

OUTCOMES COMMITTEE

Meeting Date 10 September 2013

Item Number. 137

SUBJECT: Planning Proposal - Rezoning of 2 Council owned sites from RE1 Public Recreation to R2 Low Density Residential and E2 Environmental Conservation to R2 Low Density Residential
Premises: 117A Wetherill Street, Smithfield (Lot 15 DP 27962) Part of 52 Richards Road, Wakeley (Part of Lot 1540 DP 260255)
Applicant/Owner: Fairfield City Council
Zoning: RE1 Public Recreation to R2 Low Density Residential E2 Environmental Conservation to R2 Low Density Residential

FILE NUMBER: 13/06466

PREVIOUS ITEMS: 37 - Ordinary Council - 23 April 2013

REPORT BY: Anjele Vu, Strategic Land Use Planner

RECOMMENDATION:

That Council:

1. Adopt the Planning Proposal to rezone 2 Council owned sites from RE1 Public Recreation to R2 Low Density Residential (117A Wetherill Street, Smithfield & 52 Richards Road, Wakeley).
2. Exercise its delegation under Section 59 of the Environmental Planning and Assessment Act 1979 (EP&A Act) to finalise the making of this LEP as delegated to the Group Manager - City Development who has been delegated these powers by Council and the City Manager under Section 377 of the Local Government Act 1993.
3. Advise the submission authors of Council's decision.
4. Inform the Department of Planning and Infrastructure (DP&I) in respect to Council's decision (in accordance with the DP&I Guide to Preparing LEPs).

Note: This report deals with a planning decision made in exercise of a function of Council under the EP&A Act and a division needs to be called.

SUPPORTING DOCUMENTS:

AT-[A](#) Location Maps

2 Pages

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AT-B	Planning Proposal	73 Pages
AT-C	Gateway Determination	3 Pages
AT-D	Written Authorisation to Exercise Delegation	1 Page
AT-E	Submissions	5 Pages

CITY PLAN

This report is linked to *Theme 2 Places and Infrastructure* in the Fairfield City Plan.

SUMMARY:

This report relates to the public exhibition of the planning proposal to rezone 2 Council owned sites RE1 Public Recreation to R2 Low Density Residential and E2 Environmental Conservation to R2 Low Density Residential (maps identifying the sites can be seen in Attachment A). The 2 sites that are proposed to be rezoned are:

1. 117A Wetherill Street, Smithfield*
2. 52 Richards Road, Wakeley.

***Note:** The access handles of the subject lot from Wetherill Street and Victoria Street do not form part of this planning proposal because during the preparation of draft LEP 2011 (now known as LEP 2013) narrow laneways which adjoined existing open space lands were rezoned to the zone of the adjoining area as they do not have any recreational value or environmental significance. The narrow laneways were rezoned to the zone of the adjoining area to clearly indicate these areas do not support broader recreation uses as is the case with larger RE1 parcels which support or are capable of supporting a range of recreation functions.

Notwithstanding, the laneways remained in Council ownership and continue to be classified as community land under the NSW Local Government Act.

Previously these laneways were included as part of the total open space area calculations within Fairfield City. These laneways are primarily used as access points and have no real recreational or environmental value; therefore their removal provided a more indicative figure of the actual open space area within the city.

These 2 sites were originally rezoned in July 2012 from 6(a) Existing and Proposed Recreation to 2(a) Residential A as part of the Fairfield LEP 1994 Amendment 128. However, during the preparation of the comprehensive Fairfield LEP 2011 the 2 sites were inadvertently zoned back to RE1 Public Open Space and E2 Environmental Conservation instead of R2 Low Density Residential.

This report seeks Council endorsement to the forward the Planning Proposal – Housekeeping Amendment Local Environmental Planning 2013 (Attachment B) as exhibited to the Department of Planning and Infrastructure (DP&I) for finalisation.

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BACKGROUND

In November 2010, Council officers prepared a Planning Proposal regarding the reclassification of 16 Council owned sites and the associated rezoning of 2 of the 16 Council owned sites from 6(a) Existing and Proposed Recreation to 2(a) Residential A.

The aim of that previous planning proposal was to reclassify the 16 Council owned sites and to rezone 2 of the Council owned sites to:

- Provide certainty with regards to the classification of a number of Council owned properties;
- Enable Council to enter into longer term lease agreements on a number of Council owned properties; and
- Enable Council to develop or dispose of a number of parcels of land that have been identified as surplus.

Council also received 2 submissions from public authorities during the required public authorities' consultation period. One submission came from the Roads and Maritime Services (RMS) and the other from the Office of Environment & Heritage, both submissions did not relate to the sites that are subject of this proposal.

The planning proposal was subsequently endorsed by Council on 6 December 2011 and came into force on Friday 20 July 2012.

BACK ZONING ISSUE

Historically the 2 sites (117A Wetherill Street and 52 Richards Road) were zoned for public open space purposes under Fairfield LEP 1994. However, as noted above, in November 2010 Council prepared a Planning Proposal to rezone the 2 sites from public open space to low density residential as part of a broader Planning Proposal.

At the same time Council was in the process of preparing the draft comprehensive Fairfield LEP 2011 (dFLEP2011).

During the transition period between the 2 plans, LEP 1994 Amendment No. 128 was publicly exhibited, (in which the subject sites were proposed to be rezoned for residential) prior to the public exhibition of dFLEP2011. When the dFLEP2011 was publicly exhibited the 2 sites subject to the rezoning were inadvertently shown as RE1 Public Open Space.

As a result, the dFLEP2011 did not reflect the amended zoning. Once the public exhibition of the dFLEP2011 was complete, the dFLEP2011 had progressed to a point where amending the Plan could trigger re-exhibition, which would delay the finalisation of the Plan. Accordingly, a more timely and efficient method to resolve the matter was to prepare separate Planning Proposal.

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It should be noted that the 'back zoning' issue does not impact on the sites classification and as a result no reclassification is required to be undertaken under the current Planning Proposal.

Consequently, recent discussion with the DP&I has identified the most suitable and efficient process to resolve the issue is to prepare a new planning proposal.

Council considered a report in April 2013 where Council resolved to prepare a planning proposal and inform the DP&I that Council wishes to commence the Gateway Determination Process to amend the draft Fairfield Draft Fairfield LEP 2013.

GATEWAY DETERMINATION

On 26 June 2013, Council received the Gateway Determination (Attachment C) from the DP&I which permitted draft LEP to *rezone land at Wakeley and Smithfield for residential purposes and amend the development standards applicable to the land* to be publicly exhibited subject to a number of requirements.

The Gateway Determination was conditioned so that:

1. Prior to undertaking public exhibition, Council is to update Section B within the planning proposal to correctly reference and demonstrate consistency with S117 Direction 7.1 Implementation of the Metropolitan Plan for Sydney 2036. Section B of the planning proposal is to be updated to demonstrate consistency with the draft West Central Subregional Strategy.

Comment: Complete (Planning proposal (Attachment B) was updated prior to public exhibition).

2. Prior to undertaking public exhibition, Council is to amend the planning proposal to include a project timeline, consistent with Section 2.6 Part 6 of the A Guide to Preparing Planning Proposals. The project timeline is to provide a mechanism to monitor the progress of the planning proposal.

Comment: Complete (Planning proposal (Attachment B) was updated prior to public exhibition).

3. Community Consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) The planning proposal is classified as low impact as described in A Guide to Preparing LEPs (Department of Planning & Infrastructure 2013) and must be made publicly available for a minimum of 14 days; and

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- (b) The relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made public available along with planning proposals as identified in section 5.5.2 of A guide to Preparing LEPs (department of Planning and Infrastructure 2013).

Comment: Complete. (See additional comments relating to the public consultation in the report below).

4. No consultation is required with public authorities under section 56(2)(d) of the EP&A Act.

Comment: Noted (consultation with public authorities was not carried out).

5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

Comment: Noted (A public hearing was not held).

6. The timeframe for completing the LEP is to be 6 months from the week following the date of the gateway determination.

Comment: On Target (DP&I deadline 26 December 2013).

DELEGATED AUTHORITY

In addition to the Gateway Determination Council was granted authorisation to exercise the functions of the Minister for Planning and Infrastructure under section 59 of the Environmental Planning and Assessment Act 1979 that are delegated to it by instrument of delegation dated 14 October 2012 in respect to this planning proposal. (See *Attachment D* for a copy of the Written Authorisations to Exercise Delegation).

PUBLIC EXHIBITION

Following receipt of the Gateway Determination from the DP&I, Council was required to place the Planning Proposal on public exhibition. The Planning Proposal went on public exhibition for 14 days from 17 – 31 July 2013, in accordance with the consultation strategy identified in the Gateway determination. This included letters being sent to properties owners of sites adjoining the 2 subject sites.

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SUBMISSIONS

As a result of the public exhibition process 4 submissions (*Attachment E*) were received from owners and residents of properties adjoining 117A Wetherill Street Smithfield.

Issues raised within the submissions were:

1. **Loss of Privacy** – Once the 117A Wetherill Street has been developed; there will be a loss of privacy for the residents in dwellings on Helen Street which directly adjoin the subject site.
2. **Loss of Solar Access** – The development of the 117A Wetherill Street could lead to a loss of solar access to for the existing dwellings on Helen Street directly adjoining this site.
3. **Access** – There is currently no access to the 117A Wetherill Street.
4. **Increased Traffic flow and noise**– Development of 117A Wetherill Street may lead to increased traffic flow which will reduce the amenity for the residents of the existing dwellings on Helen Street.
5. **Construction Noise** – Development of 117A Wetherill Street may result in unreasonable construction noise reducing the amenity of residents in the surrounding area.
6. **Acquisition of 5 Helen Street** - the submission authors requested that Council clarify its intent for purchasing 5 Helen Street (Lot 13//220985). If Council was to create an access road to the 117A Wetherill Street concern was raised that fencing for the adjoining properties will not be provided for the sites adjoin 5 Helen Street.

OFFICER COMMENTS

Proposed Changes to Planning Legislation White Paper

It is noted that some of the issues raised by the submission authors would be dealt with as part of a future development application. During the development application process, current legislation requires notification of properties that could potentially be impacted by certain types of development proposals, such as subdivision proposals.

However, under proposed changes to the planning system identified in the White Paper: A new Planning System for NSW, the ability for the community to comment at the DA stage may be restricted. Under the proposed changes community consultation may only be required during the planning proposals/LEP amendment stage and may not have further opportunity to comment during the DA assessment.

Given the timeframe of this proposal and the progression of the proposed changes to the planning legislation, the advice that Council officers have previously provided to the submission authors, in respect to further consultation during the development application stage, may becoming irrelevant as the result of proposed changes to the planning legislation.

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In this regard, Council officers have endeavoured to address those issues that are more related to the development application as follows:

1. **Loss of Privacy** - Any future residential dwelling built on site will need to comply with Council's residential development controls contained in Chapter 5A Dwelling Houses of Fairfield City Wide Development Control Plan (DCP) 2013. The Fairfield City Wide DCP contains controls which;

- Ensure privacy is maximised for neighbours of the dwelling house and those who will occupy the dwelling;
- Avoid overlooking of private open spaces and windows of nearby dwellings; and
- Limit noise transmission to nearby dwellings.

The proposed R2 Low Density zoning will permit low density dwellings similar to those built in the immediate area.

Similarly it is noted that under the SEPP (Exempt and Complying Development Code) includes provisions aimed at protecting neighbours privacy.

2. **Loss of Solar Access** – Council's applicable development controls will ensure that adjoining properties will enjoy adequate lighting and that any proposed new dwellings will not adversely overshadow the existing adjoining dwellings.

The SEPP (Exempt and Complying Development Code) includes setback controls that require new dwellings to be set back from the rear boundary by between 3 to 8m. To achieve the minimum landscaping required in this SEPP the proposed developments may need to be further setback from the boundaries.

In this regard setback controls and the minimum landscaping requirements contained in the SEPP (Exempt and Complying Development Code) would help create some degree of protection to solar access for the submission authors' site in the case that future development on the subject site occurred as complying development.

In addition the existing position, setbacks and orientation of the neighbouring properties further reduces the potential for overshadowing occurring from development on the subject site.

3. **Access** – Refer to comments under point 6 below.
4. **Increase Traffic flow and noise** – Any future residential dwelling built on site will need to comply with Council's residential development controls contained in Chapter 5A Dwelling Houses and Chapter 12 Car Parking Vehicle and Access Management of the Fairfield City Wide Development Control Plan (DCP) 2013.

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These controls provide guideline which minimise/avoid traffic congestion and noise. In addition, the existing Cul-de-sac and no through road arrangement will be maintained. It is not considered that there would be a significant traffic impact as a result of development of this site as the proposed zoning will permit low density residential development (generally a lower traffic generator) which is consistent with the built form of the immediate area.

Notwithstanding the above, the initial re-subdivision of the site will need to be supported by a traffic report demonstrating the development would have minimal traffic impact upon the local road network.

5. **Construction Noises** - Noise will be on a temporary basis during construction, which is common with any development of this nature. The extent of the noise will be regulated through conditions of any development consent issued.
6. **Acquisition of 5 Helen Street** - Council has acquired this site for the purposes of providing access to future development on 117A Wetherill Street. Preliminary conceptual plans shows part of the subject property will be used for access with the residue land on either side to form part of the newly created allotments. Council will reinstate any loss of fencing as a result of the proposed development.

RECOMMENDATION

As a result of the Public Exhibition, 4 submissions (*Attachment E*) were received. It is considered that the issues raised in the residents' submission can be adequately addressed by existing controls applying to residential development under Council's City Wide DCP and SEPP (Exempt and Complying Development Code) applying to future development on the site.

It is recommended that Council proceed to finalise the making of this plan, under delegated authority and in accordance with the Guide to Preparing LEPS (Department of Planning & Infrastructure 2013).

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Authorisation:
Manager Strategic Land Use Planning
Group Manager City Development

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***** END OF ITEM 137 *****

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Attachments to the Outcomes Committee Item 113 *Rezoning of 2 Council owned sites from RE1 Public Recreation to R2 Low Density Residential and E2 Environmental conservation to R2 Low Density Residential (10 September 2013)* can be accessed by following the steps below.

1. Go to <http://www.fairfieldcity.nsw.gov.au>
2. On the left hand side column of home page click on **Business Paper** link.
3. When page appears scroll down and select the **2013 and September**, then click **Find** button.
4. Click on **link which corresponds to the report under the agenda heading either HTML version or PDF version.**