

Proposed Rezoning of 5 Pine Avenue, Earlwood

Proposal Title : **Proposed Rezoning of 5 Pine Avenue, Earlwood**

Proposal Summary : **The planning proposal seeks:**
1.To rezone 5 Pine Avenue, Earlwood, from RE1 Public Recreation (Regional Open Space) to R2 Low Density Residential under Canterbury Local Environmental Plan (CLEP) 2012.
2.To amend four maps in the Canterbury LEP 2012 - Land Zoning map, Height of Buildings map, Lot Size map and Land Reservation Acquisition map.

PP Number : **PP_2013_CANTE_003_00** Dop File No : **0**

Proposal Details

Date Planning Proposal Received :	01-Jul-2013	LGA covered :	Canterbury
Region :	Sydney Region East	RPA :	Canterbury City Council
State Electorate :	CANTERBURY	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	5 Pine Avenue		
Suburb :	Earlwood	City :	Sydney
		Postcode :	2206
Land Parcel :			

DoP Planning Officer Contact Details

Contact Name : **Margaret Kirton**
 Contact Number : **0285754131**
 Contact Email : **margaret.kirton@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Warren Farleigh**
 Contact Number : **0297899608**
 Contact Email : **warrenf@canterbury.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :
 Contact Number :
 Contact Email :

Land Release Data

Growth Centre :	N/A	Release Area Name :	
Regional / Sub Regional Strategy :	Metro South subregion	Consistent with Strategy :	Yes

Proposed Rezoning of 5 Pine Avenue, Earlwood

MDP Number :

Date of Release :

Area of Release (Ha)

Type of Release (eg

:

Residential /

Employment land) :

No. of Lots : 1

No. of Dwellings : 1

(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government Lobbyists Code of

Conduct has been

complied with :

If No, comment :

Have there been meetings or

communications with

registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting

Notes :

The subject land has been zoned for open space since at least 1970. The state government is the acquisition authority for the land.

The current owner of the land purchased it in 2002 and, after failing to gain the support of Canterbury Council to have the land rezoned to residential, requested that the State Government acquire the land in 2008.

The State Government sent a letter of offer to the landowner on 30 April 2009. However negotiations stalled over which party was responsible for removing some contaminated (containing asbestos) fill on the land.

The Office of Strategic Lands (OSL) has reviewed the planning proposal and advised that if the land is rezoned for residential purposes then the acquisition liability falls away and the role of the OSL ceases. If a decision is made to retain the regional open space zoning, then the issue of the possible contamination of the site remains. The OSL advises that any new offer of acquisition would be made on the condition that the site is clean and free of contamination.

Council officers do not support the rezoning and consider that the subject land is most appropriately used for open space.

At the Council meeting of 9 May 2013, Council officers recommended that Council write to the Department to request that it pursue negotiations for the acquisition of the subject land for open space.

After considering the report and recommendation, Council resolved that the Department be advised that Council has no objection recommending 5 Pine Avenue, Earlwood be rezoned from open space to residential.

Council has submitted the checklist for the review of a request for delegation of plan making functions to councils. Should this planning proposal proceed, it is recommended that the plan making functions be delegated to Council.

External Supporting

Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The objectives are clear. The planning proposal will rezone the land to R2 Low Density Residential, apply height and lot size controls through changes to the relevant maps, and remove the land from the Land Reservation Acquisition map.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions is adequate. The planning proposal will amend the Canterbury LEP 2012 through changes to the Zoning map; Height of Buildings map; Lot Size map; and Land Reservation Acquisition map.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA : **3.1 Residential Zones
4.1 Acid Sulfate Soils
4.3 Flood Prone Land
6.2 Reserving Land for Public Purposes**

* May need the Director General's agreement

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified? **SEPP No 55—Remediation of Land**

e) List any other matters that need to be considered : **The subject land has been identified as county or regional open space since at least 1970. It adjoins the Gough Whitlam Park which forms part of the open space corridor along the Cooks River. Council has prepared concept plans in the past that demonstrate how this land (and an adjoining parcel of open space land that previously contained a works depot) can be embellished and incorporated in the riverside parkland.**

The Office for Strategic Land (OSL) has made a written offer to the landowner to acquire the site on the basis that it is clean (a contamination study identified some filling and asbestos-related concerns). To date, the landowner has not responded to the offer from OSL. The OSL advises that any new acquisition offer would be made on the condition that the site is clean and free of contamination prior to acquisition.

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain : **Direction 3.1 Residential Zones
The planning proposal is not inconsistent with this direction which aims to encourage a variety and choice of housing types.**

**Direction 4.1 Acid Sulfate Soils
The planning proposal requires consideration of this direction as it proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils. Should the planning proposal be given a gateway determination to proceed, an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils would be required prior to community consultation.**

**Direction 4.3 Flood Prone Land
The planning proposal is inconsistent with this direction which states that a draft LEP shall not rezone land within flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.**

Proposed Rezoning of 5 Pine Avenue, Earlwood

The subject land is near the Cooks River and is shown as being within the flood planning area on the Canterbury LEP 2012 maps. Council officers advise that the land is entirely affected by 1 in 100 year flooding and partly by 1 in 20 year and 1 in 50 year flooding.

Although there would be an engineering solution to constructing a dwelling on the land (as evidenced by the newly-constructed dwelling on the adjoining property which has a significantly elevated ground-floor level) it is considered that this does not justify the inconsistency with this direction.

It is considered that the inconsistency with the direction cannot be justified as it is inappropriate to rezone land that is clearly within a flood planning area for residential development when such development is currently prohibited. Although only one lot of land is involved, the rezoning would result in an increase in the exposure of people and property to risk of damage from flood waters and, on these grounds, is not supported.

Direction 6.2 Reserving Land for Public Purposes

Under this direction, should the planning proposal proceed, the approval of the Director-General is required as the planning proposal would remove an existing zoning/reservation of land for public purposes. In this case, it is recommended that the Director-General not give his approval for the removal of the reservation and that the Department continue to pursue the acquisition of the land.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : The mapping is adequate.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : Council proposes to advertise the exhibition of the planning proposal in the local newspaper and notify state agencies and adjoining landowners.

Additional Director General's requirements

Are there any additional Director General's requirements? **N/A**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The principal LEP for Canterbury was made in 2012

Assessment Criteria

Need for planning proposal : The planning proposal is the only way to achieve the rezoning of the land from open space to residential.

Proposed Rezoning of 5 Pine Avenue, Earlwood

Consistency with strategic planning framework :

Given its minor nature, the proposed rezoning is not inconsistent with the strategic planning framework.

Environmental social economic impacts :

The Planning Proposal could have a significant social impact as it would remove the opportunity for the addition of this 1000sqm parcel of land to the adjoining riverside parkland, which provides a number of recreational opportunities to the local community as well as providing an important regional cycling and walking link along the Cooks River.

The environmental impact of the planning proposal principally relates to the future placement of building structures in the floodway and the potential for such structures to impede the flow of floodwaters.

Should the land remain zoned as open space, there would be an economic cost to the state government which is the acquisition authority for the land. The Office of Strategic Lands has advised it would be prepared to continue negotiations to bring the land into state government ownership should the land retain its current zoning.

Assessment Process

Proposal type : **Minor** Community Consultation Period : **14 Days**

Timeframe to make LEP : **6 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **Office of Environment and Heritage**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **No**

If no, provide reasons : **The proposed rezoning would result in the loss of the opportunity to add additional open space land to Canterbury Council's current stock of open space land. The land has been identified as county and regional open space for more than 4 decades. The land is floodprone and rezoning it from open space to residential is inconsistent with the S117 direction - 4.3 Flood Prone Land.**

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Should a gateway determination be issued to allow the planning proposal to proceed, an acid sulphate soil study would be required prior to the exhibition of the planning proposal.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Proposed Rezoning of 5 Pine Avenue, Earlwood

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal 5 Pine Ave Earlwood.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Not Recommended**

S.117 directions: **3.1 Residential Zones**
 4.1 Acid Sulfate Soils
 4.3 Flood Prone Land
 6.2 Reserving Land for Public Purposes

Additional Information : **It is recommended that the planning proposal not proceed.**

Should this planning proposal proceed, it is recommended that the plan making functions be delegated to Council.

Supporting Reasons : **The subject land is flood prone and its proposed rezoning for residential purposes is inconsistent with s117 direction 4.3 Flood Prone Land.**
 The current zoning of the land for open space is appropriate, given the flood prone nature of the land and its location near the Gough Whitlam Reserve and the Cooks River open space corridor.
 The Department's Office of Strategic Lands has indicated it is willing to continue negotiations to acquire the land.

Signature:



Printed Name:

DAVID PITNEY

Date:

1/8/13