

**REPORT TO KU RING GAI
COUNCIL ON PUBLIC HEARING
INTO RECLASSIFICATION OF
COMMUNITY LAND AS
OPERATIONAL LAND**

**REPORT TO KU RING GAI COUNCIL
ON PUBLIC HEARING INTO
RECLASSIFICATION OF COMMUNITY LAND AS
OPERATIONAL LAND
8-10 TRYON ROAD AND
3 AND 5 KOCHIA LANE LINDFIELD**

**IN ACCORDANCE WITH
PROVISIONS OF SECTION 29 OF THE LOCAL
GOVERNMENT ACT 1993**

**Prepared by
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Appointed Chairman

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1.0 INTRODUCTION:

This report relates to a proposal by Ku ring gai Council to change the classification of certain land in the suburb of Lindfield. The report includes the results of a public hearing arranged by the Council for the reclassification. I was appointed by Council to preside at the hearing.

2.0 LAND CLASSIFICATION:

Under the NSW Local Government Act 1993 (LG Act) all public land must be classified as either community or operational. The Act defines public land as;

Public land means any land (including a public reserve) vested in or under the control of the Council, but does not include;

- (a) a public road, or
- (b) land to which the Crown Lands Act 1989 applies, or
- (c) a common, or
- (d) land subject to the Trustees of Schools of Arts Enabling Act 1902, or
- (e) a regional park under the National Parks and Wildlife Act 1974.

The NSW Department of Local Government Practice Note No. 1 May 2000 relating to public land management states;

All public land must be classified by Council as either community or operational. The main effect of classification is to restrict the alienation and use of 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 (such as a trust deed, or dedication under Section 94 of the Environmental Planning and Assessment Act, 1979). This gives rise to the restrictions in the Act, intended to preserve the qualities of the land. 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.

3.0 RECLASSIFICATION OF PUBLIC LAND:

The LG Act provides that reclassification of land from community to operational may be undertaken;

1. by a local environmental plan,
2. by resolution, but only if certain conditions are met.

Section 30 of the LG Act relates to reclassification of community land as operational and provides as follows;

- 30(1) A local environmental plan that reclassifies community land as operational land may make provision to the effect that, on commencement of the plan, the land, if it is a public reserve, ceases to be a public reserve, and that the land is by operation of the plan discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except for;*
- (a) any reservations that except land out of a Crown grant relating to the land, and*
 - (b) reservations of minerals (within the meaning of the Crown Lands Act 1989).*
- (2) A provision referred to in sub-section (1) has effect according to its tenor, but only if the Governor has, before the making of the local environmental plan, approved of the provision.*

4.0 THE PROPOSAL:

Ku ring gai Council has proposed the reclassification of the sites listed in the table below from community land to operational land. All of the sites are owned by the Council of the Municipality of Ku-ring-gai.

**TABLE A
PROPOSED RECLASSIFICATION SITES**

8-10 Tryon Road Lindfield	Lots 2 and 3 DP 219628 and Lot 5 DP 219146
3 Kochia Lane Lindfield	Lot 12 DP 225925
5 Kochia Lane Lindfield	Lot 31 DP 804447

Council proposes to reclassify the sites through the Local Environmental Plan (LEP) process. Accordingly the Council has prepared a Planning Proposal under Section 55 of the Environmental Planning and Assessment Act 1979 (EP & A Act). Council referred the Planning Proposal to the NSW Department of Planning and Environment. On 7th March 2016 the Department's Director, Sydney Region West Planning Services as delegate of the Greater Sydney Commission issued a Gateway Determination, subject to specified conditions, under Section 56 of the EP & A Act. Following receipt of the Gateway Determination Council placed the Planning Proposal on public exhibition during the period 15th July to 12th August 2016. As required by the determination Council also consulted with Energy Australia, Transport for New South Wales, Roads and Maritime Services and Sydney Water.

5.0 DESCRIPTION AND USE:

The five (5) allotments contained in Table A above have a total site area of 3,352sq metres. The site has frontages of approximately 45 metres to Tryon Road (south-east), 61 metres to Chapman lane (south-west), 16 metres to Milray Street (north-east) and 121 metres to Kochia

Lane (north-west) and is currently utilised for public carparking. Collectively, the five lots are known as “Tryon Road Carpark”.

The Council owned lands are situated on the eastern side of the Lindfield train station and Pacific Highway with a vehicular entrance at Tryon Road – the southern corner of the carpark. The collective Tryon Road carpark is a battle-axe shape and is in the vicinity of a number of existing buildings including:

1. The heritage listed (KLEP Local Centres 2012) commercial block at 1-21 Lindfield Avenue, Lindfield.
2. Recently erected apartment buildings situated at 2-6 Milray Street and 8 Kochia Lane, Lindfield.
3. Commercial offices situated at 2 Kochia Lane, Lindfield.
4. Commercial building at 12-18 Tryon Road, Lindfield.

The Council Planning Proposal refers to Council records indicating the following:

- 8 Tryon Road (Lots 2 and 3 DP 219628) was purchased in 1966 using a Lindfield carparking fund for the purposes of carparking.
- 10 Tryon Road (Lot 5 DP 219146) was purchased in 1982 using Lindfield carparking fund for the purposes of carparking.
- 3 Kochia Lane (Lot 12 DP 225925) was part resumed (compulsorily acquired) and part purchased in 1964/1965 using Lindfield carparking fund for the purposes of providing, controlling and managing a site for the accommodation of vehicles in or near a public road and carparking.
- 5 Kochia Lane (Lot 31 DP 804447) was dedicated, free of cost, to Council in 1990 as a condition of consent for Development Application No. 1515/87 for the construction of the existing commercial building at 12-18 Tryon Road, Lindfield. At the time of dedication and transfer to Council, the site was a Reservation for Special Uses – (carparking) under the Ku-ring-gai Planning Scheme Ordinance 1971. The Reservation applying to the land was removed in 1992 via LEP 100, which rezoned the site to 3(b) – Business – Commercial Services.

The Council owned lands are currently used for carparking purposes. There are no easements or restrictions registered on the current Certificate of Title. However, although not registered on the title, Lot 31 DP 804447 (5 Kochia Lane Lindfield) is deemed to be held by Council in trust for a public purpose, being a public carpark. In order for Council to proceed with its objectives for the Lindfield Village Green, the Council planning proposal seeks to extinguish the trust applying to Lot 31 DP 804447 (5 Kochia Lane Lindfield).

6.0 PUBLIC HEARING:

Where there is a proposal to reclassify community land to operational land, Section 29 of the LG Act provides that Council must arrange a public hearing.

Section 47G of the LG Act provides in part as follows;

- (2) *The person presiding at a public hearing must not be;*
 - (a) *a councillor or employee of the Council holding the public hearing, or*

- (b) *a person who has been a councillor or employee of that Council at any time during the five years before the date of his or her appointment.*
- (3) *Not later than four days after it has received a report from the person presiding at the public hearing as to the result of the hearing, the Council must make a copy of the report available for inspection by the public at a location within the area of the Council.*

In accordance with the above provisions I was appointed to preside at the hearing and prepare a report. This document comprises the report of the public hearing in accordance with the requirements of Section 29 of the LG Act.

The general administration of the public hearing was undertaken by Council staff. I have been informed that notice of the public hearing was given by Council, as required by the Gateway Determination, in accordance with the NSW Department of Planning Practice Note PN09-003 dated 12th June 2009 for Classification and reclassification of public land through a local environmental plan.

The public hearing was held at the Council Chambers at Gordon on Thursday 15th September 2016 commencing at 5pm. The hearing proceedings included;

- welcome and introduction to hearing from Chairman.
- Council presentation
- public presentations.
- concluding remarks and comments on next steps from Chairman.

Prior to the hearing I read all submissions received by the Council and inspected all sites proposed for reclassification.

With the appointment of an independent Chairman a public hearing provides an opportunity for a person independent from the Council to consider the submissions and provide an independent report for consideration by the Council. As Chairman, I advised the public hearing that as required by Section 47G(2) of the LG Act I am not a person who has been a councillor or employee of Ku ring gai Council at any time during the five years before the date of my appointment to preside at the public hearing.

This report summarises written submissions received by Council and oral presentations made to the public hearing. The report provides conclusions and recommendations on the proposed reclassification. The proceedings of the hearing were recorded and a transcript of the recording has been prepared.

7.0 PLANNING PROVISIONS RELATING TO THE RECLASSIFICATION SITES:

The provisions of Ku ring gai Local Environmental Plan (Local Centres) 2012 (LEP) which came into effect on 8th February 2013 apply to each of the sites proposed for reclassification. The provisions of Ku ring gai Local Centres Development Control Plan (DCP) apply to the sites. Relevant provisions of these planning documents are provided below.

The sites are contained within LEP zone B2 – Local Centre. The objectives of this zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide for residential housing close to public transport, services and employment opportunities.*
- *To encourage mixed use buildings that effectively integrate suitable business, office, residential, retail and other development.*

The LEP development standards applying to the sites include maximum floor space ratio 2.0:1 and maximum building height 11.5 metres.

The development objectives for the Lindfield Local Centre contained in Part 14E.1 of the Kuring-gai Local Centres DCP are:

1. *To create distinct precincts that provide a range of services, facilities and experiences.*
2. *To create vibrant local centres with distinctive and memorable characters.*
3. *To provide opportunities for new speciality retail, cafes and restaurants to be located away from the highway.*
4. *To establish a new mixed use precinct on the eastern side of Lindfield focused around a new urban park.*
5. *To establish a new mixed use precinct on the western side of Lindfield focused around a community hub and a new urban park.*
6. *To encourage restaurants, cafes and outdoor dining and offices fronting on to rear lanes to contribute to increased activity and passive surveillance.*
7. *To provide opportunities for new supermarkets to support and anchor the centre.*
8. *To promote ease of circulation and connectivity between the railway station and the local centre.*

The Lindfield Local Centre is divided into eight precincts. The reclassification sites and the Village Green project are located in Precinct L4 – Lindfield Avenue Retail Area and Village Green. The DCP objectives for the planned future character of this precinct are:

1. *To ensure development is consistent with the Lindfield Village Green Masterplan.*
2. *To provide a large flexible public open space for the community.*
3. *To service the public parking demands of the area.*
4. *To provide enhanced vehicular and pedestrian connectivity between the railway station, Pacific Highway and the Lindfield Village Green site.*
5. *To provide for public open space in the local centre.*
6. *To facilitate community interaction.*
7. *To facilitate the provision of commuter carparking spaces located in basement levels.*

The DCP states that development in Precinct L4 is to be designed in accordance with the Lindfield Village Green Masterplan at Part 14R.1 and is to support and enhance the planned future character for the precinct including the following.

- i) *In the future the precinct will provide an improved retail centre with a larger supermarket and speciality retail, offices, as well as shoptop housing.*
- ii) *This area will have a strong community focus with a new public park.*
- iii) *Public carparking will be provided in a basement under the Village Green.*
- iv) *The heritage listed shops at 1-21 Lindfield Avenue will be protected as an example of an Inter War Mediterranean style commercial building. Sensitive redevelopment at the rear of the existing heritage building will replace the existing Chapman Lane garages and alterations with new retail uses that contribute to the success and vibrancy of the Village Green; for example, cafes and restaurants that address and open onto Chapman Lane*

The provision of public open space and associated facilities together with public parking including commuter parking on the sites proposed for reclassification is consistent with the objectives and planned future character for Precinct L4 contained in the DCP.

8.0 SUBMISSIONS:

A summary of the oral presentations is included below. A summary of public written submissions is contained in Table B. The written submissions are held in Council's records and each submission has been assigned a number.

PRESENTATION BY COUNCIL

Antony Fabbro Manager Urban Planning: – Mr. Fabbro elaborated on information regarding the sites proposed for reclassification contained in the Planning Proposal. This included information regarding the acquisition of each site by the Council, a description of each site, the planning provisions relating to each site and the process for Council's consideration of future action for the sites if they are reclassified from community to operational land.

Mr. Fabbro stated in order for Council to proceed, with its objectives for the new Lindfield Village Green project, the Council Planning Proposal seeks to extinguish the trust applying to 5 Kochia Lane Lindfield. The provision of public carparking will continue to be provided under the Lindfield Village Green project.

He advised that the new Lindfield Village Green will be an open green space for social and recreational use, and will include;

- Landscaped public open space,
- Underground public carparking,
- Commuter parking and
- A pavilion for leasing as a cafe or restaurant with public seating, toilets and a lift.

The development will be designed to meet a high standard of design excellence and sustainability.

Mr. Fabbro stated that reclassification will provide Council with greater flexibility to commercially deal with any land management matters that may arise with the design and implementation of the new project – for example a long term commercial lease to the cafe operator, or a potential stratum of commuter carparking for Transport for NSW within the development, these options would be possible with the land being classified as operational land.

Mr. Fabbro concluded that the reclassification of the Council owned land to operational land status is warranted as the reclassification will assist Council to bring into effect the new Lindfield Village Green project and the reclassification should therefore be supported.

PRESENTATIONS BY THE PUBLIC

Gary Stein –

Mr. Stein advised the hearing that he is the Chairman of the Owners Corporation for the commercial development at 12-18 Tryon Road Lindfield and that he owns a number of suites in that building. He stated that there was general agreement that the proposed village green would provide real benefit to the community.

Mr. Stein referred to the dedication of land to Council for carparking as a condition of consent for the development at 12-18 Tryon Road. He was concerned that this land, which he referred to as the trust land, would not be used for parking but would be used for access to the proposed underground carpark.

Mr. Stein expressed concern regarding a reduction in carparking from 136 spaces to 80 spaces in the proposed underground carpark. He stated the existing carpark is heavily used.

Mr. Stein considered the proposed land reclassification should be put forward as part of the development application for the Village Green project.

David Barker –

Mr. Barker advised that he lives at 25/9 Tryon Road Lindfield. He supports the Village Green project as it will provide enhanced facilities for Lindfield. He expressed concern regarding current traffic conditions associated with the existing carpark.

**TABLE B
SUMMARY OF WRITTEN SUBMISSIONS**

Submission Number	Name	Summary of Submission
1	Bianca and Linda The Dutch Hideout	Supports planning proposal subject to suitable public parking being available during the construction phase so as not to disrupt their business, the Dutch Hideout at No. 5 Lindfield Avenue.
2	Nick Tobin Aqualand Projects Pty.Ltd.	Aqualand supports the reclassification which is required to facilitate the development of the Lindfield Village Green project. The submission advises that Aqualand does not wish to address the public hearing.

3	Margaret Middleton	The submission supports the proposal. The issue of closing the section of Kochia Lane between Lindfield Avenue and Havilar Lane is questioned.
4	Barbara Rawlingson	The submission does not oppose the development of the Lindfield site as a village green and community area. However concern is raised that if the project does not go ahead the land could be sold to a developer. The submission expresses a preference for the land to remain as community land as it is not necessary to make this change to enable the proposed village green to go ahead. The submission also raises issues relating to the provision of parking stickers for local residents and pedestrian safety.
5	Gary Stein	Mr. Stein expresses concern at the proposal to reclassify land to operational land prior to the formulation of a definite proposal for the "Lindfield Village Green". The submission refers to the dedication of land for short term parking as a condition of development consent for 12-18 Tryon Road. The submission states it is not clear that the development application for the project will utilise the land for carparking as is currently the case. The submission expresses concern that the current proposals seem to indicate that a further reduction in parking of 36 car spaces will result with the Council building an underground carpark. It is submitted that in the interest of fairness that the possible removal of public carparking facilities donated in trust be presented in this manner.
6	John Derrett	The submission objects to the proposed reclassification to operational land. The submission expresses a lack of trust in Council to look after public land and that the information provided is inadequate.
7	John Clive Wall and Julie Fernandez	The submission does not raise objection to the proposed reclassification. A request is made for the inclusion of exercise equipment in the proposed Village Green.

STATUTORY AUTHORITY SUBMISSIONS:

Transport for New South Wales:

By letter dated 13th August 2016 Transport of NSW advised that it has no objection to the subject planning proposal. It has advised that it would be happy to continue to work with Council in the planning and development of the Lindfield Village Green project as well as other transport related projects within the town centre.

Roads and Maritime Services:

By letter dated 26th august 2016 Road and Maritime Services advised Council that it raises no objection to the subject planning proposal.

Sydney Water:

By letter dated 17th August 2016 Sydney Water advised Council that it generally supports the planning proposal and that detailed requirements for water and waste water services will be provided at the Section 73 phase.

Energy Australia:

Council has advised that in accordance with the Department of Environment and Planning Gateway Determination it has undertaken consultation with Energy Australia. Council has advised that it has received no response to this consultation.

9.0 CONTEXT:

The Context for consideration of the proposed reclassification of the subject sites from community land to operational land is set out in the Planning Proposal dated July 2016. A review of the Planning Proposal and other relevant documents indicates that Council's planning for the Lindfield Local Centre has reached an advanced stage. Ku-ring-gai Local Environmental Plan (Local Centres) 2012 came into effect on 8th February 2013. In addition Council has adopted the Ku-ring-gai Local Centres Development Control Plan (the DCP). This plan includes detailed provisions relating to future development within the Lindfield Local Centre. Parts 14E.11 and 14R.1 refer to the establishment of the Lindfield Village Green over the area of the existing Tryon Road public carpark, including the sites referred to above proposed for reclassification from community to operational land.

At its meeting on 23rd June 2015 Council considered a report on the preferred concept design for the Lindfield Village Green. As a result of that report, Council resolved to prepare the Planning Proposal to reclassify the subject sites from community land to operational land.

At its meeting on 23rd August 2016 Council considered a report relating to the final concept plan for the Lindfield Village Green. At the meeting Council resolved as follows;

- A. *Council adopts the final concept design for Lindfield Village Green as presented in this report as the basis for preparing a development application for the project.*
- B. *The final design is made available to the public.*
- C. *That the General Manager be given delegation to grant owners consent for all necessary planning approval applications and associated documents.*

The proposal adopted by Council includes;

- Creation of the Lindfield Village Green comprising landscaped public open space at ground level over the area currently occupied by the Tryon Road carpark which currently contains 138 short term spaces.
- Provision of short term public carparking comprising 20 spaces at ground level and 80 spaces underground.
- Provision of an additional level of underground parking for commuters.
- Provision of a pavilion for leasing as a cafe or restaurant with public seating, toilets and a lift.

The Ku-ring-gai Town Centres Parking Management Plan 2010 adopted by Council on 21st September 2010 identified a surplus of short term parking spaces for the eastern precincts of the Lindfield Local Centre. The report states, in part, *the substantial surplus in short term parking achieved as a result of redevelopment suggests that Council would have the option of reducing the quantity of parking in the redeveloped Tryon Road carpark.* The report contains parking strategies for the eastern part of Lindfield including: *transfer Tryon Road carpark underground, allocate accessible parking at surface and utilise undersize spaces for motor cycle/motor scooters and retain existing 2 hour time restriction.*

The number of parking spaces incorporated into the Lindfield Village Green project is a matter to be determined by Council based on identified demand.

It has become apparent during the course of preparing for and undertaking the public hearing that the Lindfield Village Green project has reached an advanced stage. After undertaking extensive public consultation Council, on 23rd August 2016 adopted a final concept design for the project and resolved to progress towards lodgement of a development application. The Council Planning Proposal states that reclassification of the subject sites to operational land will enable the project to proceed by providing Council with greater flexibility to provide future commercial operations and to actively investigate the potential future commuter carparking.

The public exhibition of the Planning Proposal resulted in seven public and three statutory authority submissions as referred to above. No objections to the proposed land reclassification were received from statutory authorities. Five of the public submissions did not object to the land reclassification. One submission states total objection to reclassification. A further submission expressed concern that the proposed reclassification was premature and should be delayed until a definite proposal for the 'Lindfield Village Green' is formulated.

At the public hearing two presentations from the public were made. One speaker expressed support for the Village Green project and did not raise objection to the proposed land reclassification. The other speaker considered the land reclassification should be put forward as part of the development application for the Village Green project.

Having regard to Council's resolved commitment to and the advanced stage of the Lindfield Village Green project it is appropriate that the reclassification of the Council sites should now occur. No issues have been raised in the written submission or the oral presentations to the public hearing that would justify not proceeding with the reclassification process, including extinguishment of the trust for public purposes relating to Lot 31 DP 804447 (5 Kochia Lane Lindfield).

10.0 CONCLUSION:

Based on the information available at the time of the public hearing it has been concluded that all of the sites are suitable for reclassification from community to operational land as recommended below.

11.0 RECOMMENDATION:

1. Council proceed with the reclassification of the sites listed in Table A contained in Section 4.0 of this report from community land to operational land under the provisions of NSW Local Government Act 1993.
2. Council proceed to extinguish the trust for public purposes relating to Lot 31 DP 804447 (5 Kochia Lane Lindfield).
3. Council write to all persons and organisations that made a submission to the public hearing thanking them for their input and advising them of Council's decision.



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Chairman