader community.
4. Had the land been used collectively as a community garden or the like then there maybe some case to be made that it provided some greater community role. However, it is not used collectively but is in fact fenced and separated into small discrete units so its enjoyment and access is limited to the respective adjacent land owners.
5. As a result, publicly owned land that would typically be made available to the broader community, is being enjoyed by only a select few.
6. However, making the land available to the public would not serve any value or special benefit to the community as it's location, utility and character does not present any special community value.
7. It is recognised that the adjacent land owners have enjoyed tenure of the land over the course of many years by way of licenses and other informal arrangement over the lands and that changes to this

tenure would cause a disruption and inconvenience to those adjacent land owners. However, these tenure arrangements are not likely to be lawful and are inconsistent with the intent of community land as prescribed under the LGA Act and the Public Land Management Practice Note.

8. I also note that no other objections were received in regard to the other drainage reserves identified for consideration as part of this public hearing.
9. Despite the objections raised by residents as part of the submission, paradoxically the re-classification of the lands is perhaps the best opportunity for the land owners to continue their current occupation of drainage reserve land.
10. Should the re-classification process occur then there is nothing that I am aware of that compels Council to change the current ownership, land use or tenure arrangements.
11. However, as referenced by Council in their report of 25/10/16, the land maybe surplus to their needs and subsequent disposal is possible.
12. Importantly, the appropriateness of disposal of land post re-classification is beyond the scope of my consideration.
13. Nevertheless, given the focus given to this matter as part of the public hearing, it is appropriate that I make some comment and response.
14. In this regard, I am aware that Council has recently prepared and exhibited a *Drainage Reserves Disposal Policy*.
15. This disposal policy does provide for what appears to be a reasonable mechanism for the fair disposal of these lands.

8.0 CONCLUSION

Any proposal by a local council to re-classify “community land” needs to be looked at very carefully as community land is a valuable local asset and therefore should not be subject to a new ownership, management and potential land use regime without good reasons and just cause.

However, it is unrealistic for community members to expect that no change to the management, use, or even classification of community land will ever occur. Council needs to modify use of community lands to respond to the changing community needs, demands and legislative responsibilities under which they operate.

In this regard, the subject land provides no broader community benefit and it is my view that the current community land classification is more of a planning and legislative anomaly rather than a reflection of their value to the community.

Having regard to the full range of matters addressed by the council reports and public hearing participants, I have come to the opinion that, on balance, that the proposal to re-classify the subject land from community land to operational is within the broader community's interest.

9.1 RECOMMENDATION

I formally recommend, for the reasons set out above, that, on balance, Council's proposal to reclassify the subject land from "*community land*" to "*operational land*" within the meaning of the *Local Government Act 1993* (NSW) is in the public interest.



Vince Hardy (BTP, RPIA)



Dated this 3rd of April 2017