

Planning Services

Plan Finalisation Report

Local Government Area: Fairfield

File Number: IRF18/5210

1. NAME OF DRAFT LEP

Fairfield Local Environmental Plan 2013 (Amendment No. 29) (draft LEP). The draft written instrument is at **Attachment LEP**.

2. SITE DESCRIPTION

The planning proposal (PP_2017_FAIRF_003_00) (**Attachment B1 & B2**) applies to land at 1187 The Horsley Drive, Wetherill Park (Lot 1 DP 1136897) (the site). The site has an area of approximately 5.7ha and contains a bulky goods shopping centre, known as Greenway Supacentra and Plaza. An aerial view of the site is provided below as Figure 1. The Greenway Supacentra is outlined in red and the site is outlined in orange. The north point is uppermost.



Figure 1 – Aerial view of the site

The shopping centre consists of two building components separated by an at-grade car park with the following:

- Greenway Supacentra bulky goods retail outlet is an L-shaped building that wraps around the northern and western sides of the site, accommodating large-format retail tenancies that have a range of bulky goods retail uses; and
- Greenway Plaza is centrally located within the site and comprises two wings:
 - the northern wing: a single-storey building accommodating bulky goods retail use; and
 - the southern wing (i.e. the site): a two-storey building with ground floor (units 1-7) accommodating a mix of general retail and business uses and the mezzanine level (units 1-6 accommodating commercial offices).

3. PURPOSE OF PLAN

The draft LEP seeks to amend the Fairfield Local Environmental Plan (LEP) 2013 as follows:

- amend Schedule 1 Additional Permitted Uses to permit the following additional permissible uses on the site:
 - commercial premises on the ground floor; and
 - business and office premises on the mezzanine level;
- restrict the gross floor area of the above premises on the site to 500m²;
- determine that any adjoining premises on the site, which share a pedestrian access point or any other direct internal links, are to be identified as a single premise; and
- for identification purposes, include the site on the Key Sites Map as Key Site “23”.

It is noted that the draft LEP will not alter the existing B5 Business Development Zone of the site or any other development controls applying to the land.

The draft LEP seeks a minor amendment to ensure that existing land uses on the site are formalised through the additional permitted uses provision of the LEP and that further minor works, such as internal fit-outs or works, are managed efficiently and appropriately. This will remove the requirement for the proponent to submit a development application to Council each time there is a change of retail or commercial use or a need for internal fit-outs or works. The change would also allow applications for change of use and internal works to be considered by private certifiers under the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

It is also noted that these uses were previously permissible on the site under the former Fairfield LEP 1994 and the proposed amendment will enable these uses to revert to being permissible on the site. This amendment will also continue to provide employment-generating uses on the land.

Rezoning Review Process

This planning proposal was subject to the rezoning review process (formerly a pre-Gateway review) following Council's resolution not to support the proposal.

The Sydney Western City Planning Panel (formerly the Sydney West Joint Regional Planning Panel) considered the rezoning review request (PGR_2015_FAIRF_001_00) and recommended the planning proposal be submitted for a Gateway determination.

It is noted that the Secretary appointed the Panel as the alternate planning proposal authority (PPA) to progress the planning proposal, as Council advised it would not undertake the role as the PPA for this proposal.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Prospect State Electorate. Dr (Hugh) Paul Joseph Hugh McDermott MP is the State Member for Prospect.

The site falls within the McMahon Federal Electorate. The Hon Chris Bowen MP is the Federal Member for McMahon.

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

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 25 May 2017 (**Attachment C**) determined that the proposal should proceed subject to conditions.

There have been two (2) Gateway Alterations issued for the planning proposal, as follows:

- on 30 January 2018 (**Attachment D1**): for a 6-month extension; and
- on 21 March 2018 (**Attachment D2**): to revise the gross floor space restriction for retail premises on the site from a maximum of 1,500m² to 500m², and address the Western City District Plan.

The planning proposal was to be finalised by 1 September 2018.

The Department received the request by the Panel to finalise the plan on 10 September 2018. The Department is now satisfied that the Panel has met the conditions of the Gateway determination and the planning proposal may be finalised.

6. PUBLIC EXHIBITION

In accordance with the Gateway determination, the planning proposal was publicly exhibited by the Panel from 16 April 2018 to 13 May 2018.

The Panel received one (1) submission from the community during the exhibition period. The submission objected to the proposal and was made by the owners of the Stockland Wetherill Park Shopping Centre (**Attachment G**), which is located approximately 650m south of the site. The objection was made on the basis that the proposal:

- did not have strategic merit as it is inconsistent with Council's endorsed local centres policy;
- would erode the site's role as a bulky goods business centre, with local services supporting the adjacent industrial-zoned land;
- would facilitate a change in the nature and use of the site that is inconsistent with the objectives of the B5 zone; and

- there is sufficient scope for established uses to operate on the site under existing-use rights provisions and its function as a service centre would be eroded by works carried out as exempt or complying development; as well as,
- potential detrimental impacts on the local area as a result of altering the shopping centre's hierarchy by facilitating an 'emerging centre'.

The proponent responded to the concerns raised in the objection (**Attachment H**) as follows:

- the proposed amendment seeks to rectify the inconsistencies with the prohibition of previously permitted uses at the site following the introduction of the Fairfield LEP 2013 and would not introduce new uses but enable existing uses to continue as permitted uses;
- the proposed amendment would not rezone the site, and the land can accommodate ancillary commercial and business uses as evidenced by the controls in the previous Fairfield LEP 1994;
- the existing-use rights provision excludes minor works from being considered as exempt or complying development (e.g. retail fit-out tenancies) and the cost and time implications of the development application process severely impact on the ability of the centre to attract new tenants, and this planning proposal will remedy this issue; and
- the proposal will not result in an intensification of the existing retail and commercial uses at the site, and the supporting economic statement identified that the existing retail activity within the site will not have any adverse impact upon the Fairfield City Centres hierarchy.

The Submissions Report (**Attachment I**) considered and summarised both the community's submission and the proponent's response. It concluded that the proposal is considered to have merit as it will ensure existing land uses on the site are appropriately formalised through the additional permitted uses provision. These uses were previously permissible on the site under the former Fairfield LEP 1994 and the proposed amendment will rectify this situation.

On 10 September 2018, the Panel resolved to proceed with the finalisation of the planning proposal (**Attachment J**) and concluded that there were no issues raised during the public exhibition period that would preclude the planning proposal from progressing.

7. ADVICE FROM PUBLIC AUTHORITIES

No consultation with any public authorities was required in accordance with the Gateway determination. However, a submission was received from Fairfield City Council (**Attachment K**), which did not raise any objections to the planning proposal.

It is also noted that Council did not provide a response to the concerns raised in the community submission.

8. POST-EXHIBITION CHANGES

No changes by the Panel

The Panel did not resolve to undertake any post-exhibition changes to the planning proposal following the exhibition period.

Recommended changes proposed by the Department

Property and Allotment Description

Following an amalgamation of the larger property, the property and allotment description for the site in the planning proposal (i.e. 1183-1185 The Horsley Drive, Wetherill Park and Lot 1 in DP709356) has changed. Therefore, the site is now identified as 1187 The Horsley Drive, Wetherill Park and Lot 1 DP1136897.

GFA Restriction

The Department recommends that the 500m² gross floor restriction is applied to all premises across the ground and mezzanine level of the existing building on the site, as opposed to only retail premises on the ground level as identified in the Gateway Alteration (**Attachment D2**).

This will ensure that the current and future commercial uses of the site (i.e. retail, business and office premises) will only contain small tenancies and not result in larger tenancies such as a supermarket.

Consideration

The Department notes that these post-exhibition changes are justified and do not require re-exhibition. It is considered that the post-exhibition changes:

- do not alter the intent of the planning proposal and are minor amendments to the planning proposal;
- ensures the correct property and allotment description are identified in the proposed additional permitted use clause; and
- provides certainty that the site would continue to only contain small tenancy commercial premises.

Further, it is noted that the only tenancy that would be affected by applying a 500m² gross floor restriction is a shop located on the ground floor. This proposed restriction applying to the ground floor was exhibited. While applying to restriction to the mezzanine level was not exhibited, this level currently contains shops of lesser dimensions, i.e. less than a 500m² floor area, and the restriction would not impact upon their operation.

9. ASSESSMENT

Section 9.1 Directions

Inconsistent: The inconsistency of the planning proposal with the following section 9.1 Directions is addressed below.

Direction 1.1 Business and Industrial Zones

The site is zoned B5 Business Development. The Direction applies where a planning proposal affects land within an existing business zone and reduces the total potential floor area space for employment uses. As the proposal seeks to impose such a restriction, the proposal is inconsistent with the Direction. Further, the proposal is not in accordance with a strategy approved by the Secretary. Given the minor nature of the proposal, it is recommended that the inconsistency is of minor significance.

Direction 6.3 Site Specific Provisions

The objective of this Direction is to discourage unnecessary restrictive site-specific planning controls. The planning proposal is considered to be inconsistent with the Direction as it seeks to introduce an additional permitted use on the site which is a site-specific provision.

However, this inconsistency is considered to be justified as the proposed additional permitted use would enable the continued operation of existing uses on the site as permitted uses instead of being prohibited. Therefore, the inconsistency of the planning proposal with Direction 6.3 Site Specific Provisions is considered to be justified as of a minor significance.

State environmental planning policies

The planning proposal is consistent with all State Policies given the nature of the proposal which seeks to enable the existing uses on the site to continue operating as permitted uses under the Fairfield LEP 2013.

State, regional and district plans

The planning proposal is consistent with the objectives and actions of the Greater Sydney Region Plan (March 2018) and the Western City West District Plan (March 2018) as it only proposes a minor additional permitted use on the site. The Department is satisfied that the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*.

10. MAPPING

There is one (1) map associated with this planning proposal (**Attachment Map**) which has been submitted via the ePlanning Portal. This map has been examined by GIS staff and meet the technical requirements.

11. CONSULTATION WITH PANEL

The Planning Panels Secretariat was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment E**).

The Planning Panels Secretariat confirmed on 21 January 2019 that it was satisfied with the draft and that the plan should be made (**Attachment F**).

12. PARLIAMENTARY COUNSEL OPINION

On 22 January 2019, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

13. 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 has strategic merit as it is generally consistent with the Greater Sydney Region Plan and give effect to the Western City District Plan; and
- it will reduce the need for unnecessary development applications for minor works at the site.



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