

The General Manager
Port Stephens Council
Box 42, Raymond Terrace NSW 2324

Re: Planning proposal-Rezoning and reclassification of various Council Lands – 2013 Sites 17 & 18
2 Ridgeway Avenue and 9 Mitchell Street, Soldiers Point.

Sir,

On behalf of the members of the Soldiers Point Community Group Inc., I wish to lodge a submission rejecting this proposal to rezone the referenced Community Land.

Introduction:

Community Land, particularly on the foreshore should be seen as great asset to the people of Port Stephens. I appreciate that Council has a responsibility to manage assets, particularly land, under its care and that there are many such parcels which may not be used by the Community.

This is not one of those cases.

To consider rezoning foreshore land that is integral to the Soldiers Point community is a clear breach of faith on your part and that of the personnel who have proposed this alienation.

Objections:

To even consider rezoning (foreshore) Community land is bad enough but to do so resolve what is evidently the illegal use of that land is unbelievable. I refer you to items 17 & 18 in your proposal. This land is currently zoned as Community land and in 2001 was leased for a period of 25 years to the adjacent Soldiers Point Marina. This marina is owned by Clippers Anchorage P/L.

The leased portion of the Community Land in question is approximately 155 m² and covers a section of the car spaces in front of the marina and a portion of the slipway owned by Clippers Anchorage P/L.

On the 13th August 2013 at a Council meeting, Cr Dingle asked a question of Council management with regard to this leased land. The motion (item 16), which I am sure you are aware of, related to signing a deed of trust over the land. Attached to the motion was plan showing the lease in question. The question was, “ Council has leased a small parcel of Community Land (The subject of that motion), it is clear from the attached plans that the marina’s operation encroaches on some of the Community Land, land which is NOT covered by a lease, ... what is Council’s intention for this parcel?”

Councils advise was that they were seeking (through this proposal) to rezone the land to resolve this issue.

Although this interchange did not appear in the formal minutes of the meeting it was noted by a number of members of the public, (including myself) and if necessary can be supported by affidavits.

This advice together with this proposal’s rationale makes it clear that Council is aware of the current use of Community Land for business purposes by Clippers Anchorage P/L since 2001. This organisation has operated their business on a portion of Community Land, without permission, without a formal lease AND without the community obtaining any financial benefit for this illegal use for over 12 years.

The proposal to rezone a larger section of the Community Land so that it can be leased back to the same organisation is a clear breach of Council's Duty of Care. To try to smooth over this illegal and non-compliant use by rezoning and re-leasing sends a clear message to other parties – "you can do what you want within Community Land in Port Stephens, and if you are found out, Council will take the easy way out, and let you away with that breach – they will even let you continue (as in this case) to use the land".

This form of mismanagement has to stop and it has to stop by the rejection of **this proposal**.

If Council proceeds with rezoning this land, with the intention to resolving the illegal use of the Community land, it runs a clear and present risk to have such a proposal challenged in a court of appeal. There is, as shown above, no doubt that Council is aware of the illegal use of Community Land at the Soldiers Point Marina.

Council cannot, in good faith recommend such an action, even at this early stage in the rezoning process. Council will have to fight this proposal at every stage of the Department's LEP practice, the mandatory public notification and the necessary State Government approval and it will become very evident that Council has known of this illegal use of land it is supposed to manage, and has done nothing about it!

Let us not forget that Community Land cannot be sold (only leased), however if this proposal proceeds to convert the land to Operational, it takes nothing more than the delegation (similar to the one passed on the 13th August Council meeting (item 16), mentioned above) for the Mayor and the General Manager to be given delegated approval to either lease OR sell the land. Once the land is Operational, the Council can do anything it wants with the land under the Local Government Act, without any recourse by the community which Council is supposed to represent.

Even to countenance leasing this land to an organisation that has shown completed disregard for due process, one that has used the land illegally for years, and one that has a number of currently outstanding non-compliance issues with Council is unacceptable. As a separate action we will be advising Council's compliance officers of the subject of this submission and this illegal use of Community Land.

To resolve the matter of non-compliance we would suggest that Council either take immediate action to register a lease over the illegal section of its operation or shut down the operation on that parcel of land. Any such lease should ensure that that Clippers Anchorage P/L pays for the land it has used free of charge since 2001 at current commercial rates.

With respect to the proposal to rezone the Community land we ask Council to reject this proposal.

Thank you

Colin Howard
President
Soldiers Point Community Group Inc.
18th August 2013