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Plan finalisation report – PP-2020-1939

Campbelltown Local Environmental Plan 2015
(Amendment No. 23) – 194 Campbelltown Road,
Denham Court

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Campbelltown Local Environmental Plan (LEP) 2015 (Amendment No. 23).

1.1.2 Overview of the planning proposal

The planning proposal seeks to amend an existing additional permitted use clause under the Campbelltown LEP 2015 that enables development for the purposes of a service station to be carried out.

The planning proposal seeks to enable vehicles 7.5 metres or longer refuelling and parking at a service station located at 194 Campbelltown Road, Denham Court (Lot 100, DP 1176622).

1.1.3 Site description

Table 1 Site description

Site Description	The planning proposal applies to land at 194 Campbelltown Road, Denham Court (Figure 1)
Type	Site
Council / LGA	Campbelltown



Figure 1 Subject site

The site is approximately 1.2 ha and is bound by the Hume Motorway and to the south east, an off ramp from the motorway to the north east and Campbelltown Road to the west. The land is adjacent to rural land to the west of the site and the Ingleburn industrial area to the south east on the opposite side of the highway, accessed by Campbelltown Road.

The site has been developed for the purposes of a service station and ancillary services including the sales of convenience food and a car wash.

1.1.4 Purpose of plan

Table 2 below outlines the current controls applying to the site.

Table 2 Current controls

Control	Current
Zone	E4 Environmental Living zone
Maximum height of the building	9m
Minimum lot size	1ha

The planning proposal does not seek to alter the controls listed above in Table 2. However, it proposes to alter an additional permitted use clause applying to the site as compared below in Table 3.

Table 3 Current and proposed additional permitted use clause

Existing clause 17	Proposed clause 17
<p>Clause 17 Use of certain land at 194 Campbelltown Road, Denham Court</p> <p>(1) This clause applies to land at 194 Campbelltown Road, Denham Court, being Lots 73 and 74, DP 22711.</p> <p>(2) Development for the purpose of a service station is permitted with development consent, if the service station:</p> <p>(a) does not include a diesel or gas fuelling point for long vehicles (within the meaning of rule 200 of the Road Rules 2014), and</p> <p>(b) is not designed or constructed to be used by such long vehicles, and</p> <p>(c) is designed and constructed to be used by heavy vehicles (within the meaning of the Road Rules 2014) only for the purpose of fuelling, and</p> <p>(d) is not able to be accessed from a freeway.</p>	<p>Clause 17 Use of certain land at 194 Campbelltown Road, Denham Court</p> <p>(1) This clause applies to land at 194 Campbelltown Road, Denham Court, being Lot 100 DP 1176622.</p> <p>(2) Development for the purpose of a service station is permitted with development consent, if the service station is not able to be accessed from a freeway.</p>

1.1.5 State electorate and local member

The site falls within the Macquarie Fields State electorate. Anoulack Chanthivong MP is the State Member.

The site falls within the Werriwa Federal electorate. Anne Stanley MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

2.1 Pre-lodgement

A background to the planning proposal has been included in the post-exhibition submissions report. A summary is provided below:

- In July 2013, a planning proposal was submitted to Campbelltown City Council (Council) to enable the site to be developed for the purpose of a service station;
- In 2015, Council resolved to support the planning proposal;
 - During a public exhibition, Council received a submission from Liverpool City Council which raised concerns on the impact of heavy/long vehicles on the site and the subsequent impact on the local road network. The existing clause outlined in Section 1.1.4 of this report was a resolution to this submission;
 - The planning proposal was made at the end of 2015; and
 - The making of this plan has resulted in an approved development application (DA) and construction of the existing service station and ancillary services;
- The proponent later approached Council with a subsequent planning proposal to expand the services available at the approved service station. Council notified the proponent that it would not support this planning proposal on 11 December 2018;
- A rezoning review was later requested by the Sydney Western City Planning Panel (Panel) which determined on 21 June 2019, the planning proposal should be submitted to the Department for Gateway determination;
- On 25 June 2019, the Panel requested Council to advise within 42 days whether it would continue in the role of Planning Proposal Authority (PPA) for the proposal;
- On 11 July 2019, Council advised it does not accept the role as the PPA and the Panel was subsequently appointed as the alternate PPA; and
- On 26 July 2019, the Panel submitted the planning proposal to the Department for Gateway determination.

2.2 Gateway determination

The Gateway determination issued on 4 November 2019 determined that the proposal should proceed subject to conditions, which required the planning proposal to be amended prior to public exhibition to:

- include an image of the development plans for the proposed long vehicle refuelling area with the location identified;
- update the consistency of the planning proposal with the Ministerial Directions 2.1 Environment Protection Zones and 6.3 Site Specific Provisions; and
- update the supporting Traffic Report to address the suitability of the proposed long vehicle movements and access and egress arrangements.

The Gateway determination was also altered on 2 March 2021 to amend the timeframe for completing the LEP by 31 December 2021.

The conditions of the Gateway determination have been met at the time of finalisation.

3 Public exhibition and post-exhibition changes

The planning proposal was publicly exhibited between 20 May 2020 and 16 June 2020.

A total of 5 community submissions were received during the public exhibition. Submissions were also received from Council and Transport for NSW (TfNSW) which are discussed in Section 3.2 of this report.

The planning proposal was re-exhibited between 15 February 2021 to 24 March 2021 as the supporting traffic study was not updated as required by the Gateway determination. An additional submission from a local community member was received, in addition to further submissions from Council and TfNSW.

Following exhibition, the Department prepared a Submissions Report, summarising the submissions received, the proponent's response to submissions and the Department's response to issues raised for the Panel's consideration.

3.1 Submissions during exhibition

All six submissions during the public exhibition(s) objected to the planning proposal, five of which were from local community members and one from a local community group. As outlined in the Department's Submissions Report, key matters raised by the community included:

- increased traffic and road safety;
- increased noise and pollution;
- lack of strategic justification for a truck stop;
- incompatibility with E4 Environmental Living zone and surrounding area; and
- undermining of the intent of the existing clause which sought to find a balance in land use outcome.

The Department considers these matters have been resolved or justified as discussed in the following sections of this report.

3.2 Advice from agencies

In accordance with the Gateway determination, the Panel was required to consult with Campbelltown City Council, TfNSW and Roads and Maritime Services (RMS) (now part of TfNSW).

3.2.1 Transport for NSW

TfNSW provided a submission to both exhibitions for this planning proposal as detailed in the Department's Submissions Report. Each submission identified the consideration of preliminary advice previously considered by the Panel as part of the Panel's Rezoning Review decision in 2019. TfNSW also raised the following key matters:

- concerns that the proposed intensified use of the right turn into the site by heavy and long vehicles may lead to conflicts between vehicles undertaking these movements. These movements include:
 - limited deceleration and storage capacity of the right turn lane;
 - uncontrolled right turn across two lanes of opposing traffic;
 - concerns with the clearance time of a turning long vehicle; and
 - onsite storage space to cater for the queueing of long/heavy vehicles during peak times would need to be demonstrated.

3.2.2 Campbelltown City Council

Council provided a submission to both exhibitions for this planning proposal as detailed in the Department's Submission Report. Council have advised in their submissions that they object to the planning proposal for the following reasons:

- development resulting from the planning proposal could result in:
 - an increase in the volume of 'passing by' heavy vehicle traffic;
 - potential increase in road maintenance costs;
 - increased noise and air pollution;
 - adverse impacts on the aesthetic and scenic values;
 - additional traffic congestion and queuing on Campbelltown Road;
- the planning proposal is considered to be inconsistent with the:
 - objectives of the E4 Environmental Living zone;
 - priorities of the Western City District Plan;
- the documents supporting the planning proposal:
 - vary from the submitted DA;
 - do not consider the potential amenity, vegetation and flooding impacts on the site;
 - are inconsistent with one another, specifically as it relates to the revised acoustic impact assessment and traffic report;
 - the traffic report has not adequately considered important traffic and safety risks such as queuing impacts, parking and access;
 - the acoustic impact assessment has not adequately considered potential noise impacts associated with B-double truck movements, truck queuing on and off site and on-site parking; and
- the planning proposal does not justify an allowance for a greater range of truck related activities.

The matters raised by both TfNSW and Council were considered by the Panel at a public meeting as outlined in Section 4.1 of this report.

The Department considers the key matters outlined above generally relate to matters that could be suitably addressed as part of a future DA. The matters relating to the strategic merit of the planning proposal as it relates to the objectives of the E4 Environmental Living zone and the Western City District Plan have been considered by the Panel and the Department as part of the Gateway assessment. As the planning proposal has not changed further, the planning proposal is considered to have strategic merit consistent with the Gateway assessment. Further discussion has been provided in Section 5 of this report related to the matters outlined above.

4 Sydney Western City Planning Panel

4.1 Consideration of submissions

4.1.1 The Department's Submissions Report

The Panel considered the Department's submissions report at a public meeting on 16 August 2021.

As part of the submission's report, the Department noted the following:

- a number of existing services stations are located in the vicinity of the site that provide services such as truck parking and refuelling of heavy/long vehicles. The planning proposal would enable comparable uses to be carried out on the site, subject to a separate DA;
- mitigation strategies throughout the development assessment process are available to resolve concerns outlined in public and agency submissions, including environmental impacts, and does not require further change to the proposed clause; and
- The Department recommended to the Panel that the proposed amendment to the Campbelltown LEP 2015 can be made if it also includes the following restrictions – “vehicle entry and exit to the site is left-in and left-out only and the existing right turn lane is closed.”

4.1.2 Public meeting and Panel determination

The Panel's record of a public meeting on 16 August 2021 outlines the following points related to the submissions received:

- The proposed changes to clause 17 are unlikely to relevantly conflict with the objectives of the E4 Environmental Living zone as the additional permitted use has been approved and developed for the purpose of a service station;
- The Panel is satisfied that due to the division between north and southbound traffic on the Hume Highway, and the inability of motor vehicles to re-enter the highway from the site without further travel through Denham Court, the proposed changes will not attract significant traffic off the highway;
- The use of the site by heavy vehicles is not anticipated to significantly compromise the zoning objectives as there is sufficient separation from nearby residences and noise issues can be sufficiently mitigated (as per the Department's submissions report);
- The existing safety concerns of access into the site raised by Council and TfNSW will need to be regulated by a left in and left out only restriction, possibly by a median strip. However, this is typically a consideration as part of a detailed assessment in the DA stage:
 - It is not considered that the proposal will significantly change conditions on the local road system;
 - TfNSW submission did not object to the planning proposal, however, identified matters for further consideration in the DA stage;
- There is sufficient strategic and site-specific merit for the proposed clause to be amended, with the matters relating to limitations for heavy/long vehicles using the site to be considered under Part 4 of the Act; and
- Section 9.1 Ministerial Direction 6.3 Site Specific Provisions applies to the planning proposal and the removal of clauses including specific restrictions to heavy/long vehicles is considered to support the objectives of the Direction.

Council provided further comments following the Panel’s meeting on 16 August 2021. This information outlined:

- Prior to the redevelopment of the site in 2018, the site comprised of a single residential building and outbuildings;
- For the planning proposal to be consistent with Section 9.1 Direction 6.3 Site Specific Provisions, the proposed zone should be an existing zone that permits a ‘service station’ e.g. Zone IN1 General Industrial; and
- Former preliminary site investigations are assumed to have been completed for the initial redevelopment of the site and the current uses are not considered to have been evaluated with this planning proposal.

No further response was required by the Panel. The Department have provided further discussion on these points in Section 5 of this report.

On 17 September 2021, the Panel determined to recommend to the Minister that the planning proposal should be made for the reasons discussed in its public meeting on 16 August 2021 as identified above.

5 Department’s assessment

The proposal has been subject to detailed review and assessment through the Department’s Gateway determination and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council’s Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal.

As outlined in the Gateway determination report, the planning proposal submitted to the Department for finalisation:

- Remains consistent with the Region and District plans relating to the site;
- Remains consistent with all relevant Section 9.1 Directions; and
- Remains consistent with all relevant SEPPs.

The following tables (Table 4 and Table 5) identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 5.1.

Table 4 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1
Local Strategic Planning Statement	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 5.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1

	Consistent with Gateway determination report Assessment	
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 5.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1

Table 5 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1

5.1 Detailed assessment

The following section provides details of the Department's assessment of key matters.

5.1.1 Council's Local Strategic Planning Statement

The Campbelltown Local Strategic Planning Statement was adopted on 31 March 2020 and sets out the vision for the area in 2036 and actions to be taken to achieve this vision. The planning proposal demonstrates general consistency with planning priorities of the LSPS, specifically Planning Priority 11 – Striving for increased local employment. The minor amendment to the Campbelltown LEP will facilitate increased local employment aligned with an approved use on the site and surrounding business areas.

5.1.2 Section 9.1 Ministerial Directions

The Gateway assessment report noted the planning proposal was consistent with all Section 9.1 Ministerial Directions, with the exception of Directions 2.1 Environmental Protection Zones and 6.3 Site Specific Provisions. The inconsistencies with these Directions were agreed to be of minor significance when determining the Gateway. Based on comments provided by Council and changes to Ministerial Directions following the Gateway determination, the following Directions have been reviewed further.

Direction 2.6 Remediation of Contaminated Land

Under this direction, a planning proposal must consider the extent to whether land is contaminated and measures that would be required to ensure that land is suitable for any change in uses. The planning proposal does not seek to change the existing use of the land (as a service station) which could potentially generate environmental and health impacts associated with any change in use.

The Preliminary Contamination Assessment has previously been prepared to support a former DA for the site which enabled its redevelopment as a service station. Council have raised concerns that contamination matters associated with the expansion of the use are yet to be suitably addressed. Any change in use would be subject to a separate DA.

As the planning proposal seeks to only enable the expansion of the current uses on the site, matters relating to land contamination are considered to be appropriately managed as part of a future DA. It is also noted a future DA would be required to satisfy the requirements of SEPP 55 –

Remediation of Lands. The Department considers the planning proposal is consistent with this Direction.

Direction 4.3 Flooding

The terms of this direction have been updated since the Gateway assessment. The site is not identified as flood prone land in any environmental planning instruments; however, Council have identified that the site is flood affected on the north eastern extents.

The Campbelltown LEP 2015 contains flood related development controls which would enable the effective consideration of flooding risk and mitigation as part of a future DA. As the planning proposal does not seek to alter these controls or rezone land, the Department considers the planning proposal is consistent with this Direction.

Direction 6.3 Site Specific Provisions

Under this direction, a planning proposal must not create unnecessarily restrictive site-specific planning controls. As the planning proposal seeks to alter an existing additional permitted use comprising of site specific controls, this direction applies. The Gateway assessment provided an assessment of this Direction and the Secretary's delegate agreed the inconsistency was of minor significance.

The Panel and Council provided additional comments on the application of this direction as it relates to the planning proposal. However, the nature of the proposed clause has not changed since the time of Gateway assessment and the consideration of matters such as movement, access and use of the site by heavy/large vehicles was agreed by the Panel as appropriate to be considered as part of a future DA. The Department considers the inconsistencies with the terms of this Direction have been justified in accordance with the Gateway assessment.

5.1.3 Access and Traffic Impacts

Agency submissions from TfNSW and Campbelltown City Council

Both TfNSW and Council raised concerns relating to additional safety impacts created as a result of existing access arrangements and traffic generation. This extends to the operation of the existing right turn lane being used for heavy/large vehicles rather than its intended purpose of cars, the lack of on-site storage space for queuing of heavy/large vehicles during peak periods and the limitation of turning movements associated with the nearby traffic lights.

The planning proposal is supported by a traffic report. This report identifies the changes proposed by the planning proposal would have a similar traffic generation to the approved DA and the access, parking and layout of services will be in accordance with Australian Standards and addressed by a future DA.

The proponent responded to TfNSW's submission noting specifically:

- The service station has been built to cater for long vehicles to ensure deliveries from semi-trailers and B-doubles can make fuel deliveries, which ensures the use of the site by large/heavy vehicles is possible without major augmentation;
- The current right turning lane has been designed to cater for trucks, including B-doubles which was previously supported by TfNSW;
- The additional potential increase in large/heavy vehicles of the site is considered to be between 5-10 per hour and the current access to the site is sufficient; and
- Vehicles exiting the Hume Highway are controlled by traffic signals to the north of the site and there are good sight lines between those vehicles and vehicles entering and exiting the site.

The Panel considered the matters raised by TfNSW and Council could be appropriately considered as part of a future DA along with the development specific matters currently prescribed in Schedule 1, clause 17 of the Campbelltown LEP 2015.

As the site is bound by the Hume Highway to the east and a classified road (Campbelltown Road) to the west, further consultation requirements with TfNSW will be required to occur at a future DA stage pursuant to *SEPP (Infrastructure) 2007* and the *Roads Act 1993*.

The Department considers additional detailed assessments related to traffic generating activities, access arrangements and alterations to the road reserve can be appropriately managed as part of a future DA.

6 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

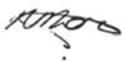
Table 6 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Panel	<p>The Panel was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>The Panel confirmed on 22 September 2021 that it approved the draft and that the plan should be made.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	<p>On 1 October 2021, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

7 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- It will enable the expansion of the services provided by the approved service station;
- The draft LEP has strategic merit being consistent with the Region and District Plans, and Council's LSPS;
- It is consistent with the Gateway Determination;
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal; and
- The Panel Secretariat raised no issues with the final draft LEP.



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