

OUTCOMES COMMITTEE

Meeting Date 10 February 2015

Item Number. 1

SUBJECT: Post Exhibition - Planning Proposal to Amend Zoning Boundary Alignment Between IN1 General Industrial and IN2 Light Industrial Zoned Land
Premises: Lot 2 and 3 DP 818038, 61-63 & 65-67 Mandarin Street, Fairfield East
Applicant/Owner: Nimish Patel
Zoning: Part IN1 General Industrial and IN2 Light Industrial

FILE NUMBER: 13/08055

PREVIOUS ITEMS: 40 - Planning Proposal to Amend Zoning Boundary Alignment Between IN1 General Industrial and IN2 Light Industrial Zoned Land - Outcomes Committee - 8 April 2014

REPORT BY: Anjele Vu, Strategic Land Use Planner

RECOMMENDATION:

That:

1. Council adopt the draft Planning Proposal (Attachment B of the report) relating to the realignment of the zone boundary between the IN1 General Industrial and IN2 Light Industrial zoned land on Lot 2 and 3 DP 818038, No. 61-63 & 65-67 Mandarin Street, Fairfield East.
2. Pursuant to Section 59 of the Environmental Planning and Assessment Act 1979, Council proceed to finalise the Planning Proposal under delegated authority in accordance with the Guide to Preparing Local Environmental Plans (Department of Planning and Infrastructure 2013).
3. Council inform the Applicant that a Site Management Plan (SMP) (relating to asbestos contaminants found on the site) must be lodged with any future development applications for this site. The SMP shall detail the actions to be taken to remediate the site prior to any works requiring excavation at the site.
4. Council place a notation on the Section 149(5) planning information for the subject site advising potential purchasers/developers that asbestos containing materials have been identified on the site.

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

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SUPPORTING DOCUMENTS:

AT-A	Gateway Determination	4 Pages
AT-B	Planning Proposal	15 Pages
AT-C	Detailed Site Investigation Report	212 Pages
AT-D	Public Consultation Responses	3 Pages

CITY PLAN

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

SUMMARY

This report relates to a Planning Proposal seeking to amend the Fairfield Local Environmental Plan (LEP 2013) by realigning the zone boundary between the IN1 General Industrial and IN2 Light Industrial zoned land at Lot 2 and 3 DP 818038, No. 61-63 & 65-67 Mandarin Street, Fairfield East.

BACKGROUND

17 April 2012, Council's Comprehensive LEP Committee – Council considered a submission to amend the zoning boundary between the IN1 General Industrial and IN2 Light Industrial zoned land relating to the subject site. At this meeting, Council resolved not to support the rezoning and advised the Applicant that a separate Planning Proposal should be submitted for any proposal to change the zone boundary between the IN1 General Industrial and IN2 Light Industrial zoned land at the subject site.

1 August 2013 – The Applicant submits a Planning Proposal.

22 October 2013, Outcomes Committee – Council considers 2 reports providing analysis of various options to realign the zone boundary between the IN1 General Industrial and IN2 Light Industrial zones on the subject site. At this meeting, Council resolved to support the realignment of the zone boundary between IN1 General Industrial and IN2 Light industrial to be consistent with adjoining sites, subject to the Applicant submitting a preliminary subdivision plan.

25 February 2014 - The Applicant submits a preliminary subdivision plan. However, during assessment it was found that this plan was inconsistent with the Council's October 2013 resolution. The Applicant was requested to re-submit amended plans to address this issue.

21 March 2014 – The Applicant submits amended plans.

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29 April 2014, Outcomes Committee – Council resolves to forward the Planning Proposal to the Department of Planning and Environment (DP&E) for gateway determination.

30 June 2014 – Gateway Determination (Attachment A) Council receives Gateway Determination from the DP&E which includes a range of conditions. One of the conditions of the Gateway Determination requires a preliminary investigation report for contamination be prepared and submitted to the DP&E.

24 October 2014 – The Applicant submits a preliminary investigation report for contamination.

12 November 2014 – 12 December 2014 – The Planning Proposal was placed on public exhibition for 28 days.

This report seeks Council's endorsement to finalise and make the Planning Proposal (**Attachment B**) as publicly exhibited under delegated authority as issued by the DP&E.

GATEWAY DETERMINATION

1. *Prior to undertaking public exhibition, Council is to prepare a preliminary investigation report for contamination in accordance with the managing Contaminated Land – Planning Guidelines 1998 (SEPP 55 – Remediation of Land) and submit to the Planning and Environment.*

Comment: Complete - A detailed report (**Attachment C**) was submitted by the Applicant on 24 October 2014 and was made available during the public exhibition period. See additional comments relating to Preliminary Investigation Report for Contamination section in the report below.

2. *Consultation is required with the following public authorities under Section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:*

- Endeavour Energy
- Jemena
- Office of Environment and Heritage
- Sydney Water
- Telstra

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

Comment: Complete – Responses were received from Sydney Water and Office of Environment and Heritage. See additional comments related to Public Authority Consultation in the report below.

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3. *Community consultation is required under Section 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act")*
 - a. *The planning proposal must be made publicly available for a minimum of 28 days; and*
 - 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 publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Planning & Infrastructure 2013).*

Comment: Complete – no submissions were received during the public exhibition period.

4. *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).

5. *The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway Determination.*

Comment: On Target (DP&E deadline 26 June 2015).

DELEGATED AUTHORITY

In addition to the Gateway Determination, Council was also 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 20 June 2014 in respect to this planning proposal (See **Attachment A** for a copy of the Written Authorisation to Exercise Delegation). Pursuant to this delegation, the Group Manager of City and Community Development is authorised to finalise the making of this Planning Proposal

PRELIMINARY INVESTIGATION REPORT FOR CONTAMINATION

A detailed site investigation was carried out and a report was prepared by SMEC Testing Services Pty Limited, Report No. 14/1786 and dated September 2014 which states that the site is fit for use in its current form. However it is recommended that a Site Management Plan (SMP) be prepared to ensure protection of future uses from asbestos contaminants found on the site. A summary of the findings of the preliminary investigation is included below and full details of this report are included in **Attachment C** of this report to Council.

Report Findings

The report states that the site contains a number of industrial buildings with a mixture of uses. These include:

- Administration;
- Materials storage;
- Workshop;
- Sand blasting booth; and
- Spray painting booth.

The report states that NSW Environment Protection Authority (EPA) *Contaminated Sites Series* were used in assessing the contamination status of the premises. Accordingly, the Health Based Investigation Levels for Industrial/Commercial Land use (HIL'D) these are the most applicable criteria in this case as these do not provide criteria for hydrocarbons, the EPA's *"Guidelines for Assessing Service Station Sites"* (EPA, 1994) were also used.

The report details that sampling and analysis of a number of soil samples at the site were carried out in accordance with EPA *Sampling Design Guidelines* (EPA 1995). The site has an area of 1.1 hectares, which requires 22 sampling points. Access was restricted to external areas of the site, and no sampling was carried out inside the workshop area.

Analysis of the samples taking during the investigation revealed the following:

- No samples returned results in excess of the HIL 'D' levels;
- One sample returned a positive result for the presence of asbestos fibres. This sample was taken from an area of suspected fill located beneath an existing concrete slab. As the majority of the site is sealed, it is thought that the risk proposed by this material is low.

The report concludes that the site is fit for continued use in its current form. It does, however, recommend the preparation of a SMP prior to redevelopment to ensure that human-health and the environment is appropriately protected during any future works requiring any onsite excavation.

Referral to Environmental Health Branch

The report was referred to Council's internal Environmental Health Branch (EHB) for review. Based on the findings of the report, Council's EHB recommend the following:

- Inform the Applicant that a SMP must be lodged with any future development applications for this site. The SMP shall detail the actions to be taken prior to any works requiring excavation at the site.
- Place a notation on the Section 149(5) planning information (see note below) for the premises, alerting potential purchasers or proponent of works that asbestos materials have been identified on the site.

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Note: A Section 149(5) is an addendum to a Section 149 (2) planning certificate that can be applied for and provides additional planning information to land owners/developers in addition to the standard information relating to zoning, planning controls and constraints of the site.

PUBLIC AUTHORITY CONSULTATION

The Planning Proposal was forwarded to Endeavour Energy, Jemena, Office of Environment and Heritage, Sydney Water and Telstra in accordance with conditions of the Gateway Determination.

Two responses were received from both Sydney Water and the Office of Environment and Heritage.

It is noted that both public authorities raised no objections to the planning proposal (refer to Attachment D for copies of the submissions)

PUBLIC CONSULTATION

Following the receipt of the Gateway Determination from the DP&E, Council Officers placed the Planning Proposal on public exhibition. The Planning Proposal was placed on public exhibition for 28 days from 12 November 2014 to 12 December 2014, in accordance with the consultation requirements identified in the Gateway Determination. No submissions were received during the public exhibition period.

CONCLUSION

As no objections were received during the public exhibition period, it is recommended that Council;

- Proceed to finalise the making of this plan, under delegated authority in accordance with the Guide to Preparing LEPs (Department of Planning & Infrastructure 2013).
- Inform the Applicant that a SMP for site contamination (i.e. asbestos) must be lodged with any future development applications for this site. The SMP shall detail the actions to be taken to remediate the site prior to any works requiring excavation at the site and
- Place a notation on the Section 149(5) planning information for subject site advising potential purchasers or developers that asbestos materials have been identified on the site.

Anjele Vu

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Strategic Land Use Planner

Authorisation:

Acting Manager Strategic Planning
Group Manager City & Community Development

Outcomes Committee - 10 February 2015

File Name: **OUT100215_4.DOC**

***** END OF ITEM 1 *****