



qA284731

14/03908

Department Generated Correspondence (Y)

PLANNING AND INFRASTRUCTURE*Growth Planning & Delivery*

Subject	Fairfield Local Environmental Plan (Amendment No.2) – 13-21 Rossetti Street, Wetherill Park		
Action	☐ For Information	☒ For Decision	☒ Letter for signature
Priority	☐ Urgent	☒ Routine	
Minister Office Generated:		Agency Generated ☒	
Minister ☐	Chief of Staff ☐	Parliament Generated ☐	
Media ☐	Policy Advisor ☐		
Deputy CoS ☐			
Local Government Area(s) affected: Fairfield LGA			
State Member:		Known Views:	
Mr Andrew Bajjan Rohan MP, Member for Smithfield		Mr Rohan made representations to the Minister in January 2013, advising of community objections to the proposed high density residential development (Obj. Ref: qA243524).	
Federal Member:		Known Views:	
The Hon Chris Bowen MP Member for McMahon		The views of the Federal Members are unknown.	
Federal Government committees/taskforces (and the like) related to this issue: N/A			

PURPOSE

- To request that the General Manager, Metropolitan Delivery as the Minister's delegate, **make** the *Fairfield Local Environmental Plan 2013 (Amendment No.2)* ('draft LEP') under section 59(2)(a) of the *Environmental Planning and Assessment Act 1979* (the 'EP&A Act 1979'), relating to land at 13-21 Rossetti Street, Wetherill Park.

RECOMMENDATION

- It is RECOMMENDED that the General Manager:
 - note** the Planning Report (**Tag A**) and attachments to this briefing note;
 - note** Parliamentary Counsel's Opinion that the draft LEP can be legally made (**Tag PC**);
 - make** the draft LEP under section 59(2)(a) of the *Environmental Planning and Assessment Act 1979*, with the post-exhibition variation proposed by Council, by **signing** the draft instrument, supporting Maps and Map Cover Sheet (respectively at **Tag LEP** and **Tag Maps**); and
 - sign** the letter to Fairfield City Council advising of this decision.

CURRENT POSITION

- The planning proposal seeks to:
 - rezone the subject land at 13-21 Rossetti Street, Wetherill Park (Lot 5 in DP 714281) from R2 Low Density Residential to B2 Local Centre;
 - apply a maximum Floor Space Ratio (FSR) control of 1.45:1 to the subject land;
 - apply a maximum Height of Building (HOB) control of 14 metres to the subject land;
 - remove the Minimum Lot Size control of 450sqm; and
 - remove the Minimum Lot Size control of 900sqm for Dual Occupancy Development.

- The draft LEP seeks to facilitate the expansion of the adjoining Wetherill Park Market Town shopping centre to the north and higher density residential development over the site. (A copy of the planning proposal, site locality and proposed rezoning map is attached at **Tag C** and **Tag Maps** respectively).

In response to community objections (see Background), Council amended the proposal post-exhibition as follows:

- Height control reduced from 20 metres to 14 metres
 - Floor space ratio (FSR) control reduced from 1.7:1 to 1.45:1.
- The agency considered Council's changes to be a reasonable response to community concerns and recommended that the proposal be finalised with the variations proposed by Council (**Tag J**).

BACKGROUND

- A Gateway Determination was issued on 06 February 2012 which allowed this proposal to proceed with conditions (**Tag E**).
- The planning proposal was exhibited from 01 August 2012 to 29 August 2012, in accordance with the Gateway requirements.
- A total of 10 submissions, including a petition containing some 193 signatures, were received by Council in regards to this proposal, the details of which are further discussed in the planning proposal and Council reports at **Tag G Pt 1**.
- The agency also received representation from Mr Andrew Rohan, Member for Smithfield, advising of community objections to the exhibited planning proposal (qA243524).
- Community objections to the proposal concern the increase in residential density, specifically with regard to increased traffic and associated noise, increased demand for parking and amenity use. Council has adequately addressed the issues raised in the submissions.
- The planning proposal was received by the agency on 19 December 2012 for finalisation, but could not be progressed until the Fairfield LEP 2013 was made (notified on 17 May 2013). The final maps were received from Council on 09 August 2013.
- The agency's Register of Lobbyist contact was checked on 24 February 2014. There were no records of any meeting(s) or contact with Lobbyist(s) in relation to this matter.
- The final PC Opinion was issued on 24 February 2014 (**Tag PC**).
- On 26 February 2014, Council was consulted on the terms of the draft instrument, pursuant to section 59(1) of the *EP&A Act 1979* and endorsed the draft plan (**Tag L**).
-

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RJ Cumming

26/2/2014

Rachel Cumming
Director
Metropolitan Delivery

Neil McGaffin

4.3.14

Neil McGaffin
General Manager, Metropolitan Delivery
Growth Planning & Delivery

(Noted and actioned Legal Services Branch)



Mr Alan Young
City Manager
Fairfield City Council
PO Box 21
FAIRFIELD NSW 1860

Contact: Rachel Cumming
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@planning.nsw.gov.au](mailto:rachel.cumming@planning.nsw.gov.au)

Attention: Julio Assuncao

Fairfield Local Environmental Plan 2013 (Amendment No. 2)

I refer to Council's submission under the *Environmental Planning and Assessment Act 1979* ('the EP&A Act'), requesting the Minister make *Fairfield Local Environmental Plan 2013 (Amendment No. 2)*, relating to land at 13-21 Rossetti St, Wetherill Park.

I am pleased to advise that as the Minister's delegate, I have made *Fairfield Local Environmental Plan 2013 (Amendment No. 2)* under section 59(2) of the *EP&A Act*.

As outlined under section 34(5) of the *EP&A Act*, this Plan will take effect when published on the NSW Legislation website www.legislation.nsw.gov.au.

The agency commends Council for the work undertaken to prepare Amendment No.2 to *Fairfield Local Environmental Plan 2013* and appreciates the co-operation of Council in delivering this plan.

Should you have any questions regarding this matter, I have arranged for Ms Rachel Cumming, Director of Metropolitan Delivery (Parramatta), to assist you. Ms Cumming may be contacted via telephone on (02) 9860 1174.

Yours sincerely

Neil McGaffin 4.3.14
General Manager, Metropolitan Delivery
Growth Planning & Delivery

Environmental Planning and Assessment Act 1979

Fairfield Local Environmental Plan 2013 (Amendment No 2)

Fairfield City Council
PO Box 21
Fairfield NSW 1860

Map Cover Sheet

The following map sheets are revoked:

Map Sheet	Map Identification Number
Land Zoning Map LZN_010	2850_COM_LZN_010_010_20130117
Height of Buildings Map HOB_010	2850_COM_HOB_010_010_20130130
Floor Space Ratio Map FSR_010	2850_COM_FSR_010_010_20130130
Lot Size Map LSZ_010	2850_COM_LSZ_010_010_20130117
Lot Size for Dual Occupancy Development Map LSD_010	2850_COM_LSD_010_010_20130117

The following map sheets are adopted:

Map Sheet	Map Identification Number
Land Zoning Map LZN_010	2850_COM_LZN_010_010_20131206
Height of Buildings Map HOB_010	2850_COM_HOB_010_010_20140207
Floor Space Ratio Map FSR_010	2850_COM_FSR_010_010_20131113
Lot Size Map LSZ_010	2850_COM_LSZ_010_010_20140117
Lot Size for Dual Occupancy Development Map LSD_010	2850_COM_LSD_010_010_20140117


Delegate of the Minister for
Planning & Infrastructure

4.3.14

Certified

[Title of Council Delegate] [Date] Minister for Planning and Infrastructure [Date]

2850_COM_MCS_20140207

Page 1 of 1



New South Wales

Fairfield Local Environmental Plan 2013 (Amendment No 2)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning and Infrastructure, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning and Infrastructure


Delegate of the Minister for
Planning & Infrastructure

4.3.14

Fairfield Local Environmental Plan 2013 (Amendment No 2)

under the

Environmental Planning and Assessment Act 1979

1 *Interpretation*

This Plan is *Fairfield Local Environmental Plan 2013 (Amendment No 2)*.

2 Commencement

This Plan commences on the day on which it is published on the NSW legislation website.

3 Land to which Plan applies

This Plan applies to Lot 5, DP 714281, 13–21 Rossetti Street, Wetherill Park.

4 Maps

Each map adopted by *Fairfield Local Environmental Plan 2013* that is specified in Column 1 of the following table is declared by this Plan to be amended or replaced, as the case requires, by the map specified opposite in Column 2 of the table as approved by the Minister on the making of this Plan:

Column 1	Column 2
Name of map being amended or replaced	Name of amending or replacement map
Fairfield Local Environmental Plan 2013 Land Zoning Map (2850_COM_LZN_010_010_20130117)	Fairfield Local Environmental Plan 2013 Land Zoning Map (2850_COM_LZN_010_010_20131206)
Fairfield Local Environmental Plan 2013 Height of Buildings Map (2850_COM_HOB_010_010_20130130)	Fairfield Local Environmental Plan 2013 Height of Buildings Map (2850_COM_HOB_010_010_20140207)
Fairfield Local Environmental Plan 2013 Floor Space Ratio Map (2850_COM_FSR_010_010_20130130)	Fairfield Local Environmental Plan 2013 Floor Space Ratio Map (2850_COM_FSR_010_010_20131113)
Fairfield Local Environmental Plan 2013 Lot Size Map (2850_COM_LSZ_010_010_20130117)	Fairfield Local Environmental Plan 2013 Lot Size Map (2850_COM_LSZ_010_010_20140117)
Fairfield Local Environmental Plan 2013 Lot Size for Dual Occupancy Development Map (2850_COM_LSD_010_010_20130117)	Fairfield Local Environmental Plan 2013 Lot Size for Dual Occupancy Development Map (2850_COM_LSD_010_010_20140117)

PLANNING AND INFRASTRUCTURE

Growth Planning & Delivery

SECTION 59 REPORT

Local Government Area: Fairfield

File Number: 11/14866

PP Number: PP_2011_FAIRF_004_00

1. NAME OF DRAFT PLAN

Fairfield Local Environmental Plan 2013 (Amendment No. 2) (the draft LEP, Map Cover Sheet and supporting maps are attached at **Tag LEP** and **Tag Maps**, respectively).

2. SUBJECT LAND DESCRIPTION

The draft LEP applies to Lot 5 of DP 714281, known as 13-21 Rossetti Street, Wetherill Park.

An aerial photograph and locality map of the site is provided on pages 9-10 of the attached proposal at **Tag C**.

3. PURPOSE OF THE PLAN

The purpose of the draft LEP is to amend the *Fairfield Local Environmental Plan 2013*, to:

- rezone the above mentioned land from R2 Low Density Residential to B2 Local Centre;
- apply a maximum Floor Space Ratio (FSR) control of 1.45:1 to the subject land;
- apply a maximum Height of Building (HOB) control of 14 metres to the subject land;
- remove the Minimum Lot Size control of 450sqm that currently applies to the subject land; and
- remove the Minimum Lot Size control of 900sqm for Dual Occupancy Development, that currently applies to the subject land.

The intent of this planning proposal is to facilitate the expansion of the adjoining Wetherill Park Market Town shopping centre to the north (at Lot 4, DP714281) by an additional 1500 m² commercial floor space and higher density residential development over the site.

This draft LEP will also formalise the zoning of the site, to reflect its current use as a car park and portion of the adjoining shopping centre (pgs 24-25 of **Tag C**).

4. STATE ELECTORATE AND LOCAL MEMBER

The State Member for McMahon, The Hon Chris Bowen MP and the State Member for has made no direct representations to the agency regarding this proposal to date.

The local member for Smithfield, Mr Andrew Rohan, made representations to the Minister for Planning and Infrastructure in January 2013 (**Tag K**), advising of community objections to high density residential development on the subject land. The concerns raised by Mr Rohan's constituents relate to the potential local traffic, noise and parking impacts of the proposed development of the site.

Council has since resolved to reduce the proposed height and FSR controls from what was originally exhibited, following formal consideration of the community objections received during the exhibition period. This matter is further discussed in **Section 6** of this report.

NSW Government Lobbyist Code of Conduct: The agency's Lobbyist Contact Register was checked on 26 February 2014. The Register contains no records of communications with registered lobbyists with respect to this draft LEP.

5. AGENCY CONSULTATION

Council consulted with the Office of Environment and Heritage (OEH) on the proposal, both prior to and during public exhibition, in accordance with the requirements of the Gateway determination (**Tag E**).

Council received two submissions from OEH, dated 24 July and 30 August 2012, regarding the proposal (see **Tag H**). OEH raised no objection to the proposal proceeding but identified the following matters to be considered by Council:

Office of Environment and Heritage

As the subject site adjoins flood-affected land, the Gateway Determination (**Tag E**) conditioned that Council prepare a flood study in consultation with OEH, prior to exhibiting the proposal, to determine the level of overland flow on the subject site.

Council subsequently sought OEH's comment on the flood analysis of the site undertaken by Britten and Associates Pty Ltd (**Tag I**), which identified the potential overland flow flooding issues to be isolated within the south-eastern corner of the site. OEH agreed that the south-eastern corner of the site may be potentially be affected by overland flow (**Tag H**).

OEH advised Council to:

- consider the flood risk for the full range of floods up to the PMF for existing and proposed conditions;
- ensure the proposal complies with their City Wide DCP 2006;
- consider a flood emergency response plan to ensure safe refuge or evacuation of occupiers in times of flood is possible;
- consider the cumulative impacts from potential full development condition within the wider catchment; and
- consider the impact of any potential cut/fill operations on the site.

OEH also recommended that Council compare the results of Britten and Associates flood analysis of the site, with the results of Council's Wetherill Park Catchment Overland Flood Study (which encompasses the site), to assist in establishing the controls and footprint of the proposed future development of the site. However, Council has advised that it was unable to compare the results of the two studies as Council's Overland Flood Study was the subject of a peer review (**Tag G Pt 1**) during the time at which this proposal was reported to Council (post-exhibition).

Notwithstanding this, Council has prepared a supporting Site-Specific Development Control Plan for Wetherill Park Market Town, which contains specific provisions for drainage and stormwater detention on the subject land.

This DCP requires the siting of any building on the subject land to be clear of ~~any overland flow paths or that the overland flow paths are effectively managed~~ to ensure no adverse impact on adjoining properties. This DCP also requires that any future development application for the subject land has due regard to the flood risk management provisions contained in Chapter 11 of Fairfield Council's City Wide DCP (**Tag G Pt 5**) that give effect to and are consistent with the principles of the NSW Floodplain Development Manual.

OEH also advised Council of the need to ensure that the proposal meets all its legislative requirements regarding aboriginal heritage. Council has advised that the planning proposal does not affect any items of aboriginal heritage significance (see page 42 of the planning proposal at **Tag C**).

It is considered that Council has satisfactorily addressed the issues raised by OEH.

6. PUBLIC EXHIBITION

The draft LEP was publicly exhibited as a proposed amendment to both the *Fairfield LEP 1994* and (then draft) *Fairfield LEP 2013* for a period of 28 days, in accordance with the requirements of the Gateway, from 1 August 2012 to 29 August 2012. The proposal was exhibited in concert with Council's supporting draft Site Specific Development Control Plan (DCP) for Wetherill Park Market Town.

A total of 10 submissions were received by Council in respect to this proposal, including 8 resident submissions (one of which contained a petition with some 193 signatures) objecting to this planning proposal (**Tag G – Pt 1**).

Community objections to the proposal were centred around the potential local traffic and parking, amenity, noise and population density impacts associated with the proposed future high density residential development on the site outlined in the exhibited draft site specific development control plan. Concerns were also raised in relation to the potential impacts of the proposal on the market value of nearby properties.

Details on the submissions received by Council during exhibition are addressed in Council's report dated 13 November 2012, attached at **Tag G – Pt 1**).

Council has adequately addressed the issues raised in the submissions, as discussed in section 6.1 of this report.

6.1 Post-exhibition changes made by Council

Council has made a number of changes to the draft LEP since public exhibition, following its consideration of the issues raised in the submissions received.

This planning proposal was considered by Council (post-exhibition) at its meeting on 27 November 2012, where it resolved to reduce the scale of the original proposal. At this meeting, Council resolved to reduce the proposed height and FSR controls for this site (as exhibited) from 20 to 14 metres and 1.7:1 to 1.45:1, prior to submission of this proposal for finalisation, in response to its consideration of community objections.

Whilst Council's revised proposal is contrary to Council officer's recommendation that the proposal proceed as exhibited, it is considered that Council's adopted position is a reasonable response to community concerns.

On 6 June 2013 the agency's Metropolitan Planning (Parramatta) team contacted Council to determine whether the applicant was supportive of Council's post-exhibition amendments to the proposal. Council advised that the applicant has not appealed Council's resolution or made a submission on the amended Site-Specific DCP for the site, and is awaiting finalisation of the proposal as per Council's resolution.

On 2 July 2013 the agency determined that the proposal should proceed as proposed by Council (see **Tag J**).

*Note: Council has prepared a draft Site-Specific Development Control Plan (**Tag G – Pt 4**) for the land in Wetherill Park Market Town (which encompasses the subject site), to ensure that the future development of this land is conducted in an orderly manner. This draft Site Specific DCP was amended by Council (post-exhibition) to incorporate the relevant height and FSR controls contained in Council's revised planning proposal. The amended draft Site Specific DCP for Wetherill Park Market Town was endorsed by Council at its meeting on 26 February 2013 and will come into effect upon gazettal of the draft LEP.*

7. CONSISTENCY WITH GATEWAY CONDITIONS

Council has satisfied the conditions of the Gateway Determination (see **Tag E**), dated 6 February 2012.

As previously discussed in **Section 6** of this report, this planning proposal was publicly exhibited by Council, in accordance with the requirements of the Gateway determination.

As the Gateway conditioned that Council provide urban design advice which addresses the interface of the site and adjoining open space area, Council's site specific DCP was subsequently amended (prior to exhibition) to incorporate specific provisions to address any potential overshadowing issues regarding the interface of the site with the adjoining open space areas. Council also amended the proposal, prior to exhibition, to provide a more comprehensive assessment of the proposal's consistency with Section 117 Direction 7.1 'Implementation of the Metropolitan Plan for Sydney 2036' (see page **27** at **Tag C**).

As previously discussed in **Section 5** of this report, a flood analysis of the site was undertaken (**Tag I**), in consultation with the Office of Environment and Heritage, in accordance with the requirements of the Gateway Determination.

8. CONSISTENCY WITH S.117 MINISTERIAL DIRECTIONS AND RELEVANT STATE ENVIRONMENTAL PLANNING POLICIES

8.1 Consistency with s.117 Ministerial Directions

The section 117 Directions that have been identified by Council as being applicable to this draft LEP, are listed as follows:

- 1.1 Business and Industrial Zones
- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 4.3 Flood Prone Land
- 6.1 Approval and Referral Requirements
- 6.3 Site Specific Provisions
- 7.1 Implementation of the Metropolitan Plan for Sydney 2036

Council has provided an analysis of the relevant s.117 Directions against the draft LEP (pgs 34-39 of Council's post-exhibition adopted proposal at **Tag C**).

It is considered that the draft LEP is consistent with the abovementioned s.117 Directions.

8.2 Consistency with applicable State Environmental Planning Policies (SEPPs) and Sydney Regional Environmental Plans (Deemed SEPPs)

The draft LEP has been identified by Council as consistent with any applicable State Environmental Planning Policies or Sydney Regional Environmental Plans (deemed SEPP's), (pgs 32-33 of **Tag C**). It is agreed that the draft LEP is consistent.

9. PC OPINION AND MAPS

On 24 February 2014, Parliamentary Counsel provided an Opinion that the draft LEP could be legally made. This Opinion is attached at **Tag PC**.

Council's supporting maps were received on 9 August 2013 (**Tag Maps**).

10. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument, pursuant to section 59(1) of the *Environmental Planning & Assessment Act 1979*. On 26 February 2014, Council approved the attached version of the draft written instrument and supporting maps (see **Tag LEP and Maps**), to which PC has issued an Opinion (**Tag PC**).

11. CONCLUSION

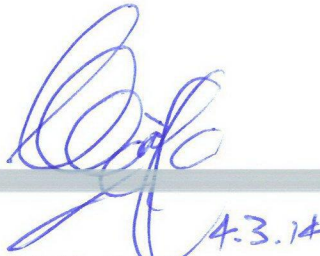
Council has satisfactorily addressed all the requirements of the Gateway determination and the proposed amendments to the *Fairfield Local Environmental Plan 2013* are supported.

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26/2/2014

Rachel Cumming
Director
Metropolitan Delivery



Neil McGaffin
General Manager, Metropolitan Delivery
Growth Planning & Delivery

Noted and actioned: Legal Services Branch

ATTACHMENTS

TAG LEP

TAG MAPS

TAG PC

Tag B – Council Cover Letter

Tag C – Planning Proposal December 2012

Tag D – Outcomes Committee 22 Nov and 8 Dec 2011

Tag E – Gateway Determination

Tag F – Outcomes Committee 10 Jul and Draft Minutes 10 Jul 2012

Tag G – Outcomes Committee 13 and 27 Nov 2012, Original Planning Proposal, Site Specific DCP, draft Fairfield City Wide DCP

Tag H – OEH Advice 24 Jul and 30 Aug 2012

Tag I – Flood Analysis Apr 2012

Tag J – BN Options for progressing 13-21 Rossetti St, Wetherill Park

Tag K – Representation from Rohan, A and Minister's reply Jun 2013

Tag L – Council approval of draft Instrument and Maps