

REPORT BY CHAIRMAN
OUTCOMES COMMITTEE

Meeting Date 12 February 2013

Item Number. 3

SUBJECT:

Proposal: Issue - Rezoning of sites in Villawood & Fairfield for Open Space purposes
Premises: 1,3,5 Karella Ave & 54,56,58 Koonoona Avenue, Villawood and 15 Nelson Street, Fairfield
Applicant: Fairfield City Council
Zoning: 2(a) Residential A and 2(b) Residential B (Fairfield Local Environmental Plan 1994)
R2 Low Density Residential & R4 High Density Residential (Fairfield Local Environmental Plan 2012)

FILE NUMBER: 13/01007

PREVIOUS ITEMS: 200 - Open Space Land Acquisition - Outcomes Committee - 6 December 2011
44 - Issue - Rezoning of Various Sites within Fairfield Heights/Smithfield and Canley Heights for Open Space Purposes - Outcomes Committee - 10 April 2012

REPORT BY: Julio Assuncao, Land Use Planner

RECOMMENDATION:

That Council:

1. Inform the Department of Planning that Council wishes to commence the Gateway Determination Process to amend the draft Fairfield Local Environmental Plan 2013 to rezone sites identified in **Attachment A** of the report for open space purposes.
2. Delegate the City Manager the authority to endorse the Planning Proposal prior to its submission to the Department of Planning and Infrastructure.
3. Submit the Planning Proposal to the Department of Planning pursuant to s.55 of the Environmental Planning and Assessment Act 1979;
4. In requesting the gateway determination Council advise the Department of Planning that it seeks to utilise the delegation for LEP Plan Making (delegated by the Minister under Section 23 of the EP&A Act 1979), as identified in **Attachment E**. The delegated functions will be undertaken by the Executive Manager - Environmental Standards who has been delegated these powers by Council and the City Manager under Section 377 of the Local Government Act 1993.

5. Upon receipt of a Gateway Determination, subject to the conditions contained therein, publicly exhibit the Planning Proposal in accordance with the Consultation Strategy outlined in the report.

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	Ownership Details	1 Page
AT-B	Locality and Zoning Maps	4 Pages
AT-C	Extract of draft Fairfield RDS - Villawood	1 Page
AT-D	Extract of draft Fairfield RDS - Fairfield	1 Page
AT-E	Planning Circular - Delegations and independent reviews of plan-making decisions	4 Pages

CITY PLAN

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

SUMMARY

Council at its Outcomes Committee meeting held on 6 December 2011 considered a report in respect to the acquisition of various sites within Canley Heights, Fairfield Heights/Smithfield and Villawood for open space purposes. The report also provided Council with the option of developing the Council property located on 15 Nelson Street, Fairfield as a local park.

During this meeting Council resolved amongst other matters the following:

- *“Council prepare a Planning Proposal to rezone the land identified for acquisition and development as public open space 6(a) Recreation – Future and Existing Open Space and that a report be prepared and brought to Council as soon as practical”*
- *“Council resolve to commence planning for 15 Nelson Street Fairfield as a local park, that a concept design and costing options be prepared ...”*

The purpose of this report is to commence the rezoning process for properties in Villawood which, at the time of writing this report, are in the process of being acquired by Council for open space purposes.

The report also seeks to rezone the Council property located on 15 Nelson Street, Fairfield which, since the above report, has been developed as a pocket park.

Please note the rezoning process for sites in Canley Heights and Fairfield Heights/Smithfield mentioned above are being dealt with in a separate Planning Proposal.

BACKGROUND

Villawood

Council at its Outcomes Committee meeting held on 6 December 2011 considered a report that identified areas, including Villawood, where additional open space provisions were required to deal with existing and future demands. The report provided Council with options on possible locations where additional open space in Villawood could be provided.

Council at the abovementioned meeting resolved to commence negotiations with the owners of the properties (listed below) that were identified in Villawood:

- 54 Koonoona Avenue, Villawood – Housing NSW
- 56 Koonoona Avenue, Villawood – Housing NSW
- 58 Koonoona Avenue, Villawood – Private
- 1 Karella Avenue, Villawood – Private
- 3 Karella Avenue, Villawood – Housing NSW
- 5 Karella Avenue, Villawood – Private

Refer to **Attachment A** for further ownership details.

Refer to **Attachment B** for locality and zoning maps.

The need for additional open space is provided by the draft Fairfield Residential Development Strategy (FRDS) 2009 and Fairfield City Council Direct (Section 94) Development Contributions Plan 2011. The findings of these Council policies are discussed in more detail later in the report.

Chronology of proposed acquisition of the Villawood properties

The proposed purchase of the above sites was the subject to a lengthy process, a brief summary of the progression of negotiations is provided below.

Initial negotiations with affected property owners

Initial negotiations with owners of the sites in Villawood indicated that there was an opportunity for Council to secure all the sites (listed above) at justifiable prices. These however were reliant on Housing NSW, who owned 3 of the identified properties, agreeing to dispose of their sites which were essential to allow a suitable public park to be created.

Due to delays associated with negotiations with Housing NSW, Council at its 10 April 2012 meeting resolved the following:

“Defer the rezoning of the Villawood sites for open space purposes with a further report to be submitted to Council when all outstanding issues have been progressed.”

Investigation of alternative sites

Council at its Outcomes Committee meeting held on 10 April 2012 also considered a separate report that provided Council with alternative sites in Villawood, should agreement not be reached with Housing NSW in acquiring their properties mentioned above. At this meeting Council resolved the following:

“Endorse Council’s Property Officers approaching the owners of the additional potential open space sites identified in this report for Villawood, to investigate the possibility of purchasing their properties.”

The report also provides Council with an update in respect to 58 Koonoona Ave, Villawood whereby the owner was open to the purchase of his property by Council.

Update in respect to purchase of Private Sites

Council at its Outcomes Committee meeting held on 10 July 2012 considered a report that provided Council with status report of negotiations with the owners of 1 Karella Ave, 5 Karella Ave and 58 Koonoona Ave, Villawood who had agreed to sell their properties to Council.

At this meeting, Council resolved to purchase the above properties subject to being able to acquire the Housing NSW properties.

Purchase of Housing NSW properties

Council at its meeting held on 24 July 2012 considered a supplementary report in respect to the acquisition of sites identified in Villawood for open space purposes. The report informed Council that agreement had been reached with Housing NSW in respect to the purchase of their properties at 54, 56 Koonoona Ave and 3 Karella Ave, Villawood which Council subsequently resolved to purchase.

Current status of negotiations

At the time of writing this report, Council was in the process of finalising the acquisition of the all the sites identified above.

The rezoning of these properties for open space purposes is seen as the next step in formalising the zoning in accordance with the intended future use.

Fairfield

The subject site, 15 Nelson Street, Fairfield, was purchased in early 2006 for the purposes of providing a public car park.

As mentioned earlier in the report, Council at its Outcomes Committee Meeting of December 2011 resolved to commence planning for 15 Nelson Street Fairfield as a local park.

The purpose of this report is to rezone the subject site for open space as the subject site has since been developed as a pocket park.

PLANNING CONTEXT

Villawood Sites

Draft Fairfield Residential Development Strategy 2009

The draft Fairfield Residential Development Strategy (FRDS) 2009, which was exhibited with Council's draft Fairfield Local Environmental Plan (FLEP), is a 20 year strategy which guides the location and type of future residential development within the Fairfield Local Government Area.

The Metropolitan Strategy has identified Villawood as a *Village Centre*. The draft RDS acknowledges Villawood as a *Village Centre* and it's on this basis that an overall strategy for the development of the locality has been developed.

The draft FRDS has identified Villawood (with its recommendations guiding the residential zoning for the locality under the draft LEP) as a location that is suitable for higher forms of residential development. However, it acknowledges that Villawood has limited community facilities that would require additional investment prior to encouraging development.

The provision of additional open space will ensure that this type of community asset is able to contribute to future demands imposed by future increases in population.

In regards to Open Space in the Villawood locality, the draft RDS provides the following assessment:

Village	Aspirational Target	Current Status	Recommendations
Open Space and Recreation	1 local park (1-4ha) 3 neighbourhood parks (0.25-2ha) Cycle links to other centres and key destinations	No local parks and neighbourhood parks are poorly distributed	Provide additional open space to support new developments and increases in density.

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	Universally accessible pedestrian facilities throughout centre		
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An extract of the relevant section of the draft RDS for Villawood is included as **Attachment C**.

Section 94 Analysis

As part of the preparation of the Fairfield Section 94 Plan (S94) 2011, an analysis was conducted in regards to the quantum of open space that would be required as the result of the expected increases in population in the Villawood Catchment. The analysis indicated that the Villawood catchment has the lowest rate of open space per person when compared to other catchments within the city. An extract of the plan highlighting this inequity is reproduced below:

	Existing Population*	Current Passive Open Space Provision (2011)*	Rate per person m2 (2011)	Additional Population (2031)	Rate per person m2 (2031)
Villawood	4,795	13,321	2.78	1,532	2.11
Fairfield	31,042	144,920	4.67	6,349	3.88
Cabramatta	40,561	175,455	4.33	5,284	3.83
Western LGA	70,315	682,889	9.71	7,550	8.77

It is important to note that the S94 Plan has been developed to ensure that any increases in population will not result in the rate of open space per person being reduced.

The S94 Plan has indicated that at least 4,259m² of additional passive open space will be required (approximately 1 neighbourhood park), in the Villawood catchment, to address expected population growth to 2031.

It is important to note that the rate of 2.78sqm of open space per person, as provided by the S94 Plan is not Council's policy. This benchmark was established to ensure that any increases in population will not reduce the provision of open space below the current lowest rate that exists within the Fairfield LGA.

Council's policy position for open space is to provide up to 12.1sqm per person where funding allows. The S94 Plan states that Council will investigate other opportunities to increase the availability of open space from other funding sources given that a greater contribution from developers is not viable.

Conclusion – Villawood Open Space Issues

Villawood was not identified by the Fairfield Open Space Strategy 2007. However, the proposal to rezone the identified sites in the Villawood locality is consistent with the findings of the draft RDS and the analysis that was conducted as part of the preparation of Council's Section 94 Plan 2011.

The draft RDS indicates that additional open space will be required within the Villawood catchment to support new developments and anticipated increases in density. The rezoning process will formalise the zoning of the land to that of its future intended purpose.

Fairfield Site

Open Space Strategy 2007

The Open Space Strategy 2007 identifies Fairfield as one of the areas within the Local Government Area in most need of additional open space. It concluded that the existing provision of open space did not meet the current demand.

Draft Fairfield Residential Development Strategy Position

The need for open space is likely to be increased given that the areas north and west of the Fairfield Town Centre have been identified as being suitable for higher density residential by the draft RDS (with its recommendations guiding the residential zoning for the locality under the draft LEP). The findings of the draft RDS are further discussed below.

The Metropolitan Strategy has identified Fairfield as a *Potential Major Centre*. The draft RDS acknowledges Fairfield Town Centre as a *Potential Major Centre* and it's on this basis that an overall strategy for the development of the locality has been developed.

In regards to Open Space in the Fairfield locality, the draft RDS provides the following assessment:

Village	Aspirational Target	Current Status	Recommendations
Open Space and Recreation	District level park (3-10ha) linking into surrounding district level open space; Range of local (1-4ha) and neighbourhood (0.25-2ha) parks across residential area. Cycle links to other	Contains a district level park but local parks are limited particularly in the west.	Ensure increased density within the western half of the catchment is supported by additional open space. Improve pedestrian linkages between residential areas and

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	centres and key destinations; Universally accessible pedestrian facilities throughout the centre.		Fairfield Park.
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It is important to note that since the preparation of the draft RDS, Council has developed the subject site as a small pocket park.

An extract of the relevant section of the draft RDS for Fairfield is included as **Attachment D**.

Section 94 Analysis

As part of the preparation of Council's S94 Plan an analysis was conducted in regards to the quantum of open space that would be required as the result of the expected increase in population in the Fairfield Catchment, which is estimated to increase in the next 20 years.

The S94 Plan estimates that 2.78m² of passive open space is required per additional person, and on this basis, would equate to a requirement of an additional 1.77 Hectares of open space for the next 20 years.

The plan estimates that a neighbourhood park should be sized between 4000-5000 square metres. This equates to the provision of approximately 4 - 5 additional neighbourhood parks to be provided in the next 20 years to keep up with the expected increase in demand as the population increases.

Conclusion – Fairfield Open Space Issues

The proposal to rezone the identified sites in the Fairfield locality is consistent with the findings of the Open Space Strategy 2007, draft RDS and the analysis that was conducted as part of the preparation of S94 Plan.

The provision of open space afforded by the subject site equates to approximately 774 sqm of open space and is regarded as a short term measure.

It is also important to note that, as part of a separate process, Council has commenced the rezoning of sites in Smithfield (which are adjacent to the Fairfield Heights Town Centre and within the Fairfield Catchment under the S94 Plan) that will facilitate provision of approximately 3500 sqm of open space in the future.

FUNDING

As mentioned earlier in the report, the subject sites are either in the ownership of Council or are in the process of being acquired by Council.

The purchase of the sites in Villawood are being funded by the Expenditure Plan utilising monies collected under the, superseded, S94 Plan 1999.

In the case of 15 Nelson Street, Fairfield, the site was acquired using Section 94 1999 Car Parking funds, Council was required to reimburse the S94 1999 Car Park Reserve from the S94 1999 Open Space & Drainage Acquisition Fund.

Council at its Outcomes Committee meeting held on 6 December 2011 in considering the report that sought to develop 15 Nelson Street, Fairfield as recreational park also resolved the following:

“Council vote \$675,000 into the 2011 Budget from the Section 94 Open Space & Drainage Acquisition Fund to reimburse the Section 94 Car Park Reserve for the construction of 15 Nelson Street as a local park.”

This process was required to ensure that the funding mechanism attached to the acquisition of the subject site matched that of its intended use.

PLANNING PROPOSAL

Council Officers have received advice from the Department of Planning and Infrastructure who have indicated that upon gazettal, the FLEP will be referred to as FLEP 2013 to reflect the adoption year. On this basis the Planning Proposal will be referenced accordingly.

At the time of writing this report, Council was awaiting the gazettal of the draft Fairfield Local Environmental Plan (FLEP) 2013 and therefore Council Officers consider that the amendment will be made to this plan.

Provided below is a brief outline of the proposed changes to the draft FLEP 2013 if Council was to proceed with the rezoning of the identified sites in Villawood and Fairfield.

Draft Fairfield Local Environmental Plan 2013

The Zoning Map, Height of Building Map and Floor Space Ratio Map will need to be amended as part of the proposal.

Villawood Sites

The sites identified in Koonoona Avenue and Karella Avenue, Villawood are proposed to be zoned as R2 – Low Density Residential under the draft FLEP 2013, these sites are currently zoned as 2(a) Residential A under the FLEP 1994.

The Planning Proposal proposes to:

- Amend the zone to RE1 – Public Recreation.

- Amend the Height of Building Map to remove the 9 metre maximum height limit (the draft FLEP 2013 does not specify a height limit within the RE1 – Public Recreation Zone)
- Amend the Floor Space Ratio Map to remove the 0.45:1 maximum FSR limit (the draft FLEP 2013 does not specify an FSR limit within the RE1 – Public Recreation Zone).

Fairfield Site

The subject site is proposed to be zoned as R4 high Density Residential under the draft FLEP 2013.

The Planning Proposal proposes to:

- Amend the zone to RE1 – Public Recreation.
- Amend the Height of Building Map to remove the 20 metre maximum height limit (the draft FLEP 2013 does not specify a height limit within the RE1 – Public Recreation Zone)
- Amend the Floor Space Ratio Map to remove the 2:1 maximum FSR limit (the draft FLEP 2013 does not specify an FSR limit within the RE1 – Public Recreation Zone.)

Section 117 Directions, State Environmental Planning Policies (SEPPs) and Regional Planning Policies (REPs)

Under preparation of the planning proposal, justification will need to be provided for any variations or inconsistencies with Section 117 Directions issued by the Minister for Planning and or departure from any SEPPs and REPs.

Section 117 Directions

It is considered that the following directions are the only ones that apply to this rezoning proposal and Council Officers consider that the proposal is consistent with these directions. Further details will be provided as part of the Planning Proposal.

3.1 Residential Zones

6.2 Reserving Land for Public Purposes

7.1 Implementation of the Metropolitan Plan for Sydney 2036

SEPPs and REPs

Council Officers consider that the proposal will be consistent and will not impact on the application of the applicable SEPPs and REPs.

DELEGATION

The Department of Planning and Infrastructure issued the Planning Circular (PS 12-006 included as **Attachment E**) in October 2012. The circular advises Councils and the public about new delegations and independent reviews related to plan-making under Part 3 of the Environmental Planning and Assessment Act 1979.

Council Officers consider that the Planning Proposal to rezone the subject sites can be prepared under delegation as outlined in the above circular.

The circular advises that the following types of draft Local Environmental Plans may be delegated to Councils to prepare and make following a Gateway determination that the planning proposal can proceed.

- mapping alterations
- section 73A matters (e.g. amending references to documents/agencies, minor errors and anomalies)
- reclassifications of land
- heritage LEPs related to specific local heritage
- items supported by an Office of Environment and Heritage endorsed study
- spot rezoning consistent with an endorsed strategy and/or surrounding zones, and
- other matters of local significance as determined by the Gateway

Council Officers consider that the rezoning of the subject sites in Villawood and Fairfield are matters of local significance as the localities have been identified by Council's draft RDS and S94 Plan 2011 as requiring additional open space.

The rezoning of the 15 Nelson Street, Fairfield for open space is also consistent with the recommendations of the Fairfield Open Space Strategy 2007 which identifies areas in the Fairfield locality as requiring additional open space.

In addition, the Planning Proposal is seeking to rezone properties that Council already owns and is using for open space or has entered into agreements to purchase for open space.

In summary it is considered that the Planning Proposal meets at least one of the categories listed above that can be delegated. Delegation will allow Council to streamline processing of the draft Local Environmental Plan, therefore allowing it to progress in a timely manner.

GATEWAY PLANNING PROPOSAL PROCESS

The steps in the Planning Proposal process are as follows:

Submit Planning Proposal to Department of Planning and Infrastructure

Finalise the Planning Proposal document which will be endorsed by delegation by the Executive Manager of Environmental Standards Department.

Forward the Planning Proposal and relevant documentation to Department of Planning and Infrastructure for Gateway Determination.

Gateway Determination

The Gateway Determination from the Department of Planning and Infrastructure will outline the conditions and requirements Council is required to comply with when proceeding with the Planning Proposal, such as the public consultation. This may also include alterations to the Planning Proposal, general community and public authority consultation and a timeframe for completion of the LEP.

The Gateway Determination may include authorisation (if requested) for Council to Exercise Delegation for the preparation of a draft Local Environmental Plan.

Public Consultation

The Gateway Determination from the Department of Planning and Infrastructure will specifically outline the public consultation required with specific public authorities as well as a determined period for the document to be on public exhibition which will occur once an ad is placed within the local paper.

Further Council Report

A further report to Council will be prepared at the conclusion of the consultation process. At this stage the Planning Proposal may be amended to reflect any issues that were identified during the consultation process. The planning proposal is then forwarded to the Department of Planning and Infrastructure for finalisation and gazettal.

CONSULTATION STRATEGY

It is considered that the rezoning of the subject sites would have minimal impact on the respective localities. It is recommended that the consultation strategy be as follows:

1. Notice in the local newspaper as per legislative requirements
2. Letter to owners of properties being rezoned
3. Letters to owners and or occupiers of properties within an approximate 50 metre radius of the subject sites

It is considered that for this type of proposal, a 28 day public consultation period would be appropriate. The gateway determination may also specify additional requirements for the exhibition of the planning proposals.

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CONCLUSION

The properties, identified by the report in Villawood and Fairfield, are either owned by Council or in the process of being acquired by Council. The rezoning these properties for open space purposes will ensure that the zoning is consistent with their future intended use. In the case of the 15 Nelson Street, Fairfield, the rezoning will formalise the zoning of the site to match its current use as a public park.

Julio Assuncao
Land Use Planner

Authorisation:
Manager Strategic Land Use Planning
Executive Manager Environmental Standards

Outcomes Committee - 12 February 2013

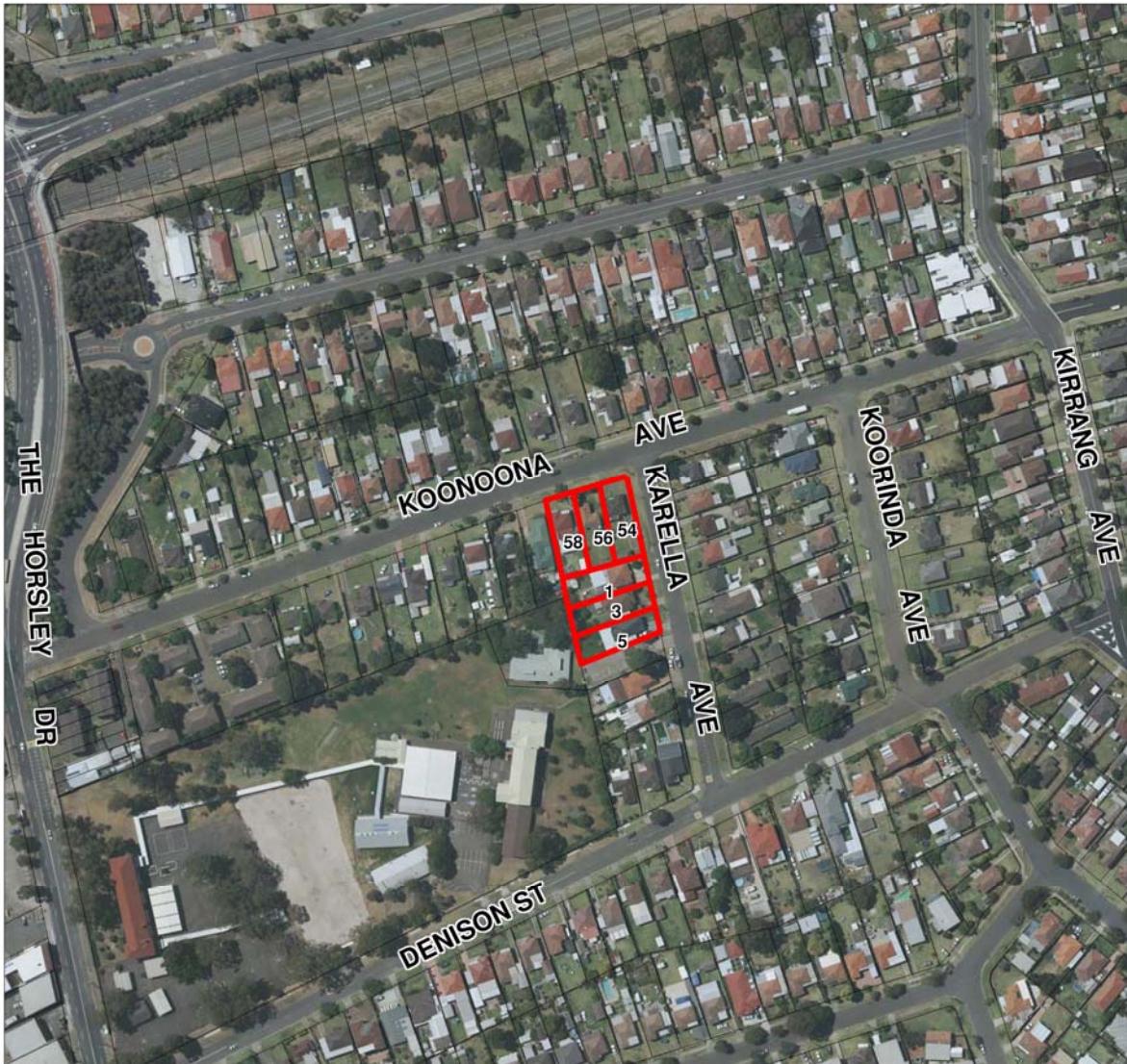
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***** END OF ITEM 3 *****

Attachment A

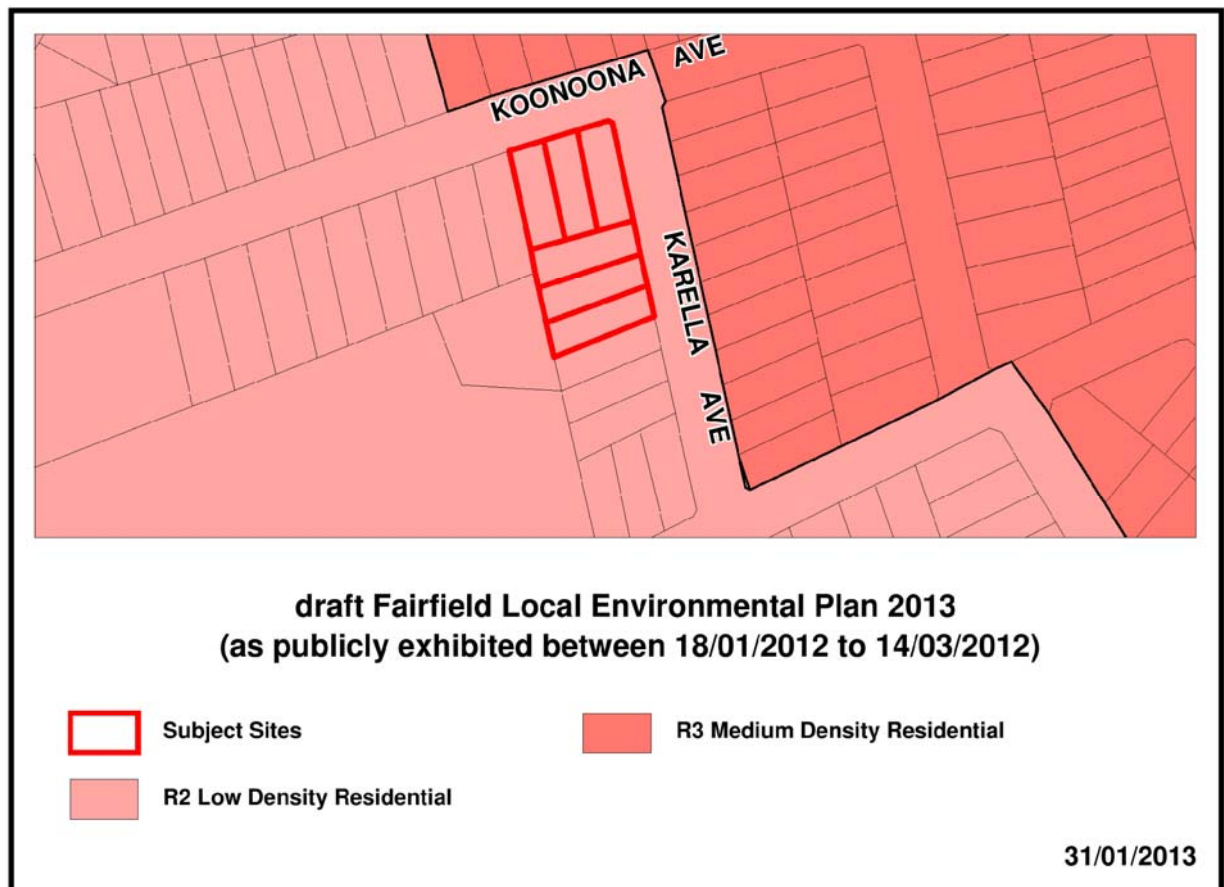
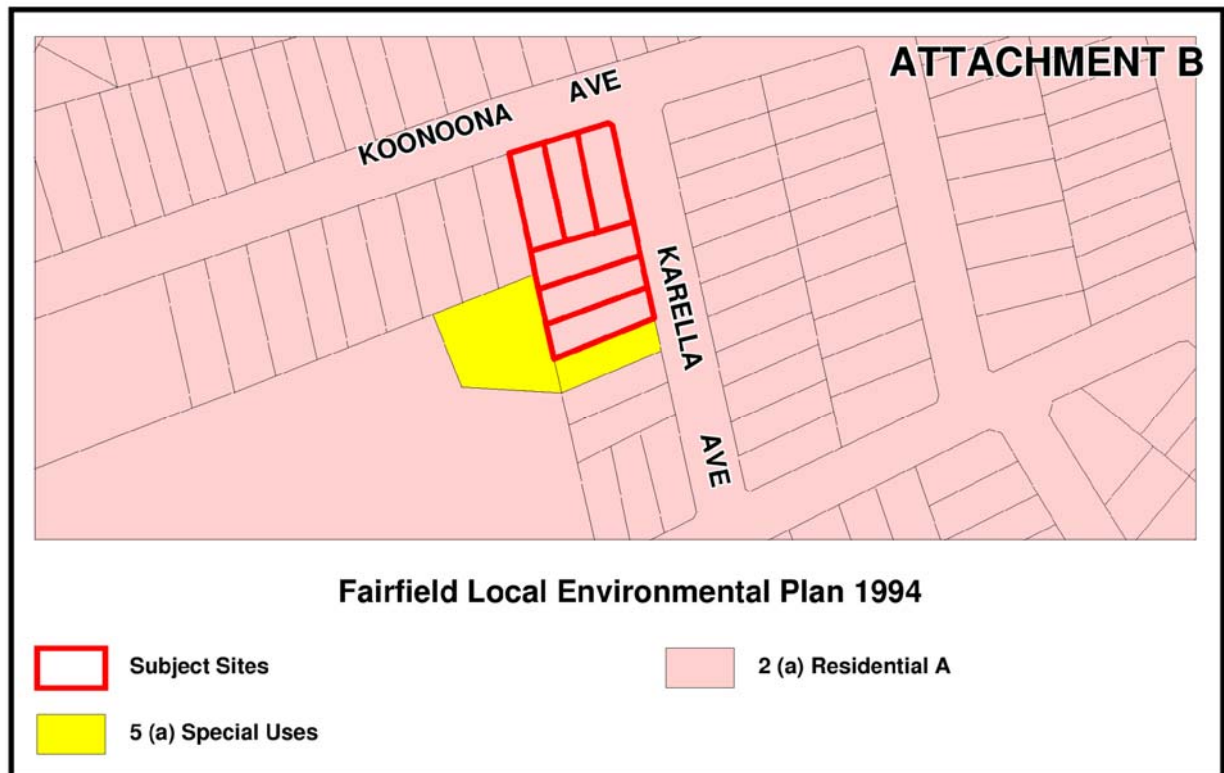
Ownership Details

Property	Legal Description	Owner(s) as of 31.01.2013
54 Koonoona Avenue, Villawood	Lot: 314 DP: 16186	Housing NSW
56 Koonoona Avenue, Villawood	Lot: 315 DP: 16186	Housing NSW
58 Koonoona Avenue, Villawood	Lot: 316 DP: 16186	Mr MT Vu
1 Karella Avenue, Villawood	Lot: 313 DP: 16186	Mr DD Dam & Ms LTV Pham
3 Karella Avenue, Villawood	Lot: 312 DP: 16186	Housing NSW
5 Karella Avenue, Villawood	Lot: 311 DP: 16186	Mr M El-Samad
15 Nelson Street, Fairfield	Lot: 10 Sec: 2 DP: 2384	Fairfield City Council

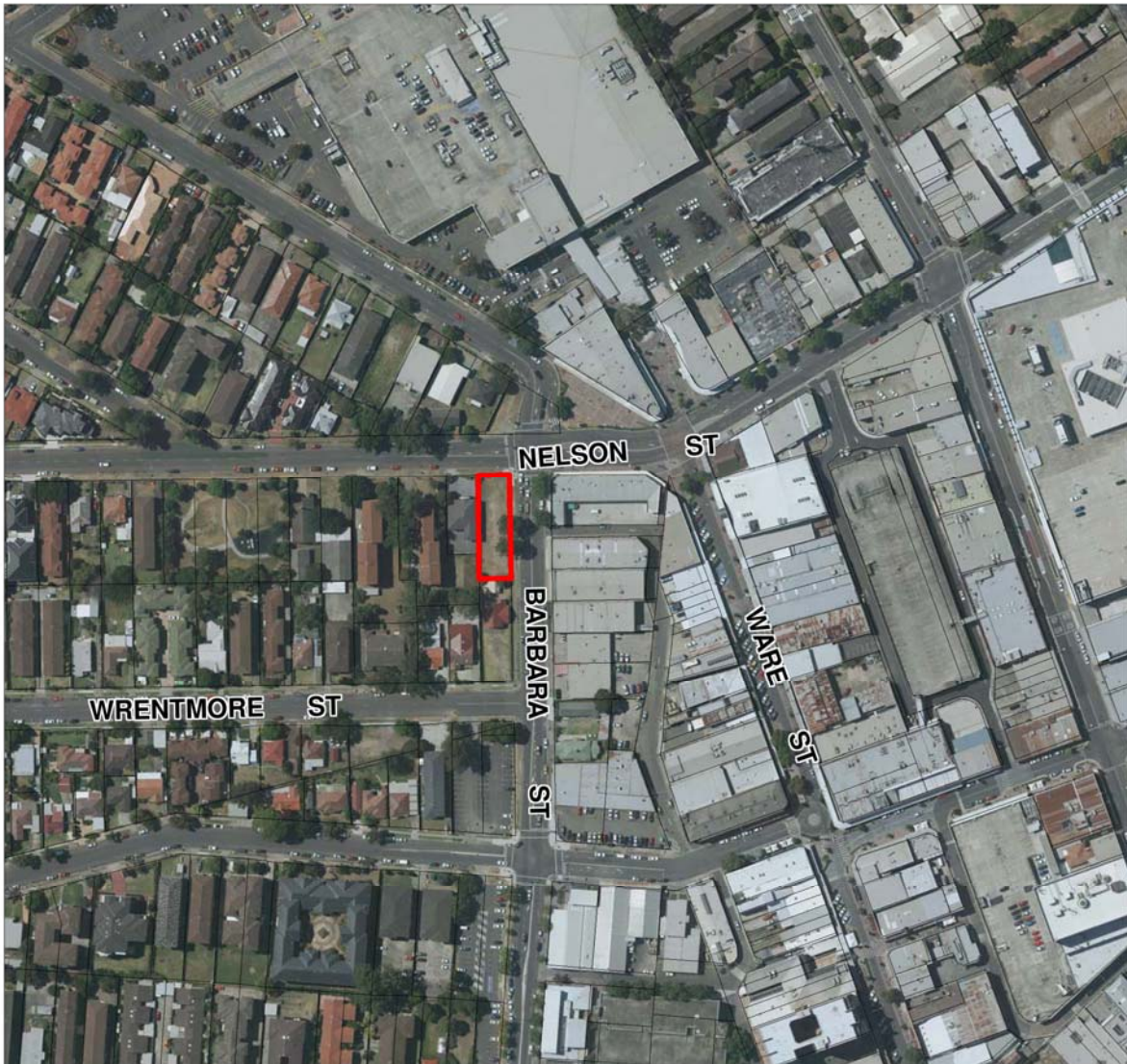
ATTACHMENT B**Location & Aerial Photo - Villawood Sites**

54 Koonoona Avenue, Villawood
56 Koonoona Avenue, Villawood
58 Koonoona Avenue, Villawood
1 Karella Avenue, Villawood
3 Karella Avenue, Villawood
5 Karella Avenue, Villawood

31/01/2013

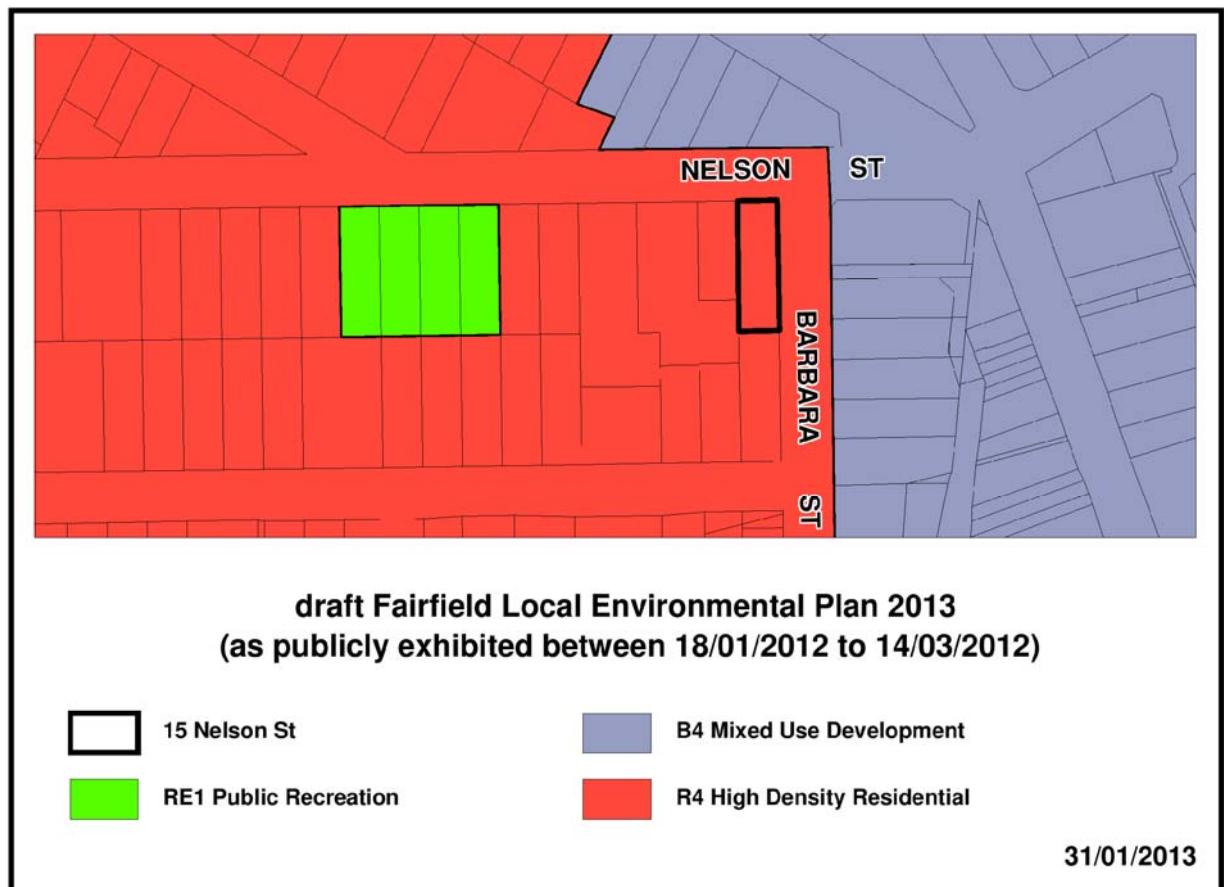
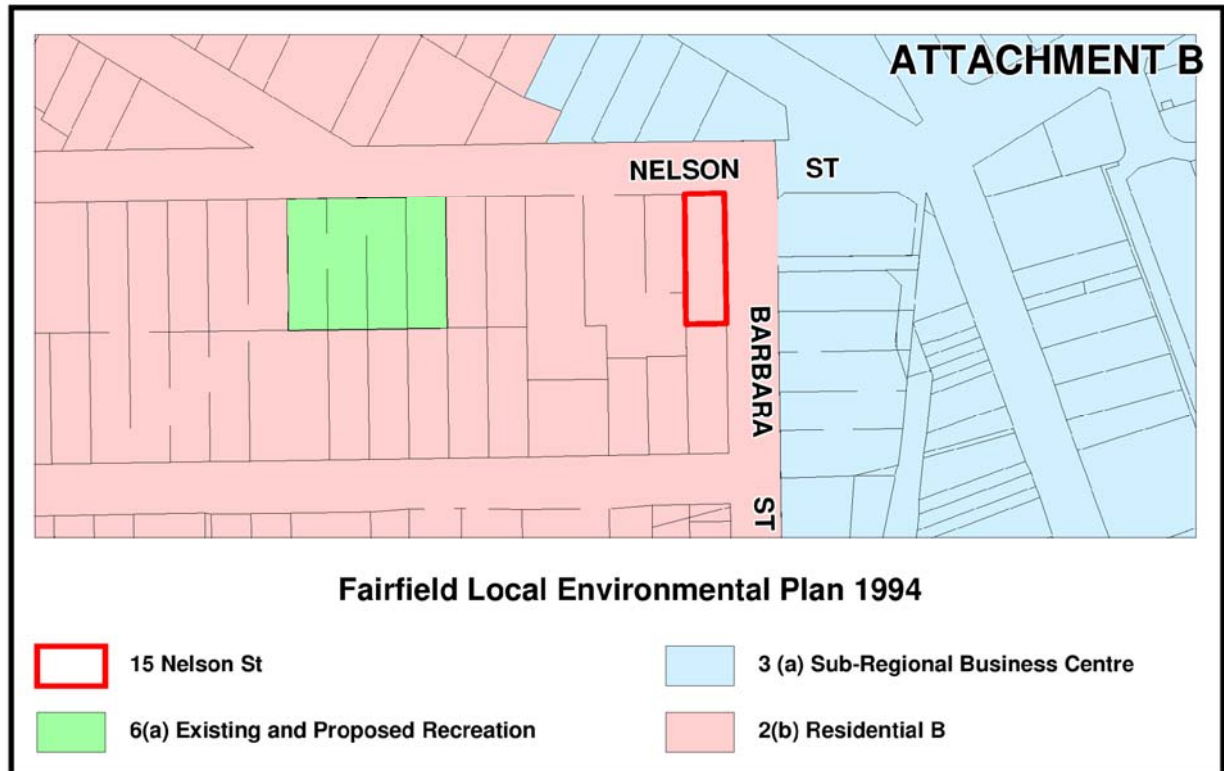


ATTACHMENT B



**Location & Aerial Photo
15 Nelson Street, Fairfield**

31/01/2013



ATTACHMENT C

STUDY AREA 6 VILLAWOOD
STRUCTURE PLAN PRINCIPLES

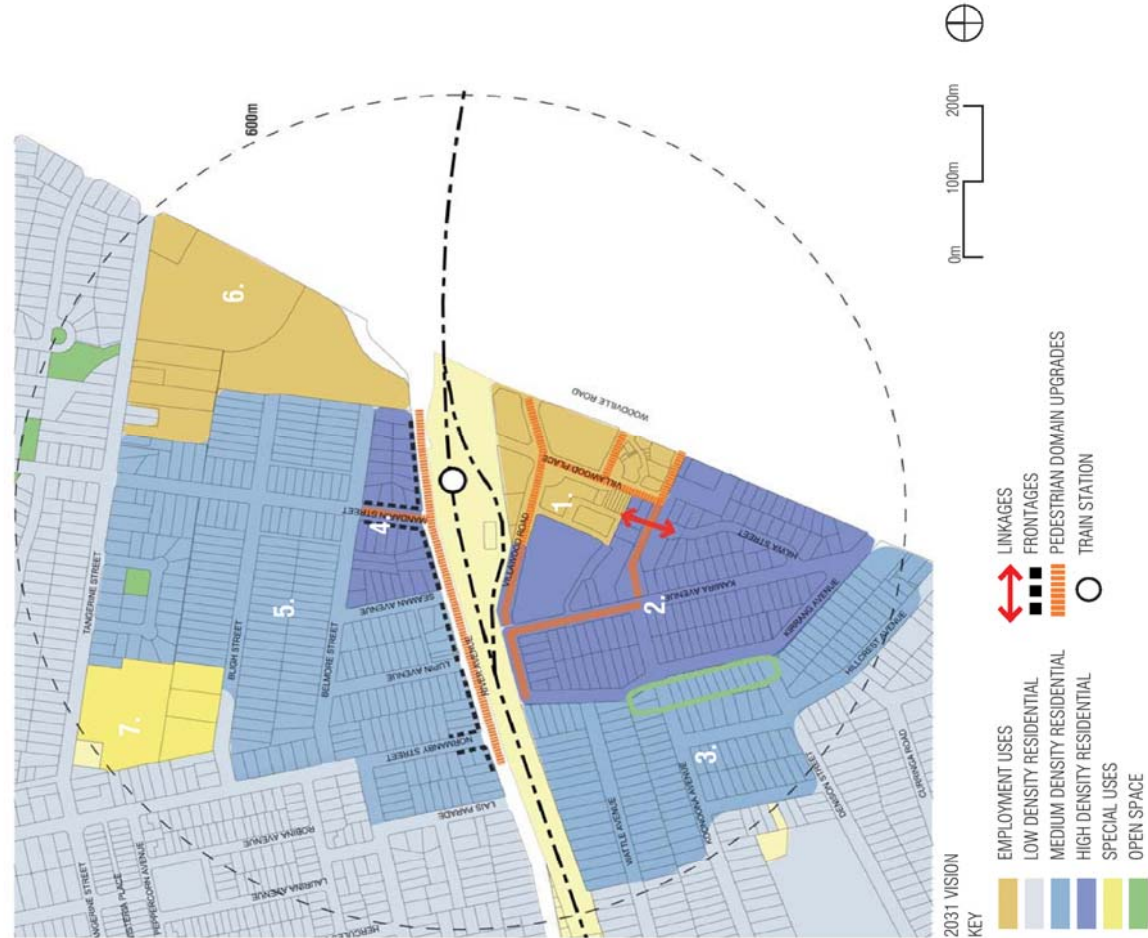
1. Department of Housing land with master plan for high density residential towers. This will be developed in the short term.
2. Extend high density area within walking distance of commercial core and railway station, in the medium term.
3. Provide medium density housing on periphery of walkable catchment in the short term.
4. Opportunity to improve north-south linkages across railway line. If station access and linkages provided, could provide high densities in the medium term.
5. Depending on increased access through railway station, opportunity to increase to medium density in the medium term.
6. Light industrial and bulky goods precinct. Need to manage interface amenity issue.
7. Existing school.
8. Activation and public domain improvements should increase safety and security in the precinct. Upgrades are required in the short term.

URBAN RENEWAL MASTER PLAN

Villawood is a short to medium term priority location for the preparation of an Urban Renewal Master Plan (URMP). The URMP should establish a long term (20 year) plan which will ensure Villawood meets the required level of services and facilities for a village. The vision for Villawood should be based on the Structure Planning Principles (above) and develop a detailed action and implementation plan to address the Recommendations in the Sustainability Matrix.

The URMP for Villawood should ensure a suitable transition between the lower density areas and the Department of Housing proposal for Kamira Avenue. It should also prioritise development of medium density housing and a range of community facilities and open space to support an increased population.

Details of the general requirements of an Urban Renewal Master Plan are in Section 5.5.



ATTACHMENT D

STUDY AREA 1 FAIRFIELD

STRUCTURE PLAN PRINCIPLES

1. Maintain existing planning controls (which allow up to 12 storeys) within the commercial core and stimulate new development through a range of public domain upgrades and site specific master planned developments. The commercial core should provide residential housing stock in the short term.
2. Increase opportunity for high density zoning along Sackville Street (east) in the medium term.
3. Potential for long-term corridor along Polding Street, connecting to Fairfield Heights should a future bus route be established.
4. Existing 3 storey walk-ups to the west of the commercial core provide a long term opportunity for redevelopment if strata titling issues are overcome. Amalgamation of lots and a master planning approach would be required to ensure high quality built form outcomes.
5. Long term potential for higher density development on larger lots, allowing gradation of developments between high density, commercial core and surrounding low density areas.
6. Constrained by existing strata, but long term potential for high density.
7. Medium density corridor along railway line to Canley Vale as a long term objective.
8. Short term opportunity for high density, mindful of building controls to mitigate rail noise and vibration.
9. Sydney Water Land with long term potential for partial redevelopment.
10. Lots fronting the western side of Fairfield Park provide an opportunity for higher density dwellings which take advantage of views and amenity of the park in the short term.
11. Flood prone land with limited potential.
12. Existing schools.

URBAN RENEWAL MASTER PLAN

Fairfield is a high priority location for a Urban Renewal Master Plan (URMP). The URMP should establish a long term (20 year) plan which will ensure Fairfield meets the required level of services and facilities for a major centre. The vision for Fairfield should be based on the Structure Planning Principles (above) and develop a detailed action and implementation plan to address the Recommendations in the Sustainability Matrix. Details of the general requirements of an Urban Renewal Master Plan are in Section 5.5.

The URMP for Fairfield should prioritise the renewal of the commercial core through adoption of the DCP and public domain improvements. This should be followed by renewal of areas currently zoned medium density in the south and east.





Planning &
Infrastructure

ATTACHMENT E

PLANNING circular

PLANNING SYSTEM

Plan-making reviews

Circular	PS 12-006
Issued	29 October 2012
Related	

Delegations and independent reviews of plan-making decisions

The purpose of this circular is to advise councils and the public about new delegations and independent reviews related to plan-making under Part 3 of the *Environmental Planning and Assessment Act 1979*.

Introduction

Two changes have been put in place to improve plan-making processes under Part 3 of the *Environmental Planning and Assessment Act 1979* (the Act). These changes come into effect on 2 November 2012 and will increase transparency, provide greater certainty, and increase councils' roles and responsibilities in plan making, by:

- delegating the making of some local environmental plans (LEPs) to councils, and
- allowing for independent reviews of some council and departmental decisions in the plan making process.

LEP delegations

The making of some LEPs will now be delegated back to councils, in keeping with the government's commitment to return local planning powers to local councils and their communities.

The Minister has delegated the following plan-making powers to councils:

- a) to make – and determine not to make – an LEP under section 59(2), and (3) of the EP&A Act
- b) to defer inclusion of certain matters in an LEP under section 59(3) and
- c) to identify which matters must be considered and which stages of the plan-making process must be carried out again prior to resubmission (section 59(4)) if the council defers the proposal or if a matter is deferred from the LEP.

The changes will give local councils responsibility for LEPs of local significance and streamline the processing of their LEPs by removing duplicative steps in the making of these LEPs.

The delegations will operate in respect of a draft LEP on receipt by council of a Written Authorisation to Exercise Delegation (the Authorisation). The Authorisation will be issued to councils as part of the Gateway determination.

When submitting a planning proposal, councils will be required to identify whether they wish to exercise the Authorisation for each planning proposal.

Delegation will be routinely issued for particular types of LEPs (see below). However, any other draft LEP that the Gateway determines is of local significance will also be delegated to councils.

LEPs to be routinely delegated

The following types of draft LEPs will routinely be delegated to councils to prepare and make following a Gateway determination that the planning proposal can proceed:

- mapping alterations
- section 73A matters (e.g. amending references to documents/agencies, minor errors and anomalies)
- reclassifications of land
- heritage LEPs related to specific local heritage items supported by an Office of Environment and Heritage endorsed study
- spot rezoning consistent with an endorsed strategy and/or surrounding zones, and
- other matters of local significance as determined by the Gateway.

Issue of delegations

Section 23 of the Act allows the Minister and the Director-General to delegate functions to a council and/or an officer or employee of a council. The department has written to all councils advising that

plan making powers are to be delegated under section 23 of the Act. A council is to formally accept the delegation before the department will issue an Authorisation in respect of any individual draft LEP.

If a council chooses to accept the delegation, it may sub-delegate the function to an officer within council (usually the general manager or planning director) who will exercise the delegation. If a council chooses to sub-delegate the function, the council should advise the department at the same time it accepts the delegation. When submitting a planning proposal to the gateway a council should advise the department whether the council or an officer will be exercising the delegated function.

Section 381 of the *Local Government Act 1993* requires that such functions cannot be delegated to:

- a) the general manager, except with the approval of the council, or
- b) an employee of the council, except with the approval of the council and the general manager.

Councils must comply with the conditions of the Authorisation in exercising their delegation. If a condition of the Authorisation cannot be complied with council must not exercise the delegation and must advise the department immediately.

Drafting and notifying delegated LEPs

Under section 59(1) of the Act the department currently requests the Office of the Parliamentary Counsel (PCO) to draft the legal instrument that gives effect to a planning proposal. However, when a planning proposal is delegated, the council will now deliver its instructions directly to PCO electronically. The council will concurrently copy the instructions to the department for monitoring and reporting only. The council will then deal directly with PCO to negotiate and agree the final wording of the instrument, prior to making the LEP.

When a plan is made, the department currently requests PCO to 'notify' the plan on the NSW Legislation webpage. The day the plan is notified on that webpage is the day the LEP becomes effective. This process will continue. When a council has made an LEP it will be forwarded to the department. The department will request notification through PCO and will record the dates of making by the council and notification on the NSW Legislation web page.

Reporting requirements

Councils will be required to report to the department on processing times for delegated LEPs (e.g. exhibition dates, dates of council resolution and/or delegated decisions to proceed with the planning proposal after exhibition, request for drafting, making of plan, and forwarding to department to arrange notification).

A template for the reporting of this information has been prepared and is provided on the department's

website at <http://www.planning.nsw.gov.au/gateway-process>. Councils will be required to submit this completed template with each LEP at the time a request is made to the department to notify the plan. Councils are also required to provide written advice to the relevant regional office of the dates as they occur to ensure that the department's publicly accessible LEP Tracking System remains up to date.

Independent Reviews

To increase transparency and accountability in the Part 3 plan-making process, the government has formalised two existing administrative review processes:

- **Pre-gateway reviews** – which may be requested by a proponent before a planning proposal has been submitted to the department for a Gateway determination. These reviews are informed by advice from joint regional planning panels (regional panels) or the Planning Assessment Commission (PAC), and
- **Gateway reviews** – which may be requested by a council or proponent following a Gateway determination, but before community consultation on the planning proposal has commenced. These reviews are informed by advice from the PAC.

These reviews will allow councils and proponents to have decisions in relation to proposed amendments to LEPs reconsidered, by providing an opportunity for an independent body to give advice on such proposals.

An amendment to the Environmental Planning and Assessment Regulation 2000 (the Regulation) has been made to require councils to notify proponents of certain matters and to charge proponents fees for reviews.

This circular provides a summary of the review mechanisms. Detailed guidance for councils and proponents is provided within *A guide to preparing local environmental plans*.

Pre-Gateway reviews

When a review may be requested

If a proponent (e.g. developer, landowner) has requested that a council prepare a planning proposal for a proposed instrument, the proponent may ask for a pre-Gateway review if:

- a) the council has notified the proponent that the request to prepare a planning proposal is not supported, or
- b) the council has failed to indicate its support 90 days after the proponent submitted a request, accompanied by the required information.

The Regulation requires councils to notify a proponent when the council determines that it will not prepare a planning proposal. The proponent of the proposed instrument then has 40 days to request that the

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relevant regional panel review the proposal. Where a council has not made a determination after 90 days, the proponent may request a review any time after the 90 days has lapsed.

A guide to preparing local environmental plans sets out lodgement requirements, including fees and information a proponent must provide to the department in order for a review to be undertaken. It also sets out strategic and site-specific eligibility criteria that must be met in order for a proposal to be eligible for review by the regional panel.

Review and determination

The relevant regional panel will review all eligible proposals forwarded to it by the department. In the City of Sydney local government area, the PAC will undertake the review.

A guide to preparing local environmental plans sets out what matters the regional panel/PAC will take into consideration when reviewing the proposal.

The regional panel/PAC will provide advice on whether it would recommend to the Minister that the proposed instrument should be submitted for a determination under section 56 of the Act (Gateway determination).

The Minister's final decision will be informed by the regional panel's or PAC's advice, and the views of the department, council and proponent.

For proposals that are to proceed, further work may still be required by the proponent before the proposal complies with section 55 of the Act in relation to submitting a planning proposal for Gateway determination.

Further details on these procedures are outlined in *A guide to preparing local environmental plans*.

Exclusions – Pre-Gateway Reviews

A proponent who has requested council to prepare a planning proposal prior to the date this circular was issued may seek a review if the supporting information accompanying the request is still current (i.e. less than two years old).

A review request accompanied by information that is more than two years old will not normally be considered.

Gateway reviews

When a review may be requested

A council or proponent may request the Minister (or delegate) to alter a Gateway determination, when a Gateway determination is made that:

- the planning proposal should not proceed
- the planning proposal should be resubmitted to the Gateway, or
- imposes requirements (other than consultation requirements) or makes variations to the proposal that the council or proponent thinks should be reconsidered.

If the Gateway determination is either to not proceed or to resubmit the planning proposal, the council or proponent has 40 days from being notified by the department to request a review.

If the Gateway determination is to proceed with the planning proposal but imposes conditions that the council or proponent considers inappropriate, the council or proponent has 14 days from being notified by the department to indicate their intent to request a review. The council or proponent would then have 40 days to formally apply for a Gateway review.

A guide to preparing local environmental plans sets out lodgement requirements, including information the council or proponent must provide for a Gateway review to be undertaken.

Review and determination

The PAC will provide advice on whether the original Gateway determination should be altered, giving consideration to the council or proponent's submission and the reasons given for the original Gateway determination.

The Minister's final decision on whether to alter the Gateway determination will be informed by the PAC's advice, and the views of the council and proponent.

Further details on these procedures are outlined in *A guide to preparing local environmental plans*.

Further information

The Environmental Planning and Assessment

Regulation 2000 has been amended to require councils to notify proponents of certain plan-making matters and to charge proponents fees for reviews. The regulation is called the Environmental Planning and Assessment Amendment (Reviews) Regulation 2012.

A guide to preparing local environmental plans

provides advice on the various stages in the plan-making process including details of the stages for pre-Gateway reviews, the review of Gateway determinations and the delegation of plan-making functions to councils. The guide has been updated throughout with the main changes relating to:

- delegation procedures
- guidance on the plan making process
- guidance on the procedures for independent review.

A guide to preparing planning proposals, issued under section 55(3) of the Act, provides advice on the preparation and content of planning proposals. The guide has been updated throughout with the main changes relating to:

- guidance on the level of information to be required for planning proposals together with the inclusion of an information checklist for planning proposals
- advice regarding pre-lodgement meetings

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- the introduction of 'part 6 – project timeline' and discussion of requirements and procedures
- guidance on mapping requirements and procedures.

Copies of the Environmental Planning and Assessment Regulation 2000 are available online at <http://www.legislation.nsw.gov.au>.

Copies of *A guide to preparing local environmental plans* and *A guide to preparing planning proposals* are available on the department's website <http://www.planning.nsw.gov.au>.

The department has developed a number of template documents to assist councils preparing delegated LEPs. Councils will be able to access these templates and use them to ensure that the key statutory requirements of the plan-making process have been complied with. These templates are available for download from the department's website at: <http://www.planning.nsw.gov.au/gateway-process>

For further information please contact the Department of Planning & Infrastructure's information centre on 1300 305 695.

Department of Planning & Infrastructure circulars are available from <http://www.planning.nsw.gov.au/circulars>

Authorised by:

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Director-General

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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