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DEPARTMENT OF PLANNING AND ENVIRONMENT

Planning Services

REQUEST TO MAKE WILLOUGHBY LEP 2012 (AMENDMENT NO. 6) – 17 SMITH STREET, CHATSWOOD

PURPOSE

- To finalise the planning proposal for 17 Smith Street, Chatswood as *Willoughby Local Environmental Plan 2012 (Amendment No. 6)* (the draft Plan).

This amendment is the result of a pre-Gateway review as Council resolved not to support it.

RECOMMENDATION

That the Deputy Secretary, Planning Services, as delegate of the Greater Sydney Commission:

- **notes** the Department's planning proposal report (Tab B), the planning proposal (Tab C), the Gateway determination (Tab D), and the post-exhibition Council report (Tab E);
- **notes** Parliamentary Counsel's Opinion that the draft Plan can be legally made, and that no changes have been made to the draft Plan since obtaining this Opinion (Tab PCO);
- **notes** the Secretary of the Department of Planning and Environment has been appointed as the Relevant Planning Authority to allow for the finalisation of the amendment (Tab RPA).
- **makes** the draft Plan under section 59(2)(a) of *Environmental Planning and Assessment Act 1979* (the Act), by **signing** the instrument (Tab LEP); and
- **signs** the letters to Willoughby City Council (Tab Let 1), and the proponent TPG NSW (Tab Let 2) advising of this decision.

CURRENT POSITION

The Planning Proposal

- The planning proposal seeks to amend Schedule 1 – Additional Permitted Uses to allow development of a 'supermarket or a supermarket and liquor store' as permitted with development consent at 17 Smith Street, Chatswood (Lot 101, DP 714477) (see location and land zoning maps at Tab A).

Pre-Gateway Review

- On 14 November 2011, a planning proposal, prepared by TPG NSW on behalf of Woolworths, to allow a supermarket and liquor store as an additional permitted use in the IN2 Light Industrial zone at 17 Smith St, Chatswood was submitted to Willoughby City Council.
- On 28 May 2012, Council resolved not to support the proposal stating that:
 - it was contrary to the local, regional, and metropolitan strategic planning framework;
 - it would erode the potential of the East Chatswood Industrial Area for providing local services and non-retail employment;
 - there were alternative sites available in existing edge of centre locations; and
 - there were outstanding traffic issues that had not been satisfactorily resolved.
- On 30 November 2012, in response to Council's resolution not to proceed, the proponent lodged a pre-Gateway review with the Department.
- On 25 June 2013, the Department's Pre-Gateway Review Justification and Merit Assessment report (Tab F) recommended the proposal proceed to independent review by the Sydney East Joint Regional Planning Panel (the Panel), as it had site-specific strategic merit.

- On 20 November 2013, the Panel met to consider the proposal. At this meeting Woolworths suggested a larger proposal incorporating a warehouse, distribution, and logistical facility to service on-line customer orders and pickups in addition to the supermarket and liquor store.
- The Panel recommended that the proposal not proceed ([Tab G](#)) as:
 - the inconsistency of the proposal with the relevant regional and metropolitan strategic plans was major and significant;
 - a major supermarket of 4000 square metres should be located in a retail zone; and
 - a smaller supermarket of up to 1000 square metres principally serving the industrial area would probably be an appropriate permissible use on this site.
- On 17 December 2013, the Deputy Director General, as the Minister's delegate, resolved that the proposal may have merit, and the Department offered Council the role of Relevant Planning Authority for the planning proposal ([Tab H](#)).
- On 22 January 2014, Council accepted the role of Relevant Planning Authority ([Tab I](#)).

Gateway Determination

- On 24 March 2014, a Gateway determination for the planning proposal was issued with a timeframe for completion of 9 months (i.e. finalisation in December 2014).
- The Department's planning proposal report ([Tab B](#)) supported the planning proposal as it was considered that it:
 - is located on the edge of an industrial area and has good access to the regional road system. This location would enable trucks servicing the proposed supermarket to access the site through the industrial area and avoid residential areas;
 - the site is suitable for a stand-alone supermarket, being a larger, unconstrained site in single ownership on the edge of an industrial area;
 - the location of the site is near Eastern Valley Way, which provides access for residents, workers and passing motorists;
 - the proposed supermarket would increase the employment capacity on the site by generating approximately 176 jobs;
 - responds to unmet demand for supermarket floor space in the local government area; and
 - responds to the changing nature of the East Chatswood Industrial Area.

Public Exhibition and Consultations

- Council publicly exhibited the proposal between 21 May and 2 July 2014. During this period approximately 940 submissions were received by Council, comprising:
 - 135 individual submissions in support;
 - 109 individual submissions objecting;
 - 643 signed pro forma letters objecting; and
 - 53 of the submissions were neutral.
- The majority of submissions against the proposal were pro forma letters, many of which were generated from templates.
- Woolworths engaged consultants Crosby Textor to undertake a survey of 600 Willoughby residents. The outcome of this survey was that:
 - 50% of residents supported the proposal;
 - 37% were opposed; and
 - 13% had no opinion one way or the other.
- Woolworths also prepared an economic assessment on the impact of the proposed Woolworths on existing local retail. The assessment concluded the development would not compete with existing retail as it will be a stand-alone store that services different retail catchment areas.
- In September 2014, shortly after the public exhibition period had closed, Council received 150 pro forma letters generated from Woolworths' website as well as a petition of approximately 3,500 signatures in support of the proposal.

Consideration of Submissions

- The key issues raised in Council's assessment of submissions are summarised and considered below. A summary of issues raised in submissions is at (Tab Summary).

Unmet demand for supermarket floor space

- Research carried out by Duanne Location IQ for Woolworths identified that the Willoughby local government area is undersupplied with supermarket floor space.
- Council has argued that there are other locations which could accommodate a new supermarket in the local government area.

Response: The Department considers that the planning proposal will assist in addressing the unmet demand for new supermarket floor space in the Willoughby local government area. The proposed development will enhance an underutilised industrial site and contribute to revitalising the East Chatswood Industrial Area.

Impact on existing local centres

- Council has argued that a full-line supermarket in the East Chatswood Industrial Area could undermine the economic viability of the local centres such as Castle Cove and Castlecrag, as well as impact on the Chatswood CBD and Northbridge.
- The proponent has argued that as the development is a stand-alone supermarket only and will not include specialty floor space, the vast majority of specialty shops in the region would not be negatively impacted as they would not be in direct competition.

Response: The Department considers that, given the increasing population in the local area, the congestion of the Chatswood CBD, and the apparent unmet demand for supermarket floor space, the proposal will not impact negatively on existing local centres.

As noted below under 'Consultation with Council regarding the draft Plan', the Department has limited the floor space ratio of the development to 1.1:1 and the gross floor area to 4815sqm. In response to Council's concerns over potential impacts on other centres, this will limit any potential impact on other local centres, whilst providing supermarket floor space for the local office worker population and adjacent residential area.

Impact on industrial land

- Council contends that the planning proposal will erode the East Chatswood Industrial Area's ability to providing local services and non-retail employment and may be a catalyst for further changes to the Industrial Area for retail or residential land uses.
- The proponent asserts that the industrial character of the East Chatswood Industrial Area has been undergoing a transition, with a significant increase in office space and warehousing, and a decline in industrial uses.

Response: Willoughby Local Environmental Plan 2012 permits offices in industrial zones, provided that they are ancillary to a permitted industrial use on the land. This was also the case under the former Willoughby Local Environmental Plan 1995. This has had the effect over time of allowing an increased office presence in the East Chatswood Industrial Area.

The Department undertook a desktop land use study (Tab O) which showed that 38% of the Industrial Area is office / commercial space, and 19% is office / warehouse space. Figure 2 of the desktop land use study maps land use by site, whilst Figure 3 breaks the Industrial Area into six precincts and maps the predominant land use within each precinct.

The Department notes that the Industrial Area is in transition from strictly industrial uses to a mixed use employment area, with only about 21% of uses in the Industrial Area now characterised as predominantly industrial.

Traffic impacts

- A significant concern raised by the majority of submissions both for and against the proposal is the potential traffic impact that the supermarket would have on the surrounding road network, including intersection capacity impacts.
- Council requested a traffic management plan be implemented and paid for by Woolworths.

Response: The Department considers that the traffic analysis provided is sufficient at this stage. A traffic management plan and detailed assessment of the impacts of any future proposal, including a potential warehouse component, should be assessed at the development application stage.

Woolworths has proposed that it enter into a voluntary planning agreement amounting to a monetary contribution of \$1,765,000, which will allow for intersection upgrade works at Eastern Valley Way, Smith Street, and Castle Cove Drive. This will help to mitigate the increased traffic impacts of the proposal.

Agency Consultation

- In accordance with the Gateway Determination, Energy Australia, Sydney Water and Roads and Maritime Services (RMS) were notified of the planning proposal. RMS raised concerns with regards to the design and construction of the proposed road works which would need to be resolved prior to RMS giving its support. Since this time significant discussion has occurred regarding the required road works. On 30 June 2015, RMS notified the Department that 'in-principle' support had been reached with Woolworths regarding a voluntary planning agreement for the funding and construction of the required intersection upgrade works (see [Tab J](#)).
- No response was received from the other agencies listed above.

Representations from Local Members

- The Hon Gladys Berejiklian MP, Member for Willoughby, made a number of representations on behalf of her constituents, regarding their opposition to the development.
- The Hon Mike Baird MP, Premier and Member for Manly made representations on behalf of Mr Andrew Bray, Managing Director, Bray's IGA, concerning this and other planning proposals being pursued by Woolworths for non-retail zoned sites.

Post Exhibition

On 30 October 2014, Council wrote to inform the Department that it had resolved not to support the proposal following public exhibition, and requested that it not be finalised ([Tab Refusal](#)).

However, as the proposal is the result of a pre-Gateway review, Council does not have authorisation to exercise plan making powers. It is the Department's responsibility to decide whether to finalise or refuse the proposal as delegate of the Greater Sydney Commission.

Consultation with Council regarding the draft Plan

- Consultation with Council regarding the draft instrument, under s59(1) of the Act, occurred via email on 16 February 2016, and Council responded on 3 March 2016 ([Tab K](#)). Council's concerns are summarised and addressed below:
 1. A specific definition of supermarket should be provided, as the use would seem to currently fall under 'shop' opening up the site for a range of other, perhaps unintended, uses.

Response: The wording of the draft instrument for the additional use has been specified as 'supermarket' or 'supermarket and liquor store' to preclude any other type of 'shop' being permissible, thus addressing Council's valid concern.

2. To contain the amount of retail in the industrial area, surplus capacity on the site should be restricted to light industrial uses. A clause restricting supermarket floor space ratio on the site to no more than 1:1 should be imposed.

Response: To address Council's request, the Department asked Parliamentary Counsel to revise the draft instrument to limit the floor space ratio of the development to 1.1:1 and the gross floor area to 4815sqm as specified in the proposal. This will limit the impact of the proposal on local centres and the Industrial Area itself, whilst allowing for the future warehouse, distribution, and logistical facility to service on-line shopping which Woolworths has proposed on the site.

3. Council remains concerned about issues such as traffic generation, hours of operation, and other amenity impacts. Council asks what traffic and roadwork improvements are to be provided by the applicant and how this will be ensured.

Response: Woolworths and RMS have reached an 'in-principle' agreement to fund intersection upgrade works at Eastern Valley Way, Smith Street and Castle Cove Drive. The upgrade works must be completed prior to the issue of any occupation certificate for the site, or within a set time period of the issue of any occupation certificate.

- The revised draft instrument was forwarded to Willoughby Council, and on 5 May 2016, Council responded stating that it had no further comments regarding the wording of the draft amendment (Tab L).
- The Department's s59 consultation with Council also generated the following responses:
 - a letter, dated 1 March 2016, from Council's Planning and Infrastructure Director, Peter Conroy to the Secretary of the Department opposing the proposal (Tab M); and
 - a letter, dated 24 February 2016, opposing the proposal from Councillor Angelo Rozos, to the Minister for Planning (Tab N).
- These letters have been replied to under separate cover.

Appointment of Secretary as alternate Relevant Planning Authority

- On 5 July 2016, the Secretary of the Department was appointed Relevant Planning Authority to allow for the finalisation of the amendment (Tab RPA).

Conclusion

- Given the merit assessment on which the Department made its Gateway determination (Tab B) and the significant work undertaken by Woolworths and RMS to reach an agreement on the road upgrades required to support the original proposal, it is recommended that the proposal is finalised, subject to restrictions on the floor space ratio and gross floor area of the development to ensure the proposal supports local service provision without adversely impacting on surrounding commercial centres.
- The Department supports the finalisation of the amendment to allow development of a 'supermarket or a supermarket and liquor store' as permitted with development consent at 17 Smith Street, Chatswood as:
 - it will provide additional employment in the Willoughby local government area,
 - the site's location in the Industrial Area close to Eastern Valley Way will minimise amenity impacts for nearby residents from delivery vehicles and supermarket customers;
 - although submissions on the proposal show that there is mixed community sentiment regarding the proposed supermarket and liquor store, there appears to be a valid need for supermarket provision in the local area;
 - the East Chatswood Industrial Area has been undergoing transition for some time, and already contains significant areas of office and retail uses; and
 - the changing nature of the industrial area should be reviewed in the context of these current uses and future potential within the local and broader regional context.

- The planning proposal report (Tab B) concludes that the proposal is consistent with the Gateway determination (Tab D) and that no revision is required.
- There are no unresolved matters with regard to section 117 Directions.
- There have been no meetings with lobbyists.


Karen Armstrong
Director, Sydney Region East


Stephen Murray
Executive Director, Regions


Marcus Ray
Deputy Secretary
Planning Services

Contact Officer: Sandy Chappel (JS)
Acting Team Leader, Sydney Region East
Phone: (02) 9228 6591