

2. LAND DESCRIPTION AND PLANNING

2.1 Classification Of Public Land (including Reclassification)

Legislative Framework

All public land vested in a council, with the exception of a road, or land to which the *Crown Lands Act 1989* applies, must be classified as either "community" or "operational" land. The purpose of classification is to clearly identify land that is suitable for use by the general public (community land) and land that is set-aside for operational purposes (operational land).

Classification of land has a direct consequence on Council's ability to dispose or alienate the land by sale, leasing or some other means. Under the *Local Government Act 1993*, community land must not be sold (except for scheduled purposes), exchanged or otherwise disposed of by Council and the land must be used and managed in accordance with an adopted plan of management (refer to *2.2 Community Land and Community Land Categories*). In addition, community land is subject to strict controls relating to leases and licences (refer to *2.4 Leases, licences or other estates*). By comparison, no such restrictions apply to operational land. For example, operational land can be sold, disposed, exchanged or leased including exclusive use over the land, unencumbered by the requirements which control the use and management of community land. Operational land would usually include the following: -

- Land held as a temporary asset;
- Land held as an investment;
- Land which facilitates the carrying out by a council of its functions; or
- Land which may not be open to the general public (eg. works depot).

The classification or reclassification of public land will generally be achieved by a local environmental plan (LEP) or by a resolution of Council in accordance with sections 31, 32 and 33 of the *Local Government Act 1993*. If land is not classified by resolution within a three-month period from acquisition it automatically becomes community land, regardless of whether it satisfies the objectives for community land as outlined in the *Local Government Act*.

Implications for parcels addressed in this Plan

This plan of management identifies a number of community land parcels to be investigated for reclassification as operational land (refer to *5.0 Management Strategies – 5.1 Action Plan, items MA1 - MA4*).

Road reserves

Fifty-three parcels recorded on the WLR as community land are maintained public roads or provide access to private properties. They include right-of-ways, lane ways, road extensions, road widening and portions of roadway such as splay corners and roundabouts. These are not permissible uses of community land under the *Local Government Act 1993* (refer to *2.2 Community Land and Community Land Categories*).

It is likely that these parcels of land were classified as community land when the Local Government Act 1993 came into effect. Provisions in the Act meant that many Council owned lands were automatically classified as community land without assessment. A number of parcels have retained their original, yet inappropriate, classification and have been identified for reclassification through this plan of management process.

This plan of management recommends that these community land parcels be investigated and reclassified to operational land and dedicated as "road reserve" in accordance with the *Roads Act 1993* or dedicated as "road" under the *Local Government Act 1993* (refer to *5.0 Management Strategies – 5.1 Action Plan, item MA1*). These road reserves are scheduled in *Table 1. Values and Issues* and identified by a description code

(Desc. code) of R. The parcels are also shown on the *Locality Maps* in *Appendix I*, though it is worth noting that some of these parcels cover a very small area and may be difficult to identify on the maps.

In all these cases, it is not anticipated that the change of classification will result in any alteration in the way the community uses the land.

Miscellaneous reclassifications

Initiation of investigations towards reclassification has also been recommended for twenty-six other parcels to reflect the future intended use of the land as a result of issues and values identified during the development of this Plan. These parcels are identified in *Table 1: Values and Issues* (Desc. code: MR), and are shown on the *Locality Maps* in *Appendix I*.

Of these, thirteen parcels are narrow strips of land (less than 1 metre wide) that are located behind residential properties bordering the area known as the Belrose Road Corridor. The corridor, owned by the RTA, was reserved for future construction of a major arterial road. It is understood that this narrow strip of community land was established to provide a buffer between the road and existing residential properties. Road construction is no longer planned and the area is now subject to a Master Plan to subdivide the land for residential development and public open space.

During the development of this plan of management, it has been necessary for Council to reconsider the future intended use of these parcels in light of plans for the neighbouring corridor. Due to the very narrow width of the parcels, options for community use are limited. Council has received some submissions from the community requesting retention of the parcels as an access way. This is not considered a desirable planning outcome for parcels adjoining future residential subdivisions as retention of the land would result in the creation of a narrow alleyway between boundary fences. It is preferable for pedestrian access to be provided by a network of well-lit footpaths as part of the residential development.

Parcels adjoining areas proposed as public open space in the Belrose Road Corridor should be subsumed within the newly created community land parcels and managed consistently with the larger neighbouring reserve (either as part of the Neighbourhood Parks Plan of Management or the Bushland Plans of Management). A formal network of paths or tracks would provide public access through the open space network in appropriate locations and link with footpaths through the residential subdivision.

Until the Master Plan is adopted, Council is unable to identify with certainty which of the narrow parcels will adjoin residential blocks versus public open space. It is therefore recommended that subject to recommendations from the Belrose Road Corridor Master Plan, Council investigate and reclassify if appropriate the narrow strips of community land. Future options may include incorporation into Belrose open space corridor or equitable disposal to adjoining owners.

The remaining thirteen parcels which have been recommended for reclassification or further investigation are either currently inaccessible to the community or not of a sufficient area to provide for future community use.

2.2 Community Land And Community Land Categories

Legislative Framework

The ways in which community land can be used and managed are strictly governed in accordance with an adopted plan of management and any law permitting the use of the land for a specified purpose or otherwise regulating its use. The community land in this plan of management is owned in fee simple by Council and must not be sold, exchanged or otherwise disposed of except in the instance of enabling the land to be added to Crown reserve or a protected area under the *National Parks and Wildlife Act 1974*.

Furthermore, the nature and use of community land may not change without an adopted plan of management.

Community land must be categorised as either a natural area, a sportsground, a park, an area of cultural significance or for general community use, or a combination of these categories. The *Local Government Act 1993* has a further requirement that land categorised as a "natural area" must be given a sub-category of either bushland, wetland, escarpment, watercourse, foreshore or a category prescribed by the regulations.

The recommendations of this plan of management cover parcels categorised as "general community use".

A schedule including all of the definitions and guidelines for categorisation under the *Local Government (General) Regulation 1999* is provided in *Appendix III: Guidelines for categorisation of community land*.

In accordance with the guidelines for categorising community land under the *Local Government (General) Regulation 1999*: -

Land should be categorised as **general community use** under s.36 (4) of the Act if the land:

- a) May be made available for use for any purpose for which community land may be used, whether by the public at large or by specific sections of the public, and
- b) Is not required to be categorised as a natural area under section 36A, 36B or 36C of the Act and does not satisfy the guidelines for categorisation as a natural area, a sportsground, a park or an area of cultural significance.

Section 14, Local Government (General) Regulation 1999

Under the *Local Government Act 1993* each category of community land is provided with a set of core objectives. In this plan of management, the core objectives for land categorised as general community use provide the legislative framework for ensuring appropriate management strategies.

"The core objectives for management of community land categorised as general community use are to promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public:

- a) In relation to the public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public, and
- b) In relation to purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities)."

Refer to *5.0 Management Strategies – 5.1 Action Plan* for further details relating to core objectives.

Implications for parcels addressed in this Plan

The parcels investigated during the development of this plan of management have a wide variety of characteristics and associated values and issues. These parcels have been grouped according to their core characteristics in order to provide consistent decision-making and guide ongoing management for these and subsequently acquired parcels of community land. Many of the parcels investigated satisfy the objectives for community land categorised as general community use and will continue to be managed under this Plan – refer to the discussion below relating to roadside buffers, drainage reserves and public access and recreation.

The review of land proposed for this plan of management has revealed a number of parcels which have values that could be better served by other plans of management for example Bushland and Neighbourhood Parks. These parcels are identified in *Table 1. Values & Issues* (Desc. code: OP) and are shown on the *Location Maps, Appendix I*. The recommendation of this plan of management is to refer these parcels to the aforementioned plans for consideration and ongoing management. Consequently they will not be categorised as part of this plan of management process.

Roadside Buffers

Council owns fifty-seven parcels of community land which run alongside the area's major arterial roads – Warringah Road, Forest Way and Mona Vale Road. These parcels are identified in *Table 1: Values & Issues* (Desc. Code: B) and are shown in *Appendix I* on Locality Maps Y, Z, ZA, ZC, ZF, ZG, ZH, ZI and ZJ. Many of these parcels form a contiguous buffer between the road and residential properties and are valued by local residents not only for their visual amenity in screening the road, but also as a noise barrier, a pleasant place to walk and as a wildlife corridor.

Council aims to protect the character of the areas through which the arterial roads pass by providing a wide vegetated strip which prevents development right up to the roadside. This intention is supported through the *Warringah Local Environmental Plan 2000* which has minimum set-back requirements of at least 20m from the frontage of privately owned parcels along these major arterial roads.

The management actions recommended for these parcels relate primarily to the protection, management and enhancement of remnant habitat values and the maintenance and enhancement of public access, linkages and passive recreation (refer to *5.0 Management Strategies – 5.1 Action Plan, items MG1-7 and MH1-7*). A number of these parcels are affected by encroachments from neighbouring private properties which threaten or reduce the value of the land to the wider community (refer to *5.0 Management Strategies – 5.1 Action Plan, items ME1*). Council's approach to encroachments is briefly discussed in *3.3 Community Issues*.

Drainage Reserves

Fourteen parcels, identified in *Table 1: Values & Issues* (Desc. Code: D), fulfil an important drainage function. These parcels range in size and contain both natural watercourses and stormwater infrastructure, both above and below-ground. The management actions recommended for these parcels aim to enhance drainage functions, water quality and stream flows, whilst improving the community's use and enjoyment of the reserves where possible (refer to *5.0 Management Strategies – 5.1 Action Plan, items MF1-7*).

In several cases where infrastructure is below-ground and the parcels themselves hold little value for wider community use, a recommendation has been made to reclassify the parcels to operational land (refer to *5.0 Management Strategies – 5.1 Action Plan, items MA4*).

Public Access and Recreation

The Plan also contains twenty parcels which are important for public access, linkages and passive recreation refer to *Table 1: Values & Issues* (Desc. Code: P). These pathways, steps and small reserves form part of a valued pedestrian network through neighbourhoods, linking residential areas with services such as shops, schools and public transport. Management actions have been recommended to ensure that these parcels are safe, accessible and appealing to use (refer to *5.0 Management Strategies – 5.1 Action Plan, items MH1-7*).

Natural Area - Bushland

The *Local Government Act 1993* was amended from 1 January 1999 to integrate the management of community land with threatened species laws, in particular the preparation of plans of management. A number of parcels of land investigated during preparation of this plan of management contain remnant and vestigial components of natural bushland. In accordance with the guidelines for categorisation of community land, many of these areas should be categorised as Natural Area with an appropriate sub-category assigned.

Significantly, some parcels investigated in the Belrose – Terrey Hills area retain "Duffy's Forest", a scheduled endangered ecological community under Schedule 1, Part 3 of the *Threatened Species Conservation (TSC) Act 1995*. One site in particular contains specimens of Caley's Grevillea (*Grevillea caleyi*), a shrub listed as "endangered" on Schedule 1, Part 1 of the TSC Act and scheduled nationally under the *Environment Protection and Biodiversity Conservation Act 1999*. This species is the subject of a Recovery Plan. Preliminary site investigations during the course of this study suggest that Caley's Grevillea and/ or other scheduled endangered species may be present on other sites in the Belrose – Terrey Hills area, either as standing vegetation or as a stored seed bank in the soil.

Land parcels containing remnant natural bushland, including all sites with existing or possible threatened species, have been referred for consideration under the Bushland Plans of Management (refer to *5.0 Management Strategies – 5.1 Action Plan, item MB1*).

Parks

A number of parcels have also been identified as having recreational values that would be more adequately promoted and managed with a categorisation of “park”. These have been referred for consideration under the Neighbourhood Parks Plan of Management (refer to *5.0 Management Strategies – 5.1 Action Plan, item MB2*).

2.3 Crown Reserves, Public Purpose And Categorisation

Legislative Framework

The *Crown Lands Act 1989* provides for the reservation and dedication of Crown land for a range of “public purposes”. Uses and activities are broadly defined by the public purpose of the reservation, consistent with any conditions and provisions of specific zoning under the *Warringah Local Environmental Plan (2000)*. The principles of Crown land management are as follows:

- a) Environmental protection principles be observed in relation to the management and administration of Crown land;
- b) The natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible;
- c) Public use and enjoyment of appropriate Crown land be encouraged;
- d) Where appropriate, multiple use of Crown land be encouraged;
- e) Where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity;
- f) Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

Section 11, Crown Lands Act 1989

Case law judgements are also important in determining the policy and management practices affecting Crown land as follows: -

- a) Use of the reserve must be consistent with public purpose of the reservation;
- b) Improvements and developments must support, or be ancillary to, the public purpose of the reservation;
- c) Provision must be made for broad community access and equity;
- d) Reasonable entry fees and charges may be imposed but access may only be restricted where there is a legal requirement (e.g. health and safety) or need for maintenance/ operational facilities or equipment storage relating to the reserve's public purpose;
- e) A lease or licence must be consistent with public purpose of the reservation.

The NSW Department of Lands has policies and guidelines for other uses and activities on Crown land, including assessing food and beverage outlets, however none of the parcels of land are likely to be affected by these specific provisions.

While there is no legislative requirement to categorise Crown land, it is considered an appropriate course of action to ensure overall consistency in land management.

Implications for parcels addressed in this Plan

In addition to community land, this plan of management process has included three Crown reserve parcels. Two are miscellaneous small reserves while the Terrey Hills Rural Fire Service building, and curtilage, part of Frank Beckman Reserve, is included in order to authorise proposed development.

The Crown land parcels are listed as follows with public purpose and proposed categories: -

CROWN LAND DESCRIPTION	MAP REF.	PUBLIC PURPOSE	PROPOSED CATEGORY
Terrey Hills Rural Fire Brigade Booralie Road, Terrey Hills (part of Frank Beckman Reserve)	ZL175	Public Recreation Community Centre & Public Hall	General Community Use
Yanco Close, Frenchs Forest	X86	Access	General Community Use
Allambie Rd & Monserra Rd, Allambie Heights	G32	Public Recreation	To be considered in the Neighbourhood Parks Plan of Management

Warringah Council, as appointed Trustee of Frank Beckman Reserve under the *Crown Lands Act 1989*, has the ongoing responsibility for care, control and management of this Crown land. This reserve (ZL175 WLR 6863/1A*) is currently categorised as Park and Natural Area – bushland. This plan of management recommends that only the portion of the parcel indicated by shading on Map ZL175 should be categorised as "general community use". Warringah Council has care, control and management under section 48 of the *Local Government Act 1993* for the other two parcels of land in Yanco Close, Frenchs Forest (X86 WLR 91/6*) and the corner of Allambie Road and Monserra Road, Allambie Heights (G32 WLR 60/4*).

* See Table A1: Land Description, Appendix I, for more information about these items.

2.4 Leases, Licences Or Other Estate

Community Land

A lease, licence or other estate may be granted, in accordance with an express authorisation by this plan of management, providing the lease, licence or other estate is for a purpose prescribed in s.46 of the *Local Government Act 1993*. The purpose must be consistent with core objectives for the category of community land.

Council must not grant a lease, licence or other estate for a period (including any period for which the lease could be renewed by the exercise of an option) exceeding 21 years. A lease, licence or other estate may be granted only by tender in accordance with s.46A of the *Local Government Act 1993* and cannot exceed a term of 5 years (including any period for which the lease could be renewed by the exercise of an option), unless it satisfies the requirements as scheduled in s.47, or is otherwise granted to a non-profit organisation (refer to *Leases, licences and other estate in respect of community land – s.46, 46A, 47 and 47A Local Government Act 1993*).

Crown Land

The NSW Department of Lands policy on Crown Land leases and licenses is that public access and equity must be preserved. Activities, services and facilities on Crown land should have benefits for the broad

community and must be consistent with the public purpose of the reservation. Although Crown Land leases are not required to be authorised in a plan of management, authorisations have been provided to ensure a consistent approach to the management of lands covered by this plan. *Section 2.3 Crown Reserves, Public Purpose And Categorisation* provides further information regarding Crown Land.

Implications for parcels addressed in this Plan

There are no current leases or licences in relation to the parcels of land included in this plan of management. A deed (formalised by an interim generic plan of management) exists for landscaping works on two land parcels adjoining Wesley Gardens Aged Persons Centre, Forest Way, Belrose (Map refs: ZH161/ ZH160). A formal agreement will also be established to enable the ongoing maintenance of a parcel by the Belrose Country Club, subject to road widening conditions (Map ref: ZG138). For further details and express authorisation of leases, licences or other estate refer to *5.0 Management Strategies: items MD1-MD5*.

2.5 Land Description

As identified in *1.2 Study Area*, this plan of management process has included a detailed investigation and assessment of a broad range of miscellaneous Community Land and Crown Land parcels across the Warringah LGA.

Figure 1: Location Map shows the distribution of all land parcels investigated and assessed in this plan of management. A series of more detailed maps identifying each of the land parcels is contained in *Appendix I: Locality Maps*. These maps also indicate the categorisation of land as general community use under this plan of management.

Table A1: Land Description, Appendix II, describes these parcels of land which are generally small in size, contiguous or fragmented. The table includes parcels that are to be:

- categorised as general community use and have an ongoing and primary functional role of providing stormwater drainage, public access/recreation or road-side buffers/nature strips
- categorised as general community use prior to reclassification as discussed in *2.1 Classification of public land (including reclassification)* including road reserves and miscellaneous reclassifications
- referred to other plans of management (not categorised by this Plan) as outlined in *2.2 Community land and community land categories*