

**PLAN 03****Planning Proposal Request - 104 Fifteenth Avenue, West Hoxton**

<b>Strategic Direction</b>	Strengthening and Protecting our Environment Exercise planning controls to create high-quality, inclusive urban environments
<b>File Ref</b>	050242.2022
<b>Report By</b>	Lilyan Abosh - Strategic Planner
<b>Approved By</b>	David Smith - Director Planning & Compliance

<b>Property</b>	104 Fifteenth Avenue, West Hoxton
<b>Owner</b>	Dalco (NSW) Pty Ltd & Covo Positano Pty Ltd
<b>Applicant</b>	Fabrizio D'Alfonso

**EXECUTIVE SUMMARY**

On 27 October 2021, Council received a planning proposal request on behalf of Mr Fabrizio D'Alfonso for land at 104 Fifteenth Avenue, West Hoxton. An updated planning proposal request (**Attachment 1**) was submitted to Council on 8 February 2022 following a request for additional information.

The planning proposal request seeks to amend the Liverpool Local Environmental Plan 2008 (LLEP 2008) to relocate the key site polygon as it relates to 104 Fifteenth Avenue, on the Key Sites Map in the LEP. The key site provision applying to the eastern portion of the site allows for additional permitted uses, being a service station and take away food and drinks premises.

In July 2021, Council received a Development Application (DA-750/2021) for the subject site seeking the demolition of the existing structures and construction of a service station and convenience store, take away food and drinks premises (McDonalds), childcare centre and Torren's title subdivision into 19 residential allotments.

The Development Application (DA) was referred to Transport for New South Wales (TfNSW) for concurrence. TfNSW advised the future road boundary of Fifteenth Avenue will likely necessitate additional land to be acquired along the Fifteenth Avenue and Second Avenue frontages. Due to the encroachment of the future road boundary into the key site polygon, the service station and take away food and drinks premises could no longer be accommodated within the key site boundary.

**PLANNING & COMPLIANCE REPORT**

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Accordingly, the intent of the planning proposal request is to facilitate the development of the service station and take away food and drink premises, in accordance with the development outcome proposed under DA-750/2021. The DA is intended to be assessed concurrently with this planning proposal.

The planning proposal request was considered by the Liverpool Local Planning Panel (LPP) on 28 February 2022, as required by the Local Planning Panels Direction – Planning Proposals. Following consideration of the planning assessment report (**Attachment 2**), the LPP advised (**Attachment 3**) that the proposal has strategic and site-specific merit and supported the proposal proceeding to a Gateway determination.

It is recommended that Council note the advice of the LPP and support the planning proposal request proceeding to the Department of Planning and Environment (DPE) for a Gateway determination, noting that a further report will be provided to Council after state-agency consultation and public exhibition is complete.

**RECOMMENDATION**

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That Council:

1. Notes the advice of the Liverpool Local Planning Panel;
  2. Endorses in principle the planning proposal request to amend Clause 9 in Schedule 1 – Additional permitted uses of the Liverpool Local Environmental Plan 2008;
  3. Delegates to the Acting CEO (or delegate) the preparation of the formal planning proposal including any typographical or other editing amendments if required;
  4. Forwards the planning proposal to the Department of Planning and Environment, pursuant to Section 3.34 of the Environmental Planning and Assessment Act 1979, seeking a Gateway determination;
  5. Subject to Gateway determination, undertake public exhibition and community consultation on the planning proposal in accordance with the conditions of the Gateway determination and the Liverpool Community Participation Plan; and
  6. Receive a further report on the outcomes of public exhibition and community consultation.
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## REPORT

### Site and locality

The planning proposal request relates to land at 104 Fifteenth Avenue, West Hoxton (Lot 2 DP 1074727). The subject site is irregularly shaped and has a total area of approximately 18,230m<sup>2</sup>. The site is located at the corner of Fifteenth Avenue and Second Avenue. Fifteenth Avenue is currently under investigation for further upgrades, including road widening. A transmission line easement on the neighbouring lot also runs adjacent to the western boundary of the property.

The site is zoned part R2 Low Density Residential and part SP2 Infrastructure. The portion of



Figure 1 - Aerial image of the locality (Source: Michael Brown Planning Strategies)

land zoned SP2 Infrastructure relates to the future road widening of Fifteenth Avenue and is to be acquired by Transport for New South Wales (TfNSW) in accordance with Clause 5.1 of the LLEP 2008.

The lot is identified as a key site within Clause 9 of Schedule 1 Additional permitted uses in the LEP, allowing for the development of a service station and take away food and drink premises. The key site provision only applies to the eastern portion of the lot and restricts any takeaway food and drink premises to a maximum gross floor area (GFA) of 300m<sup>2</sup>.

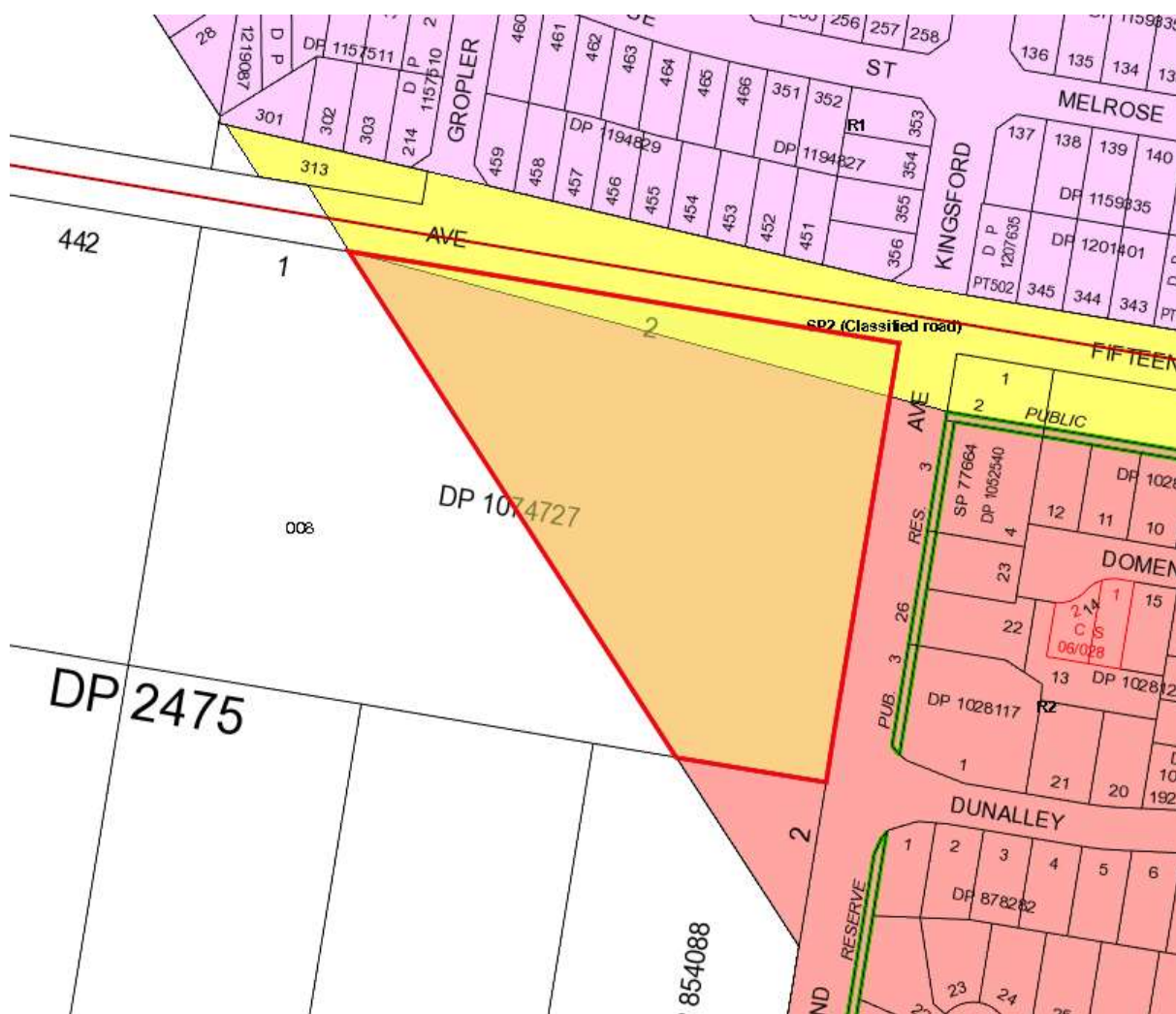


Figure 2 - Zoning of the subject site (Source: LCC Geocortex)

## Background

In July 2021, a Development Application (DA-750/2021) was lodged for demolition of the existing structures and construction of a service station and convenience store, take away food and drinks premises (McDonalds), childcare centre for 90 children and Torren's title subdivision into 19 residential allotments.

Pursuant to Section 138 of the Roads Act 1993, the application was referred to TfNSW for concurrence. On 3 September 2021, TfNSW responded with the following:

*"TfNSW advises that the subject property is within an area under investigation for the proposed Fifteenth Avenue Upgrade. The subject site (Lot 2, DP 1074727) will likely be affected by road widening to facilitate for the rapid transit corridor from Liverpool to Nancy Bird Walton Airport. As such the development should not intrude on the potential future road boundary (blue line) as stipulated in the attached aerial image."*



## PLANNING & COMPLIANCE REPORT

The potential future road boundary indicated in Figure 3 by TfNSW necessitates the acquisition of additional land and encroaches significantly into the key site polygon. As a result, the site configuration proposed under DA-750/2021 could no longer be accommodated.

## Subject Planning Proposal



Figure 2 - Potential future road boundary provided by TfNSW (Source: TfNSW)

The planning proposal request, prepared by Michael Brown Planning Strategies, initially sought to amend the Key Sites Map, Land Acquisition Map and Land Zoning Map, to reflect the additional land to be rezoned SP2 Infrastructure. Prior to lodgment, Council suggested the Land Acquisition Map and Land Zoning Map not be amended as part of this proposal, as the area require for future acquisition will be informed by the final design of the Fifteenth Avenue upgrade, which is not completed.

### Additional Information Request

Following an initial assessment of the proposal, a request for additional information was sent to the proponent on 10 January 2022. The points outlined within the letter relating to the irregular shape of the proposed key site provision were addressed in the amended planning proposal requested submitted on 8 February 2022.

The planning proposal request seeks to amend the LLEP 2008 to facilitate the development of a service station and take away food and drinks premises. It is envisaged that future development of the entire site will comprise of a:

- Service station and associated convenience store;
- Take away food and drink premises;
- Childcare centre for 90 children; and
- Torrens title subdivided residential allotments.

The proposal is to be achieved through relocating the key site polygon as it relates to Lot 2 DP 1074727 Fifteenth Avenue on the Key Sites Map.

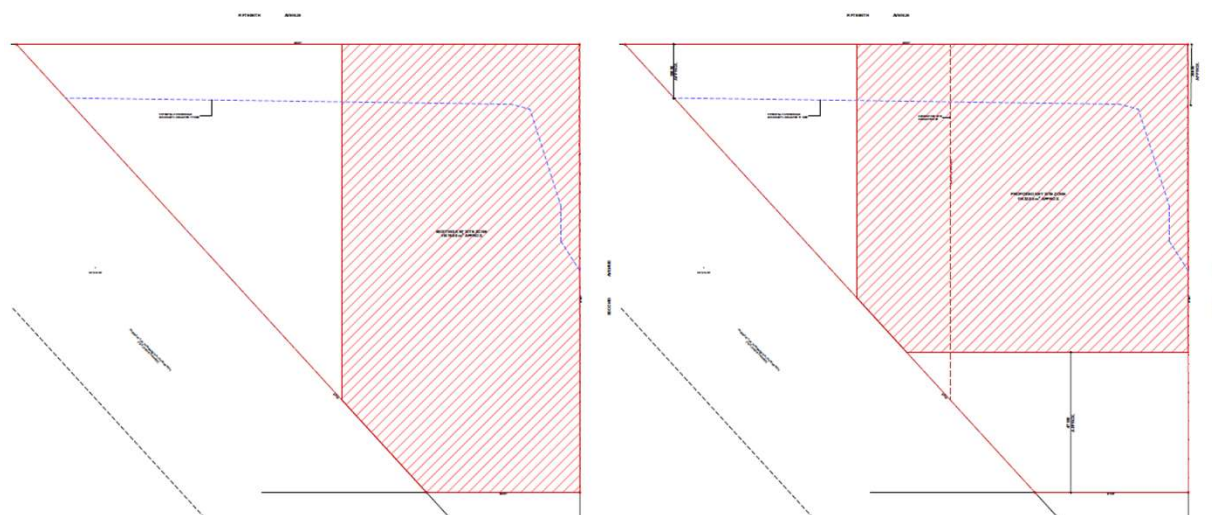


Figure 4 - Existing (left) and proposed (right) Key Site Map polygon (Source: Michael Brown Planning Strategies)

## Planning Assessment

The planning assessment report considered by the Liverpool Local Planning Panel (LPP) is provided at **Attachment 2**. It includes an assessment of the merits of the proposal against the District and Region Plan, the Liverpool Local Strategic Planning Statement (LSPS) and the Department of Planning's 'Local Plan Making Guidelines'. The report concluded that the planning proposal request has site-specific and strategic merit and will rationalise the development of the site in accordance with the key site provision.

## Liverpool Local Planning Panel Advice

The planning proposal request was considered by the LPP on 28 February 2022 for advice. The LPP supported the planning proposal request proceeding to DPE for a Gateway determination.

Council staff comments on the LPP advice is outlined in Table 1.

*Table 1 - LPP Advice and Council Staff Response*

<b>LPP Advice</b>	<b>Council Staff Comment</b>
<i>The Panel neither endorses or disendorses any particular design for the service station, take away food and drink premises and/or childcare centre. Detailed design issues and the inter-relationship between proposed uses are a matter for the proponent and Council's development assessment officers in consultation with State Agencies as part of the DA.</i>	Noted.  Matters surrounding compatibility of the uses and detailed design will be dealt with in the separate assessment of DA-750/2021 noting that these uses are already permissible with consent.
<i>The Panel recommends Council officers reconsider their assessment of the Planning Proposal against Section 9.1 Ministerial Direction 6.3. The Planning Proposal appears to be inconsistent with that direction.</i>  <i>However, the Panel considers that the inconsistency is justified on the basis that it is of minor significance, being a minor mapping change to an existing Key Site boundary.</i>	Council agrees with the panel's consideration of the proposal against Ministerial Direction 6.3. The planning proposal will reflect this prior to being reported to DPE for a Gateway determination.
<i>The Panel also recommends that the Planning Proposal be publicly notified concurrently with an amended development application in accordance with section 3.40 of the EP&amp;A Act.</i>	Council will ensure the planning proposal and amended DA are exhibited concurrently should the proposal receive a Gateway determination.

## **CONCLUSION**

It is recommended that Council endorse in principle the planning proposal request and that it be forwarded to DPE for a Gateway determination. This is supported by the advice of the LPP and Council's assessment that the proposal has sufficiently demonstrated both strategic and site-specific merit.

Upon receipt of a Gateway determination, public exhibition and community consultation will be undertaken. Council will then receive a post-exhibition report for a final decision on the proposal including any possible amendments resulting from the consultation process.

## **FINANCIAL IMPLICATIONS**

There is no unbudgeted financial impact if Council supports the recommendation in this report. A fee has been paid by the proponent for the assessment and processing of this planning proposal request.

## **CONSIDERATIONS**

<b>Economic</b>	Facilitate economic development.
<b>Environment</b>	There are no environmental and sustainability considerations.
<b>Social</b>	There are no social and cultural considerations.
<b>Civic Leadership</b>	Encourage the community to engage in Council initiatives and actions. Provide information about Council's services, roles and decision making processes. Operate a well-developed governance system that demonstrates accountability, transparency and ethical conduct.
<b>Legislative</b>	Environmental Planning and Assessment Act 1979.
<b>Risk</b>	The risk is deemed to be Low. The risk is considered within Council's risk appetite.

## **ATTACHMENTS**

1. Planning Proposal Request (Under separate cover)
2. Planning Assessment Report (Under separate cover)
3. Local Planning Panel Advice (Under separate cover)
4. Current ASIC Extract - Dalco (NSW) Pty Ltd (Under separate cover) -  
**Confidential**
5. Current ASIC Extract - Covo Positano Pty Ltd (Under separate cover) -  
**Confidential**