

## Planning Services

### Planning Report

**Local Government Area:** Liverpool

**File Number:** 17/11427

#### 1. NAME OF DRAFT PLAN

Liverpool Local Environmental Plan 2008 - Amendment No.41 (draft LEP), see **Attachment LEP** to the Briefing Note.

#### 2. SITE DESCRIPTION

The planning proposal (**Attachment B**) applies to two council owned sites at 4 Marulan Way, Prestons and 38 Newbridge Road, Chipping Norton.

#### 3. PURPOSE OF PLAN

The purpose of the draft plan is to:

- rezone land at 4 Marulan Way, Prestons (part of Lot 104, DP 876128) from RE1 Public Recreation to R2 Low Density Residential zone and reclassify from 'Community land' to 'Operational land' by insertion of this parcel of land into Part 2, Schedule 4 of Liverpool Local Environmental Plan 2008;
- rezone land at 38 Newbridge Road, Chipping Norton (part of Lot 66 DP 1050611) from R2 Low Density Residential to RE1 Public Recreation zone and reclassify from 'Operational land' to 'Community land', by insertion of this parcel of land into Part 3, Schedule 4 of Liverpool Local Environmental Plan 2008 ('LEP'); and
- remove a redundant clause 7.5(4)(a) in the Liverpool LEP 2008 which makes reference to the repealed Part 3A of the *Environmental Planning and Assessment Act 1979*.

#### 4. THE DRAFT PLAN

##### 4 Marulan Way, Prestons



The draft LEP aims to reclassify one Council owned site from Community land to Operational Land at 4 Marulan Way, Prestons (part of Lot 104, DP 876128). The subject land is a minor part (100 square metres) of a larger open space network, but is isolated by a footpath.

The subject land is known as Pasquale Minnici Park and is surrounded by low density residential development. The land is currently zoned RE1 Public Recreation under Liverpool Local Environmental Plan 2008 and is proposed to be zoned R2 Low Density Residential.

An adjoining owner has approached Council to purchase the subject site to increase the backyard space of privately owned 14 Taralga Street, Prestons.

The building height, floor space ratio (FSR) and lot size controls are proposed for the site so as to correspond with the revised zoning and consistent with the surrounding low density residential zoned lands.

Council considers the loss of open space as inconsequential, and the proceeds from the exchange will be returned to the relevant Section 94 Contribution Fund allowing for the embellishment of other recreational spaces in the LGA. The reclassification is consistent with Council's Operational Plan and enables surplus Council property to be developed and/or sold.

The proposed reclassification is to be placed in Schedule 4 Part 2 – Land classified, or reclassified as 'operational land' – interest to be changed of the Liverpool Local Environmental Plan 2008.

#### 38 Newbridge Road, Chipping Norton



38 Newbridge Road, Chipping Norton (part of Lot 66 DP 1050611) is proposed to be reclassified from 'Operational land' to 'Community land' and rezone from R2 Low Density residential to RE1 Public Recreation zone. The land was recently acquired by Council to prevent residential properties being developed as it falls within the Moorebank-Milperra Floodway area.

The proposed reclassification from 'Operational land' to 'Community land' at 38 Newbridge Road, Chipping Norton does not require the Governor's approval. All corresponding development controls applying to the land are proposed to be removed. The proposed reclassification is to be placed in Schedule 4 Part 3 to be reclassified as 'community land'.

#### Removal of Clause 7.5(4)(a)

The draft plan will remove a redundant clause 7.5(4)(a) which makes reference to the repealed Part 3A of the *Environmental Planning and Assessment Act 1979*.

On 26 March 2014, Liverpool Council resolved to proceed with the planning proposal.

## 5. GOVERNOR'S APPROVAL

The proposed reclassification of 4 Marulan Way, Prestons is to remove the public reserve status of the land and all interests affecting the land to be discharged. The Governor's approval is required because it is a public reserve and interest on the land is to be changed.

On 9 August 2017, the Governor's approval was given to remove the public reserve status and to discharge all interests affecting the land under section 30(2) of the Local Government Act 1993 (**Attachment E**).

The land will be placed in Schedule 4 Part 2 – Land classified, or reclassified as 'Operational land' – interest to be changed of the Liverpool Local Environmental Plan 2008.

## 6. STATE ELECTORATE AND LOCAL MEMBER

Both Prestons and Chipping Norton in Liverpool falls within Holsworthy State Electorate.

The local member for Holsworthy is Ms Melanie Gibbons, MP.

To the regional planning team's knowledge, neither local member has made any written representations for the proposal.

**NSW Government Lobbyist Code of Conduct:** There have been no meetings or communications with registered lobbyists with respect to this proposal.

**NSW Government reportable political donation:** There are no donations or gifts to disclose and a political donation disclosure is not required.

## 7. GATEWAY DETERMINATION

The Gateway determination issued on 17 April 2014 (**Attachment C**) determined that the proposal should proceed subject to conditions. The Gateway timeframe has since been altered (**Attachment D**) on three occasions. The proposal is to be finalised by 24 October 2017. Council has met the conditions in the Gateway determination.

- Council is to ensure the planning proposal addresses the Director General's requirements relating to the reclassification of public land consistent with section 5.5.4 of a Guide to Preparing LEPs and Council complies with the relevant requirements of the agency's practice note PN09-003;
- Consultation is required under section 56(2)(d) of the EP&A Act with the Office of Environment and Heritage (OEH). The OEH 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;
  - o Council sought comments from the Office of Environment and Heritage (OEH).
  - o No objections were raised by the OEH that require changes to the proposal.
- Community consultation is required under sections 56(2)(c) and 57 of the *Environmental Planning and Assessment Act 1979* ("EP&A Act") as follows:
  - 1) The planning proposal must be made publicly available for a minimum of 28 days; and
  - 2) 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 (Department of Planning & Infrastructure 2013);
    - o Council placed the proposal on public exhibition from 2 July 2014 to 30 July 2014.

- 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. However, a public hearing is required to be held into the matter in accordance with the agency's practice note PN009-003, as the Planning Proposal involves a reclassification from community to operational; and
  - No public hearing is required to be held by Council under section 56(2)(e) of the EP&A Act.
  - A public hearing under the *Local Government Act 1993* was conducted on 19 August 2014 in accordance with PN009-003.
- The timeframe for completing the Local Environmental Plan is to be 6 months from the week following the date of the Gateway determination.
  - The Gateway timeframe dated 24 November 2014 (as revised on 8 July 2015, 24 February 2016 and 16 August 2017) requires the plan to be finalised on 24 October 2017.

## **8. STATE ENVIRONMENTAL PLANNING POLICIES AND S117 DIRECTIONS**

The draft LEP is consistent with relevant SEPPs or deemed SEPPs. The draft LEP is consistent with all section 117 Directions.

## **9. CONSISTENCY WITH THE DRAFT SOUTH WEST DISTRICT PLAN**

The planning proposal is consistent with the Liveability Priority L5 - Facilitate the delivery of safe and healthy places of the Draft South West District Plan. The proceeds from the sale of the rezoned public land will be used to facilitate the delivery of improved recreation and community facilities.

## **10. PUBLIC CONSULTATION**

### Public Exhibition

The planning proposal was exhibited for 28 days from 2 July 2014 to 30 July 2014. There were no submissions received in response to the community consultation.

### Public Hearing

A public hearing was conducted on 19 August 2014 in relation to reclassification of 4 Marulan Way, Prestons. There were no written submissions, however a verbal presentation was presented which raised an unrelated issue. No objections to reclassification or rezoning were raised.

The Report on Public Hearing recommended that the land at 4 Marulan Way, Prestons (part of Lot 104, DP 876128) be reclassified as 'Operational land' (**Attachment F**) and the use of the land for public recreational use to be ceased.

## **11. ADVICE FROM PUBLIC AUTHORITIES**

Council consulted the Office of Environment and Heritage. No objections were raised by the agency.

## **12. POST EXHIBITION CHANGES**

No changes were made to the Planning Proposal post exhibition.

## **13. MAPPING**

The LEP amendment includes an updated Key Sites Map which has been checked by the Department's ePlanning Team and sent to Parliamentary Counsel.

#### **14. CONSULTATION WITH COUNCIL**

Under s59(1) of the EP&A Act, Council was consulted on the terms of the draft instrument. Council's response, which supported the LEP being made is at **Attachment G**.

#### **15. PARLIAMENTARY COUNSEL OPINION**

Parliamentary Counsel Opinion was issued on 10 November 2016 and was revised on 13 February 2017 and 24 May, 2017 that the draft plan may legally be made (**Attachment PC**). No changes were made to the written instrument.

#### **16. RECOMMENDATION**

It is recommended that the Greater Sydney Commission's delegate determine to make the draft LEP because:

- the reclassification of land at Prestons from community to operational land and rezoning from RE1 Public Recreation to R2 Low Density Residential zone will provide Council with flexibility to facilitate the disposal of under-utilised open space land and the proceeds to be returned to the relevant Section 94 Contribution Fund to fund the embellishment of other recreational spaces;
- the reclassification and rezoning of land at Chipping Norton from R2 Low Density residential to RE1 Public Recreation zone will allow Council to prevent residential properties being developed within the Moorebank-Milperra Floodway area which is one of the worst floodways in NSW; and
- it will remove a redundant clause 7.5(4)(a) in the Liverpool LEP 2008.

**Endorsed by**



21/08/17

**Adrian Hohenzollern**  
**Team Leader**  
**Sydney Region West**  
**Planning Services**

Contact Officer: Cho Cho Myint  
Sydney Region West  
Phone: 98601507

