

Draft Statement of Environmental Effects To accompany Planning Proposal

64 Victoria Road, North Parramatta

August 2020

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Appendix	Title	Prepared By											
1	Plans and Traffic and Parking Assessment	Lyle Marshall and Partners Pty. Ltd.											

1.1 Summary

Site Details	
Address	64 Victoria Road, North Parramatta
Property Description	Lot 1 DP662142
Area	495m2
Local Government Area	Parramatta
Current Use	Dwelling and take away food premises.

General Details	
Proposal	To use the existing premises as a 'take away food and drink premises' and add new signage, fitout, make modifications to the existing front and make repairs to the awning.
Application Type	Development Application
Level of Assessment	Local
Consent Authority	Parramatta City Council
Applicable Codes	Parramatta LEP 2011

1.2 History

An application for a sign and modified shop front was recently withdrawn following advice by Council that they can find no record of the 2007 consent for a pizza shop having been properly activated via a Construction Certificate or Occupation Certificate.

A pre-lodgement meeting (DL/552/2018) was held in relation to this site on 6 July 2018. It was under that the applicant must confirm existing use rights exist on the premises. The application was subsequently lodged with a legal opinion supporting existing use rights and evidence that the uses has not ceased.

Council acknowledged that the use had not ceased but legal advice noted that the failure to 'activate' the 2007 consent properly was the issue, irrespective of the ongoing use.

On 12 September 2019 Council served a Notice of intention to Give an Order (Council Reference: 349 356) to cease the unauthorised use. This matter became the subject of a Land and Environment Court appeal. The result was a modified Order dated 16 July 2020

The modified Order allowed the use of a "take away food and drink premises" to continue, provided that a Planning Proposal and DA was lodged for the property. This DA is appended to that Planning Proposal and can be considered after Gateway Determination.

The agreement via the Court process and the Amended Order aimed to remove the need to prove existing use rights, thereby removing any future legal proceedings for both parties. In the interim, the use of the site continues as a "food and drink premises".

More detail around the site approvals history is contained in Section 1.4.

1.2 Preamble

The purpose of this report is to describe the proposed development and review the relevant planning requirements relating to the proposal. It provides an assessment of the proposed development in terms of the Evaluation Criteria prescribed under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

In the preparation of this Statement of Environmental Effects the site and the locality has been considered along with the attached plans.

This application is also intended to be assess with the Planning Proposal for the site, pursuant to Division 3.5 Planning instrument amendments and development applications. For this reason all discussions in relation to existing use rights have been removed, as they are not necessary in this case.

1.3 Site and Locality Description

The site originally contained a 60m2 shop and dwelling house with parking in the rear yard. It is likely that the property was constructed in the early 1900s. It is located on a busy road with a range of residential dwellings and buildings in the nearby area.

The site is on the northern side of Victoria Road and has a rear boundary width of 15.67m and front boundary width of 16.4m2. The site area is 495m2 and the length is an average of about 31m.

Images showing the site in context are set out below in Figures 1 and 2 and in the photos that follow.



Figure 1:Locality map. Source: NSW Government - Six Maps



Figure 2: Aerial photograph of the proposed site. Source: NSW Government - Six Maps



Photo1:Street view of the premises



Dearoom townhouses over basement car parking. Status: Refused Lodged: 16/12/1997

DA/348/2006 – Development Application: Internal alterations and use of existing premises for the purpose of a mixed business. Status: Withdrawn Lodged: 24/04/2006

DA/757/2007 – Development Application: Proposed pizza shop, demolish the existing garage and internal alterations to the existing dwelling. Status: Approved Lodged: 12/09/2007

DA/757/2007/A – Development Application - Section 96 modification to an approved pizza shop, the modifications include changing the use of a pizza shop to a seafood shop. Status: Approved Lodged: 06/03/2008

DA/197/2018 – Development Application: Replace content of an above awning sign and wall sign. Status: Withdrawn Lodged: 23/03/2018

The site is likely to have been approved prior to 1940 or thereabouts. The existence of this existing commercial building is confirmed in 1943, as shown in the aerial photograph below:



Figure 3:Aerial photograph of the proposed site 1943. Source: NSW Government – Six Maps

The validity of historic site approvals was demonstrated in Council's 1996 approval for signage associated with a "mixed business" use. Additionally, anotherconsent for the property was established by DA/419/1997 where a Mixed Business shop was approved on 17 September 1997.Furthermore, a2007 approval (DA/757/2007) recognised the validity of this 1997 approval. In the 2007 consent, Parramatta LEP 2001 allowed "local shops" in the R2 zone which applied to the site at that time. In the 2001 LEP, "local shop" was defined as: "a shop which operates primarily to serve the needs of the surrounding residents or workers and does not exceed 60 square metres in floor space area." The consent was careful to ensure the area requirement was met for this use. At this point the site <u>does not</u> have existing use rights and the commercial use of the premises (to a maximum of 60m2) did not require them.

Part 4 of Parramatta LEP 2001 provided additional provisions in Clause 43 which applied to land zoned 2(b):

43 Special Provisions applying to certain land

(2) Where an existing building was lawfully constructed for use as a shop, a person may with development consent,

(a) use that building as a shop or commercial premises, or

(b) alter, extend or rebuild that building for use as a shop or commercial premises.

Council's 2007 Assessment Report confirms that "the existing building was lawfully constructed for the use as a shop/ commercial premises ..." The specificity around the nature of the use (pizza shop, seafood, grocery store etc.) is irrelevant to the issue of existing use rights (as demonstrated in Section 1.5.2 below).

The Parramatta LEP 2011 then rezoned the land to R3 – Medium density residential and changed the relevant definitions. The new zone allows for "neighbourhood shops" which are clearly intended to function like a 'corner store' that provides a wide range of household items. The definition is shown below:

neighbourhood shop means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.

At the commencement of Paramatta LEP 2011, the site was being used as a takeaway food shop. Under the 2011 LEP, this use would be appropriately called a "food and drink premises" which is prohibited. The former definition of "local shop" was broad enough to accommodate allthese former types of uses, notwithstanding the distinction provided withineachof the consents.

While the use has never ceased, it was Council's question as to whether the 2007 consent was ever properly activated that ultimately led to the Amended Order being issued for the site.

2. Description of Proposal

2.1 General Description

This Development Applicationseeks consent to fitoutand use the food and drink premises and change the signage, as shown in the attached plans.

The architectural plans include floor plans and a detailed schedule of materials as relevant. The floor area of the premises is the area required to accommodate a modest food and drink premises with ancillary cool rooms and storage area.

2.2 Signage

The property has an awning sign, an under-awning sign and a wall sign on the eastern façade. The photographs below show the signage that exists.



2. Description of Proposal



2.3 Hours of Operation & Staff

The proposed hours of operation are:

8am to 10pm, seven days per week.

Staff is to be three (3) people.

2.3 Access, Traffic and Parking

Access to the parking at the rear of the site remains as existing. No increase in floor area means no additional parking is required. Currently seven (7) spaces exist in the rear yard, plus a shared parking loading area. The 2007 consent noted that the DCP required two (2) spaces and only two (2) were proposed. In this regard the rear yard provides five (5) more spaces than required.

Attached to the application is a traffic and parking assessment, showing the swept path diagrams for two sizes of vehicles, demonstrating that all cars can enter and leave the site in a forward direction.

3.1 Environmental Planning and Assessment Act 1979

The Act is the principle planning and development legislation in New South Wales. In accordance with Section 1.3, the objectives of the Act are: -

"(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,
- (iii) the protection, provision and co-ordination of communication and utility services,
- (iv) the provision of land for public purposes,
- (v) the provision and co-ordination of community services and facilities, and
- (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
- (vii) ecologically sustainable development, and
- (viii) the provision and maintenance of affordable housing, and..."

For the reasons set out below, the proposed development satisfies the above stated objectives of the Act: -

- The proposed development will provide a valuable commercial service to the local community;
- Creation of a viable premises that provideslocal jobs;
- The proposal will result in the orderly and economic use and development of land that has a long history as a small shop;

3.2 Provision of relevant Environmental Planning Instruments

Section 4.15 (1)(a)(i) requires the consideration of all relevant Environmental Planning Instruments at the Development Application Stage.

The proposed development has been prepared having regard to the following EPI's:

- SEPP 55 Remediation of Land
- SEPP 64- Advertising and Signage
- Parramatta LEP 2011

3.2.1 SEPP 55 – Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Contaminated Lands (SEPP 55) establishes State-wide provisions to promote the remediation of contaminated land.Clause 7 of the SEPP 55 requires that a consent authority must not grant consent to a development if it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

This application will not cause any change to site conditions that would cause concern in this regard. Renovation work will have appropriate regard to materials that many be dangerous. Usual conditions and guidelines apply.

3.2.2 SEPP 64 – Advertising and Signage

In granting consent under the SEPP the following clause provides the operative provisions:

Clause 8 – Granting of consent to signage

A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:

- (a) that the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and
- (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.

The overall objectives of the SEPP are as follows:

- (a) to ensure that signage (including advertising):
 - (i) is compatible with the desired amenity and visual character of an area, and
 - (ii) provides effective communication in suitable locations, and
 - (iii) is of high quality design and finish, and
- (b) to regulate signage (but not content) under Part 4 of the Act, and
- (c) to provide time-limited consents for the display of certain advertisements, and
- (d) to regulate the display of advertisements in transport corridors, and
- (e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.

The proposed wall and fascia signs replace existing signage. The proposed signs communicate business names, general activity, hours of operation and introduce a 'splash' of colour to the existing blue building.

Their location on the building does not damage the amenity of the area although the building is unique to the residential setting.

This application accords with the objectives of the SEPP.

The Table below outlines compliance with the assessment criteria outlined in Schedule 1 of the SEPP:

TABLE 1: SEPP 64 – Schedule 1Assessment Criteria Compliance Table											
1 Character of the areaIs the proposal compatible withThe character of the area is residential											
e character of the area is residential d signage is limited to this premises e existing signage on the site has opted a range of colours pending on the operator. The oposed signage for the Chinese keaway is appropriate to the ilding. The building is unique in ntext because of existing use rights. e signage is suitable for the ongoing e of the site.											

Is the proposal consistent with a particular theme for outdoor advertising in thearea or locality?	~	No particular theme exists.
2 Special Areas		
Does the proposal detract from the amenity or visual quality of anyenvironmentally sensitive areas, heritage areas, natural or other conservationareas, open space areas, waterways, rural landscapes or residential areas?	✓	No. It replaces existing signage.
3 Views and Vistas		
Does the proposal obscure or	,	No.
compromise important views?	✓	
Does the proposal dominate the skyline and reduce the quality of vistas?	✓	No. The building and signage exists.
Does the proposal respect the viewing rights of other advertisers?	✓	Yes.
4 Streetscape, setting or landscape		
Is the scale, proportion and form of the proposal appropriate for thestreetscape, setting or landscape?	✓	Yes, it is proportional to the wall of the existing single storey building and the fascia sign relates to the proportions of the facia.
Does the proposal contribute to		These unobtrusive signs add colour to
the visual interest of the	~	the façade and reduce the visual
streetscape, setting orlandscape?		impact of the walls.
Does the proposal reduce clutter by rationalising and simplifying existingadvertising?	1	It replaces existing signage.
Does the proposal screen unsightliness?	-	No unsightliness is required to be screened.
Does the proposal protrude above buildings, structures or tree canopies in thearea or locality?	✓	No.
Does the proposal require ongoing vegetation management? 5 Site and building	1	No.

Is the proposal compatible with the scale, proportion and other characteristicsof the site or building, or both, on which the proposed signage is to be located?	✓	Yes. The signs relate to the scale of the building.
Does the proposal respect important features of the site or building, or both?	✓	Yes, although the building is hardly significant. The signs will maintain window openings and complement the horizontal proportions provided by the awning.
Does the proposal show innovation and imagination in its relationship to thesite or building, or both?	-	No.
	adv	ertisements and advertising structures
Have any safety devices, platforms, lighting devices or logos been designed asan integral part of the signage or structure on which it is to be displayed?	1	No safety devices, lighting or platforms are proposed.
7 Illumination		
Would illumination result in unacceptable glare?	~	No illumination is proposed.
Would illumination affect safety for pedestrians, vehicles or aircraft?	~	No.
Would illumination detract from the amenity of any residence or other form of accommodation?	1	No.
Can the intensity of the illumination be adjusted, if necessary?	✓	N/A
Is the illumination subject to a curfew?	✓	N/A
8 Safety		
Would the proposal reduce the safety for any public road?	~	No.
Would the proposal reduce the safety for pedestrians or bicyclists?	✓	No.
Would the proposal reduce the safety for pedestrians, particularly	✓	No.

children, byobscuring sightlines from public areas?

3.2.3 Local Environmental Plan.

The site is zoned R3 – medium density residential under Parramatta LEP 2011. The use as a "food and drink premises" permissible in the zone, having been added as an additional permissible use, following the Planning Proposal approval for the premises.

No change is proposed to the building height or floor area. It is noted that the commercial floor area subject to the additional use has been resolved as part of the Planning Proposal. This application reflects this decision.

Minor affectation by Acid Soils applies to the site but no earthworks are proposed.

No other operative provision of the LEP applies, given this proposal is for the use of an existing premises.

3.3 Provision of relevant Draft Environmental Planning Instruments

Section 4.15(1)(a)(ii) requires Council to consider the Provisions of relevant Draft Environmental Planning Instruments.

No relevant draft instruments apply, beyond the site specific Planning Proposal discussed.

3.4 Provisions of relevant Development Control Plans

Section 4.15(1)(a)(iii) of the act requires the consideration of Council's DCPs.Parramatta DCP 2011 applies and provides some guidance in relation to signage. Section 5.5 applies very similar controls to those outlined in SEPP 64. To avoid unnecessary repetition they are not repeated again here. All sizes are within usual sign size requirements noted in the DCP.

3.5Agreements & Provisions of Regulations etc.

- Section 4.15(1)(a)(iiia) requires consideration of any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4,
- Section 4.15(1)(a)(iv) requires consideration of the EPA Regulation.

3.5.1 Planning Agreements:

There is no current planning agreement or draft agreements included in this proposal at the time of writing.

3.5.2 EPA Regulations:

All demolition work will be undertaken in accordance with Clause 92 of the EPA Regulations 2000 requiring the consent authority to consider AS 2601 - 1991: The Demolition of Structures.

All building work will be carried out in accordance with Clause 98 of the EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia.

4. Impacts & Site Suitability

4.1 Likely Impact of Development

Section 4.15(1)(b) requires consideration of the likely impact of the development. Details impact analysis has been carried out in consideration of the LEP and DCP as noted above. An analysis of potential impacts is summarised below.

4.1.1 Context & Setting; Potential impacts on adjoining properties

<u>Context:</u>

The current context is an established residential area on a busy road. The shop has been a long-standing use and is well known to all residents.

The proposal will not adversely impact upon the amenity of the local neighbourhood and seeks to continue its use as a food premises.

4.1.2 Access, transport and traffic

No expansion of floor space is proposed and no change is proposed to on-site parking. Five (5) more parking spaces are proposed than are required ensuring no impact to adjoining properties in terms of street parking. The quantum of trips to and from the site is minor in the context of Victoria Road. There will be no new impact. The traffic and parking assessment is provided as an attachment to this application to demonstrate suitability of the site. Vehicles can all enter and leave the site in a forward direction. The parking rate exceeds most commercial zones at any location.

4.1.3 Public domain

There will be no significant change to the public domain.

4.1.4 Heritage

The site is not a listed heritage item.

4.1.5 Utilities; Other land resources; Water; Soils; Air and Microclimate; Flora & Fauna; Waste; Energy; Noise & vibration; Natural Hazards; Technological Hazards

The proposal has no impact on these matters. All services remain available to the site.

Noise:

Noise has been determined in previous consents with appropriate conditions added. The previous condition was:

- 25. The use of the premises not giving rise to:
- a. transmission of unacceptable vibration to any place of different occupancy
- b. a sound pressure level measured at any point on the boundary of any affected residential premises that exceeds the background (LA90) noise level in the absence of the noise under consideration by more than 5dB(A) between 7:00am and 10:00pm on any day. Sound pressure levels from activities including plant and equipment shall not exceed measured background levels after 10:00pm and until 7:00am. The source noise level shall be assessed as an LAeq. 15 min and adjusted in accordance with guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content as described in the NSW EPA's Environmental Noise Control Manual, Industrial Noise Policy 2000 and the Protection of the Environment Operations Act 1997.

Reason: To prevent loss of amenity to the area.

Odour:

The existing consent incorporates conditions relating to odour, having regard to Australian Standard 1668 (Parts 1 and 2).

Condition 24 of the latest consent also required a waste room and a requirement that, "all putrescible waste shall be removed from the site with sufficient frequency to avoid nascence from pests and odours."

Condition 26 of the latest consent also imposed a requirement that the premises, "not give rise to emissions or air impurities in contravention of the Protection of the Environment Operations Act 1997. Air emissions from the premises must not cause a nuisance from odours, nor be hazardous to human health or the environment."

Similar conditions will be added to the new DA consent once it is finalised.

<u>Waste:</u>

4. Impacts & Site Suitability

The existing consent incorporates conditions relating to waste storage and disposal for a food premises, having regard to the food safety standards prescribed under the Food Safety Act 2003 and Australian Standard 4674 – 2004. A similar condition will be added to the new DA consent once it is finalised.

4.1.6 Safety, Security & Crime Prevention; Social impact in the locality; Economic impact in the locality

This proposal will enhance the economic vitality of the area as a new local businesseswill be using the premises.

The take-away food shop provides a natural place of surveillance in the locality.

4.1.7 Site Design and internal design

No structural changes are proposed. The parking has been demonstrated to be appropriately designed. Loading is possible on the site.

4.1.8 Construction; Cumulative Impacts

There are no significant cumulative impacts other than those associated with the use. These have been considered in the Planning Proposal and addressed in previous consents on the property. Construction impacts are internal only can all be well managed through conditions of consent and established legislation.

4.2 Suitability of the Site

Section 4.15(1)(c) requires consideration of the suitability of the site.

4.2.1 Proposal fits in the locality

The proposal is a continuation of a long-established commercial premises being a food premises.

4.2.2 Site attributes conducive to development

This is evident in design and supported by specialist reports.

4. Impacts & Site Suitability

4.3 Submissions

Section 4.15(1)(d) requires assessment by Council following exhibition.

4.4 The Public Interest

Section 4.15(1)(e) requires the public interest to be considered. At this stage there are no known issues of public interest relevant to this application at this stage.

The Planning Proposal did include a petition of local residents offering their support for the use being regularised on the site.

5. Conclusion

This application for the use of the premises follows the approval of a Planning Proposal for the premises to regularise the long term use of the site as a food and drink premises. Each work together to remove the reliance on existing use rights and provide surety to the property owner.

The impacts have been well considered and are acceptable in the context. Certain impacts will be managed via conditions of consent to further assist in mitigation.

There are no new building works or increase in floor area. Internal renovations and painting etc. do not require DA approval and do not represent an impediment to issuing the consent requested.

Tim Stewart Town Planner





PETITION

To: Town Planning Parramatta City Council

PO Box 22 PARRAMATTA NSW 2150

Dear Sir/ Madam

RE: Development for Chinese Take Away

Property : 64 Victoria Rd Parramatta NSW 2150

We, the undersigned hereby express our support of the above DA application as we need this Chinese take away shop in the surrounding neighbourhood.

No	NAME	ADDRESS	SIGNATURE
1	Relacce Te Amo	9 Irving St 2150	& total
2	Nick Peek	110 Victoria Rol 2150	A.M.
ß	Atshoy Gaulli	130 BWIER STREE 2151	Me
4	Ham Brandon	130 Victoria Road 2150	A
5	PAT MIGAUD	3-5 Post OFFICE St 211B	2.2
9	Simon Cerner	5 REVENDEN AVENE 2763	SCerer
2	MARIN CHILLOS	22-169 ENANT AND Nonday	and the
8	JENNY RISHOP	11/38 BRICKFIELD ST 2951	
ი	Richard Mersina	7/28 KINg St, Panemath, 2130	C. And Tax,
10	APRILA HONDSON	2/80 occurrent St Devered	the edded the

PETITION

To: Town Planning Parramatta City Council PO Box 22 PARRAMATTA NSW 2150 Dear Sir/ Madam RE: Development for Chinese Take Away Property : 64 Victoria Rd Parramatta NSW 2150 We, the undersigned hereby express our support of the above DA application as we need this Chinese take away shop in the surrounding neighbourhood.

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To: Town Planning Parramatta City Council PO Box 22 PARRAMATTA NSW 2150 Dear Sir/ Madam RE: Development for Chinese Take Away Property : 64 Victoria Rd Parramatta NSW 2150

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We, the undersigned hereby express our support of the above DA application as we need this Chinese take away shop in the surrounding neighbourhood.

No	NAME	ADDRESS	SIGNATURE
	XICONG WANG	5/18 Retis St, Parramatia	
2	Yun Xir Cai	3116 Berli Si Monaria	Yun D'n Cei
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2	Jason Ture	Relfs St Parrametta	L.
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PETITION

J.

Property : 64 Victoria Rd Parramatta NSW 2150 **RE: Development for Chinese Take Away** PO Box 22 PARRAMATTA NSW 2150 **Parramatta City Council** To: Town Planning Dear Sir/ Madam

We, the undersigned hereby express our support of the above DA application as we need this Chinese take away shop in the surrounding neighbourhood.

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	NAME	Rachard Wothe	Valde Nolan	TOIL GPANSHAW	Dames Carlin	S Runret	N. BARRISKILL	Re Borchau	1 1 1	I Accertacy	HERE SLOUTS	ehen	C Smith	5 Meruna	M Cawtrone	P. STOLL
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	22 WANDSWERTH SI THRAMM. IT SULVAR	Wands with it Parameter	THE AVENDIE GRANVILLIE EVIDOR		CT PARAMATTA ANDIN		ISBRELLAST PARAMMEN K. LeV GUC	22-24 Early Street Parcamatta P.H.	N 11	48-152 PENNAUT SI PARMA. MATCH	18, 10-12 New St, Nontr/MARTH Kett Sende	PENNANT WILL REPART A	ST PARKAWATA Z. W.		
NAME ADDRESS	Thegon Stonhein 22 WA	GATTU 1/1	V122aRR1 1/33	FURDAN AGUS 13/10/1	ANABELLE TILLS ZI INING ST	26	RAYMEND KHARAN 10 TS	0	Zoran Mihal, 2051	EUA VIJEN 148-1/2	SARHAM (Azil Ausayed 127/R	SHAUF GOINS 3 FACTORY		
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