



IRF 22/1573

## Gateway determination report – PP-2021- 6200

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Liverpool LEP 2008 Amendment to Key Sites Map

May 22



Published by NSW Department of Planning and Environment

[dpe.nsw.gov.au](http://dpe.nsw.gov.au)

Title: Gateway determination report – PP-2021- 6200

Subtitle: Liverpool LEP 2008 Amendment to Key Sites Map

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# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

## Contents

<b>1</b>	<b>Planning proposal.....</b>	<b>2</b>
1.1	Overview.....	2
1.2	Objectives of planning proposal .....	2
1.3	Explanation of provisions .....	2
1.4	Site description and surrounding area.....	5
1.5	Mapping.....	7
1.6	Background .....	7
<b>2</b>	<b>Need for the planning proposal .....</b>	<b>8</b>
<b>3</b>	<b>Strategic assessment .....</b>	<b>8</b>
3.1	District Plan .....	8
3.2	Local.....	8
3.3	Local planning panel (LPP) recommendation.....	9
3.4	Section 9.1 Ministerial Directions .....	9
3.5	State environmental planning policies (SEPPs) .....	11
<b>4</b>	<b>Site-specific assessment .....</b>	<b>12</b>
4.1	Environmental.....	12
4.2	Social and economic.....	12
4.3	Infrastructure .....	13
<b>5</b>	<b>Consultation.....</b>	<b>13</b>
5.1	Community .....	13
5.2	Agencies.....	13
<b>6</b>	<b>Timeframe .....</b>	<b>13</b>
<b>7</b>	<b>Local plan-making authority .....</b>	<b>14</b>
<b>8</b>	<b>Assessment summary .....</b>	<b>14</b>
<b>9</b>	<b>Recommendation.....</b>	<b>14</b>

# 1 Planning proposal

## 1.1 Overview

**Table 1 Planning proposal details**

<b>LGA</b>	Liverpool
<b>PPA</b>	Liverpool Council
<b>NAME</b>	Map Amendment to Key Sites Map 008 (19 homes, 100 jobs)
<b>NUMBER</b>	PP-2021-6200
<b>LEP TO BE AMENDED</b>	Liverpool LEP 2008
<b>ADDRESS</b>	Part of 104 Fifteenth Avenue, West Hoxton
<b>DESCRIPTION</b>	Part of Lot 2 DP 1074727
<b>RECEIVED</b>	21/04/2022
<b>FILE NO.</b>	EF22/5952
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose, and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

The planning proposal seeks to amend the existing area identified on Key Sites Map and referred within Clause 9 of Schedule 1 of the Liverpool LEP 2008 at 104 Fifteenth Avenue, West Hoxton.

The objectives of this planning proposal (**Attachment A**) are clear and adequate.

## 1.3 Explanation of provisions

This planning proposal seeks to amend Key Sites Map (KYS) of the Liverpool LEP 2008 to adjust the area subject to the key sites map within a contiguous parcel of land. The subject site is zoned part R2 Low Density Residential and part SP2 Infrastructure (Classified Road). The SP2 Infrastructure zoned land relates to the future road widening of Fifteenth Avenue and is to be acquired by TfNSW.

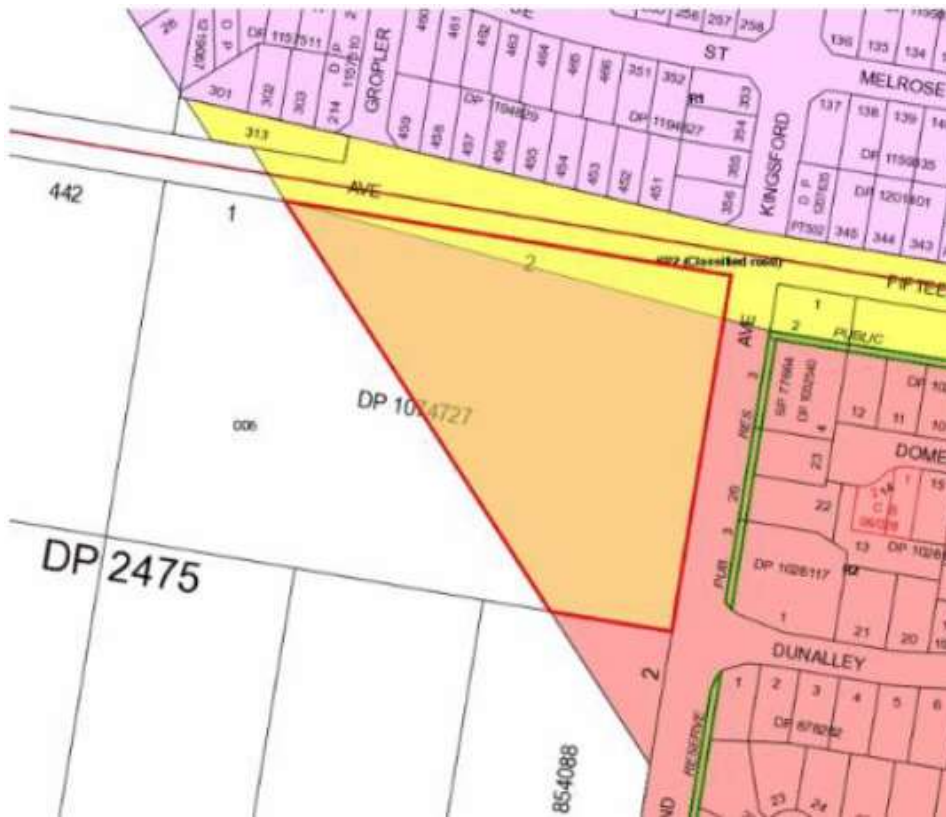


Figure 1 Subject site (site is heavy edged red)

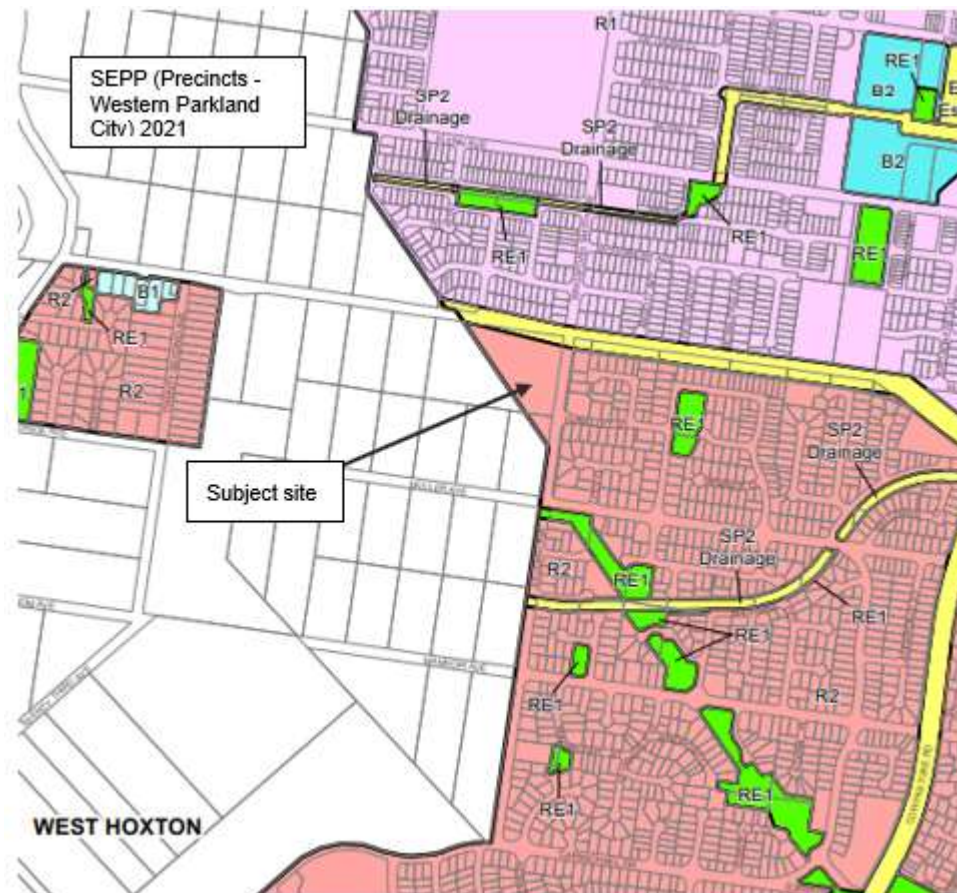


Figure 2 – Zoning of the site

Childcare centres are permissible in R2 Low Density Residential zone. Clause 9 of Schedule 1 Additional Permitted uses in the LEP allows for a service station and take away food and drink premises on the site as follows:

**9 Use of certain land for service stations and take away food and drink premises**

(1) *This clause applies to land shown coloured yellow on the Key Sites Map.*

(2) *Development for the following purposes is permitted with consent—*

(a) *service stations,*

(b) *take away food and drink premises if—*

(i) *there will be no more than 1 take away food and drink premises at each of the areas shown coloured yellow on the Key Sites Map, and*

(ii) *the gross floor area of the take away food and drink premises is not greater than 300m<sup>2</sup>.*



**Figure 3 Existing Key Sites Map 008**

The area as referred on the KYS map is to be amended to facilitate the proposed Integrated development (DA-750/2021) and the proposed realignment of the Fifteenth Avenue for Fifteenth Avenue Smart Transit (FAST) corridor, a rapid bus route connecting Liverpool CBD to the Western Sydney International (Nancy-Bird Walton) Airport. **Figure 4** identifies the extent of the site which will be acquired for the purpose. No changes to the SP2 zone for acquisition have been identified at this time.

The proposed integrated development at the subject site is for:

- demolition of the existing structures;
- 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.





**Figure 4 Potential future road boundary for acquisition by TfNSW**

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

## 1.4 Site description and surrounding area

The subject site (**Figures 5 and 6**), 104 Fifteenth Avenue, West Hoxton (Lot 2 DP 1074727) is at the corner of Fifteenth Avenue and Second Avenue and has an area of approximately 18,230m<sup>2</sup>. The land is clear of vegetation and contains a two-storey dwelling and several outbuildings. Access to the site is currently provided from Fifteenth Avenue. A transmission line easement on the neighbouring lot runs adjacent to the western boundary of the property.

The subject site is surrounded by:

- low density housing in Middleton Grange, including recently constructed single and double storey detached dwellings to the north;
- low density housing comprising predominately of single and double storey detached dwellings to the east;
- the Western Sydney Parklands open space corridor, including several waterbodies to the south and west.

Fifteenth Avenue is currently under investigation by TfNSW for further upgrades, including road widening to facilitate the FAST Corridor, as shown in **Figure 4**. The site is approximately 1.55km south-west of the Westlink M7 which is a major arterial highway that links Sydney's orbital motorway network. The site is along several bus routes servicing Carnes Hill to Liverpool.



Figure 5 The subject site (yellow dotted line)

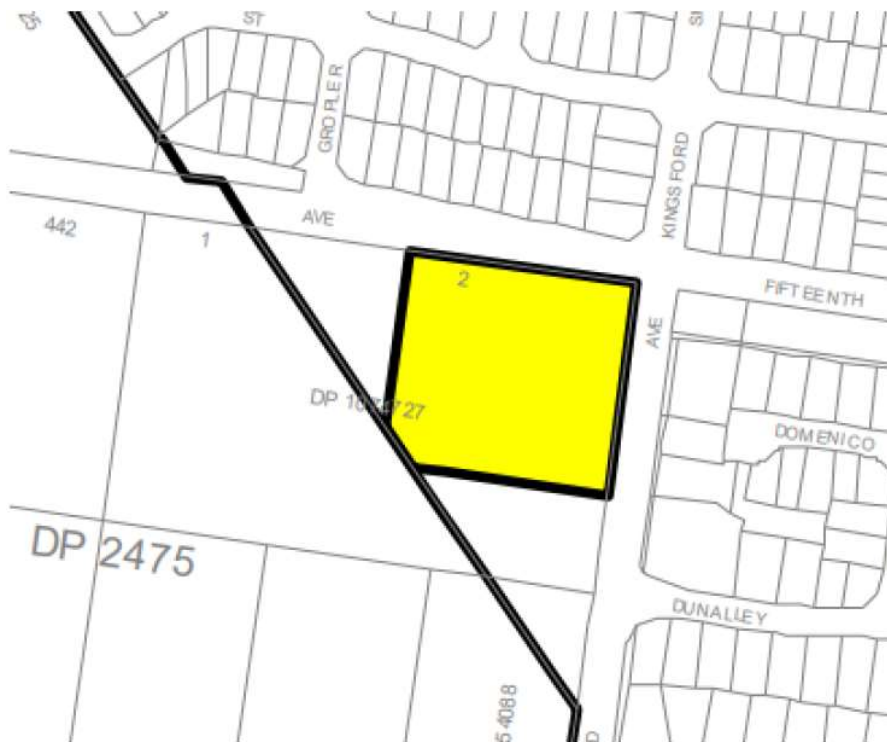


Figure 6 Subject site and surrounds



## 1.5 Mapping

To facilitate the proposed change, the KYS map 4900\_COM\_KYS\_008\_020\_20151104 will be amended as shown in **Figure 7**. This amendment will adjust the existing land identified as a key site, but is retained within the existing allotment.



**Figure 7 Proposed amendment to the KYS map**

## 1.6 Background

Council advises the existing key site area applies only to the eastern portion of Lot 2. Clause 9 of Schedule 1 is a legacy provision which was carried over from Liverpool Local Environmental Plan 1997 and the existing key site area reflects the lot area at the time Liverpool LEP 2008 was made. Since then, lot amalgamations have occurred, and the existing key site area boundary does not apply to the entire site.

An integrated Development Application (DA-750/2021) was lodged for the subject site, comprising 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 Transport for NSW (TfNSW) for concurrence. On 3 September 2021, TfNSW advised that the proposal is not supported in its current form. TfNSW has advised Council of the proposed widening of Fifteenth Avenue for a major arterial road, the need to accommodate future access/arrangements from Fifteenth Avenue and other technical requirements including location of access, deceleration lanes, additional setbacks from the new road boundary, swept paths and consistency requirements with Ausroads Standard. TfNSW's letter is at **(Attachment E)**.

The potential future road boundary provided by TfNSW does not require an amendment to the SP2 zone at this time, however, it does necessitate a review of how the site will be utilised and the need to amend the key site map to reflect the proposed layout of the additional permitted uses on the site.

## 2 Need for the planning proposal

The planning proposal is the best means to achieve the objectives and intended outcomes. It is not the result of any endorsed strategic planning statement, strategic study or report. It is however generally consistent with the relevant district and local strategic documents.

## 3 Strategic assessment

### 3.1 District Plan

The site is within the Western City District Plan released by the Greater Sydney Commission on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

Consistency of the planning proposal against relevant priorities and actions of the District Plan are discussed in **Table 3** below. The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*.

**Table 3 District Plan assessment**

District Plan Priorities	Justification
Planning Priority W3: Providing services and social infrastructure to meet people's changing needs	The proposal aims to provide the surrounding residential with additional services including a fast-food outlet, convenience-based services and childcare services. It will create approximately 100 local jobs and 90 childcare places.
Planning Priority W7: Establishing the land use and transport structure to deliver a liveable, productive and sustainable Western Parkland City.	The proposal will preserve and accommodate the FAST Corridor reserve at the same time enabling the development of employment generating uses that will service the local community and travelling patrons along this corridor.

### 3.2 Local

The proposal states that the planning proposal has site specific and strategic merit. It is consistent with the strategic direction and objectives of Liverpool Local Strategic Planning Statement (LSPS), as stated in the **Table 4** below:

**Table 4 Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement	Council advises the proposal is consistent with the Productivity Planning Priority 11, 'An attractive environment for local jobs, business, tourism and investment'. It falls within the strategic context of contributing to the economic growth of the LGA and along a key corridor, which will service the Western Sydney International (Nancy-Bird Walton) Airport. The planning proposal will enable for employment generating uses, which will inevitably lead to increased employment opportunities for local workers and support the local economy.

Council further advises the proposal is not inconsistent with the guiding principles of its Centres and Corridor Strategy 2020. Although the subject site is not located in a business zone, the Strategy identified service stations and take away food and drink premises permitted on identified key sites often serve an enterprise corridor function that is commensurate with sites in the B6 zone.

### 3.3 Local planning panel (LPP) recommendation

The planning proposal was considered by the Liverpool Local Planning Panel (LPP) on 28 February 2022. The LPP advised that the planning proposal has site and strategic merit and should proceed to the Department for a Gateway determination (**Attachment G**). Council's resolution on 30 March 2022 noted the LPP's advice.

### 3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant Section 9.1 Directions is discussed below in **Table 5**:

**Table 7 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.4 Site-specific Provisions	Yes	No changes proposed to the LEP provision (Clause 9 of Schedule 1 Additional Permitted uses). The proposal only relates to the area it applies as indicated on Key Sites Map of the LEP. The proposed variation to the site area is of a minor nature.
1.10 Implementation of Western Sydney Aerotropolis Plan	Yes	The site is outside the Aircraft Noise Exposure Forecast (ANEF) contours (NEC_001) in the SEPP. It is within the 13km Wildlife Buffer Area and Obstacle Limitation Surface RL 230.5 AHD, as discussed in paragraph 3.5 State Environmental Planning Policies in this report.

4.3 Planning for Bushfire Protection	No	<p>A Bushfire Hazard Assessment (Harris Environmental Consulting, March 2021) at <b>Attachment H</b> prepared as part of the DA-750/2021 identified that the site is affected by Category 3 Bushfire Prone Vegetation but does not reflect the area proposed. The assessment report/planning proposal need to be updated to reflect the proposed site as identified in the proposal.</p> <p>Gateway determination condition is to require an updated bushfire assessment in consultation with the NSW Rural Fire Service (RFS) and the proposal's consistency with this direction.</p>
4.4 Remediation of Contamination	Yes	<p>The planning proposal does not materially change the uses permitted on the site and is consistent with this direction.</p> <p>A Preliminary Site Investigation report (Dalco &amp; Covo Positino, March 2021) at <b>Attachment I</b> submitted for DA-750/2021 advises asbestos fibres and bonded cement fragments were detected in the soil samples.</p> <p>The report concludes that the site is suitable for the proposed land uses subject to remediation and validation to safely remove asbestos fibres and bonded cement fragments and demonstrate that the remaining excavations and excavated soils being undertaken meet NSW EPA requirements.</p> <p>It is considered this can be undertaken at development assessment stage.</p>
6.1 Residential Zones	Yes	<p>The site is partly zoned R2 Low Density Residential and will retain its zoning and the ability to deliver future housing. The site is identified as a key site in the LEP for the additional permitted uses. No changes are proposed to permissible uses. The proposed non-residential uses will service the surrounding residential population with retail and community facilities and add 100 local jobs.</p> <p>The proposal is consistent with the Direction.</p>
7.1 Business and Industrial Zones	Yes	<p>The site is identified as a key site in the LEP and deemed a suitable location for the additional permitted uses. No changes to the existing permissible land uses including service station, takeaway food and drink premises and childcare services are proposed.</p>



### 3.5 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

**Table 8 Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Resilience and Hazards) 2021	Provisions in Chapter 3 Hazardous and Offensive Development (Cl. 3.12) and 4 Remediation of Land (Cl. 4.6)	Applicable/consistent	<p>The Site Investigation report (Dalco &amp; Positino, 19 March 2021) concluded that remediation and validation works can be undertaken, to safely remove asbestos hotspots (including bonded cement fragments identified) to meet NSW EPA requirements for the proposed land use.</p> <p>Assessment against the criteria under Clause 3.12 Matters for consideration by consent authorities and 4.6 Contamination and remediation to be considered in determining development application of the SEPP, will need to be demonstrated as part of the DA.</p> <p>Gateway condition includes consultation with NSW Environment Protection Authority (EPA).</p>
State Environmental Planning Policy (Precincts - Western Parkland City) 2021	Chapter 4 Western Sydney Aerotropolis, Part 4.3 Development controls – Airport safeguards	Applicable/consistent	The site is within the 13km Wildlife Buffer Zone map (WBZ_001) and Obstacle Limitation Surface (OLS) Map (OLS_001) under the SEPP. Developments on the site will be required to address relevant clauses in relation to height and vegetation of the SEPP.
SEPP (Transport and Infrastructure) 2021	<p>Part 2.3 Development controls, Division 17 Roads and traffic</p> <p>Chapter 3 Educational establishments and childcare facilities</p>	Applicable/consistent	<p>A service station at the site will require an assessment against the provisions in Part 2.3 Development controls of the SEPP (i.e., Division 17 Roads and traffic).</p> <p>Chapter 3 Educational establishments and childcare facilities of the SEPP include requirements and specific development controls for consideration by consent authorities.</p>

## 4 Site-specific assessment

### 4.1 Environmental

The Bushfire Hazard Assessment (Harris Environmental, March 2021) at **Attachment H** identified the subject site is affected by Category 3 Bushfire Prone Vegetation. The assessment was prepared for the development application (DA-759/2021). As shown in **Figure 7** below, the site is outside the land mapped as bushfire prone land/buffer area. An updated assessment is required to validate this. A Gateway condition is proposed for consultation with the NSW RFS.



**Figure 7 Bushfire prone land**

In terms of contamination, a Preliminary Site Investigation report (Dalco & Covo Positino, March 2021) advises asbestos fibres and bonded cement fragments were detected in the soil samples, but these do not restrict the proposed land uses on the subject to remediation and validations works meet NSW EPA requirements. The Preliminary Site Investigation report is at **Attachment I**.

### 4.2 Social and economic

The proposed amendment will not have adverse economic impacts as it is a matter of moving the development area within the site. No changes are proposed to the land use permissible on the site. The proposed uses will service the surrounding residential population with community and retail services and create approximately 100 local jobs.

There is a potential land use conflict between the proposed childcare centre and service station land uses on the site, but these are matters to be considered as part of the development assessment process.

## 4.3 Infrastructure

The proposal will enable the proposed development to proceed while accommodating additional land for the future Fifteenth Avenue FAST corridor.

As part of the DA-759/2021, Transport for NSW (TfNSW) has advised Council that the proposal is not supported in its current form as the proposal will need to accommodate future access/arrangements from Fifteenth Avenue FAST corridor and other technical requirements for access, deceleration lanes, additional setbacks from the new road boundary, swept paths and consistency requirements. These are issues that can be considered and resolved at DA stage provided the key sites map is adjusted to facilitate the development and the road infrastructure. A Gateway condition is included for consultation with TfNSW.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate, and forms the conditions of the Gateway determination.

### 5.2 Agencies

It is recommended the following agencies are to be consulted on the planning proposal and given 21 days to comment:

- TfNSW
- NSW Rural Fire Services
- NSW Environment Protection Authority

## 6 Timeframe

Council proposes a 6 months' time frame to complete the LEP as shown in **Table 9** below.

**Table 9 Proposed timeframe by Council**

Timeframe	Action
<i>April 2022</i>	Submission of Planning Proposal to DPE
<i>June 2022</i>	Gateway Determination issued
<i>July-August 2022</i>	State agency consultation
<i>July-August 2022</i>	Community consultation
<i>September 2022</i>	Consideration of submissions and proposal post-exhibition
<i>September 2022</i>	Post-exhibition report to Council
<i>October 2022</i>	Legal drafting and making of the plan

The Department agrees with Council's proposed timeframe of approximately 6 months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has requested to be the local plan-making authority. As the planning proposal is of low impact and risk. The Department recommends that Council be authorised to be the local plan-making authority for this proposal.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- the proposal has strategic and site-specific merits and gives effect to the Western City District Plan;
- the proposal is of minor variation to the site identified in the existing Key Sites Map; and
- the proposal will service the surrounding residential population with community and retail services and create approximately 100 local jobs.

As discussed in the previous sections 4 and 5, the Bushfire Hazard Assessment is to be updated to reflect the specific area subject to this proposal. A Gateway condition has been inserted to this effect.


## 9 Recommendation

It is recommended the delegate of the Minister determines that the planning proposal should proceed subject to the following conditions:

1. Prior to public exhibition:
  - a) the Bushfire Hazard Assessment is to be updated to clearly reflect the proposed site area subject to the new mapping; and
  - b) the planning proposal is to address the consistency with Section 9.1 Direction 4.3 Planning for Bushfire Protection;
2. Public Exhibition is required under section 3.34(2) and schedule 1 clause 4 of the Act as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **28 days**;
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, December 2021).
3. Consultation is required with the following public authorities under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
  - NSW Rural Fire Service
  - NSW EPA
  - TfNSW



4. The timeframe for completing the LEP is to be **6 months** from the date of the Gateway determination. Council should aim to commence exhibition within **1 month** of the Gateway determination.
5. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.
6. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing.



(Signature) 18/05/2022

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Attachment	Title
Report	Gateway determination report
A	Planning proposal
B	Gateway determination
C	Letter to Council
D	Existing and proposed Key Sites Map
E	TfNSW advice
F	Council resolution
G	Liverpool Planning Panel advice
H	Bushfire Hazard Assessment
I	Preliminary Site Investigation report