

OUTCOMES COMMITTEE

Meeting Date 8 September 2009

Item Number. 137

SUBJECT:

Annual Reviews of Fairfield LEP 1994 – Status and Changes

FILE NUMBER: G14-02-039/ 123

PREVIOUS ITEMS: 60 - Outcomes Committee - 12 May 2009
62 - Outcomes Committee - 12 May 2009

REPORT BY: Steven Liaros, Senior Environmental Planner

RECOMMENDATION:

1. That Council notify the Department of Planning of its intention to commence preparation of an LEP to amend the Fairfield Local Environmental Plan 1994 in order to correct the zone boundaries at Percy Street Reserve in Fairfield Heights;
2. That Council write to the Department of Planning requesting that the Minister amend the Fairfield LEP 1994 with respect to land at Percy Street Reserve, in accordance with section 73A - Expedited amendments of Environmental Planning Instruments, as the amendment is a correction of an obvious error.
3. That should the Minister advise that the provisions of section 73A cannot be used in this case, then this proposed amendment be included either as part of the first or second annual reviews (that is, amendment No. 117 or amendment No. 121) with the aim of resolving the matter as soon as possible.
4. That Council write to the Department of Planning requesting that the Minister rezone the land at the corner of Diprose and Vine Streets from zone 5(a) Special uses to 2(a) Residential (as a s73A amendment or as part of amendment No. 117) as the proposal deals with matters that it is considered do not warrant compliance with the conditions precedent for the making of the instrument because a Site Compatibility Certificate has already been issued allowing residential development on the land.
5. That Council remove from the draft Fairfield LEP 1994 (Amendment No. 121), the proposal to rezone and reclassify land at Sherwin Park (adjacent to Canley Vale High School);
6. That Council advise the Department of Planning that the proposal to permit certain minor retail and commercial uses at 13-21 Rossetti Street Wetherill Park has been deferred from draft Fairfield LEP 1994, Amendment No.117 and should now be

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included as a deferred matter and progressed with the Second Annual Review (draft Fairfield LEP 1994 Amendment No. 121);

7. That Council include the proposal to permit 'hotels' at 673-683 Smithfield Road (Assyrian Club) in the second annual review of the Fairfield Local Environmental Plan 1994.
8. That the rezoning proposals for 131 Polding Street, Fairfield Heights and 49 Whitaker Street, Yennora be deferred until after the finalisation of the Residential Strategy and a further report submitted to Council at that time outlining options in relation to progressing the rezoning proposals;
9. That the rezoning proposals for 130 Edensor Road, Bonnyrigg and 136-138 Polding Street, Smithfield no longer be considered as part of the third annual review of Fairfield LEP 1994, but that these sites be considered during the preparation of the new comprehensive LEP.

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.

SUPPORTING DOCUMENTS:

AT-A Percy Street Reserve Aerial Photo & Zoning Map	2 Pages
AT-B Sherwin Park Aerial Photo & Zoning Map	2 Pages

SUMMARY:

The Executive Manager – Environmental Standards has a significant non-pecuniary interest in relation to the site at 49 Whitaker Street, Yennora, referred to in the report as the planning consultant for the site is a former long standing friend.

The purpose of this report is to clarify the status of the various amendments to the Fairfield LEP 1994 and obtain resolutions so as to expedite certain matters where possible, commence a new amendment to correct an error, and to finalise matters that are no longer necessary.

In brief, the following changes are being proposed:

- (1) To add a further rezoning proposal to correct the location of zone boundaries at Percy Street Reserve in Fairfield Heights;
- (2) To transfer the proposal to permit 'hotels' at 673-683 Smithfield Road (Assyrian Club) from the third to the second annual review so as to assist in expediting the matter;

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- (3) Where possible, to take advantage of the new provisions in the EP&A Act 1979, that allow Council to correct errors or to address minor proposals without following the full LEP review process. It is considered that this approach could be followed with respect to:
- a. the Percy Street Reserve amendment referred to above; and
 - b. the proposal at 110 Vine Street (cnr. Diprose Street in Fairfield) to allow residential development on a decommissioned Sydney Water Sewer Pumping Station. In this case, the applicant, Sydney Water, has obtained a Site Compatibility Certificate through the provisions of the Infrastructure SEPP to allow the proposed residential development;
- (4) To remove two proposals as these are considered to be no longer relevant or necessary. These proposals are:
- a. To rezone and reclassify part of Sherwin Park (adjacent to Canley Vale High School) so as to allow for the sale of the land and its subsequent use as an extension to the school. The Department of Education is now intending to compulsorily acquire the land and use the provisions of the Infrastructure SEPP to carry out the work. There will therefore be no further need to amend the Fairfield LEP as the desired outcome can be achieved outside this process;
 - b. To reclassify land at 7-17 Rafter Crescent, South Abbotsbury to allow the land to be sold back to the previous owner and allow residential development. A significant number of objections were received when the matter was exhibited and further studies were required to resolve the matter. It was consequently deferred from the First Annual LEP Review (Amendment No. 117) to allow the other proposals to proceed.

It appears that Council's Properties Section has reached 'in-principle' agreement with the former owner with regard to the compensation amount and so, subject to Council's agreement to that amount (to be considered in a separate report), there may no longer be any need to proceed with the proposed reclassification.

- (5) To include the proposal to allow additional small-scale commercial uses on the land adjoining Wetherill Park Market Town as part of the Second Annual LEP Review. This was previously included as part of the First Annual LEP Review but, just prior to the conclusion of the LEP review, the applicant proposed to include supermarkets on the subject site contrary to previous discussions and agreements. The matter was deferred so as to allow other matters in the First Annual Review to proceed. The applicant has since advised that they do not propose to include supermarkets as a desired use and so it is considered that the matter can now proceed in accordance with the previously agreed conditions.

The report will conclude by clarifying how each of the proposals that have been considered to date will proceed.

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PROPOSALS FOR FUTHER CONSIDERATION

Percy Street Reserve

As a result of an application for a Section 149 Planning certificate for land adjoining the reserve, Council has become aware of an error in respect of the zone boundaries of Percy Street Reserve in Fairfield Heights. As the incorrect zoning on the land may affect a property sale, it is necessary to correct this error as soon as possible.

This reserve consists of five (5) narrow lots, being lots 43 to 47, Section 24 Deposited Plan 489. The zoning map referred to in the Fairfield Local Environmental Plan 1994 identifies lots 44 to 48, Section 24 Deposited Plan 489 as the lots that are zoned 6(a) Existing and Proposed Recreation. Refer to aerial photo and zoning map at attachment A.

Therefore there appears to be an error with regard to the zoning of lot 43 and lot 48. The details of the errors are as follows:

1. Lot 43 Section 24 DP 489 currently zoned 2(a) Residential A should be rezoned to 6(a) Existing and Proposed Recreation. Council records indicate that this lot is, and has always been, owned by Council and the aerial photo also confirms that the land is used as park.
2. Lot 48 Section 24 DP 489 currently zoned 6(a) Existing and Proposed Recreation should be rezoned to 2(a) Residential A. Council records also confirm that this land is indeed privately owned and is occupied by a private dwelling and should appropriately have a residential zoning;

These amendments should be considered as an obvious mapping error requiring correction. Section 73A of the EP&A Act 1979 allows the Minister to expedite amendments to a planning instrument if it is to simply correct an obvious error in the principal instrument.

It is therefore recommended that the above corrections be referred to the Minister for Planning (through the Department of Planning) to allow for their immediate amendment.

Should the Minister advise that this error cannot, in her opinion, be amended in accordance with the provisions of section 73A referred to above, it is recommended that this amendment should be included as part of the Second Annual Review of the Fairfield LEP 1994.

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Sydney Water Site – Cnr Diprose and Vine Streets

This proposal to rezone a decommissioned Sydney Water Sewer Pumping Station from zone 5(a) Special uses to 2(a) Residential A was included as part of the Second Annual review of the Fairfield LEP 1994 (Amendment No. 121).

The rezoning was supported on the basis that the new zoning would be consistent with the surrounding zone and under the new comprehensive LEP the site would also be zoned residential irrespective of whether this amendment was made. The proposal was considered following an application from Sydney Water.

However, Sydney Water has subsequently received, from the Department of Planning, a Site Compatibility Certificate under the State Environmental Planning Policy (Infrastructure) 2007. This allows for the development of the subject land for the purpose of residential dwellings regardless of the zoning. The proposed amendment would therefore have no adverse consequence.

Section 73A of the EP&A Act 1979 now allows the Minister to expedite amendments to a planning instrument if they “deal with matters that the Minister considers do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land.”

Accordingly, it will be recommended that Council write to the Department of Planning requesting that the Minister make this amendment without further delay.

Sherwin Park (adjacent to Canley Vale High School)

This proposal arose as a result of a request from the Principal of Canley Vale High School to acquire part of Sherwin Park so as to allow for the expansion of the High School. The subject site is part of lot Z DP 419831. (Refer to attachment B).

The proposal included the rezoning of land at Sherwin Park (adjacent to Canley Vale High School) from 6(a) Recreation to 2(a) Residential A and reclassification of that same land from Community land to operational land so that it could be transferred to the school.

Council has now been advised that the land will be purchased by the Department of Education, through the compulsory acquisition processes. Therefore, no amendments to Fairfield LEP 1994 are required. The school can now proceed with the work it proposes on this site under the provisions of the Infrastructure SEPP and so there is no ownership or approvals based reason to proceed with the rezoning.

Wetherill Park Market Town – 13-21 Rossetti Street, Wetherill Park

At its meeting on 26 May 2009 (item 60 – First Annual review of the Fairfield Local Environmental Plan 1994 – Amendment No. 117), Council resolved, in relation to this site, as follows:

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3. *That Council exclude from the draft LEP the proposal to rezone land at 13-21 Rossetti Street, Wetherill Park and also the proposal to allow 'function centres' on that same parcel of land;*
4. *That given the recent amended proposal to allow supermarkets on the land at 13-21 Rossetti Street, Wetherill Park substantially amends the current proposal, the applicant be requested to submit amended studies that illustrate full compliance with Council's Retail and Commercial Centres/ Activities Policy and consistency with the draft DCP included in attachment F to this report;*

Council has now received advice from the applicant that they do not intend to proceed with the proposal to allow supermarkets at the subject site. Their intention is to proceed with the rezoning of the land, as previously intended, to allow minor/ local scale retail and commercial uses on the land and to exclude supermarkets and other large floor-plate uses from the site.

It is therefore recommended that this proposal be reactivated and included in the Second Annual LEP Review (amendment No. 121) as a deferred matter.

7-17 Rafter Crescent, South Abbotsbury

This proposal was to reclassify the subject land, which is currently a bushland reserve, from Community to Operational land. Preliminary advice indicated that this land was no longer required as public open space and so the reclassification would allow the land to be sold back to the previous owner and allow residential development to occur.

The proposal was exhibited and a public hearing was held to consider this as part of the First Annual Review of the Fairfield LEP 1994. As a result of significant objections to the reclassification of the land, and the subsequent need for further studies to be carried out, this matter was deferred so as not to delay other matters in the draft amending LEP.

Council's Properties Section has since advised that the Council, as current property owner, and the former owner of the subject land, have reached 'in-principle' agreement with regard to the payment of compensation rather than transferring the land to that former owner.

Council will be considering, in its role as property owner, a separate report at its Services Committee meeting to determine whether to agree to the compensation amount.

Should Council agree to the terms, the reclassification will no longer need to proceed, especially given the extensive concerns raised by local residents in relation to redevelopment of this land and loss of bushland.

If Council does not agree to the terms of the compensation, the further studies discussed in the previous report will proceed and a further report will be provided to Council in relation to the proposal to reclassify the land when these further studies are completed.

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STATUS OF EACH OF THE REVIEWS

So as to clarify the status of, and the proposals included, in each of the reviews, the following information can be provided. This is, of course, subject to Council resolving as recommended in this report and confirmation being received from the Department of Planning.

A. First Annual Review (Fairfield LEP 1994 Amendment No. 117).

This matter has been referred to the Department of Planning for finalisation and gazettal of the Plan. The Department advises that they are currently awaiting advice from Parliamentary Counsel as to the final specific wording of the amendment. They will provide further advice as soon as practical.

The proposals in this amendment are:

- (1) 49 Delamere Street, Canley Vale. To rezone land at from 6(a) Public Recreation to 2(a) Residential and reclassify the same land from community to operational;
- (2) 42A Spencer Street, Fairfield. To reclassify land, from community to operational;
- (3) 44 Larra Street, Yennora. To rezone land at from 5(a) Special Uses to 4(a) General Industrial;
- (4) 103 Edensor Road, St Johns Park. To rezone land at from 6(a) Public Recreation to 6(b) Private Recreation;
- (5) 39 and 39A Davis Road, Wetherill Park. To rezone land at from 5(b) Special Uses – Arterial Road to 4(a) General Industrial;
- (6) 1-9 Bonnyrigg Avenue, Bonnyrigg. To amend Fairfield LEP Schedule 2 to permit 'Bus Depot use';
- (7) To permit "function centres" at all land zoned 3(c) Local Business Centre (land to be zoned B2 Local Centre in the comprehensive LEP) at Edensor Park, Greenfield Park, Wetherill Park (Market Town), Wakeley, Canley Heights, Canley Vale, Fairfield Heights, Smithfield and Villawood.

B. Expedited matters

It will be recommended that the matters below are either a correction of an error or minor in nature and so the Fairfield LEP 1994 should be amended by the Minister immediately pursuant to the provisions of s73A of the EP&A Act 1979 (expedited matters).

- (1) Sydney Water Site - Cnr Diprose and Vine Streets - Rezone to 2(a) Residential A.
- (2) Rezone land at Percy Street Reserve so as to correct the error in the zone boundaries;

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C. Second Annual Review (Fairfield LEP 1994 Amendment No. 121)

The Department of Planning has agreed that the amendments included in this proposal may proceed. All relevant public authorities have been consulted. Council will be advised of details of the consultation process when the matter is reported so as to allow referral to the Department of Planning to put the draft Plan on exhibition.

Subject to the matters proceeding in accordance with the recommendations of this report, the matters included in the Second Annual Review will be as follows:

- (1) Calabria Club and Council land, Restwell Road, Prairiewood - Rezone to permit commercial, high density residential, some retail uses and clubs.
- (2) 1 Cutler Road, Lansvale - Rezone from 2(a) Residential A to Special Industrial 4(c).
- (3) 190 Canley Vale Road, Canley Heights - Rezone from 2(a1) Residential A1 to 3(c) Local Business Centre;
- (4) Assyrian Club - 673-683 Smithfield Road, Edensor Park - Permit 'hotel' use;
- (5) 13-21 Rossetti Street, Wetherill Park – Rezone land to allow certain minor retail and commercial uses.

D. Third Annual Review (Fairfield LEP 1994 Amendment No. 123)

The Third Annual Review originally included only the proposal to allow 'hotels' at the land at 673-683 Smithfield Road Edensor Park – Assyrian Club. The Department of Planning has now approved the progress of this proposal as part of the Second Annual Review.

At its meeting on 26 May 2009 (item 62 – Third annual Review of the Fairfield Local Environmental Plan 1994 – Amendment No. 123) Council resolved that the following properties be offered the opportunity to lodge a rezoning application:

- (1) 131 Polding Street, Fairfield Heights;
- (2) 49 Whitaker Street, Yennora;
- (3) 130 Edensor Road, Bonnyrigg; and
- (4) 136-138 Polding Street, Smithfield.

Council also resolved "that this be an exhaustive list of properties for review". Applicants were given until 30 July 2009 to lodge an application. As a result of changes to the Environmental Planning and Assessment Act 1979 relating to submission of rezoning application, proponents were informed of the changes and offered until 31 August to finalise their applications.

For the property at 49 Whitaker Street, Council has received a planning proposal which represents the technical documentation required for a rezoning application, but no signed application form has been submitted nor have any fees been paid. A subsequent letter was then received requesting that Council "defer the matter until the Council finalises its rezoning study for the high residential zone for Fairfield Heights". This letter also referred to the property at 131 Polding Street, requesting that this also be deferred.

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It will be recommended that these matters be deferred and that a further report be forwarded to Council after the residential strategy has been finalised.

As at the date of writing this report, there were no submissions received for 130 Edensor Road, Bonnyrigg or 136-138 Polding Street, Smithfield, and it will be recommended that these matters be finalised in terms of spot rezoning proposals.

E. Matters no longer proceeding

In addition to the two sites referred to in the previous section, the following matters will no longer be proceeding (for reasons outlined earlier in the report) and so no amendments will be made to the LEP in relation to these:

- (1) 7-17 Rafter crescent, South Abbotsbury; reclassify land to 'operational';
- (2) Sherwin Park (adjacent to Canley Vale High School). To rezone land from 6(a) Recreation to 2(a) Residential A and reclassify that same land from 'Community' to 'Operational' land.

Steven Liaros
Senior Environmental Planner

Authorisation:
Manager Strategic Land Use Planning

Outcomes Committee - 8 September 2009

File Name: **OUT080909_4**

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

ATTACHMENT 'A'



The information shown on this plan is indicative only. All details must be confirmed by the relevant Council officer. This plan must not be reproduced without prior consent.

Fairfield City Council
Percy Street Reserve - Aerial

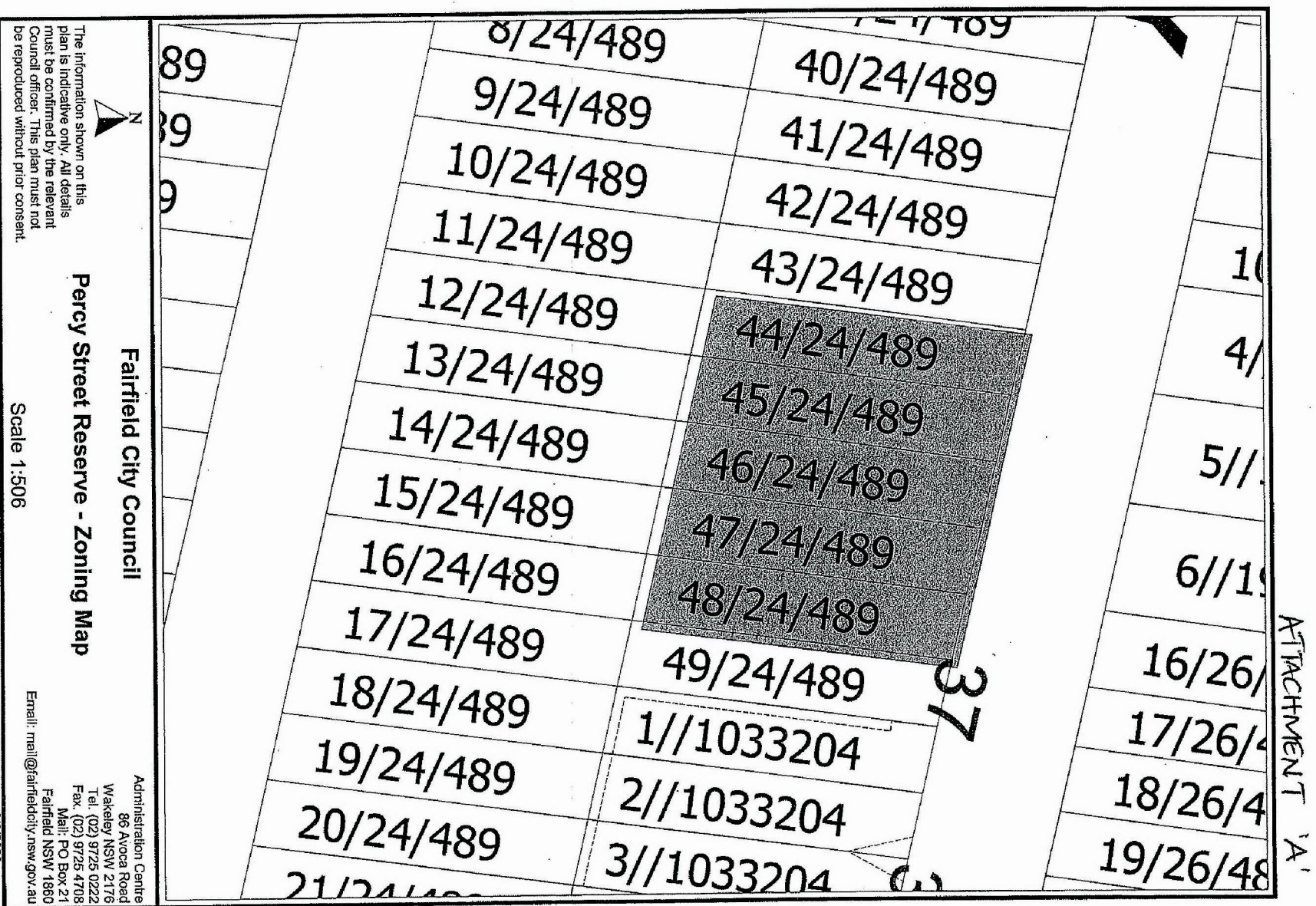
Scale 1:477

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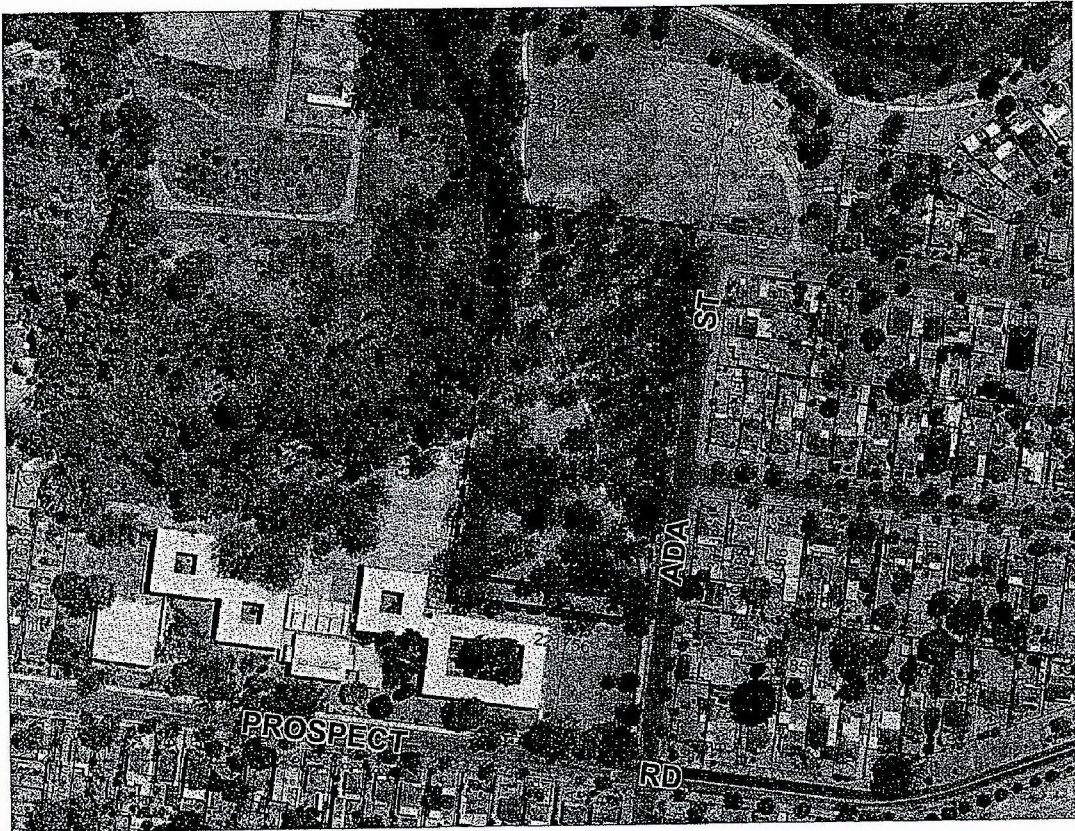
2/9/2009

ATTACHMENT A

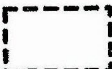
Percy Street Reserve Aerial Photo & Zoning Map



ATTACHMENT 'B'



 Subject Site

 Existing Council Reserve



SCALE 1:3,000

Suburb: Canley Vale

Site 6 - Aerial Photo
FAIRFIELD AMENDMENT No. 121

PLANNING OFFICER : S. LIAROS

DATE: 13/10/2008

COUNCIL FILE No: G14-02-039/121

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Legend:

- [Solid Line] Subject Site
- [Dashed Line] Existing Council Reserve
- 2(a)** 2. RESIDENTIAL (a) A
- 5(a)** 5. SPECIAL USES (a) Special Use
- 6(a)** 6. RECREATION (a) Existing and Proposed

Map Labels: 5(a), 2(a), 6(a), PROSPECT RD, ADA ST, 912951, 224786, 1124322, 11, 620174, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200.

Scale: SCALE 1:3,000

Location: SUBURB: CANLEY VALE