



IRF21/3739

Plan finalisation report – PP-2020-4126

60-80 Southern Cross Avenue and 45-65 Hall Circuit,
Middleton Grange

April 2022



Published by NSW Department of Planning, Industry and Environment

dpe.nsw.gov.au

Title: Plan finalisation report – PP-2020-4126

Subtitle: 60-80 Southern Cross Avenue and 45-65 Hall Circuit, Middleton Grange

© State of New South Wales through Department of Planning and Environment 2021 You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, if you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing [October 21] and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Contents

1	Introduction.....	1
1.1	Overview.....	1
1.1.1	Name of draft LEP	1
1.1.2	Overview of Planning Proposal	1
1.1.3	Site description	2
1.1.4	Purpose of plan.....	3
1.1.1	State electorate and local member.....	8
2	Gateway determination and alterations	8
3	Public exhibition and post-exhibition changes	9
3.1	Submissions during exhibition.....	9
3.1.1	Submissions supporting the proposal	9
3.1.2	Submissions objecting to and/or raising issues about the proposal.....	10
3.2	Advice from agencies.....	15
3.3	Post-exhibition changes.....	16
3.3.1	Post-exhibition Council resolution	16
3.3.2	The Department's recommended changes	17
3.3.3	Justification for post-exhibition changes.....	18
4	Department's assessment.....	18
4.1	Detailed assessment.....	19
5	Post-assessment consultation	26
6	Recommendation.....	26
	Attachments	

1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Liverpool Local Environmental Plan 2008 (Amendment No. 63).

1.1.2 Overview of Planning Proposal

The planning proposal (**Attachment A**) will facilitate the development of the Middleton Grange town centre. The proposal seeks to realign the zone boundaries to ensure a more logical road layout and more permeable pedestrian movements. The proposal also involves changes to the height and FSR development standards. The town centre will include mixed use buildings with a potential gross floor area (GFA) of 108,000m², comprising 72,000m² residential floorspace (approx. 671 dwellings) and 36,000m² non-residential floorspace that provides opportunities for retail and commercial investment as well as community facilities, and approximately 7,600m² of open space.

A discussion of the exhibited planning proposal, Council's and the Department's post-exhibition changes is provided in section 3.3.

1.1.3 Site description

The site (**Figure 1**) is in Middleton Grange which is located 7.5km east of the Nancy Bird Walton airport and 7km west of Liverpool city centre. It is bounded by Southern Cross Drive (north), Bravo Avenue and Middleton Grange Public School (east), and Hall Circuit/Flynn Avenue (south). The site is approximately 69,000m² in area.

The site is 350m north of Fifteenth Avenue which is committed under the Western Sydney City Deal to become a transit boulevard with a rapid transport system, connecting Nancy Bird Walton airport to the Liverpool City Centre. Cowpasture Road is 420m to the west.

Table 1 Site description

Site Description	The planning proposal (Attachment A) applies to land at 60-80 Southern Cross Avenue and 45-65 Hall Circuit, Middleton Grange (Lots 2, 3, 4, 5 and 6 DP 1207518, Lot 1 DP 1078564, Lot 12 DP 1108343 and Lot 102 DP 1128111)
Type	Site
Council / LGA	Liverpool
LGA	Liverpool

Table 2: Current Controls

Control	Current			
Zone	R1	B2	RE1	SP2
Area	26,189m ²	32,127m ²	2,340m ²	9,220 m ²
Maximum height of building	8.5m	18m	-	
Floor space ratio	0.75:1	1.5:1	-	
Number of dwellings	122 - 209 (cl. 5.3 Development near zone boundaries)	374 - 504 (cl. 5.3)	-	
Residential GFA	66,000m ²			
Non-Residential GFA	0	11,730m ² - 15,800m ² (cl. 5.3)	-	
Potential GFA	77,730m ²		750m ²	



Figure 1 Subject site

1.1.4 Purpose of plan

Exhibited Planning Proposal

The intent of the planning proposal (**Attachment A**) is to facilitate a new town centre comprising a range of mixed-use buildings up to 29m in height (stated as eight storeys). The exhibited planning proposal proposed a total development Gross Floor Area (GFA) of 113,173m² comprising:

- 63,703m² GFA of residential space (approximately 671 new dwellings);
- 48,248m² GFA of non-residential uses including:
 - 12,529m² GFA of medical centre space;
 - 8,223m² of Office/SOHO (e.g., home office) space;
 - 500m² GFA of community centre; and
 - 26,996m² GFA of other commercial space (supermarkets, shops, cafes, gyms, entertainment and childcare).

To deliver the above, the proposal seeks to make changes to the Liverpool LEP 2008 to adjust zone boundaries and to ensure a more logical road layout and more permeable pedestrian movements as follows:

- adjust zone boundaries:
 - R1 General Residential: Reduction from 26,189m² to 14,243m² (approximately 11,946m²);
 - B2 Local Centre: Increase from 31,278m² to 43,013m² (approximately 11,735m²);
 - RE1 Public Recreation: Reduction from 2,340m² to 2,000 m² (approximately 340m²);
 - SP2 Infrastructure: Increase from 9,200m² to 9,800m² (approximately 600m²);
- amend the Land Reservation Acquisition Map to identify land for acquisition by Council for the purposes of public recreation;
- increase height limits:
 - New R1 General Residential: From 8.5m to 9.5 - 14m (three to four storeys);
 - New B2 Local Centre: From 8.5 - 18m to 20 - 29m (six to eight or nine storeys);

- increase FSR limits:
 - New R1 General Residential: From 0.75:1 to 1:1; and
 - New B2 Local Centre: From 0.75:1 and 1.5:1 to 2.3:1; and
- allow an additional permitted use of ‘restaurant or café’ on the part of the land to be zoned R1 General Residential.

Recommended Planning Proposal

Table 3 outlines the proposed controls for the LEP following post exhibition amendments by Council and the Department. **Figures 2 – 6** shows the proposed development controls. **Figure 7** shows the location of proposed parks.

Table 3 Proposed controls

Control	Current				Proposed (Re-aligned zone boundaries)			
Zone	R1	B2	RE1	SP2	R1	B2	RE1	SP2
Area	26,189m ²	32,127m ²	2,340m ²	9,220 m ²	14,243m ² (Includes Park 1)	43,013m ² (Includes Park 3 - minimum 2,500m ²)	2,000m ² (To be dedicated to Council)	9,800m ² Includes 750m ² of New Park 1 and land adjoining New Park 2 (1028m ²) and New Park 3 (598m ²)
Maximum height of the building	8.5m	18m	-		8.5m, 14m, 20m, 29m (Equating to 2 – 9 storeys) 3m height control applicable to Park 3		N/A Park 2 Land	N/A
Zone	R1	B2	RE1	SP2	R1/B2		RE1	SPp2
Floor space ratio	0.75:1	1.5:1	-		1.9:1(average) inclusive of additional FSR if economic demand supports		N/A	N/A
Number of dwellings	122 - 209 (cl. 5.3)	374 - 504 (cl. 5.3)	-		671 (capped)		-	
Residential GFA	66,000m ²				72,000m ² (capped)		-	
Non-Residential GFA	0	11,730m ² – 15,800m ² (cl. 5.3)	-		26,000m ² , plus additional potential 10,000m ² above ground floor		-	

Control	Current			Proposed (Re-aligned zone boundaries)		
Potential GFA	77,730m ²	750m ²		108,000m ²		
Jobs	473 (Hill PDA, November 2020 based on Retail - 10,000m ² , Non-retail commercial services - 5,500m ² , Entertainment - 5,500m ²)					
Proposed Open Space (m ²)	Park 1: 956m ² - SP2 land (750m ²) + R1 land 206m ² Park 2: 2,000m ² - RE1 land Park 3: 2,500m ² - Minimum requirement 2,500m ² wholly within B2 zone for public purpose Total Park area: 5,456 ² - Council owned land 2,750m ² and Private land 2,706m ²					
Additional clauses	<ul style="list-style-type: none"> Retain minimum of 2,500m² for purposes of a public park on B2 zoned land. Identify the entire subject site on FSR 008 map as Intensive Urban Development Area (Area '13') so that Clause 7.1A Arrangements for designated State public infrastructure in intensive urban development areas applies to the site. Site specific provision to enable non-residential ground floor GFA on the site will be 26,000m² (equating to 1.8:1 FSR) with an additional non-residential GFA of 10,000m² which can only be provided above ground floor level if the proposal can demonstrate: <ul style="list-style-type: none"> consistency with the Liverpool LSPS; and the demand for the quantum of employment floor space supported by a peer reviewed economic impact assessment. To address the interface between the proposed development and the surrounding low-density residential areas. To identify 1,200m² of R1 General Residential adjacent to new Park 1 to permit restaurant and café uses. 					

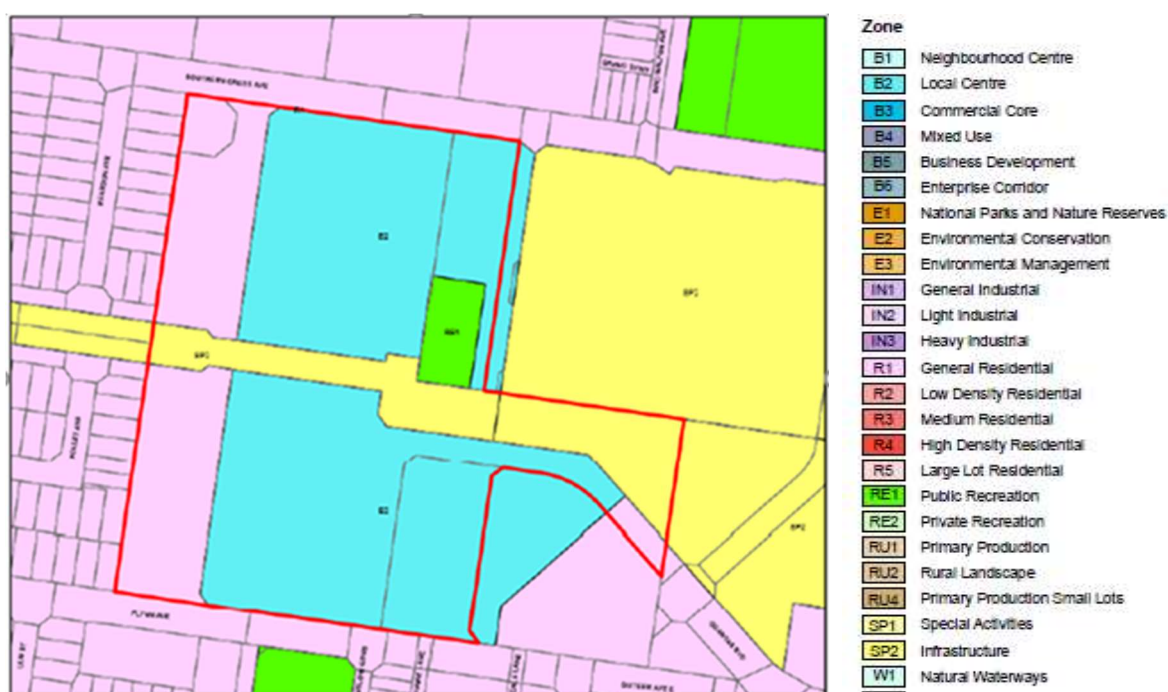


Figure 2: Proposed Zoning Map

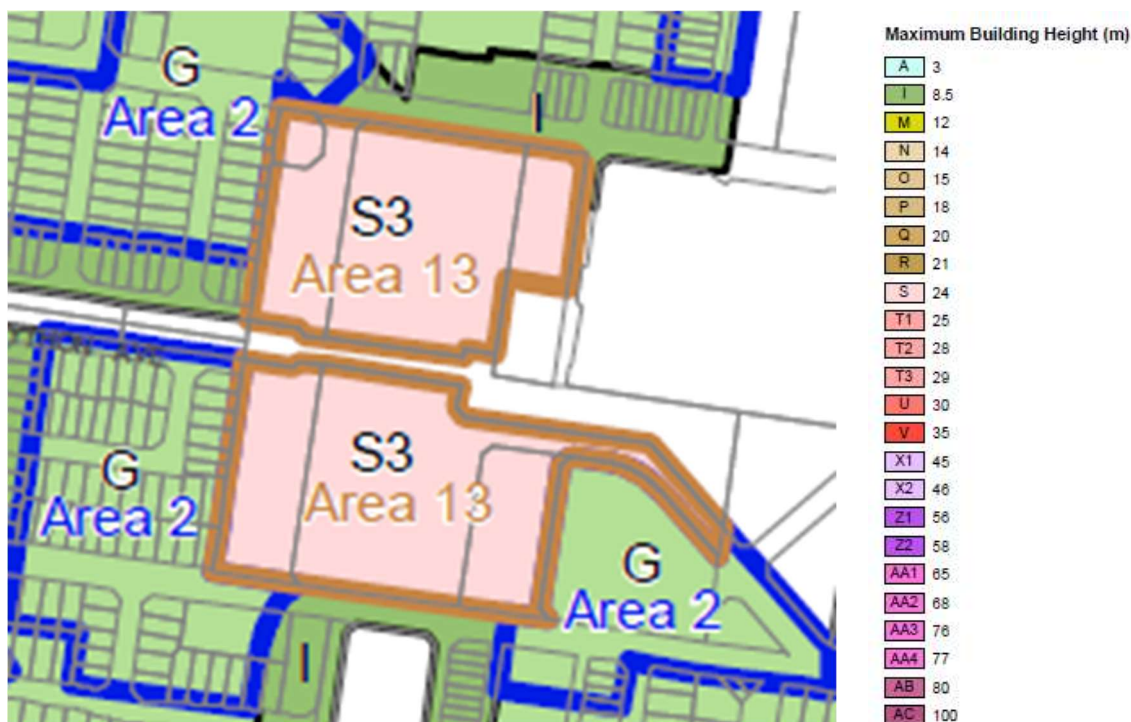


Figure 3 Proposed FSR Map

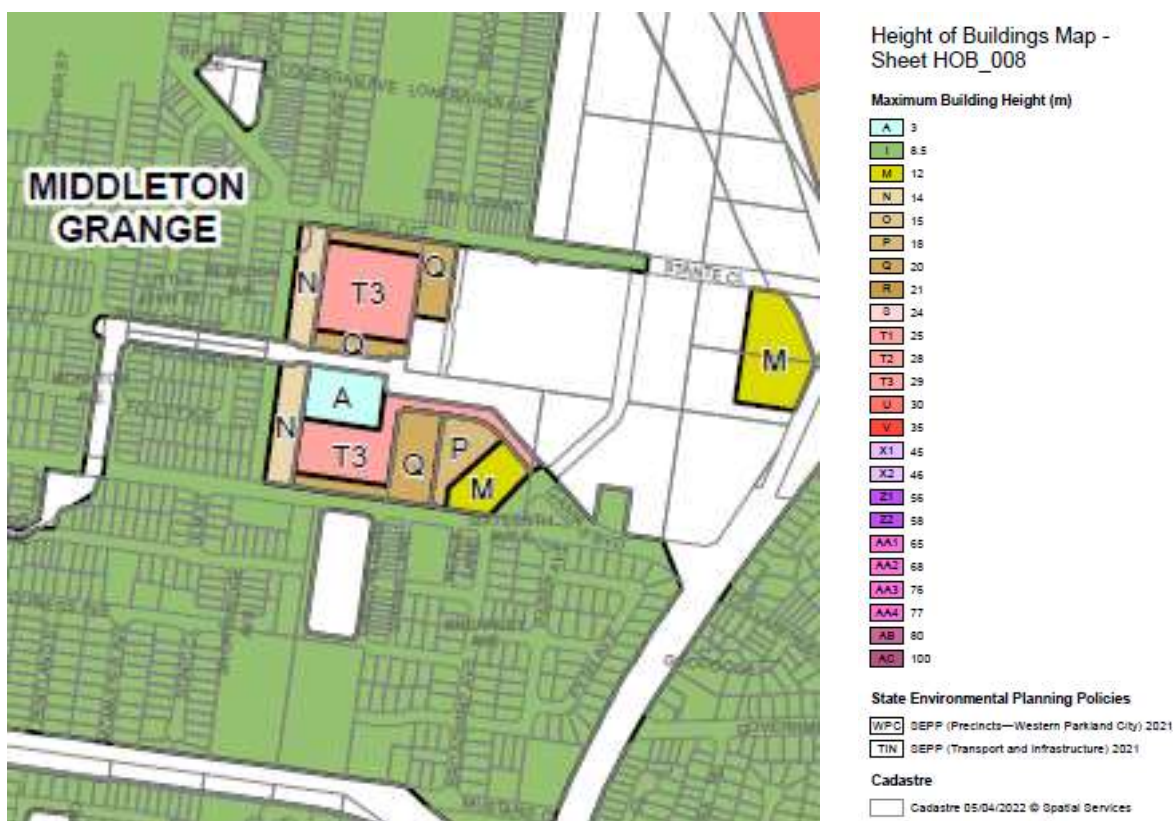


Figure 4 Proposed Height of Building Map

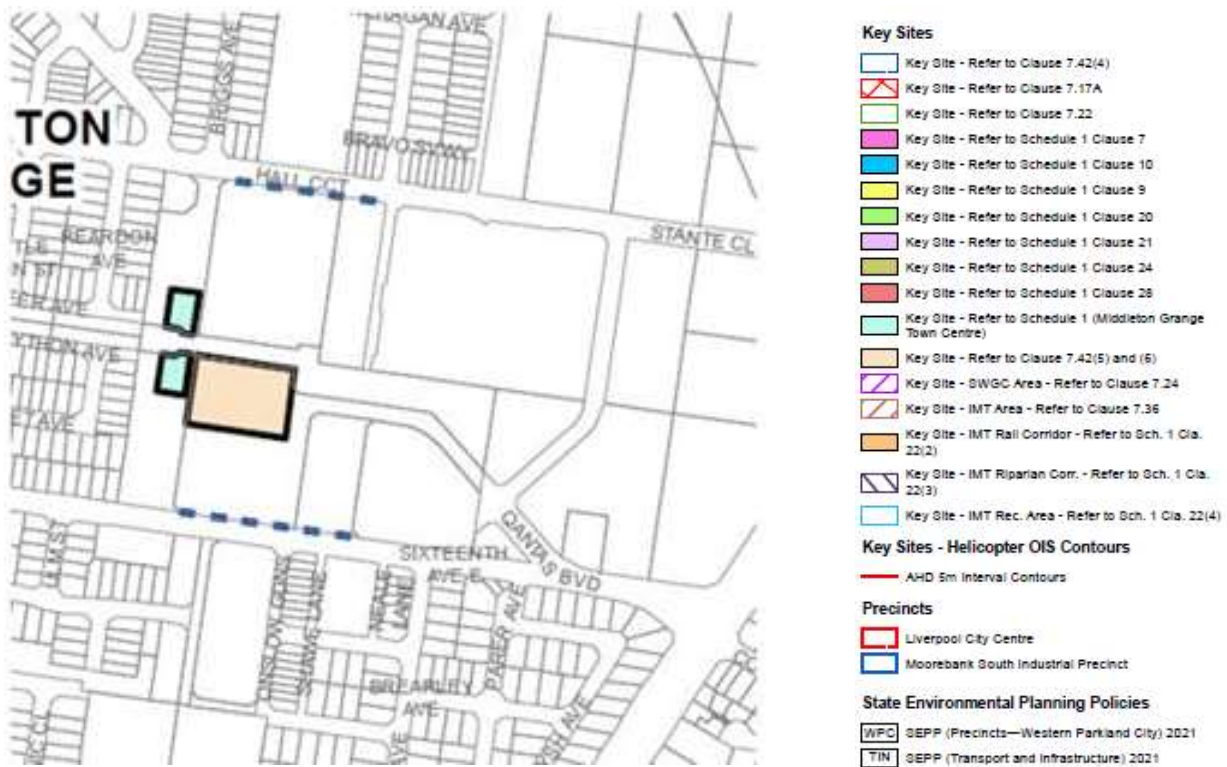


Figure 5 Proposed Key Sites Map

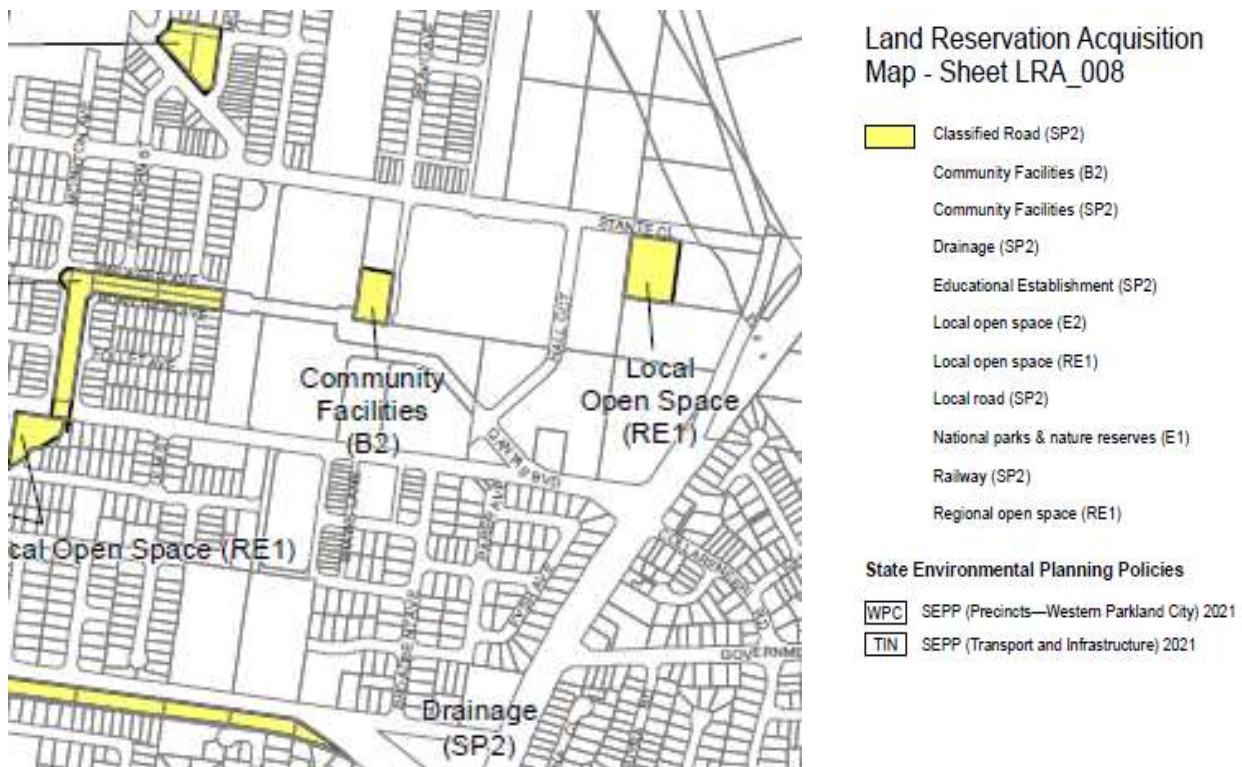


Figure 6 Land Reservation Acquisition Map



Figure 7 Proposed parks

1.1.1 State electorate and local member

The site falls within the Mulgoa state electorate. Ms Tanya Davies MP is the State Member. The site falls within the Werriwa federal electorate. Ms 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

The Gateway determination issued on 15/08/2016 (**Attachment B1**) relating to the original planning proposal (**Attachment A**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions.

Table 4 below shows the dates the Gateway determination was altered.

Table 4 Gateway determination and alterations

Gateway	Date	Completion date
Gateway determination	15/08/2016	15/02/2018
First Gateway alteration Time extension	6 /07/2018	22/02/2019

Gateway	Date	Completion date
Second Gateway alteration Time extension	24/08/2020	31/12/2020
Third Gateway alteration Time extension	23/12/2020	30/04/2021
Fourth Gateway alteration Time extension	16/07/2021	3/09/2021

In accordance with the Gateway determination (as altered) the proposal was submitted to the Department on 2 September 2021.

3 Public exhibition and post-exhibition changes

First Exhibition

The planning proposal (**Attachment F**) was publicly exhibited from 29/08/2018 to 26/09/2018. Council received 867 submissions, of which 94% of respondents opposed the planning proposal.

At its Council meeting of 12 December 2018 Council resolved to withdraw support for the planning proposal but at its 31 July 2019 meeting, Council resolved that it reaffirms the December 2018 resolution opposing the increase in density and heights as proposed for the Middleton Grange Town Centre at the time and commit that if any amendments were to be made by the proponent, an exhibition/community consultation period of 28 days would be undertaken.

At its 25 September 2019 meeting, Council resolved to give an in-principle support for the development of a town centre. Council also resolved that a preliminary assessment and exhibition be undertaken if a revised planning proposal was lodged.

Second Exhibition

A revised planning proposal (**Attachment A**) was subsequently lodged by the proponent on 29 October 2019.

The stated intent of the revised planning proposal is to facilitate a new town centre comprising a range of mixed-use buildings up to 29m in height (stated as eight storeys) for 671 dwellings within a GFA of 63,703m² and a non-residential GFA of 48,248m² totalling an overall GFA of 113,173m².

The revised planning proposal was exhibited from 13/11/19 - 11/12/19. There were 240 community submission received with 136 (57%) in support, 100 (42%) in objection and 3 (1%) were mixed.

3.1 Submissions during exhibition

3.1.1 Submissions supporting the proposal

The reasons the submissions supported the proposal included:

- potential increase in property values;
- provision of a medical centre;
- more convenient shops/restaurants etc.;
- generate employment;
- increase green space;
- increase supply of housing/affordability;
- stimulate economic growth/generate activity; and
- provision of a local centre.

3.1.2 Submissions objecting to and/or raising issues about the proposal

The reasons the submissions objected to the proposal are summarised below and are at **Attachment G**.

Table 4 Summary of Key Issues

Issue raised	Council response and Department assessment of adequacy of response
Other more appropriate locations for this development	<p><u>Council Response:</u></p> <p>The proposed land uses are generally in line with Council and State strategic priorities. However, the applicant has not demonstrated that there is sufficient demand to cater to the non-residential floorspace proposed.</p> <p><u>Department Response:</u></p> <p>The site is identified as a local centre in the LSPS and Council's Centres and Corridors Strategy, therefore it's development as a centre is strategically supported. The planning proposal retains the existing zones currently provided for the site, however, adjusts the boundaries to increase the B2 Local Centre zone and SP2 zone and a reduction to the R1 General Residential zone and RE1 Public Recreation zone.</p> <p>The Department is satisfied that the future DCP requirement to provide an economic needs assessment with any future development application for ground level non-residential GFA and any application for the additional 10,000m² upper floor non-residential GFA, will ensure that demand is addressed in the assessment process.</p>
Noise and amenity	<p><u>Council Response:</u></p> <p>The site is already envisioned to be a centre which would create some level of noise. Noise and amenity impacts would likely arise from additional traffic associated with the planning proposal. These matters would be required to be addressed as part of future development applications</p> <p><u>Department Response:</u></p> <p>The Department concurs with Council's response. The existing controls envisage the site as a centre use. Any noise and amenity impacts associated with the proposed boundary adjustment between the zones will be required to be addressed as part of the DA process.</p>

Over development of the site

Council Response:

Recommendations have been made to cap the residential yield of the site to what has been described as the outcome of planning proposal by the applicant. This is combined with a reduced height to provide better transition to the surrounding area. A peer reviewed economic impact assessment (EIA) as part of a staged development application would help ensure that ground level non-residential/commercial development aligns with market demand, while also allowing for the development of the medical centre, should there be demand. Traffic reporting suggests that, pending upgrades, the traffic network can accommodate the development associated with the planning proposal. Subject to these amendments, the planning proposal's potential development is within the capacity of Middleton Grange to accommodate and would enable development of a centre at the site.

Department Response:

The recommended residential floorspace cap of 72,000m² has been adopted, together with a dwelling cap of 671 units to ensure the residential element of the site is supported by the infrastructure contributions and open space provision. It also provides certainty in terms of the quantum of overall developable floorspace on the site. The increased residential GFA constitutes an increase from the existing permissible residential GFA of 6,000m².

The proposal would allow for a baseline non-residential GFA of 26,000m² with an additional 10,000m² above ground level if there is sufficient and demonstrated demand through an EIA. This would equate to an increased permissible non-residential GFA from the existing controls of approximately 20,000m² – 24,000m².

The proposed heights across the site reflect the increased density. The Department considers that the site can accommodate this additional density in terms of built form, with overshadowing and interfaces with the surrounding residential areas adequately addressed.

Clause 7.42(4) of the draft LEP (**Attachment LEP**) addresses the interface between the proposed development and the surrounding low-density residential areas.

Infrastructure contributions via a local VPA or a Contributions Plan, and application of the satisfactory arrangements clause 7.1A in the LEP will ensure that appropriate infrastructure is in place.

To this end the draft LEP has a deferred commencement clause for the LEP to commence after 6 months of it being published to give Council time to make arrangements for local infrastructure that is required to support the proposed town centre. This may include finalising the current local VPA negotiations or a Contributions Plan. The deferred commencement also will

Issue raised	Council response and Department assessment of adequacy of response
	provide time for Council to finalise an amendment to 'Part 2.5 – Middleton Grange' of the Liverpool Development Control Plan 2008.
Lack of infrastructure	<p><u>Council Response:</u></p> <p>The Department of Education has not raised any concerns regarding the planning proposal's impact on the capacity of the neighbouring school.</p> <p>The proposed development would make contributions to Council's development contributions fund. The relevant development contributions plan may be revisited at any time prior to approval of a development application to capture contributions required for new infrastructure.</p> <p><u>Department Response:</u></p> <p>The existing infrastructure needs to be upgraded to accommodate the proposed development of the town centre.</p> <p>Negotiations are under way for a local planning agreement to secure works in kind to the value of approximately \$12 million and a monetary contribution of \$8 million. These include upgrades to local roads, intersections and local open spaces.</p> <p>The draft LEP (Attachment LEP) has a 6 month deferred commencement provision which will give Council and the proponent enough time to make arrangements for required local infrastructure to support the proposed town centre. The deferred commencement also will provide time for Council to finalise an amendment to 'Part 2.5 – Middleton Grange' of the Liverpool Development Control Plan 2008.</p> <p>The site will also be subject to the existing satisfactory arrangements clause in the Liverpool LEP (Clause 7.1A) which will ensure any necessary state infrastructure contributions as part of the development application process.</p>
Reduction in property value	<p><u>Council Response:</u></p> <p>The centre use is already permissible under existing controls. Evidence has not been provided that suggests that the planning proposal would result in changes to property values.</p> <p><u>Department Response:</u></p> <p>The permissibility of the centre is already provided for under the existing controls. There is no evidence to suggest that property values within the area will be negatively impacted due to development of a town centre.</p>

Issue raised	Council response and Department assessment of adequacy of response
Traffic congestion and parking	<p><u>Council Response:</u></p> <p>Traffic reporting suggests that the local road network will be capable of supporting the potential development of the site, pending contributions from the developer to upgrade local roads and intersections. Upgrades to surrounding State roads would be required to be arranged with Transport for NSW.</p> <p>Public transport access to the site is poor, and there are no plans from public transport service providers to increase provision. As such, it is likely that the new residents would be highly reliant on private vehicle transportation for non-local trips.</p> <p>Parking provision would be subject to a future development application, as required by the relevant development control plan.</p> <p><u>Department Response:</u></p> <p>The site will be subject to the satisfactory arrangements clause 7.1A in the LEP to ensure that required upgrades to state roads are secured prior to delivery of any proposed development. The site will benefit from the Fifteenth Avenue Smart Transit (FAST) Corridor once operational. A local planning agreement to secure works needed for local infrastructure upgrades is yet to be entered between Council and the proponent.</p> <p>As per Council's comment above, parking provision for the development will be subject to a future development application and compliance with the relevant DCP and ADG requirements.</p>

Issue raised	Council response and Department assessment of adequacy of response
<p>Height of building, urban form, character, overshadowing and privacy</p>	<p><u>Council Response:</u></p> <p>Existing reporting suggests that the built form enabled by the proposed controls would not result in unreasonable impacts to the built environment. However, recommendations have been made that would help ensure that the development of the site would better transition to surrounding uses. Future applications will be required to demonstrate alignment with design controls, including ensuring that overshadowing, privacy and character impacts are reasonable and justified. In particular, the Apartment Design Guide (or relevant guidelines of the day) would provide clear guidance on overshadowing, height transitions and building separations from surrounding areas.</p> <p><u>Department Response:</u></p> <p>Internal urban design advice has determined that the proposed heights are appropriate, provided sun penetration of the open space is maximised which will also be guided by the DCP and ADG requirements.</p> <p>A local provision (Clause 7.42(4)) has been included in the draft LEP (Attachment LEP) that ensures the development of the site would better transition to surrounding low density residential development. It is considered that the height of building at boundary interfaces has been satisfactorily addressed and resolved.</p>
<p>Number of dwellings</p>	<p><u>Council Response:</u></p> <p>Recommendations have been made to cap the residential yield of the site to align with the planning proposal's description of the development outcomes and LSPS vision for approximately 500 to 1,000 additional dwellings to be provided in Middleton Grange by 2036.</p> <p><u>Department Response:</u></p> <p>A dwelling cap of 671 units together with a residential floorspace cap of 72,000m² is proposed and is supported. Refer to section 4.1 for further discussion and the draft LEP at Attachment LEP.</p>

Issue raised	Council response and Department assessment of adequacy of response
Smaller centre consistent with existing controls	<p><u>Council Response:</u></p> <p>Current planning provisions do not cap commercial floorspace, only require non-residential uses at the ground floor of B2 Local Centre zoned land. As such, ultimate provision beyond the minimum ground-floor allotment is highly variable and largely determined by market forces.</p> <p><u>Department Response:</u></p> <p>Detailed consideration of the permissible non-residential GFA has been undertaken by Council and the Department with feedback from the Proponent. Refer to section 4.1 for discussion and details of the post exhibition amendments on page 18 of this report.</p>

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in **Table 5** who have provided the following feedback. Agency submissions are at Appendix E of the Hill PDA Assessment for Council at **Attachment H**.

Table 5 Advice from public authorities

Agency	Advice raised	Council/Department response
Office of Environment and Heritage	Noted that the flood risks along the existing channel within the site are low to medium. The applicant's stormwater management strategy does not include a sensitivity analysis under projected climate change scenarios, as requested by previous OEH submissions.	Council considered the additional stormwater information was provided. Further assessment in accordance with Council's requirements will be undertaken as part of any future development application.

Agency	Advice raised	Council/Department response
Transport for NSW (RMS provided comments on the original planning proposal)	<p>A funding mechanism for development contributions to offset traffic impacts on the regional road network should be finalised prior to any amendment.</p> <p>Future local road intersection signalisation would need to be reviewed and approved by Transport for NSW</p> <p>Transport for NSW does not have current plans to enhance local bus services, which are currently at low volumes, though they may be provided in the future for social equity.</p>	The site will be subject to the satisfactory arrangements clause 7.1A in the LEP to allow continued negotiations/agreement for State infrastructure contributions as part of the development assessment process. The proponent and TfNSW have been advised of this requirement.
Sydney Water	Confirmed that there is sufficient wastewater capacity for the proposed zoning changes. Detailed requirements for water servicing, recycled water services and wastewater servicing will be required to be provided at the Section 73 application phase.	Noted.
Department of Education (DoE)	No objection to the planning proposal. DoE provided commentary on the potential impacts to Middleton Grange Public School and suggestions regarding upper-level setbacks and use of non-reflective building materials.	No objection raised.
State Emergency Services	The SES has not provided comments on the revised planning proposal.	Noted.

The Department considers Council has adequately addressed matters raised in submissions from public authorities.

3.3 Post-exhibition changes

3.3.1 Post-exhibition Council resolution

At Council's Ordinary Meeting on 25/08/2021, Council resolved to proceed with the planning proposal (**Attachment I**) with the following post-exhibition changes:

- cap on residential floorspace to 72,000m²;
- introduction of a dwelling cap of 671 units;

- provide DCP (DCP) controls for the site including design requirements for home-business enabling units;
- cap the average FSR for the site to 1.8:1;
- maintain the proposed 20m height along the northern and southern interface;
- introduce 2 storey street wall and 4m setback control along the entirety of Southern Cross Ave and Flynn Ave, east of Main Street;
- allow up to 1,200m² of R1 General Residential adjacent to New Park to permit restaurant and café land use;
- maintain area proposed by the proponent to have height limit of 9.5m at current level of 8.5m;
- map New Park 3 on key site map and remove development standards;
- prepare an amended site-specific DCP to ensure future development is alignment with the LSPS;
- request DPE/TfNSW finalise State level planning agreement for road upgrades prior to finalisation of the planning proposal; and
- refine development contributions plans to consider demand for infrastructure associated with the planning proposal.

Council forwarded the planning proposal to the Department for finalisation on the condition of:

- A local voluntary planning agreement being executed;
- An amendment to 'Part 2.5 – Middleton Grange' of the Liverpool Development Control Plan 2008 is finalised; and
- An amendment to the proposed land acquisition map is made to rectify the inconsistency with the Liverpool Contributions Plan 2008.

3.3.2 The Department's recommended changes

Following the receipt of the revised planning proposal from Council, the Department has made further changes to the proposal as follows to achieve a consensus between Council and the Proponent:

- non-residential ground floor GFA of 26,000m² with bonus non-residential GFA of maximum 10,000m² which can only be provided above ground floor level – subject to heads of consideration, but will include matters such as:
 - consistency with the Liverpool LSPS;
 - demonstrated demand for the additional non-residential floor space;
- retain B2 zone on New Park 3 (minimum of 2,500m²) for the purposes of a public park with height and FSR controls for certainty;
- the site will be subject to the existing satisfactory arrangements clause under the Liverpool LEP to ensure upgrades to relevant state infrastructure is secured as part of the development application process rather than at the planning proposal finalisation stage; and
- ensure arrangements are in place for local infrastructure upgrades to support the proposed town centre on the subject site prior to the making of the LEP.

3.3.3 Local Infrastructure

The existing local infrastructure is not capable to support the town centre at this location and is the key to accommodate the proposed residential (671 dwellings) and non-residential development of 26,000m² on the site. Council recently advised that the local VPA negotiations are ongoing and the

proposed local infrastructure works identified in Council's resolution dated 25/08/21 to support the proposal remains unfunded.

The Department understands key details of the draft local planning agreement which is being negotiated between Council and the proponent include:

- construction of an open space park and embellishment works to the area designated as Park 3 with a minimum area of 2,500m² within the B2 zoned land (park will remain in the private ownership of the developer, but with a public access easement).
- dedication of Park 2 to Council. Park 2 is the land not currently owned by Council that is proposed to be rezoned to RE1 Public Recreation;
- construction of a signalised intersection at Main Street and Flynn Avenue and the intersection for the new proposed access lane and Flynn Avenue;
- construction of an upgrade to the Cowpasture Road intersection, Flynn Avenue from Qantas Boulevard to Ulm Street as a widened 4 lane road within the existing road reserve, in consultation with Council;
- construction of a road upgrade and services for Southern Cross Avenue between the western boundary of the Land to the Middleton Grange Primary School;
- construction of the culvert and drainage works approved under the Modification DA-64/2007/C; and
- a monetary contribution of \$8,000,000.

Council has advised that the agreement being negotiated is based on the total GFA of 98,000m² on the site and the additional non-residential GFA up to 10,000m² above ground floor will not attract additional contribution rates.

3.3.4 Timeframe

Council has previously advised that the existing Liverpool Contributions Plan does not contemplate the development under the draft LEP and does not capture the level/type of infrastructure that is needed for the proposed development. A VPA to identify the need and funding of local infrastructure upgrades to support the town centre is yet to be entered.

The draft LEP has been drafted for a 6-month deferred commencement which will give Council enough time to make arrangements for the required local infrastructure to support the proposal.

3.3.5 Justification for post-exhibition changes

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

- respond to of the issues raised by the public consultation submissions, and detailed consultations with Department's Urban Design and Open Space Teams on open space and urban design issues,
- are not considered to be of major significance and will give effect to Council's resolution; and
- the recommended changes will allow a proposed development on the site, which is of a reduced footprint, lesser amenity impact on the surrounding development as well as on the development on the site.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B1**) 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 modified).

As outlined in the Gateway determination report (**Attachment B2**), the planning proposal submitted to the Department for finalisation:

- The draft LEP has strategic merit and is aligned and consistent with the Greater Sydney Regional Plan and Western District Plan.
- The proposal will provide additional employment generating uses to assist the Middleton Grange centre in achieving LSPS priorities.
- Issues raised during consultation have been addressed and there were no agency objections to the proposal.
- Concerns raised by Council and the proponent post exhibition have been addressed.

The following **Tables 6 and 7** 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 4.1.

Table 6 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1

Table 7 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 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

Amendments to the Planning Proposal by the Department Post Exhibition

Amendments to the permissible non-residential floor space

The Centres and Corridors Study identifies Middleton Grange as a planned centre with the potential to accommodate a supermarket. Council's LSPS identifies Middleton Grange as a town centre accommodating jobs growth of 500-1000. It also makes recommendations for a review of the zoning framework to encourage the development of the centre.

The planning proposal exhibited in 2019 proposed 48,248m² of non-residential floorspace.

Council's assessment concluded that whilst the proposed non-residential GFA is broadly consistent with the LSPS, it has not been justified as being supported by market conditions and may deliver an oversupply resulting in poor ground level activation. The LEP requires the ground floor of all buildings to contain non-residential uses within the B2 zone and the desire to deliver shop top housing may consequentially increase provision of non-residential GFA. Council does, however, acknowledge that ground floor uses, if developed, would contribute significantly to Council's LSPS goal of 500 - 1000 jobs in Middleton Grange.

Council's final independent assessment (**Attachment J**) recommended that a 1.8:1 FSR was applied to the site and a FSR control was removed from New Park 3. The recommendation resulted in a total permissible GFA of approximately 98,000m², equating to approximately 26,000m² of non-residential floorspace (including retail, medical centre, gym and community uses), assuming the allowable residential floorspace is maximised. Council's justification for this FSR is to align dwelling and job delivery with the LSPS, infrastructure provision, and to avoid oversupply of non-residential floor space. The residential cap has been applied to ensure that if there is no demand for non-residential floorspace, that approval cannot be sought for additional residential floorspace. Council's independent assessment did not propose a cap on above ground residential GFA on the basis that if a market exists for office/medical centre and other uses which can be provided above ground, then its delivery is a valid outcome for the B2 Local Centre.

The Proponent and Council have agreed that provision of a retail centre of approximately 10,000m² is appropriate for Middleton Grange. This would result in a remainder of 16,000m² permissible non-residential ground floorspace, of which 1,200m² can be provided as café or restaurant use within the R1 zone around New Park 1. With the remainder for business, office, entertainment, and social uses such as pool, gyms or childcare centre.

The Proponent disagreed with Council's proposed permissible non-residential GFA, on the basis that it effectively reduces the permissible commercial floorspace by the amount attributable to the social uses or medical centre.

The Department's assessment has concluded that an FSR should be applied to the site which would enable a baseline permissible floor space of 98,000m² (noting that a residential floorspace cap of 72,000m² would be applied). This would be applied to the entire site, including New Park 3 (see comments below). This baseline position is aligned with Council's recommendation in terms of quantum floorspace. The Department agrees with Council's resolution that a site-specific DCP should be adopted to require future staged development applicants which reflects LSPS employment targets and justifications of the amount of employment floorspace.

The Department understands Council's concerns relating to non-residential uses is the potential for over-capacity of ground floor non-residential uses with the oversupply of ground level retail. The Department has therefore concluded to provide a site-specific provision to permit an additional FSR of 0.1:1 equating to the additional 10,000m² above ground floor level non-residential GFA. To secure this additional FSR, the attributable GFA would be restricted to the provision of non-residential floorspace on the upper floors of any detailed development proposal, acknowledging that if the demand can be justified that these uses are valid outcomes for the Middleton Grange Centre. This amendment will secure the desired outcome of ground floor activation and allow for delivery of office and other non-residential floorspace above ground level if there is a market for these. As part of the justification for the additional above ground floor non-residential GFA, any future development application would require Council to be satisfied of the justification.

This will ensure that if appropriate, Council may approve these uses and may help in achieving its LSPS employment targets.

Removal of development standards from proposed New Park 3

Council's proposed removal of the FSR and Height of Building Controls from the area mapped for New Park 3 (approximately 2,500m²) is intended to ensure that the proposed public open space as part of the indicative design is delivered.

The removal of FSR and Height of Building numerical control from the area identified for New Park 3 would effectively enable an unlimited FSR and height of building standard (3m, based on proponent's response to Hill PDA, at **Attachment J**) on this area without the restriction that an RE1 land use zone would normally provide in terms of permissible uses. This is not the intended outcome of the planning proposal or Council's intention. The alternative of an RE1 zoning to New Park 3 at this high level and indicative design stage would be onerous, especially when the minimum area of publicly accessible open space can be secured through the Key Sites Map and Planning Agreement.

The planning proposal provides an indicative design for the development at Middleton Grange and the final design will be subject to detailed design development and subsequent development applications. The application of a site wide FSR control would enable flexibility in the delivery of the density across the site, with the proposed height control ensuring that the built form and scale of the development is located appropriately across the site.

To secure the provision of the New Park 3 it is recommend that the site is identified on the Key Sites Map (008) with a corresponding Local Provision requiring the provision of a consolidated area of publicly accessible open space of no less than 2,500m² which is to be provided within the B2 zoned land. This combined with the proposed planning agreement and Height of Building control of 3m would provide sufficient certainty of the delivery of adequate public open space within the proposed development. The 3m height reflects the proponent's request in its submission to Council in November 2020, attached to the final Hill PDA Assessment at **Attachment J** (page 26).

Clause 7.42(5) of the draft LEP (**Attachment LEP**) requires that development consent is not granted to development on land unless it includes an area of not less than 2,500m² to be used for the purpose of a public park.

Amendments to the Planning Proposal by Council Post Exhibition

Residential floorspace and dwelling cap

Council's Comment	Proponents Comment	Department Comment
<p>Council initially recommended a residential floorspace space cap of 65,000m² due to concerns that if there is no demand for non-residential floorspace, more residential floorspace would be provided.</p> <p>A dwelling cap was supported by Council in response to the increase residential GFA to ensure the additional GFA is utilised to provide larger dwellings rather than more units. It also ensures the number of dwellings on the site does not exceed the communicated vision of 671 dwellings.</p>	<p>The proponent requested for an increased GFA cap of 72,000m² to enable flexibility in design and potential allocation of residential floorspace of home business uses which Council has accepted and formed part of Council's post-exhibition changes.</p> <p>The Proponent does not support the introduction of a dwelling cap of 671 units and considers that it places additional risks on the project that outweigh the benefits. These risks include financing, marketing risk, increased cost per apartments because of increased financial risk and increased risk that development may not go ahead. The Proponent suggests that lowers of the number of dwellings may perversely result in a higher number of residents.</p>	<p>The Department agrees with the proposed cap on residential GFA and dwelling numbers as it will ensure that there is certainty that the vision and intended outcomes of the planning proposal is secured. The planning proposal will provide adequate housing choice and the proposed floorspace and cap will enable flexibility in its delivery and mix.</p> <p>Furthermore, the Department considers the dwelling cap appropriate to ensure that the level of infrastructure and open space provision sought via the voluntary planning agreement is adequate for potential total number of dwellings.</p> <p>Clause 7.42 (2)(a) and (b) of the draft LEP identifies a dwelling cap of 671 dwellings and 72,000m² residential GFA on the site. The draft LEP is at Attachment LEP.</p>

Café and restaurant use additional permissible use in R1 General Residential zone

Council's comment	Proponents Comment	Department Comment
<p>Councils' concerns relating to amenity impacts for the surrounding area, alignment with the objectives of the zone and reduce likelihood of oversupply of non-residential uses.</p>	<p>The proponent proposed a cap of the additional permissible use floorspace to limit the quantum of restaurant/café space. The proponent intends for the restaurant/café use to create a focal point for activity adjoining the central open space.</p>	<p>Council's resolution of 25/8/21 (Attachment D) recommended the proposed cap of 1,200m² and therefore the Department considers this matter solved as part of the post-exhibition amendments.</p> <p>The proposed Schedule 1 Additional permitted uses in the draft LEP allows 1,200m² of restaurant/café space within the R1 zoned land, highlighted on the Key Site Map (008). The draft LEP is at Attachment LEP.</p>

Proposed heights along southern, northern and western interfaces

Council Comment	Proponent Comment	Department Comment
<p>The revised planning proposal proposes a 9.5m height limit along the western interface and a 20m height limit along the southern and northern interfaces.</p> <p>Council recommended the retention of the 8.5m height limit along the western interface to preserve the transition from two to four and eight storey development from the western residential areas.</p> <p>Council's final position in relation to the southern and northern interface is to maintain the 20m height limit and introduce a 2-storey street wall and 4m setback control along the entirety of Southern Cross Avenue and Flynn St, east of Main Street.</p>	<p>The proponent is supportive of the proposed amendments to the height limits along the western, northern and southern interfaces.</p>	<p>The Department supports the proposed interface heights and proposed height limits applied across the site and considers this matter to be resolved as part of the post-exhibition amendments.</p> <p>The proposed Clause 7.42(4) addresses this concern by having development controls for height and setbacks within B2 zone, along the frontages of Southern Cross and Flynn Avenue. The draft LEP is at Attachment LEP.</p>

Strategic AssessmentThe Regional and District Plan

The Department required the planning proposal to be updated to reflect the priorities of the Greater Sydney Region Plan and Western City District Plan. The Department is satisfied that the planning proposal has adequately addressed each plan.

Council considered the planning proposal's overall alignment with the District Plan infrastructure priorities to be marginal, due to the need for additional measures to be undertaken outside of the planning proposal (i.e., development control plan and securing both local and state infrastructure).

The Department is satisfied that the proposed 6 months deferred commencement of the LEP (**Attachment LEP**), the application of the existing satisfactory arrangements clause in the LEP to secure State infrastructure upgrades and the local infrastructure upgrades identified in Council's resolution dated 25/08/21 will address Council's concerns regarding alignment with the District Plan. The deferred commencement also will provide time for Council to finalise an amendment to 'Part 2.5 – Middleton Grange' of the Liverpool Development Control Plan 2008.

Liverpool Local Strategic Planning Statement (LSPS)

Middleton Grange is identified as a town centre by Liverpool's LSPS with an identified housing growth of 500-1000 and jobs growth of 500-1000. The LSPS also specifically identifies Middleton Grange as one of the existing suburbs which will benefit from the Fifteenth Avenue Smart Transit Corridor. This is intended to provide residents with a rapid public transit connection from Liverpool city centre to the many opportunities provided by Western Sydney Airport and link existing suburbs such as Miller and Middleton Grange. It is considered that the planning proposal appropriately addresses the LSPS and is generally consistent with its planning priorities.

Liverpool Centres and Corridors Strategy (Centres Strategy)

The Liverpool Centres Strategy identifies Middleton Grange as a release area local centre, with smaller centres envisaged at Austral and Leppington East. The proposed rezoning enables a marginal increase in the current permitted residential floorspace and proposed non-residential floorspace will enable the centre to achieve employment goals envisaged by the LSPS.

Section 9.1 Ministerial Directions

- Direction 1.4 Site Specific Provisions (Former Direction 6.3)

Under this direction, a planning proposal must not create unnecessary restrictive site-specific planning controls. The inconsistency with this direction is considered minor and justified as it is the only reasonable mechanism to manage impacts on surrounding areas and to ensure the delivery of open space provision and an appropriate quantum of the different residential and non-residential floorspace across the site.

- Direction 4.1 Flooding (Former Direction 4.3)

Under this direction, a planning proposal must not rezone land within the flood planning area to certain zones. Council considers the relevant flood issues to have been adequately addressed. Additional flood assessment will be required as part of the development application and assessment process in accordance with Council flood map and LEP requirements. It is considered that any inconsistency with this direction is justified.

- Direction 5.1 Integrated Land Use and Transport (Former Direction 3.4)

Under this direction, a planning proposal must locate zones for urban purposes to give effect to the aims and objectives and principles of Improving Transport Choice (DUAP 2001) and The Right Place for Business (DUAP 2001). The planning proposal will facilitate and promote development of an envisaged local centres providing housing, jobs and services to an already established urban area. Whilst the site is not currently well serviced by public transport, the FAST road network will improve public transport movement opportunities.

A satisfactory arrangements clause within the LEP will ensure the necessary state infrastructure is secured as part of any development application process.

- Direction 5.2 Reserving Land for Public Purposes (Former Direction 6.2)

Under this direction, a planning proposal must not create, alter or reduce existing zones or reservations of land for public purposes without the approval of the relevant public authority and the equivalent of the Director-General of the Department of Planning (or an office of the Department nominated by the Director-General). The planning proposal proposes to reduce the area of land zoned RE1 Public Recreation from 2,340m² to 2,000 m² (approximately 340m²). The inconsistency with this direction is minor due to marginal change to the existing area zoned for RE1 Public Recreation. Although the proposal results in a reduction of RE1 zoned land overall, there is an increase in public open space to be provided on site. It proposes to dedicate 2,500m² of B2 zoned land for public open space.

State Environmental Planning Policies (SEPPs)

- State Environmental Planning Policy (Resilience and Hazard)

The planning proposal has not provided an assessment of contamination risk. However, the planning proposal consists of minor changes to zone boundaries. It is considered that a future planning application would be required to address any contamination assessment and therefore the planning proposal is consistent with Chapter 4 Remediation of land of this SEPP.

- State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development

The SEPP includes design principles required to be considered for residential flat buildings or mixed-use developments which have a residential component. The planning proposal generally complies with the principles and objectives of the ADG. A comprehensive assessment of compliance with SEPP 65 and the ADG will be required to be undertaken as part of the development application assessment.

Site Specific Assessment

Open Space

The planning proposal facilitates 2000m² of RE1 land (for New Park 2), being a reduction from the 2,340m² of existing RE1 zoned land. To offset this reduction a New Park 1 is proposed on the western SP2 land and a minimum consolidated area of 2,500m² (New Park 3) publicly accessible open space will be secured on the B2 zone land through Clause 7.42(5) of the draft LEP (**Attachment LEP**).

Council raised concerns regarding the certainty of the delivery of this open space (Park 3) on the site. The Department is satisfied that the inclusion of the site on the LEP Key Sites map with a site-specific provision in the draft LEP requiring a consolidated minimum area of 2,500m² of publicly accessible space within the B2 zone will secure this open space. New Park 2, zoned RE1 is to be provided and then dedicated to Council under the terms of the planning agreement.

The Department is concerned regarding the level of open space proposed to be provided on site against the proposed dwelling/residents proposed. The combination of the key sites provision to provide a consolidated area of 2,500m² within the B2 zone and the dwelling cap is appropriate to ensure that a satisfactory level of open space per person is provided.

Social and Economic Impacts

The revised planning proposal will generate economic benefits for the site and positive social impacts of the future residents of the site and wider Middleton Grange community. The site will deliver the identified local centre for Middleton Grange.

Environmental Impacts

- Flooding and Stormwater

The Department considers detailed assessments relating to flooding and stormwater can be appropriately managed as part of a future development assessment process.

- Contamination

The Department considers additional detailed assessments relating contamination can be appropriately managed as part of any future development assessment process.

Infrastructure

The site will be subject to the existing satisfactory arrangements clause (Clause 7.1A) provided in the Liverpool LEP to ensure the necessary state contributions are secured as part of the development assessment process. A local planning agreement between the proponent and Council to ensure that both works in kind and monetary contributions, together with the provision of open space on site is yet to be secured.

In the absence of an agreement for funding the local infrastructure, Council has advised that the existing Liverpool Contributions Plan may need to be updated to support the proposed development. Council further advised that the existing Liverpool Contributions Plan does not contemplate the development under the draft LEP and does not capture the level/type of infrastructure that is needed for the proposed development.

Council anticipates that potentially 12 month timeframe is required if the existing development contribution plan is to be updated, however the LEP has accommodated a 6 month deferred commencement as an interim measure. The commencement date will be reviewed if more time is required.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 8 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Six map sheets have been prepared by the Department's ePlanning team and meet the technical requirements. Both the proponent and Council have been consulted on the maps at different stages.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment D).</p> <p>Council confirmed on 21/04/2022 that it approved the draft and that the plan should be made. (Attachment E).</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 21/04/2022, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 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:

- The draft LEP has strategic merit being consistent with the Western District plan and Council's LSPS;
- It will deliver 671 dwellings, upto 36,000m² of non-residential floorspace (including retail, medical centre, gym and community uses) and approximately 5,500m² of open spaces.
- It is consistent with the Gateway Determination; and
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



27 April 2022

Adrian Hohenzollern
Director Western
Place and Infrastructure

Assessment officer

Cho Cho Myint

Senior Planner, Central (Western)

02 9860 1507

Attachments

Attachment	Title
Report	Plan finalisation report
PC	Parliamentary Counsel's Opinion
Maps	Draft LEP maps
LEP	Draft LEP
MCS	Map cover sheet
Council	Letter to Council advising of the decision
A	Planning proposal
B1	Gateway determination and alterations
B2	Gateway determination report
D	Section 3.36(1) consultation with Council
E	Council comments on draft LEP
F	Planning Proposal (July 2018)
G	Summary of submissions (13 Nov – 11 Dec 2019)
H	Hill PDA Assessment (Nov 2020)
I	Council's resolution (25 May 2021)
J	Hill PDA Assessment (April 2021)