

VICTORIA ROAD PRECINCT LEP AMENDMENT RESPONSE

Introduction

Thank you for referring a copy of the draft amendment for Victoria Road on 31 October 2017 for comment.

The draft amendment contains two proposed local clauses, one requiring a development control plan (DCP) to be prepared for the precinct and the other relating to arrangements for designated state public infrastructure. The clauses refer to a Key Sites Map, prepared by the Department, which identifies the land to which the planning proposal applies.

To give less than a week for Council officers to provide comments on the draft amendment is unacceptable for such a major and controversial proposal.

The planning proposal has not being amended to address the matters raised in the report considered by the Inner West Council's Administrator at the Council meeting held on 27 June 2017 and it is understood that matters raised in the Roads and Maritime Services' objection to the proposal are still yet to be resolved.

The draft amendment, as presently drafted, has funding and resourcing implications for the Inner West Council. With such serious implications, and the fact that proposal has not been amended to address the issues raised by Council, the Inner West Council must be given an opportunity to comment on the draft amendment.

Initial Comments

The following initial comments on the draft amendment have been prepared by Council officers.

Development Control Plan

The draft amendment includes a provision requiring a DCP to be prepared for the land that provides for a number of matters. In doing so it is contended that the draft amendment lacks certainty for controlling future development in the Victoria Road Precinct and effectively leaves the determination of fundamental impacts, such as upgrading of road networks, transport connections, traffic, amenity, heritage, etc. of the planning proposal to a later date. The draft amendment essentially locks in increased heights and densities (FSR and HOB controls) on the assumption that a DCP will be capable of being formulated to address matters including:

- “(d) *the management and mitigation of the impacts of the development on the amenity of the neighbourhood, and*
 - (e) *the impacts of the development on the surrounding residential areas,”*
- Proposed Clause 6.17 (3)

It is contended that such an approach is contrary to the objects of the Environmental Planning and Assessment Act in that it would not encourage *“the promotion and co-ordination of the orderly and economic use and development of land”* or *“the provision of land for public purposes”* in the Victoria Road Precinct.

Under the draft amendment, the DCP is meant to deal with a number of matters that may require land dedication – i.e. upgrade of road networks, creating connections, managing amenity impacts (drainage/flooding issues perhaps?). DCPs are not a legitimate means by which land dedications can

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take place – especially since DCPs are ultimately policies that need not be followed and since section 94 of the EPA Act and the jurisprudence around that section make it abundantly clear that a contributions plan is required before land dedications may take place. In addition, section 94 is financially problematic for Council as the full cost of infrastructure can never be recouped through a Section 94 Plan.

Once the rezoning takes place, Council's chance to use a Voluntary Planning Agreement (VPA) to comprehensively address public infrastructure is lost. The Council will then be left with piecemeal development and the difficulty of asking first cabs off the rank to pay for infrastructure that future applicants should also contribute to.

One of the critical concerns is that the draft amendment does not identify any land for the provision of the necessary public infrastructure, services and amenities required for the redevelopment of the area. Nor does it include measures relating to the funding responsibilities and associated funding mechanisms to deliver the necessary infrastructure including provisions relating to the acquisition of land for infrastructure purposes and measures as to how the proponent and developers will be required to contribute to Council and State government agency costs of delivering the necessary open space, drainage upgrades, public domain improvements, community infrastructure, public and active transport, utilities and services needed by a very large development of this nature, on land that is in multiple ownership.

Land required for public purposes should be identified on the relevant LEP Land Reservation Acquisition Map. The draft amendment does not identify any land for any public purposes.

It is normal practice that land identified for public purposes on LEP Land Reservation Acquisition Maps does not have floor space ratio or height of building on the respective LEP Floor Space Ratio Map or Height of Building Map.

The FSR Maps and HOB Maps contained in the draft amendment for land in the Victoria Road Precinct set FSR and HOB controls for all land within the precinct. The proposed FSR controls include FSR controls of 3.00:1 and 3.50:1. Some of the required public infrastructure for the redevelopment of the precinct would be located on land where such FSR controls are proposed, effectively increasing the costs associated with acquiring that land for public purposes because of the increased development potential of that land under the controls proposed.

Whilst the draft amendment includes a proposed clause, *Clause 6.18 Arrangements for designated State public infrastructure in relation to development on certain land at Victoria Road, Marrickville* the draft amendment does not contain a clause for the provision of local public infrastructure.

The planning proposal seeks to up zone land and this would bring forward necessary infrastructure to be planned and delivered including property acquisitions that is outside the scope of Marrickville Section 94/94A Contributions Plan. Furthermore, the real value of Section 94 contributions has decreased over the years due to the \$20,000 per dwelling cap on contributions, inflation, and land price escalation coupled with increasing development costs. The contributions cap limits the contribution funds that may be received by Council and hinders the ability of Council to provide the level of public infrastructure, facilities and services required by this planning proposal.

It is essential that the proposed amendments include appropriate mechanisms that efficiently and transparently fund the delivery and/or upgrade of all necessary local, regional and state level infrastructure items, and include the funding responsibilities and associated funding mechanisms to deliver that infrastructure including staging, timing, cost and trigger points for the delivery of that infrastructure.

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Matters referred to in proposed Clause 6.17 (3)

As detailed above, the draft amendment includes a provision requiring a DCP to be prepared for the land that provides for a number of matters and effectively leaves the determination of fundamental impacts of the planning proposal to a later date.

Those matters are listed in the proposed Clause 6.17 (3) but the relevant provisions are so imprecisely worded they will be impractical and in some cases impossible to apply in development assessments.

A number of matters that have previously been identified by Council as significant concerns are not specifically included in the matters listed in the proposed clause. For example:

- the appropriateness of certain proposed zoning changes and/or proposed development standards for certain land, as detailed in the resolution of Council's Administrator on 27 June 2017;
- the need to provide new areas of public open space within the precinct to support the new resident and worker population (approximately 1,100 dwellings and 7,000 new workers);
- the unresolved impacts regarding precinct wide drainage and flooding issues that will result in a need for Council to carry out significant capital works that are currently unfunded;
- the provision of affordable rental housing;
- the proposal not reflecting the urban design and built form recommendations provided by Rod Simpson and Council's Architectural Excellence Panel; and
- the appropriateness of permitting a 14 storeys building envelope for Block D as a building of such height would completely overshadow and destroy the amenity of Wicks Park.

Affordable Housing

The Proponent's Planning Proposal included the provision of affordable rental housing.

The draft amendment does not include any requirement for the provision of affordable housing within the Victoria Road Precinct. It is not known why an affordable rental housing provision is not included in the draft amendment.

To not include a provision for affordable rental housing in the draft amendment is incomprehensible and not in the public interest.

It is noted that under Division 1 Infill affordable housing of State Environmental Planning Policy (Affordable Rental Housing) 2009 includes an affordable housing provision. It is also noted that if a development application was submitted where a proponent proposed to provide some affordable rental housing, a consent authority would be able to impose a condition of development consent relating to the provision of that affordable housing, under Section 80A of the Act, as it would be a condition relating to the development the subject of the applicant.

As stated previously the proponent's Planning Proposal included the provision of affordable housing. It is imperative that a requirement for the provision of affordable rental housing be included in the LEP controls for the Victoria Road Precinct.

Maps

The draft amendment includes a number of amendments to Maps which form part of Marrickville Local Environmental Plan 2011.

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Because of the time given for Council's response, officers have not had an opportunity to review the maps forwarded to Council on Wednesday afternoon 1 November 2017, relating to the planning proposal other than a cursory glance.

It is noted that the Key Sites Maps identify the land coloured green rather than blue as detailed in proposed Clauses 6.17 (2) and 6.18 (2). It is also noted that the notation in the Legend to the Map refers to "Clause 6.16" and not the clauses referred to in the draft instrument. It is also noted that the land identified as "K" on the Key Sites Maps includes land outside the land to which the Planning Proposal relates, being the land which comprises Marrickville Public School at 116 Chapel Street, Marrickville.

It would also appear that the Maps prepared may not necessarily be based on the existing current LEPs. For example proposed map LZN_004 contains some information that is not consistent with the current map.

Implications for other Planning Proposals

The Inner West Council has a number of planning proposals which are currently being assessed which seek to rezone currently zoned industrial zoned areas to permit other forms of development (e.g. land in the Carrington Road Industrial Precinct). There are also a number of planning proposals under consideration where Council is seeking to ensure that adequate affordable housing is provided.

Approval of the planning proposal as submitted, without any amendments, would set an undesirable precedent and weaken the Council's position to ensure that such matters as adequate affordable housing is provided.

The planning proposal relates to a significant amount of land which is currently zoned industrial and which forms part of the Marrickville-Sydenham Industrial precinct. That precinct is the largest industrial precinct in the Inner West Council local government area.

Council's recent industrial lands studies did not envisage such a significant loss of industrial zoned land that recent Planning Proposals, including the subject proposal, have sought. It is also noted that the 2015 Hill PDA Industrial Precinct Review, prepared for the NSW Department of Planning to inform the Greater Sydney Commissions Draft Central District Plan, does not support or justify any loss of industrial/employment land that is shown to be healthy in the Marrickville-Sydenham industrial precinct.

Like former draft District Plans, the recently released draft Eastern City District Plan encourages councils to take a 'precautionary approach' to the conversion of employment and urban services land and this recommendation is of particular importance to the Inner West LGA.

In light of the above it is considered that approval of the planning proposal, as submitted, would bring into question the 'precautionary approach' to the conversion of employment and urban services land encouraged under the draft District Plan. It is contended that such an approval would start to undermine the integrity of that approach.

Conclusion

It is understood that pressure is being exerted on the Department to finalise the proposal. As detailed in this submission there are a number of substantive matters/issues that remain outstanding or not satisfactorily resolved. Those matters need to be satisfactorily resolved before the gazettal of any amendments to the planning controls that apply to the land.



As stated previously, the draft amendment lacks certainty for controlling future development in the Victoria Road Precinct and effectively leaves the determination of fundamental impacts of the planning proposal to a later date via a DCP that provides for the matters specified in proposed Clause 6.17 (3).

Whilst gazettal of the draft amendment may get the planning proposal off the Department's desk, with so many substantive matters not satisfactorily resolved it is contended that the gazettal of the draft amendment, as currently proposed, would not be a good planning outcome for future development in the Victoria Road Precinct, and would be a clear a dereliction of the Department's duties and responsibilities.

If this draft amendment proceeds without more precise, enforceable wording and changes to accommodate Council's serious concerns, it will become an open door for developers to evade their responsibilities and pass on the costs of providing the necessary public infrastructure required to the wider community without any compensatory local benefits and undermine the achievement of potential good planning outcomes.

This will border on public negligence by the State Government.

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