



Planning,  
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## Plan finalisation report – PP-2020-3108

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Appin Road and Kellerman Drive, St Helens Park

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# 1 Introduction

## 1.1 Overview

### 1.1.1 Name of draft LEP

Campbelltown Local Environmental Plan 2015 (Amendment No. 22).

The planning proposal seeks to rezone a corner allotment (Appin Road and Kellerman Drive) from R2 Low Density Residential zone with an additional permitted use clause to permit a service station and neighbourhood shops to better align with the Standard Instrument. The proposed LEP amendment will rezone the site to B1 Neighbourhood Centre zone under CLEP 2015, to allow the development of a 1,710m<sup>2</sup> neighbourhood retail development (small supermarket, speciality shops and fast-food outlets) to complement the existing service station on the land and allow for 11 units of shop top housing.

### 1.1.2 Site description

**Table 1 Site description**

Site Description	Type	Council Name	LGA
The planning proposal ( <b>Attachment A1-A3</b> ) applies to Lot 6202 DP 1203930 land at the Corner of Appin Road and Kellerman Drive, St Helens Park.	Site	Campbelltown City Council	Campbelltown



**Figure 1 Subject site**

### 1.1.3 Purpose of plan

The table below outlines the current and proposed controls for the LEP.

**Table 2 Current and proposed controls**

Control	Current	Proposed
Zone	R2 Low Density Residential	B1 Neighbourhood Centre
Maximum height of the building	8.5 m	9m
Minimum lot size	500m <sup>2</sup>	none
Min lot size for dual occupancies	700m <sup>2</sup>	none
Number of dwellings	0	11 Units
Number of jobs	N/A	39 Jobs

The planning proposal will repeal the Schedule 1 Additional Permitted Uses provisions of CLEP 2015 (as below) as it is no longer required, and revoke the Additional Permitted Uses Map (APU\_009AB) as there are no other sites identified on this map tile and it is no longer required.

- Deletion of clause No.38 under Schedule 1 of CLEP 2015 Additional Permitted Use;

**“38 Use of certain land at Appin Road, St Helens Park**

- (1) This clause applies to land at Appin Road, corner of Appin Road with northern end of Kellerman Drive, St Helens Park, being Lot 1112, DP 1025751.
- (2) Development for the purpose of a service station and neighbourhood shop is permitted with development consent of the existing ‘Schedule 1 Additional Permitted Uses’ which allows a service station and neighbourhood shop on the site.”

- Replace clause 38 with:

**“38 (Repealed)”**

### 1.1.4 State electorate and local member

The site falls within the Campbelltown state electorate. Gregory Charles Warren MP is the State Member. The site falls within the Macarthur federal electorate. Mike Frelander MP is the Federal Member. To the team’s knowledge, neither MP has made any written representations regarding the proposal.

## 2 Gateway determination and alterations

The Gateway determination issued on 9/09/2020 (**Attachment B1**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions as detailed in the Gateway Determination Report (**Attachment B2**).

The Gateway determination was altered on 21/05/2021 (**Attachment B3**) granting a timeframe extension due to extensive consultation between Council, TfNSW and the proponent in the preparation of the updated traffic study and the preparation of a site contamination assessment.

The Gateway determination was altered 26 July 2021 (**Attachment B4**) to remove council delegation to make the plan due to a perceived agency objection and allow the Department to start the finalisation process.

In accordance with the Gateway determination (as altered) the proposal is due to be finalised on 18/05/2022.

## 3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 10/05/2021 to 7/06/2020, as required by section 29 of the *Local Government Act 1993*. Three submissions were received.

### 3.1 Submissions during exhibition

#### 3.1.1 Submissions objecting to and/or raising issues about the proposal

One community submission was received (**Attachment C1**), opposing the construction of shops given concerns of additional vehicles at the intersection of Kellerman Drive and Appin Road.

### 3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with two public agencies, NSW Environment Protection Authority (EPA) and Transport for NSW (TfNSW) who have provided the following feedback.

The EPA advised that it had no comments (**Attachment C2**).

TfNSW advised that it did not support the proposal primarily for traffic safety reasons (**Attachment C3**), noting:

- the proposed land zone - the B1 zone has a much wider permissible uses including commercial premises, places of public workshop, and tourist and visitor accommodation;
- traffic safety concerns - the proposal cannot be adequately assessed without demonstrating how the proposed “seagull” traffic treatment operates. A plan showing dimension, turning paths and any traffic control devices should be provided. The intensification of this site has the potential for the right turn bay into the site from Kellerman Drive to queue out and result in queuing into the intersection which would not be acceptable. A cycle length for the future intersection layout/conditions to be used in SIDRA analysis to be revised to 140 secs;
- intersection of Appin road and Kellerman Drive – there are ongoing discussion between TfNSW and Council which are currently being worked through and it appears that this proposal conflicts with the proposed upgrade to Appin Road; and
- role of public transport services – more consideration of bus, walking and cycling along Appin Road and the potential reduction in parking spaces on this site.

### 3.3 Council position

#### 3.3.1 Council’s adopted resolution

In Council’s Letter (**Attachment D1**) to the Department, Council note that the Gateway determination originally granted Council with delegated authority to make the Plan, but due to an unresolved agency submission from TfNSW, Council is not able to exercise the delegated authority provided to it, and the planning proposal will need to be forwarded to the Department for finalisation. At Council’s Ordinary Meeting on 13/07/2021, Council resolved to proceed with the planning proposal with no post-exhibition changes, and to forward the planning proposal to the

Minister for Planning and Public Spaces and request that the amendment to the Campbelltown Local Environmental Plan 2015 be made.

The Ordinary Council Meeting Report (**Attachment D2**) further clarifies Councils position that unresolved traffic concerns raised in a local community submission and TfNSW can be resolved through a development assessment process:

- *“traffic concerns raised by TfNSW and the local resident have been considered in the traffic and parking assessment accompanying the PP, and it is acknowledged that future road and driveway works would need to be undertaken to provide safe vehicular access to future development of the site. This would need to be resolved at the DA stage. Given the proximity of the site with Appin Road (a state classified road), further consultation with TfNSW would be required at the DA stage to ensure all proposed road design treatments are adequate for any proposed development on the site”; and*
- *“it is of note that the issue raised by TfNSW is a DA matter that could be resolved to its satisfaction, through the normal DA process, following the making of the Plan. The matter raised by TfNSW is not a matter that should be used to hinder the progression or making of the Plan”.*

## 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:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with the Council’s Local Strategic Planning Statement.
- Remains consistent with relevant Section 9.1 Directions, and as directed by the Gateway determination provides further detail to align with Direction 2.6 Remediation of Contaminated Land.
- Remains consistent with all relevant SEPPs

The following tables 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 3 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
Local Planning Panel (LPP) recommendation	<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 type="checkbox"/> No, refer to section 4.1

**Table 4 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
Environment 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.

### 4.1.1 Alignment with Gateway determination conditions

Condition 1 of the Gateway determination required consistency with Section 9.1 Direction 2.6 Remediation of Contaminated Land. As outlined in the Gateway Determination Report (**Attachment B2**), to ensure the proposals consistency with this direction consultation be undertaken with the EPA. Prior to public exhibition the planning proposal was referred to the EPA who provided a submission advising there was no comment the proposal does not require an environmental protection licence and has no comments to provide and no follow up consultation is required (**Attachment C2**).

The planning proposal has addressed all Gateway conditions.

### 4.1.2 Addressing agency comments and public submissions

As outlined in the Gateway determination report (**Attachment B2**), additional traffic modelling as a requirement of Gateway is not supported and this pre-empts advice from TfNSW and is considered more appropriate level of investigation that should occur at the development assessment stage. The Infrastructure SEPP provides the provisions that require the concurrence of TfNSW or controls that require the assessing authority to consider the safety and efficiency of the classified road network, in this instance Appin Road. In particular, section 101 provides that where practicable vehicular access is provided to the land by a road other than a classified road.

As stated in Section 3.2 above, one community submission (**Attachment C1**) raised concern with more vehicles entering/exiting the site and the intersection of Appin Road and Kellerman Drive, and TfNSW have provided a submission (**Attachment C3**) on the planning proposal citing traffic safety concerns and potential inconsistency with proposed upgrades with Appin Road and Kellerman Drive, and existing compliance concerns in regard the current driveway entry/exit to the



existing petrol station, although noting that discussions between Council and TfNSW are ongoing to resolve these issues.

The Department requested further clarification from TfNSW to understand if the issues raised in their submission could be adequately addressed and resolved during a development assessment. In a Letter to Council (**Attachment C4**), TfNSW requested traffic and safety issues prior to lodgement of a Development Application, that support for the planning proposal is contingent upon specific vehicle access arrangements, including a “left in/left out” driveway access to the site, that could be addressed in a site specific Development Control Plan to guide any future development application. TfNSW stated it is their “preference is to address the traffic and safety issues raised in our previous letter at the planning proposal / rezoning stage and not to defer these matters until the DA stage. In this case, the traffic and safety issues associated with changes to planning controls should be addressed at the rezoning stage to demonstrate that the proposal and the resulting intensification of land use changes and associated transport impacts can be addressed prior to the land being rezoned”.

In reports to Council Ordinary meetings (**Attachment D2**), Council have reiterated that the current provision of the LEP allows for neighbourhood shops and a petrol station on the site, and that the proposed controls better align with the Standard Instrument. That a holistic approach for the development of the site had been considered when approving the existing petrol station to allow space for future development of neighbourhood shops and access to the site via both Appin Road and Kellerman Drive. That the Concept Design (**Attachment A2**) and Traffic and Parking Assessment (**Attachment A4**) demonstrates compliance with Council’s DCP and Australian Standard requirements, and can integrate with the intersection upgrades of Appin Road and Kellerman Drive, and therefore sufficient to support the change in LEP controls. Noting that any future development application would be required to provide further detailed traffic analysis and justification for the development plan. Also, as part of any development application TfNSW current position would be noted and TfNSW would be required to make further comment on any final development plan prior to an approval.

The Department acknowledges Council and TfNSW positions and notes traffic safety issues are ongoing and being worked through and requests Council continue to work closely with TfNSW to ensure any future development plan for the site responds to TfNSW traffic safety concerns, specifically in regards to future upgrades of the intersection of Appin Road and Kellerman Drive and entry/exit driveway access to the site, prior to lodgement of a development application. Also, noting that TfNSW must be consulted as directed by the Infrastructure SEPP once a development application is lodged.

The Department considers the planning proposal has justified the proposed LEP amendment, and that concerns raised by TfNSW are not an objection and will be resolved prior to a development approval and therefore should not preclude the making of this LEP. As mentioned above, the Infrastructure SEPP also provides the provisions that require the concurrence of TfNSW or controls that require the assessing authority to consider the safety and efficiency of the classified road network, in this instance Appin Road.

## 5 Post assessment consultation

The Department has consulted with the following stakeholders after the assessment.

**Table 5 Consultation following the Department's assessment**

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Four maps have been prepared by the Department's ePlanning team and meet the technical requirements.	<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 (Attachment E)</i></p> <p>Council confirmed on 19/08/2021 that it was agreeable with the draft instrument and that the plan should be made <b>(Attachment F)</b></p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 23/08/2021 , Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at <b>Attachment PC</b> .	<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 Campbelltown Local Strategic Plan.
- It is consistent with the Gateway Determination.
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



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25 August 2021  
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## Attachments

<b>Attachment A1</b>	<b>Planning proposal</b>
<b>Attachment A2</b>	<b>Concept Design</b>
<b>Attachment A3</b>	<b>Preliminary Contamination Assessment</b>
<b>Attachment A4</b>	<b>Traffic and Parking Assessment</b>
<b>Attachment A5</b>	<b>Campbelltown Business Centres Strategy 2005</b>
<b>Attachment A6</b>	<b>Economic Assessment</b>
<b>Attachment B1</b>	<b>Gateway determination</b>
<b>Attachment B2</b>	<b>Gateway Determination Report</b>
<b>Attachment B3</b>	<b>Gateway Alteration</b>
<b>Attachment B4</b>	<b>Gateway Alteration</b>
<b>Attachment C1</b>	<b>Community Submission</b>
<b>Attachment C2</b>	<b>EPA Submission</b>
<b>Attachment C3</b>	<b>TfNSW Submission</b>
<b>Attachment C4</b>	<b>TfNSW Letter to Council</b>
<b>Attachment D1</b>	<b>Council letter requesting to make the LEP</b>
<b>Attachment D2</b>	<b>Council Report – 13 July 2021</b>
<b>Attachment E</b>	<b>Section 3.36(1) consultation with Council</b>
<b>Attachment E</b>	<b>Council consultation on the draft LEP</b>
<b>Attachment PC</b>	<b>Parliamentary Counsel’s Opinion</b>
<b>Attachment Maps</b>	<b>Draft LEP maps</b>
<b>Attachment LEP</b>	<b>Draft LEP</b>
<b>Attachment MCS</b>	<b>Map cover sheet</b>
<b>Attachment Council</b>	<b>Letter to Council advising of the decision</b>