

MARRICKVILLE council

**SUPPLEMENTARY
BUSINESS PAPER
1**

for

**COUNCIL
MEETING
09/07**

**6.30 PM, TUESDAY,
16 OCTOBER, 2007**

Distributed 16 October, 2007

SUPPLEMENTARY PRECIS

The following report appears as a late item with Mayoral approval as information required for the preparation of the report was not available at the time of distribution of the Business Paper.

GENERAL MANAGER'S REPORTS

- GM 113 PROPOSED REZONING OF PARTICULAR PROPERTIES IN 1**
THE VICINITY OF SOUTH STREET, TEMPE
File Ref: P4490.40-02
At its meeting on 18 September 2007 (Item GM 87, Meeting No. 08/07) Council passed a resolution regarding the rezoning of particular properties in the vicinity of South Street, Tempe. That resolution was made with the intention of trying to avoid the acquisition by Council of properties no longer needed for open space. This report recommends that, for the purpose of satisfying the requirements of the Environmental Planning and Assessment Act 1979, Council now resolve to prepare a draft local environmental plan in respect of properties in the vicinity of South Street, Tempe, as described in this report.

**GM 113 - PROPOSED REZONING OF PARTICULAR PROPERTIES IN
THE VICINITY OF SOUTH STREET, TEMPE
For Decision**

File Ref: P4490.40-02

General Manager reports:

Synopsis

At its meeting on 18 September 2007 (Item GM 87, Meeting No. 08/07) Council passed a resolution regarding the rezoning of particular properties in the vicinity of South Street, Tempe. That resolution was made with the intention of trying to avoid the acquisition by Council of properties no longer needed for open space. This report recommends that, for the purpose of satisfying the requirements of the *Environmental Planning and Assessment Act 1979*, Council now resolve to prepare a draft local environmental plan in respect of properties in the vicinity of South Street, Tempe, as described in this report.

Background

At its meeting on 18 September 2007 (Item GM 87, Meeting No. 08/07) Council considered a report regarding privately owned properties in the vicinity of South Street, Tempe that are currently zoned (in whole or in part) Local Open Space 9(A) Reservation under *Marrickville Local Environmental Plan 2001*. That report is included at **ATTACHMENT 1**. The report noted that the amount of existing open space in the area is now such that it is no longer desirable for Council to acquire the properties that continue to be affected by the reservation. The report noted that, by Council using its best endeavours to remove the reservation from the affected properties, Council may be able to avoid the costly acquisition of properties that are no longer required for open space.

Following its consideration of that report, Council resolved:

THAT:

- 1. Council agree in principle and seek approval from the Department of Planning to a localised rezoning of 1B, 1, 3, 5, 7 and 43 South Street, 1 Barden Street and 2 Smith Street given the urgent nature of this matter;*
- 2. Council write to the owners of No. 5 South Street, Tempe declaring that Council does not intend to acquire the land for public open space in the future and Council is using its best endeavours to effect a rezoning accordingly;*
- 3. a further REPORT on the reply from the Department of Planning be submitted for Council's consideration; and*
- 4. ATTACHMENTS 1, 2 AND 3 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act, 1993:*

CONFIDENTIAL ATTACHMENT 1 is confidential in accordance with Section 10A (2) (b) of the Local Government Act, 2003, as it contains information on the personal hardship of residents or ratepayers;

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CONFIDENTIAL ATTACHMENT 2 is confidential in accordance with Section 10A (2) (g) of the Local Government Act, 2003, as it contains advice that would be privileged from production in legal proceedings on the ground of legal professional privilege; and

CONFIDENTIAL ATTACHMENT 3 is confidential in accordance with Section 10A (2) (c) of the Local Government Act, 2003, as it contains advice that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

In regard to point number one above, the General Manager telephoned the Regional Director, South West Sydney Department of Planning to advise of Council's resolution and Council wrote to the Department of Planning, by letter dated 8 October 2007. Council officers have since received verbal advice from the Department of Planning that the Department will soon be sending a letter to Council advising that to provide an opinion in response to Council's letter of 8 October 2007, it requires Council's resolution in the prescribed format (as described in the Department's Planning Circular PS 06-005).

In order for Council to receive an opinion from the Department of Planning as to whether Council might, at this point in time, be able to proceed with the rezoning of particular properties in the vicinity of South Street, Tempe, it will be necessary for Council to provide more detailed information than was contained in Council's letter of 8 October 2007.

Conclusion

In order for Council officers to be able to commence the process of preparing more detailed information for the consideration of the Department of Planning, it is recommended that Council now resolve, for the purpose of Section 54 of the *Environmental Planning and Assessment Act 1979*, to prepare a draft local environmental plan to rezone particular properties in the vicinity of South Street, Tempe, as shown on the map at ATTACHMENT 2.

RECOMMENDATION:

THAT:

1. Council resolve, for the purpose of Section 54 of the *Environmental Planning and Assessment Act 1979*, to prepare a draft local environmental plan to rezone particular properties in the vicinity of South Street, Tempe, as per the map at ATTACHMENT 2; and
2. Council inform the Department of Planning of its decision to prepare a draft local environmental plan, and submit to the Department the documentation required by the Local Environmental Plan Review Panel.

ATTACHMENT 1: Total 53 pages

Report to Council meeting of 18 September 2007, Meeting No. 08/07, report GM 87, "SOUTH STREET , TEMPE – SOUTH SIDE – LOCAL OPEN SPACE RESERVATION ZONING".

ATTACHMENT 2: Total 2 pages

Map showing proposed zoning of properties in the vicinity of South Street, Tempe.

**ATTACHMENT 1 - GM 87 - SOUTH STREET, TEMPE - SOUTH SIDE -
LOCAL OPEN SPACE RESERVATION ZONING
For Decision**

File Ref: P4490.40-02

Director, Technical Services reports:

Synopsis

This report provides further information in relation to a number of private properties along the southern-side of South Street, Tempe that currently have a dual zoning of Local Open Space 9 (A) and Arterial Road and Arterial Road Widening 9 (C) in the present Marrickville Local Environmental Plan 2001 (LEP). Following a resolution of Council to defer making a decision on the purchase of No. 5 South Street, Tempe the owners of that property have now written to Council citing "hardship".

It is recommended that, given the urgent nature of this matter, Council agree in principle and seek approval from the NSW Department of Planning to a localised rezoning of the remaining Open Space Reservation-affected properties on South Street, Tempe and that Council writes to the owners of No. 5 South Street, Tempe declaring that Council does not intend to acquire the land for public open space in the future and Council is using its best endeavours to effect a rezoning accordingly. It is further recommended that a report on the advice from the Department of Planning be submitted for Council's consideration.

This report contains **CONFIDENTIAL ATTACHMENTS 1, 2 & 3** which are confidential in accordance with Section 10A (2) of the Local Government Act, 1993:-

CONFIDENTIAL ATTACHMENT 1 is confidential in accordance with Section 10A (2) (b) of the Local Government Act, 2003 as it contains information on the personal hardship of residents or ratepayers. Accordingly, disclosure of the information is not in the public interest;

CONFIDENTIAL ATTACHMENT 2 is confidential in accordance with Section 10A (2) (g) of the Local Government Act, 2003 as it contains advice that would be privileged from production in legal proceedings on the ground of legal professional privilege. Accordingly, disclosure of the information is not in the public interest; and

CONFIDENTIAL ATTACHMENT 3 is confidential in accordance with Section 10A (2) (c) of the Local Government Act, 2003 as it contains advice that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business. Accordingly, disclosure of the information is not in the public interest.

During its debate on this item at the Meeting, the Council/Committee may decide, by resolution, to discuss the confidential information in closed confidential committee. Before doing so, the Committee will determine if members of the public will be allowed to make verbal representations as to whether that part of the meeting should be closed.

Background

At its meeting of 18 July 2006 (Item PR 16, Meeting No. 06/06), Council resolved **THAT:**

**ATTACHMENT 1 - GM 87 - SOUTH STREET, TEMPE - SOUTH SIDE -
LOCAL OPEN SPACE RESERVATION ZONING
For Decision**

1. *"existing Reservations for Local Open Space (A) remain and redevelopment issues on those properties be managed on a case by case basis;*
2. *a review of all Reservations be undertaken as part of the development of a new LEP; and*
3. *a review of the likely impact and prospects of construction of the St Peters Industrial Route (SPIRE Route) be undertaken prior to preparation of the draft LEP."*

The LEP Review process is not due for completion until 2009. However, by Council demonstrating that it is using its best endeavours to remove the relevant reservations, it may be able to avoid a costly acquisition which is no longer required. Consequently, it is recommended that Council agree in principle to a localized rezoning of the subject properties.

A report was presented to Council at its meeting of 19 June 2007 (Item GM 58, Meeting No. 05/07), which outlined a variety of issues in relation to the current zonings that affect a number of private properties along the southern side of South Street, Tempe. In the present Local Environmental Plan (LEP) 2001 the affected properties have a dual zoning of Local Open Space 9 (A) and Arterial Road and Arterial Road Widening 9 (C).

The owners of No. 5 South Street wish to sell their property and have formally approached Council to acquire it following the difficulties they have experienced attracting buyers. This matter was reported to Council at its 19 June 2007 meeting (Item GM 58, Meeting No. 05/07) when it was resolved **THAT:**

1. *"Council defer any decision to purchase No. 5 South Street, Tempe pending the outcome of consultation with the owners and residents of the subject properties which will be undertaken as part of the LEP Review; and*
2. *the owners of No. 5 South Street be so advised."*

The owners were advised of this decision and have subsequently written back to Council citing hardship (**CONFIDENTIAL ATTACHMENT 1**). Legal advice from John Ayling SC obtained by Council's Principal Solicitor (**CONFIDENTIAL ATTACHMENT 2**) is attached to this report.

Discussion

No. 5 South Street, Tempe is one of a number of properties along the southern side of South Street, Tempe affected by the current LEP 2001 zonings. The owner of No. 5 South Street, via his agent (Elders Real Estate), has written to Council seeking owner-initiated acquisition of the property.

Council recently purchased properties at 1 Wentworth Street and 2A Fanning Street as part of the LEP 2001 intention for Council to acquire land reserved for Local Open Space 9 (A) in the area. Council's S94 Plan allocated \$2 million to purchase properties along South Street.

It is considered that Council does not require any further properties along South Street, Tempe for Open Space purposes, having recently acquired sufficient land to provide a suitable frontage of Open Space onto South Street. Further, Council does not have sufficient funds from S.94

**ATTACHMENT 1 - GM 87 - SOUTH STREET, TEMPE - SOUTH SIDE -
LOCAL OPEN SPACE RESERVATION ZONING
For Decision**

contributions to purchase Open Space following a down-turn in the amount of contributions received.

Although the necessary prerequisites obligating Council to acquire the property have not been met, Egan National Valuers have been engaged to provide an independent valuation for the subject property in accordance with the Land Acquisition (Just Terms Compensation) Act 1991. The valuation is attached (**CONFIDENTIAL ATTACHMENT 3**).

The issue of property acquisitions in South Street is further complicated by the current dual zoning that divides the subject properties into two zonings, 9 (A) and 9 (C). The later being part of the County Road Reservation. Four of the properties on the southern side of South Street between Fanning and Barden Streets are also affected by the County Road Reservation. The RTA has previously formally agreed to a change to the northern boundary of the County Road Reservation which would have the affect of removing the County Road Reservation zoning from the subject properties as shown in **ATTACHMENT 4** and this will be included in the LEP Review process. However, in the event that the property is to be acquired prior, Council and the RTA would each need to acquire their respective portions and proceed with a subdivision of the land.

Following consultation with Council's Development & Environmental Services Division, it is recommended that Council first seek approval from the Department of Planning to a localized rezoning of 1B, 1, 3, 5, 7 and 43 South Street, 1 Barden Street and 2 Smith Street on the basis of urgency because there is continuing interest being expressed in Council purchasing the properties, the most recent enquiry being from the owner of No. 5 South Street who is citing hardship grounds, and because Council does not require the subject properties for Open Space and does not have sufficient S94 funds to purchase them. There is no guarantee that the Minister for Planning will agree to consider a localized rezoning proposal and, even if this were to occur, the outcome and timeframe is unknown. However, in following this course of action, Council would be in a position to exhibit that it is using its best endeavours to remove the relevant reservations over the affected land.

RECOMMENDATION:

THAT:

5. Council agree in principle and seek approval from the Department of Planning to a localised rezoning of 1B, 1, 3, 5, 7 and 43 South Street, 1 Barden Street and 2 Smith Street given the urgent nature of this matter;
6. Council write to the owners of No. 5 South Street, Tempe declaring that Council does not intend to acquire the land for public open space in the future and Council is using its best endeavours to effect a rezoning accordingly;
7. a further REPORT on the reply from the Department of Planning be submitted for Council's consideration; and
8. **ATTACHMENTS 1, 2 AND 3** are **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act, 1993:

**ATTACHMENT 1 - GM 87 - SOUTH STREET, TEMPE - SOUTH SIDE -
LOCAL OPEN SPACE RESERVATION ZONING
For Decision**

CONFIDENTIAL ATTACHMENT 1 is confidential in accordance with Section 10A (2) (b) of the Local Government Act, 2003, as it contains information on the personal hardship of residents or ratepayers;

CONFIDENTIAL ATTACHMENT 2 is confidential in accordance with Section 10A (2) (g) of the Local Government Act, 2003, as it contains advice that would be privileged from production in legal proceedings on the ground of legal professional privilege; and

CONFIDENTIAL ATTACHMENT 3 is confidential in accordance with Section 10A (2) (c) of the Local Government Act, 2003, as it contains advice that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

ATTACHMENT 1: Total 4 pages
Confidential Attachment

ATTACHMENT 2: Total 8 pages
Confidential Attachment

ATTACHMENT 3: Total 36 pages
Confidential Attachment

ATTACHMENT 4: Total 1 page
Proposed Arterial Road Zoning

Council Meeting - 09/07 - 16 October, 2007

***ATTACHMENT 1 - GM 87 - SOUTH STREET, TEMPE - SOUTH SIDE -
REZONING
For Decision***

**THIS ATTACHMENT IS CONFIDENTIAL IN ACCORDANCE WITH SECTION
10A(2)(b) OF THE LOCAL GOVERNMENT ACT, 1993, AS IT CONTAINS
INFORMATION ON THE PERSONAL HARDSHIP OF RESIDENTS OR RATEPAYERS**

Council Meeting - 09/07 - 16 October, 2007

***ATTACHMENT 2 - GM 87 - SOUTH STREET, TEMPE - SOUTH SIDE -
REZONING
For Decision***

**THIS ATTACHMENT IS CONFIDENTIAL IN ACCORDANCE WITH SECTION 10A(2)(g)
OF THE LOCAL GOVERNMENT ACT, 1993, AS IT CONTAINS ADVICE THAT WOULD
BE PRIVILEGED FROM PRODUCTION IN LEGAL PROCEEDINGS ON THE GROUND
OF LEGAL PROFESSIONAL PRIVILEGE**

Council Meeting - 09/07 - 16 October, 2007

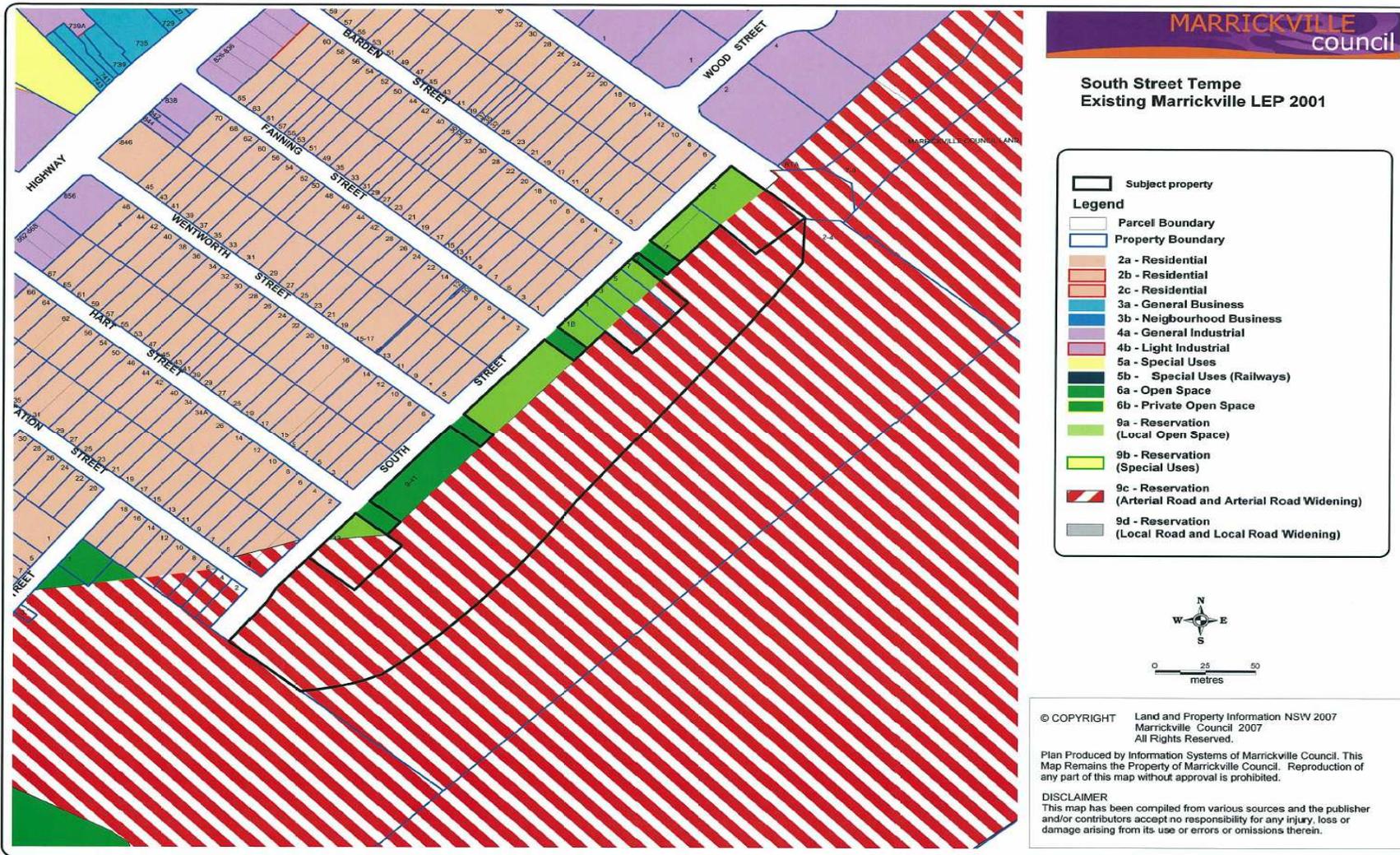
***ATTACHMENT 3 - GM 87 - SOUTH STREET, TEMPE - SOUTH SIDE -
REZONING
For Decision***

**THIS ATTACHMENT IS CONFIDENTIAL IN ACCORDANCE WITH SECTION 10A(2)(c)
OF THE LOCAL GOVERNMENT ACT, 1993, AS IT CONTAINS ADVICE THAT
WOULD, IF DISCLOSED, CONFER A COMMERCIAL ADVANTAGE ON A PERSON
WITH WHOM THE COUNCIL IS CONDUCTING (OR PROPOSES TO CONDUCT)
BUSINESS**

ATTACHMENT 4 - GM 87 - SOUTH STREET, TEMPE - SOUTH SIDE - REZONING
For Decision



ATTACHMENT 2 - GM 113 - PROPOSED REZONING OF PARTICULAR PROPERTIES IN THE VICINITY OF SOUTH STREET, TEMPE
For Decision



ATTACHMENT 2 - GM 113 - PROPOSED REZONING OF PARTICULAR PROPERTIES IN THE VICINITY OF SOUTH STREET, TEMPE
For Decision

