

Place, Design and Public Spaces

EF20/26353

Gateway determination report

LGA	Inner West
PPA	Inner West Council
NAME	13-55 Edinburgh Road, Marrickville
NUMBER	PP_2020_IWEST_004_00
LEP TO BE AMENDED	Marrickville Local Environmental Plan 2011
ADDRESS	13-55 Edinburgh Road, Marrickville
DESCRIPTION	Lot 1 DP612551 and Lot 91 DP4991
RECEIVED	6/8/20 (Adequacy Date 18/8/20)
FILE NO.	IRF20/4146
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to amend Marrickville Local Environmental Plan (LEP) 2011 in relation to the subject site to:

- permit retail premises, business premises, centre-based child care facilities, medical centres and community facilities; and allow the additional permitted uses only in conjunction with the approved shopping centre extension under Major Project Approval MP09_0191.

1.2 Site description

The site (**Figure 1**) located in Marrickville, is bound by Smidmore Street to the north and west, Edinburgh Road to the south and west, and Murray Street to the west. The site has an area of 8,881.3m² and is irregularly shaped, and is comprised of two lots, legally described as Lot 1 DP 612551 and Lot 91 DP 4991.

The site currently comprises industrial warehouse buildings and an associated parking area. A water drainage reserve also runs through the site. The site is covered by building footprints, concrete paving and concrete building slabs with minimal landscaping along the site boundary.

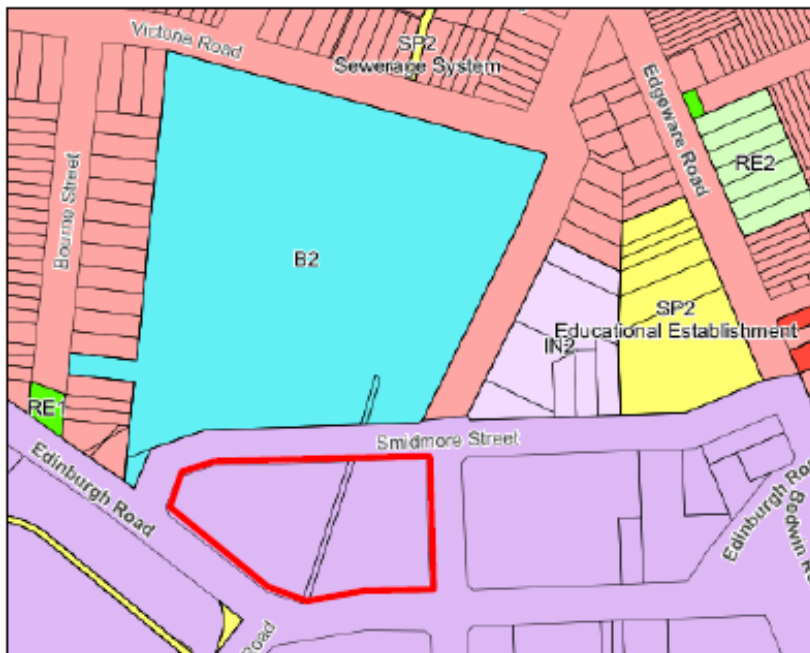


Figure 1: Aerial photograph of the subject site (source: Near Map)

1.3 Existing planning controls

Under the existing Marrickville Local Environmental Plan 2011, the site:

- is zoned IN1 General Industrial (**Figure 2**); and
- has a maximum floor space ratio (FSR) of 0.95:1.



Zone

B1	Neighbourhood Centre
B2	Local Centre
B4	Mixed Use
B5	Business Development
B6	Enterprise Corridor
B7	Business Park
IN1	General Industrial
IN2	Light Industrial
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
R4	High Density Residential

Figure 2: Land zoning map Marrickville LEP 2011

In the IN1 zone the following uses are permissible with consent:

Agricultural produce industries; Depots; Dwelling houses; Freight transport facilities; Garden centres; General industries; Hardware and building supplies; Industrial training facilities; Intensive plant agriculture; Kiosks; Light industries; Markets; Neighbourhood shops; Oyster aquaculture; Places of public worship; Roads; Take away food and drink premises; Tank-based aquaculture; Timber yards; Warehouse or distribution centres; Any other development not specified in item 2 permitted without consent) or 4 (prohibited).

The site is not within the immediate vicinity of any heritage items. The site is also identified as flood prone land under the LEP (**Figure 3**). The land is at or below the flood planning level – the level of a 1:100 ARI flood event plus 0.5 metre freeboard.

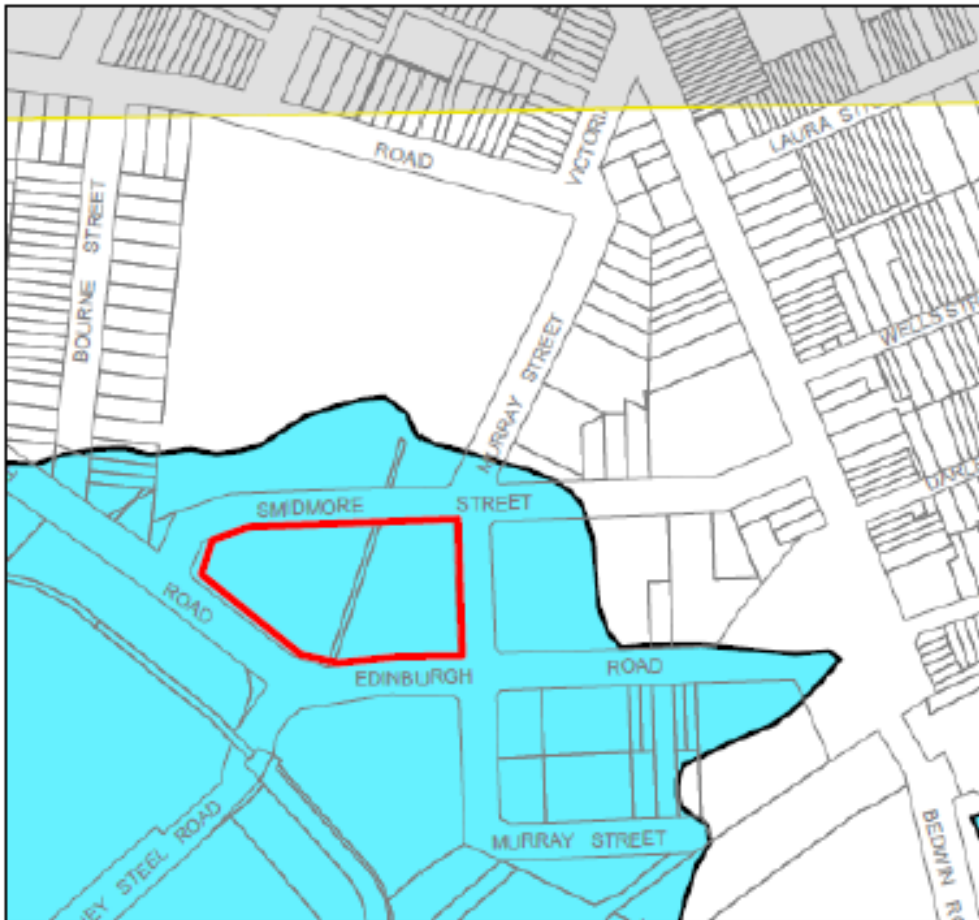


Figure 3: Marrickville LEP 2022 Flood Planning Map.

1.4 Surrounding area

The site adjoins the Marrickville Metro, a subregional shopping centre to the north of the site. The surrounding area is a mix of industrial, residential, commercial and educational uses, an electrical substation is located to the west of the site.

The site is located approximately 800m from St Peters railway station and 1.5km north of Sydenham railway station. Enmore Park and Camdenville Oval are both approximately 450m from the site, while Sydney Park is located approximately 900m from the site.

The site sits at the north eastern edge of a large industrial area (**Figure 4**) zoned IN1 General Industrial which follows the rail line to the south west. The site has industrial and warehouse development adjoining to the east, south and west. The Marrickville Metro site to the north is zoned B2 Local Centre. To the north and surrounding the Marrickville Metro is a residential area zoned R2 Low Density Residential.

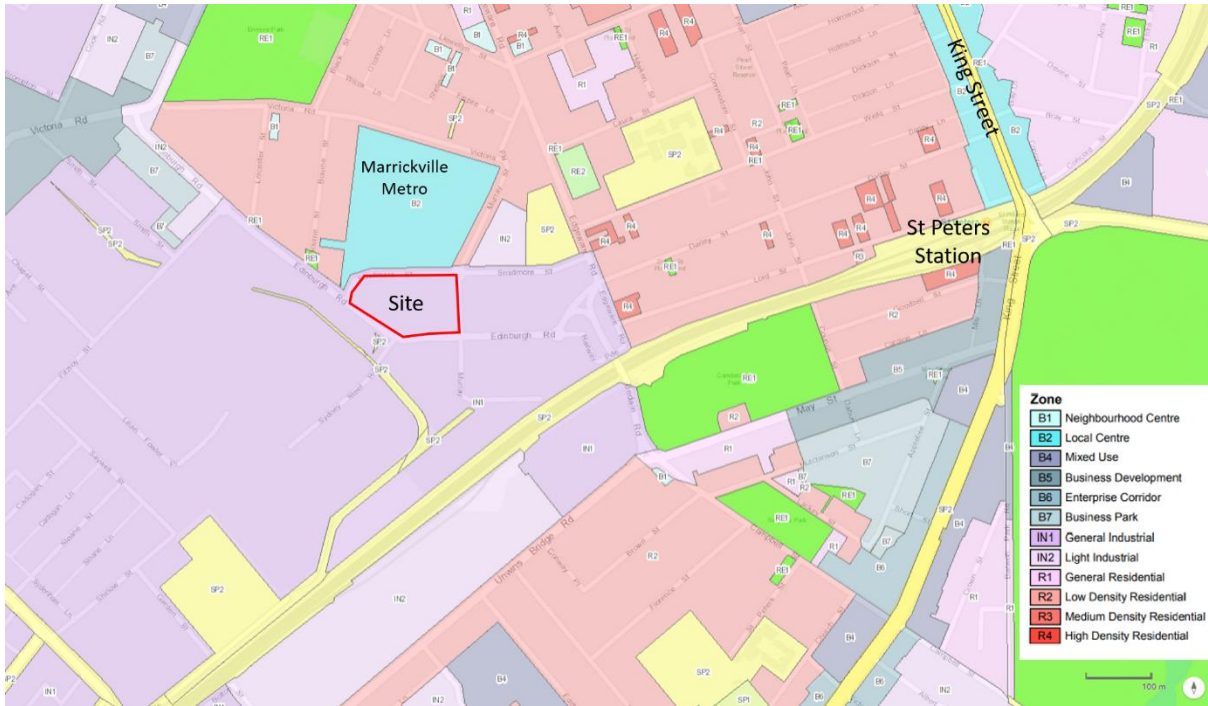


Figure 4: Broader site context (Site outlined in red).

1.5 Background

Major Project Approval:

On 19 March 2012, the Department issued a Major Project Approval (MPA) (MP09_0191) to permit the expansion of the existing Marrickville Metro Shopping Centre. The MPA split the development into three stages:

- *Stage 1A* comprises works to the main entry of the existing Marrickville Metro shopping centre at Victoria Road, traffic management works and geotechnical works on the Edinborough Road site.
- *Stage 1B* comprises the new shopping centre building at 13-55 Edinborough Road (the subject site of this planning proposal).
- *Stage 2* comprises the expansion of the existing shopping centre, including first floor additions to the existing building at 34 Victoria Road.

There are 10 modifications to the original MPA. The most recent modification that clarifies the description of the development is Modification 8.

The description that best covers the works specifically for the Edinborough Road site (Stage 1B) is the following:

- Demolition of existing warehouse buildings and associated structures on the Edinborough Road site.
- Construction of a new building on the Edinborough Road site with two main levels of retail and car parking above comprising:
 - A new supermarket (4,449sqm);
 - New retail premises and business premises;
 - A total additional 14,595sqm GFA (11,529sqm Gross Leasable Floor Area); and

On 8 August 2018 Council advised the proponent that the rezoning was unlikely to be supported. Council was concerned that the broader uses in a B2 zone, such as shop-top housing could constrain the potential of the adjacent industrial precinct. As an alternative, Council officers recommended that the Proponent consider additional permitted uses as outlined in the current planning proposal.

1.5 Summary of recommendation

It is recommended that the planning proposal proceed subject to conditions because:

- the proposal is either consistent, or justifiably inconsistent with the objectives and directions of the Eastern District Plan and the relevant section 9.1 Ministerial Directions;
- the proposal will ensure consistency between the Marrickville LEP 2011 and the current Major Project Approval for a shopping centre development on the site with regards to permissible land uses;
- inclusion of business premises and retail premises as additional uses enables the application of the Codes SEPP to simplify the approval process for minor works, such as tenancy fit outs and changes of use;
- this approach is in keeping with current Government objectives during the Covid-19 pandemic to cut red tape, simplify the planning system and fast track projects;
- the proposal encourages investment and business activity within an existing local centre; and
- the proposal permits centre-based childcare, medical centres and community facilities, providing the opportunity to co-locate healthcare and social infrastructure within a local centre that is close to public transport and can be easily accessed by the local community.

2. PROPOSAL

2.1 Objectives or intended outcomes

Both retail premises and business premises are approved as part of the Major Project Approval on the site, however these land uses are still prohibited under the IN1 General Industrial zoning.

The objective of the Planning Proposal is to amend the Marrickville LEP 2011 to support the approved shopping centre redevelopment of 13-55 Edinburgh Road, Marrickville to:

- ensure consistency between the Marrickville LEP 2011 and the current Major Project Approval (MPA) for a shopping centre development on the site with regards to permissible land uses;
- ensure minor and low impact works associated with a shopping centre can be undertaken as exempt or complying development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP)*; and
- enable compatible land uses that are typically offered in a shopping centre to be considered in a development application to Council.

2.2 Explanation of provisions

To achieve the desired objectives and outcomes, the Planning Proposal seeks to amend the MLEP 2011 by:

- Inserting 13-55 Edinburgh Road, Marrickville (Lot 1 DP612551 and Lot 91 DP4991) into *Schedule 1 Additional permitted uses* to:
 - permit retail premises, business premises, centre-based child care facilities, medical centres and community facilities; and
 - allow the additional permitted uses only in conjunction with the approved shopping centre extension under Major Project Approval MP09_0191.
- Amending the Key Sites Map (KYS_004) to include 13-55 Edinburgh Road, Marrickville.

Restricting the permissibility of the additional uses to only be permitted in conjunction with the approved shopping centre extension will ensure that if the intended development does not eventuate, only development consistent with the IN1 zoning would be possible.

2.3 Mapping

The planning proposal states that an amendment to the Key Sites Map will be incorporated into the LEP amendment. It is assumed that this will simply identify the site and link back to the land uses described in Schedule 1. However, a draft map has not been provided with the planning proposal. It is recommended that the planning proposal be revised prior to community consultation to include a draft Key Sites Map, and to explain why the map is needed.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is not a result of a strategic study. It is in response to a land-owner initiated planning proposal to facilitate the expansion and redevelopment of Marrickville Metro shopping centre, as per the MPA for the site.

The IN1 General Industrial zoning of the site does not reflect the approved retail development on the site as it prohibits retail premises and business premises, and restricts other uses that are typically offered in a shopping centre.

Since these uses are prohibited in the IN1 zone, a complying development certificate could not be issued under the Codes SEPP nor can development consent be granted under the Marrickville LEP 2011. One of the general requirements for complying development under the Codes SEPP is that development must be permissible with consent under an environmental planning instrument applying to the land (Clause 1.18 (1) (b)).

Under the existing planning framework, any other uses that might typically be offered in a shopping centre, such as community facilities, medical centres and child care centres, would need to obtain approval by way of a modification of the MPA as opposed to a development consent from Council.

The Planning Proposal seeks to simplify the approval process for minor works associated with the uses permitted under the MPA; and include other compatible uses, not considered at the time of the MPA.

4. STRATEGIC ASSESSMENT

4.1 District

Eastern City District Plan

The Eastern District Plan gives effect to the Greater Sydney Region Plan. The Eastern District Plan encompasses the Inner West LGA. The plan identifies Marrickville Metro as a local centre in the structure plan. The following planning priorities are relevant to the proposal:

Planning Priority E1: Planning for a city supported by infrastructure.

- The planning proposal is consistent with the above priority as it will maximise the utility of the existing infrastructure assets around the Marrickville Metro centre. In particular St Peters rail station and bus services.

Planning Priority E3: Providing services and social infrastructure to meet people's changing needs.

- The planning proposal is consistent with the above priority as it seeks to permit centre-based childcare, medical centres and community facilities on the site which would serve the current and future needs of the local community.

Planning Priority E4: Fostering healthy, creative, culturally rich and socially connected communities

- The Proposal provides the opportunity to co-locate healthcare and social infrastructure within an approved retail development that is close to public transport and can be easily accessed by the local community.

Planning Priority E6: Creating and renewing great places and local centres, and respecting the District's heritage.

- The proposal facilitates retail and business premises and social infrastructure within an approved retail development on the site. In conjunction with the existing Marrickville Metro shopping centre, the Proposal provides further land use mix and amenity to the community.

Planning Priority E10: Delivering integrated land use and transport planning and a 30-minute city

- The proposal co-locates different services and uses as part of an expansion to Marrickville Metro shopping centre, which is identified as a 'Local Centre' under the Eastern City District Plan which is well serviced by existing public transport.
- The proposal provides job opportunities within 30 minutes travel from the broader Inner West.

Planning Priority E11: Growing investment, business opportunities and jobs in strategic centres

- The proposal simplifies the approval process for retail premises and business premises which will encourage investment and business activity within an existing Local Centre.
- The additional medical, community and child care uses, will also provide opportunities for job growth.

Planning Priority E12: Retaining and managing industrial and urban services land

- The site is zoned IN1 General Industrial. The proposal is inconsistent with this priority which requires the retention and management of industrial land for those purposes.
- The MPA for a retail development on the site was granted in 2012, essentially changing the industrial nature of the site.
- The proponent consulted the Department and the Greater Sydney Commission (GSC) in September 2018. The advice (**Attachment D**) stated the effect and activation of the MPA prior to the adoption of the District Plan means that the retain and manage policy in the Plan is not to be enforced for this land and the Department may consider a planning proposal to rezone the land to permit retail and business purposes.
- A provision is proposed that ties the additional permitted uses to the redevelopment of the site in accordance with the MPA. If the MPA does not proceed, only development consistent with the IN1 zoning would be permissible. The final wording of this provision is subject to legal drafting.

4.2 Local

Inner West Local Strategic Planning Statement

Our Place Inner West – Local Strategic Planning Statement (LSPS) guides land use planning and development in the LGA to 2036. The LSPS intends to implement the directions and actions of the Greater Sydney Region Plan and Eastern City District Plan at a local level. This provides a clear line of site between the key strategic priorities identified in these plans.

The Department notes the following relevant planning priority.

Planning Priority 9 – Implement the Employment and Retail Lands Strategy

This priority seeks to implement Council's Employment and Retail Lands Strategy which includes preparing LEP provisions to preserve industrial and urban services land.

As discussed, the MPA has already been activated and the GSC has advised in this instance the retain and manage approach of the District Plan does not apply.

4.3 Section 9.1 Ministerial Directions

The proposal's consistency with the relevant section 9.1 Ministerial Directions is described below:

1.1 Business and Industrial Zones

This Direction aims to encourage employment growth in suitable locations, protect employment land in business zones, and support the viability of identified centres. It also states that a planning proposal must not reduce the potential floor space area for industrial uses in industrial zones.

The site is zoned IN1 General Industrial. As described above, the MPA for the expansion of the shopping centre was granted in 2012. Given the specific advice of the GSC and the MPA preceding the adoption of the District Plan, any potential loss of industrial floor space as part of this proposal is considered acceptable. The proposal facilitates the expansion of the Metro shopping centre, and is consistent with the objective to support the viability of identified centres.

It is considered the proposal's inconsistency is minor and justifiable.

2.6 Remediation of Contaminated Land

The objective of this Direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.

The 2017 Douglass Partners contamination synthesis report was prepared for the modification of the shopping centre expansion DA on the basis of retail development. The contamination report found that three underground storage tanks (USTs) were formerly located on the site, but were since decommissioned. Metal concentrations were found across the site. There may have been an electricity sub-station on the site, and as such polychlorinated biphenyls (PCBs) may be present.

The report found that the Edinburgh Road site is suitable, from an environmental perspective for the proposed shopping centre redevelopment provided that a number of conditions were applied during construction. However, it is not known whether the site is suitable for the more sensitive childcare centre use, or whether these conditions are adequate for childcare centres.

It is recommended that a supplementary contamination report be prepared to determine the suitability of the site to be developed for childcare purposes. Such a report will inform the decision on consistency with section 9.1 Direction 2.6 Remediation of Contaminated Land.

3.4 Integrating Land Use and Transport

Under this Direction, a planning proposal must consider improving access to housing, jobs and services by walking, cycling and public transport and reducing reliance on cars.

The proposal facilitates the expansion of the existing Marrickville Metro centre. It is located within a 10-minute walk to St Peters Railway Station in the east and within a 15-minute walk to Sydenham Railway Station in the south. The centre is well served by buses.

The planning proposal is consistent with this direction as it will enable retail, business premises, childcare facilities, medical centres and community facilities in close proximity to public transport services encouraging walking, cycling and use of public transport.

4.1 Acid Sulfate Soils

The objective of this direction is to avoid adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils. The planning proposal impacts on land within Acid Sulfate Soil Risk Class 2.

However, acid sulfate soils have been considered as part of the MPA for the shopping centre expansion. This proposal is considered consistent with the direction as it does not seek to facilitate any additional external works beyond the MPA.

4.3 Flood Prone Land

The objectives of this direction are to ensure that development of land is consistent with the Flood Prone Land Policy, and to ensure that LEP provisions are commensurate with flood hazard, and that flood impacts are considered both on and off site.

All of the site is identified as flood prone land (**Figure 3**). In an extreme flood event, such as the Probable Maximum Flood (PMF), the Stage1B development is surrounded with high hazard floodwaters. The assessment of the MPA for shopping centre expansion addressed flood constraints for retail development only.

The site is exposed to flash flooding with a steep rate of rise of floodwaters and there is insufficient warning time before the floods arrive to enable orderly evacuation. In these circumstances the Flood Emergency Response Plan (FERP) for the Metro centre recommends a shelter in place strategy.

Flood risk is dependent on several factors including flood producing factors such as rainfall intensity, volume of runoff, rate of rise etc. The other factors include the vulnerability of the population affected by flooding. Young children in a childcare centre would be more vulnerable than retail workers and shoppers.

Council required the proponent to prepare a supplementary Flood Assessment Emergency Response Plan for a proposed medical centre in January 2019. This plan recommends the medical centre be located on the first floor of the building or above (e.g. level 2). Similar to the medical centre approach, it is now recommended that a supplementary Flood Assessment Emergency Response Plan be prepared to consider the unique sensitivity of a childcare centre. This plan will be required to demonstrate the suitability of a childcare centre within the Edinburgh Road shopping centre site, and consistency with the section 9.1 Direction. Consultation with the State Emergency Service is also recommended.

6.3 Site Specific Provisions

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls. The Planning Proposal is inconsistent with this direction as it introduces additional permitted uses on the site and imposes an additional requirement that ties the delivery of these uses to the existing development approval for the Metro shopping centre expansion.

A rezoning of the site was considered inappropriate as detailed in section 3 above. The site specific clause will ensure that the site continues to operate as industrial land in the event that the MPA does not eventuate.

In this case, an amendment to Schedule 1 of Marrickville LEP 2011 is considered the most appropriate way to achieve the objectives for the planning proposal. The proposal would not impose additional development standards or requirements to IN1 zones and does not contain any drawings or specific details of a development. Therefore, the inconsistency is considered minor and justified.

4.5 State environmental planning policies (SEPPs)

SEPP 55 Remediation of Land

Contamination of the site has been considered in accordance with SEPP 55 as part of the original MPA for the Metro shopping centre redevelopment. As outlined above in relation to section 9.1 Ministerial Direction 2.6, an additional contamination study is required to address whether the site is suitable for a childcare centre development.

SEPP (Exempt and Complying Development Codes) 2008

Currently the Codes SEPP cannot be applied to the shopping centre redevelopment as retail and business services are prohibited in the IN1 zone. Clause 1.18 (1)(b) of the SEPP requires that development must be permissible with consent under an environmental planning instrument applying to the land to enable complying development.

The proposed amendment will deliver more streamlined assessment processes as it will enable the exempt and complying development provisions of this SEPP to apply to the approved development on the site.

There are no other State Environmental Planning Policies that specifically apply to the proposal.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The proposal will facilitate the development of community facilities, centre-based child care facilities and medical centres within an accessible location in the Marrickville Metro centre. The planning proposal should be amended to include further information on the need for the proposed land uses and the social benefits provided by permitting them.

5.2 Environmental

Biodiversity

The site is fully built upon with industrial buildings and hard surface car park. There are no significant biodiversity values on the site, it is not home to critical habitat, threatened species or ecological communities.

Traffic and Transport

The traffic and transport impacts of the proposed shopping centre redevelopment have already been considered as part of the MPA. The traffic impact assessment estimated that the daily traffic generation of the Centre following the completion of the proposed expansion would be 16,900 trips per day. Previous approvals conditioned a number of road improvement works to accommodate the traffic demand from the proposed expansion, and a new bus stop located on Edinburgh Road fronting the new site.

The Centre is within close proximity to frequent bus and train services. St Peters Railway Station is located within a 10-minute walk to the east and Sydenham Railway Station which is located within a 15-minute walk to the south. St Peters Station provides services every ten to 15-minutes in both directions and Sydenham Station provides services every five to 15-minutes during the peaks.

The routes serviced by the existing bus stop on Smidmore Street include: the City via Redfern; Bondi Junction via Oxford Street; and Bondi Junction via Moore Park and Erskineville. These bus services are provided at approximately 15 to 30-minute intervals.

Bicycle parking spaces are also to be provided as part of the shopping centre redevelopment.

The accessibility of the site demonstrates its suitability as a location for key social infrastructure such as a child care facilities, medical centre and community facilities.

5.3 Economic

The planning proposal supports the shopping centre redevelopment which will result in social and economic benefits. The centre will positively contribute to the local and broader inner west economy providing additional jobs and services.

5.4 Infrastructure

The site is well served by public transport and located in an established urban area that has access to relevant utilities.

6. CONSULTATION

6.1 Community

Part 5 of Council's planning proposal provides little detail of the proposed community consultation beyond saying that the legislative requirements and conditions of a Gateway determination and Council's Community Engagement Framework would be met. It is recommended that the proposal be revised to specify how the community will be consulted e.g. will adjoining landowners be contacted.

An exhibition period of 28 days is considered appropriate for this proposal.

The *Environmental Planning and Assessment Act 1979* (s.10.18) has recently been amended and no longer requires exhibition documents to be made available at a physical location during the COVID 19 pandemic. Council is now able to exhibit the planning proposal and associated documents on Council's website or the Planning Portal, in lieu of displaying them in Council's Library and Administration building. A Gateway condition is recommended to require the planning proposal to be updated to reflect the above.

6.2 Agencies

The planning proposal states that stakeholder consultation will be undertaken in accordance with the legislative requirements.

Key Government agencies have already been consulted as part of the MPA for the Metro shopping centre expansion. Due to the greater vulnerability of child care facilities in times of flood, when compared to retail uses, it is proposed that the State Emergency Service (SES) be consulted and given 21 days to comment.

7. TIME FRAME

The planning proposal provides an estimated project timeline of six months from Gateway determination to complete the LEP. Due to the COVID 19 pandemic and likely delays as a result of this condition, and the requirement for updated contamination and flood studies, it is recommended that a nine month timeframe be applied to give Council greater flexibility.

The project timeline in Council's planning proposal will need to be updated to reflect current dates and extended timeline.

8. LOCAL PLAN-MAKING AUTHORITY

Inner West Council has requested authority to use its delegated plan making functions for this amendment. Given that the proposal demonstrates site specific and strategic merit and that it will facilitate the expansion of the shopping centre that already has Major Project Approval, Council should be authorised to be the plan making authority.

9. CONCLUSION

The planning proposal to amend Marrickville LEP 2011 for the 13-55 Edinburgh Road, Marrickville site is supported and should proceed subject to conditions as:

- the proposal is either consistent, or justifiably inconsistent with the objectives and directions of the Eastern District Plan and the relevant section 9.1 Ministerial Directions;
- the proposal will ensure consistency between the Marrickville LEP 2011 and the current Major Project Approval for a shopping centre development on the site with regards to permissible land uses;
- inclusion of business premises and retail premises as additional uses enables the application of the Codes SEPP to simplify the approval process for minor works, such as tenancy fit outs and changes of use;
- this approach is in keeping with current Government objectives during the Covid-19 pandemic to cut red tape, simplify the planning system and fast track projects;
- the proposal encourages investment and business activity within an existing local centre; and
- the proposal permits centre-based childcare, medical centres and community facilities, providing the opportunity to co-locate healthcare and social infrastructure within a local centre that is close to public transport and can be easily accessed by the local community.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Direction 1.1 Business and Industrial Zones is minor and justifiable;
2. note that the consistency with section 9.1 Directions 2.6 Remediation of Contaminated Land, and 4.3 Flood Prone Land are unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be amended to address the following matters and submitted to the Department for review and endorsement prior to public exhibition:

- (a) the planning proposal is to be revised to include a draft Key Sites Map and discussion on why the map is needed;
 - (b) update references to the Employment and Retail Lands Strategy to recognise the strategy has been finalised;
 - (c) to inform the decision on consistency with section 9.1 Direction 2.6 Remediation of Contaminated Land, a supplementary contamination report is to be prepared to determine the suitability of the site to be developed for childcare purposes;
 - (d) to inform the decision on consistency with section 9.1 Direction 4.3 Flood Prone Land, a supplementary Flood Assessment Emergency Response Plan is to be prepared to consider the unique sensitivity of a childcare centre;
 - (e) include contextual details of the Major Project Approval for the site in Part C, 8 to explain how the impacts of the development have been considered;
 - (f) include further information on the need for the proposed land uses and social benefits provided by permitting them in Part C, 9; and
 - (g) include a revised project timeline.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
 3. Consultation is required with the State Emergency Service.
 4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, if reclassifying land).
 5. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
 6. Given Council's request and the nature of the planning proposal, Council should be the local plan-making authority.



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