

NORTHERN BEACHES COUNCIL

PUBLIC HEARING FOR PROPOSED CATEGORISATION OF COMMUNITY LAND AT 40 STUART STREET, MANLY

BACKGROUND INFORMATION

7 JULY 2021



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1 INTRODUCTION

1.1 Background

The former Manly Council purchased 40 Stuart Street in Manly in 2012 to add the land to Little Manly Beach Reserve.

The Little Manly Reserves Landscape Masterplan was adopted by Northern Beaches Council on 26 November 2019. The Masterplan proposes demolishing the dwelling at 40 Stuart Street, and incorporating the land into Little Manly Beach Reserve as open space.

From 28 October to 1 December 2020 Council notified the community and issued a public notice about a proposal to reclassify the Council-owned land at 40 Stuart Street from operational land to community land under the *Local Government Act 1993*. 89% of the 65 submissions received were in favour of the reclassification of 40 Stuart Street from operational to community land. On 23 February 2021 Council resolved to reclassify 40 Stuart Street from operational to community land.

Community land is required to be categorised under the Local Government Act. It is proposed to categorise 40 Stuart Street in Manly as Park, consistent with the guidelines for categorisation as Park in Clause 104 of the *Local Government (General) Regulation 2005*, and the core objectives for the Park category in Section 36G of the Local Government Act, in order to facilitate the use of the land for public recreation.

Community land is also required to be subject to a Plan of Management prepared under the Local Government Act. The *Little Manly Coastline Management Plan 2004* will be amended to include 40 Stuart Street in Manly.

Council is required to place on public exhibition for a period of 42 days a proposed amendment to the *Little Manly Coastline Management Plan 2004* to include 40 Stuart Street in Manly (Lot 3 DP 252420) as community land. Council is also required to hold a public hearing in respect of the proposed categorisation of 40 Stuart Street as Park and that amendment to the *Little Manly Coastline Management Plan 2004*.

Council has placed the proposed amendments to the *Little Manly Coastline Management Plan 2004* on public exhibition from Wednesday 7 July to Wednesday 18 August 2021.

A public hearing is required under Section 40A of the *Local Government Act 1993* to receive community submissions about categorising community land. Under the Act the public hearing must be chaired by an independent facilitator. Details of the public hearing on Thursday 12 August 2021 and how to make a submission are in Section 1.2.

1.2 Public hearing and submissions

The public hearing for the proposed categorisation of 40 Stuart Street in Manly (Lot 3 DP 252420) as Park will be held on Thursday 12 August 2021 from 6:00pm to 7:30pm.

The public hearing will be held via an online conference using Microsoft Teams due to COVID-19 public gathering restrictions. Community members will be able to join the public hearing online or call in by telephone.

Registrations are essential before 12 noon on Thursday 12 August 2021 at <https://yoursay.northernbeaches.nsw.gov.au/proposed-amendment-little-manly-coastline-plan-management>

Submissions about the proposed categorisation of 40 Stuart Street in Manly can be made:

- ☐ **verbally at the public hearing on Thursday 12 August 2021** by joining the hearing via Microsoft Teams, or by calling in by phone. Prior registration is required (see above)
- ☐ via the **online submission form** on Council's Your Say page:
<https://yoursay.northernbeaches.nsw.gov.au/proposed-amendment-little-manly-coastline-plan-management> from **Wednesday 7 July until Wednesday 18 August 2021**
- ☐ **in writing to Council** at 'Proposed amendment to Little Manly Beach Reserve PoM – 40 Stuart Street, Manly', Northern Beaches Council, PO Box 82 Manly, NSW 1655 from **Wednesday 7 July until Wednesday 18 August 2021**

The question to address in your submission is:

**Do you agree or not with the proposal to categorise community land comprising 40 Stuart Street in Manly (Lot 3 DP252420) as Park?
Why or why not?**

1.3 About this background information document

This background information document sets out the legislative requirements for categorisation of community land in Section 2, particularly:

- ☐ categorisation of community land
- ☐ preparation of Plans of Management for land classified as community land
- ☐ public hearings regarding the categorisation of community land.

Section 3 explains the proposed categorisation of 40 Stuart Street in Manly.

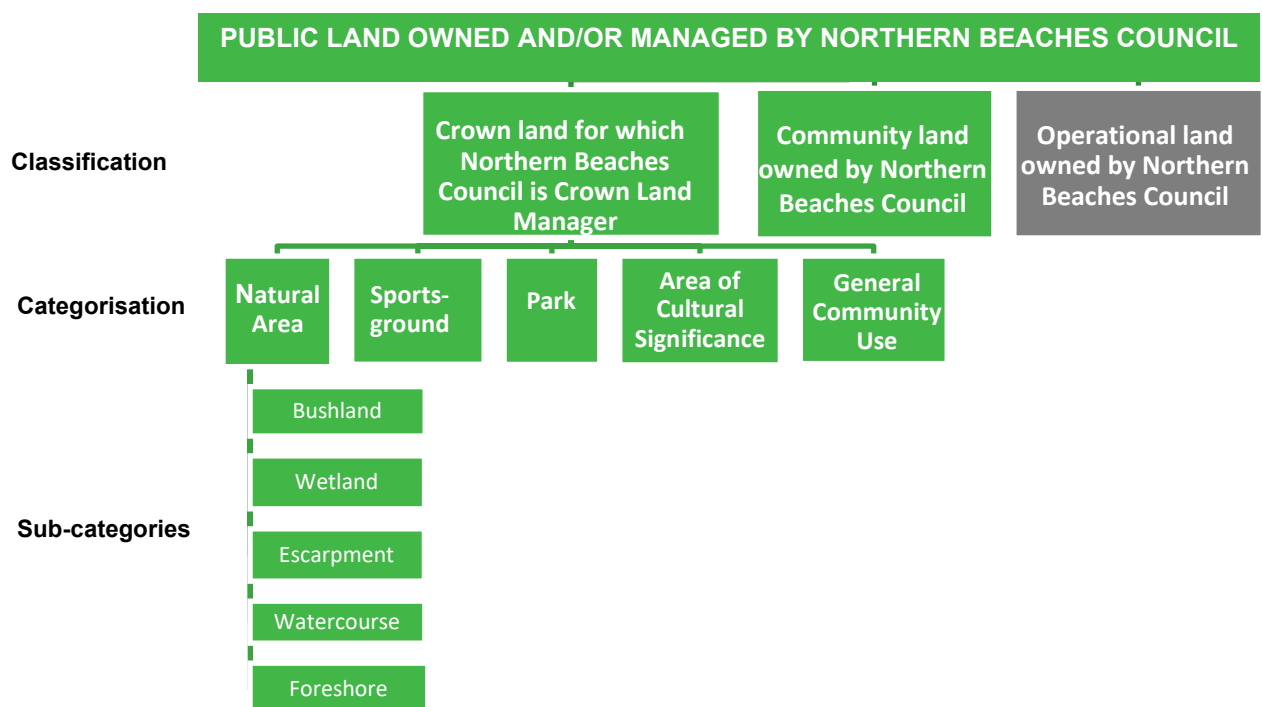
2 COMMUNITY LAND CATEGORISATION

2.1 Community land

The *Local Government Act 1993* sets out a range of requirements that Northern Beaches Council is legally bound to adhere to. These requirements include the management of community land owned by Northern Beaches Council.

40 Stuart Street in Manly is owned by Northern Beaches Council, and is classified as community land under the *Local Government Act 1993*.

Figure 1 Classification and categorisation of community land



The Local Government Act requires that all land owned by Council must be classified as "community" or "operational" land (Section 26).

Community land is intended to be managed for use by the community for purposes including environmental protection, recreational, cultural, social and educational activities. Community land may only be leased or licensed for up to 21 years without the Minister's consent or up to 30 years with the Minister's consent, it cannot be sold, and its use is restricted to the above purposes.

Conversely, operational land is land that can be used for any purposes deemed fit by Council, may be used for commercial purposes, be leased for a longer period, and can be sold.

2.2 Categorisation of community land

2.2.1 What are the categories for community land?

The *Local Government Act 1993* requires that all land owned by a Council which is classified as community land be categorised.

Community land may be categorised as one or more of the following under Section 36(4) of the Act:

- ☐ natural area.
- ☐ sportsground.
- ☐ park.
- ☐ area of cultural significance.
- ☐ general community use.

Community land that is categorised as a natural area is to be further categorised as one or more of the following under Section 36(5) of the Act:

- ☐ bushland.
- ☐ wetland.
- ☐ escarpment.
- ☐ watercourse.
- ☐ foreshore.
- ☐ a category prescribed by the regulations.

2.2.2 What are the guidelines for categorising community land?

Guidelines for categorising community land as a particular category are in Clauses 102 to 111 of the *Local Government (General) Regulation 2005*.

The Department of Local Government's revised Practice Note on Public Land Management (Department of Local Government, 2000) made general recommendations on the guidelines for categorising community land. The Practice Note stated:

"Council must have regard to the guidelines in determining a category (cl.9) but are not required to adopt any category merely because the land fits the description in the guidelines. Council should look at all the circumstances of the land in making a decision as to categorisation. For example, a piece of land may seem to satisfy the guidelines for more than one category. Council has a discretion in this case to look at the land in context, taking into account all relevant material before determining a category. It is important that Council be able to justify a decision."

Also, Council may have a piece of community land, parts of which may be best managed as different categories, for example a piece of land with remnant bushland in one part and children's play equipment in another. Council is able to categorise land as part 'Natural Area – Bushland' and part 'Park'. It is strongly recommended that the land in each category not overlap. Overlapping categories may cause conflict in management objectives and will create confusion in the minds of Council staff and the community."

2.2.3 Core objectives for managing community land

Each category and sub-category of community land has core objectives that apply to it under the *Local Government Act*. The core objectives outline the approach to management of the land covered by the particular category. The core objectives for each category of community land are set out in Sections 36E to 36N of the *Local Government Act 1993*.

The guidelines and core objectives for the Park category and other categories which could be considered for 40 Stuart Street in Manly are in Table 1.

Table 1 Guidelines and core objectives for categories of community land considered for the subject lots

Category	Guidelines ¹	Core objectives ²
Park	Land that is, or is proposed to be, improved by landscaping, gardens or the provision of non-sporting equipment and facilities, for use mainly for passive or active recreational, social, educational and cultural pursuits that do not unduly intrude on the peaceful enjoyment of the land by others.	<ul style="list-style-type: none"> - encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities, and - provide for passive recreational activities or pastimes and for the casual playing of games, and - improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.
Sportsground	If the land is used or proposed to be used primarily for active recreation involving organised sports or the playing of outdoor games.	<ul style="list-style-type: none"> - encourage, promote and facilitate recreational pursuits in the community involving active recreation involving organised sports and informal sporting activities and games, and - ensure that such activities are managed having regard to any adverse impact on nearby residences.
General Community Use	Land that 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.	<ul style="list-style-type: none"> - 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 in relation to: <ul style="list-style-type: none"> - public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public. - 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).
Natural Area	If the land, whether or not in an undisturbed state, possesses a significant geological feature, geomorphological feature, landform, representative system or other natural feature or attribute that would be sufficient to further categorise the land as bushland, wetland, escarpment, watercourse or foreshore under section 36(5) of the Act.	<ul style="list-style-type: none"> - conserve biodiversity and maintain ecosystem function in respect of the land, or the feature or habitat in respect of which the land is categorised as a natural area. - maintain the land, or that feature or habitat, in its natural state and setting. - provide for the restoration and regeneration of the land. - provide for community use of and access to the land in such a manner as will minimise and mitigate any disturbance caused by human intrusion. - assist in and facilitate the implementation of any provisions restricting the use and management of the land that are set out in a recovery plan or threat abatement plan prepared under the <i>Threatened Species Conservation Act 1995</i> or the <i>Fisheries Management Act 1994</i>.
Under Section 36(5) of the Act, Natural Areas are required to be further categorised as bushland, wetland, escarpment, watercourse or foreshore based on the dominant character of the natural area.		

Category	Guidelines ¹	Core objectives ²
Natural Area – Foreshore	Land that is categorised as a natural area should be further categorised as foreshore under section 36(5) of the Act if the land is situated on the water's edge and forms a transition zone between the aquatic and terrestrial environment.	<ul style="list-style-type: none"> - maintain the foreshore as a transition area between the aquatic and the terrestrial environment, and to protect and enhance all functions associated with the foreshore's role as a transition area - facilitate the ecologically sustainable use of the foreshore, and to mitigate impact on the foreshore by community use
1	<i>Local Government (General) Regulation 2005</i>	
2	<i>Local Government Act 1993</i>	

2.3 Plans of Management for community land

Council must prepare a Plan of Management for community land (Section 36(1)). Community land is required to be used and managed according to a Plan of Management applying to the land.

Requirements of the Local Government Act for the contents of a Plan of Management include categorisation of the land.

2.4 Public hearings for categorisation of community land

2.4.1 Why hold a public hearing to categorise community land?

A public hearing is required under Section 40A of the *Local Government Act 1993* if:

- ☐ a Plan of Management proposes to categorise (that is, the Plan has not been previously been prepared and adopted by Council, or has not categorised community land) the community land covered by the Plan of Management
- ☐ a Plan of Management proposes to re-categorise (changing the adopted category) the community land covered by the Plan of Management

Note: Public hearings regarding categorisation or re-categorisation of community land are not related to reclassification. Reclassification is when community land is re-classified as operational land that can then be managed differently and has the ability to be sold by Council. Community land is protected under the Local Government Act and cannot be sold.

2.4.2 Who conducts a public hearing?

An independent chairperson will conduct the public hearing, and provide a report to Council with recommendations on the proposed categorisation of community land.

Under Section 47G of the Act, the person presiding at a public hearing must not be:

- a) A Councillor or employee of the Council holding the public hearing.
- b) A person who has been a Councillor or employee of that Council at any time during the 5 years before the date of his or her appointment.

2.4.3 What happens after the public hearing?

Council must make a copy of the report regarding the outcomes of the public hearing available for inspection by the public at a location within the area of Council no later than four days after it has received the final report from the person presiding at the public hearing.

The public hearing report will be presented to Council for its information when it considers adopting the proposed amendments to the *Little Manly Coastline Management Plan 2004*, and the proposed categorisation of 40 Stuart Street in Manly.

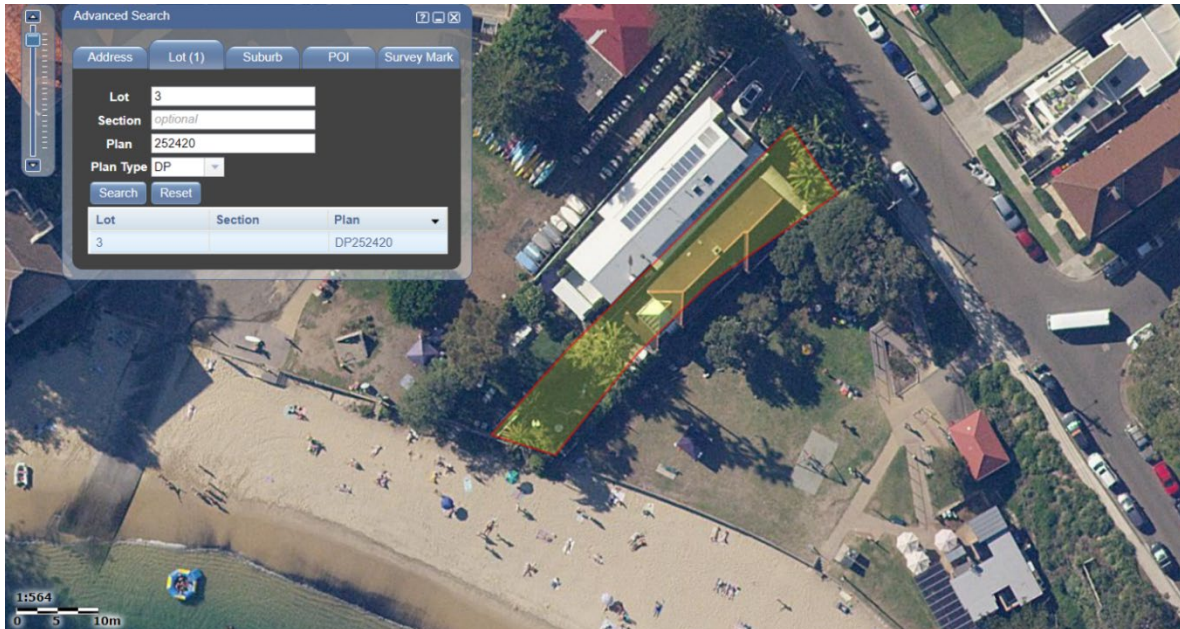
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3 THE SUBJECT LAND

3.1 Location and ownership of 40 Stuart Street, Manly

The locational context of Lot 3 DP 252420 at 40 Stuart Street in Manly is in Figure 2.

Figure 2 Location of the subject land



The subject land is owned by Northern Beaches Council as shown in Figure 3.

Figure 3 Ownership of the subject land



The subject land is shown in Figure 4.

Figure 4 Site photos of the subject land



View south-east from Stuart Street



View north-west from Little Manly Beach Reserve



View south-west from Little Manly Beach Reserve



View north-east from Little Manly Beach

3.2 Proposed categorisation of the subject land

40 Stuart Street in Manly (Lot 3 DP 252420) has not yet been formally categorised under the *Local Government Act 1993*.

Council proposes to categorise the subject land as Park, which would be consistent with the Little Manly Beach Reserve Masterplan showing incorporation of 40 Stuart Street as open space, as shown in Figure 5.

Figure 5 Little Manly Beach Reserve Masterplan



Council believes the Park category best fits the proposal to demolish the dwelling on 40 Stuart Street and incorporate the land into Little Manly Beach Reserve as open space.

The Park category as it is proposed to apply to 40 Stuart Street, Manly is shown in Figure 6.

Figure 6 Proposed categorisation of 40 Stuart Street, Manly (Lot 3 DP 252420)



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