

COUNCIL SUPPLEMENTARY REPORT

Panel Reference	PPSSEC-171
DA Number	MOD/2021/0376
LGA	Inner West
Proposed Development	Application under s4.55 (2) of the Environmental Planning and Assessment Act 1979 to modify modified Determination No. MOD/2020/0096 dated 18 September 2020 to reduce the car parking required, reconfigure layout, carry out alterations to achieve NCC compliance, provision of roof services, façade changes, the addition of internal ceiling fans and modify conditions of consent of consent relating to numerous matters including conditions 68A and 112 relating to the adoption and implementation of a Local Area Traffic Management Study
Street Address	750 Princes Highway TEMPE NSW 2044
Applicant/Owner	Bunnings Properties Pty Ltd
Date of DA lodgement	10 September 2021
Total number of Submissions	Initial: 44 submissions Renotification: 75 submissions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Number of submissions Modification to conditions imposed by the Panel
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Industry and Employment) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • Marrickville Local Environmental Plan 2011 • Inner West Local Environmental Plan 2022 • Marrickville Development Control Plan 2011
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Council's Assessment Report • Architectural Plans • Tempe South LATM Study – Final Report • Section 4.55 Statement • Determination No. 201700185 dated 18 September 2020
Summary of key submissions	<ul style="list-style-type: none"> • Traffic concerns
Report prepared by	Andrew Newman
Report date	25 August 2022

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Not
applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

No

Conditions

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Yes

INNER WEST

SUPPLEMENTARY REPORT

Application No.	MOD/2021/0376
Address	750 Princes Highway TEMPE NSW 2044
Proposal	Application under s4.55 (2) to modify modified Determination No. MOD/2020/0096 dated 18 September 2020 to reduce the car parking required, reconfigure layout, carry out alterations to achieve NCC compliance, provision of roof services, façade changes, the addition of internal ceiling fans and modify conditions of consent of consent relating to numerous matters including conditions 68A and 112 relating to the adoption and implementation of a Local Area Traffic Management Study
Date of Lodgement	10 September 2021
Applicant	Bunnings Properties Pty Ltd
Owner	Bunnings Properties Pty Ltd
Number of Submissions	Initial: 44 Renotification: 75
Value of works	\$44,825,000.00
Reason for determination at Planning Panel	Number of submissions Modification to conditions imposed by the Panel
Main Issues	Adoption of a Local Area Traffic Management study and amendments to Condition 68A of the consent
Attachment A	Council's Assessment Report considered by the Panel on 31 March 2022
Attachment B	Architectural Plans
Attachment C	Tempe South LATM Study – Final Report
Attachment D	Section 4.55 Statement
Attachment E	Modified Determination No. 201700185 dated 18 September 2020



LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

Note: Due to scale of map, not all objectors could be shown.

1. Executive Summary

This supplementary report addresses the deferral of the determination by the Sydney Eastern City Planning Panel (SECPP) dated 13 April 2022 of the application submitted to Council under s4.55 (2) of the Environmental Planning and Assessment Act 1979 to modify modified Determination No. MOD/2020/0096 dated 18 September 2020 to reduce the car parking required, reconfigure layout, carry out alterations to achieve NCC compliance, provision of roof services, façade changes, the addition of internal ceiling fans and modify conditions of consent of consent relating to numerous matters including conditions 68A and 112 relating to the adoption and implementation of a Local Area Traffic Management Study at 750 Princes Highway Tempe.

The application was notified to surrounding properties and 44 submissions were received in response to the initial notification. Following deferral of the application, the application was re-notified, and 75 submissions were received.

This report addresses the matters of the SECPP deferral and provides a status update on these matters. New matters raised in submissions in response to the renotification of the application are also addressed in this report.

Council's original assessment of the application and response to a majority of the issues raised in submissions is contained in the original Assessment Report which was prepared for the 31 March 2022 Determination meeting can be found at Attachment A for reference.

2. Background

2(a) Site history

The following application outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

Application	Proposal	Decision & Date
DA201700185	To partially demolish the rear of the existing building, construction of a new building form and adaptively reuse the site for use as a 2 level hardware and building supplies store with undercroft car parking, erection of signage, boundary adjustments to provide a slip lane from the Princes Highway into Smith Street and the widening of Smith Street on the north-eastern side	Approval by Sydney Eastern City Planning Panel 27 June 2019
MOD/2020/0096	Modification to DA201700185 to modify the internal arrangement of the foyer and other minor changes	Approval by Council under delegated authority 18 September 2020

2(b) Application history

The following table outlines the relevant history of the subject application.

Date	Action
10 September 2021	Application Lodged.

28 September 2021 to 12 October 2021	Application notified in accordance with Council's Community Engagement Framework.
12 November 2021	Amended Planning Statement including changes to proposed modifications to conditions uploaded to NSW Planning Portal by Applicant.
9 December 2021	SECPP Briefing held.
21 February 2022	Amended Planning Statement including changes to proposed modification of conditions submitted following Panel briefing and internal discussions with Council's Planning and Traffic staff.
9 March 2022	Community information evening held by Council to outline the proposal as amended and receive community feedback.
31 March 2022	SECPP Public Meeting and Determination Meeting held.
13 April 2022	SECPP deferred determination of the application pending further notification and other matters.
27 May 2022 to 17 June 2022	Application (as amended on 21 February 2022) re-notified in accordance with Council's Community Engagement Framework.
19 August 2022	SECPP Briefing held.
1 September 2022	Final SECPP Public Meeting and Determination Meeting scheduled.

2(c) Other Matters

Other matters that do not form part of the application before the SECPP but are related to the application and subject site are discussed below.

(i) Council Resolution to Investigate Feasibility of a Signalised Intersection

In accordance with a Council resolution on 12 April 2022, an independent study commenced examining the access/egress options to the Bunnings Tempe site including provision of traffic signals allowing direct connections from the proposed Bunnings site to Princes Highway. The proposed traffic signals would change the vehicle access arrangements for the site with the incoming and outgoing traffic flow altered to minimise Bunnings traffic impact on local roads.

Previously RMS (now Transport for NSW) has not supported the provision of traffic signals directly onto Princes Highway due to the close proximity of existing traffic signals and the associated 'see through' effect. Recent communications from Transport for NSW (TfNSW) indicated that they may be able to review their position on the matter, provided that the relevant assessments be undertaken.

Council has sought comments from TfNSW to ensure that the feasibility study is undertaken in accordance with their guidelines and requirements. A project scope was issued by TfNSW covering a range of issues and this was adopted in the scope of the proposed feasibility study. The scope of the study includes consideration of road safety implications, transport network impacts, site specific constraints and community/resident impacts.

Council subsequently engaged *Traffix* to commence the feasibility study. The timeframe for the project comprises:

- Stage 1 investigation works: early August 2022
- Stage 2 liaising with Bunnings, Ikea and TfNSW

As part of the study, Council staff seek to hold discussions between Council, Ikea and Bunnings on internal design changes to support revised entry and exit arrangements. These discussions will take place at stage 2 and will follow after the technical investigation has drawn to a close.

The feasibility study outcomes do not form part of the development consent provided to Bunnings by the original decision of the SECPP. Effective provision for traffic signals to

manage traffic generated by the development is dependant upon Bunnings including this as part of a further modified development application. This would require the applicant to modify design layouts at their expense.

The feasibility study and subsequent investigations remain ongoing at the time of writing this report.

(ii) Class 1 Appeal

On 26 July 2022, the applicant lodged a deemed refusal Class 1 Appeal to the Land and Environment Court for this application. Consideration of the appeal by the Court is in its early stages at the time of writing this report.

3. Deferral Matters

The following is an update and discussion of the matters identified in the SECPP record of deferral (“the deferral”) dated 13 April 2022.

(i) Notification

The deferral raised concern with the notification of the application in light of the amendments to the application made in February 2022 having not been re-notified during the assessment process.

The application was re-notified for a period of 21 days from 27 May 2022 to 17 June 2022 in accordance with Council’s Community Engagement Framework. The re-notification included the following:

- Letters mailed to surrounding properties and properties likely to be impacted by the proposal, noting the number of individually notified properties was increased from the original notification.
- Details on Council’s Website and documentation viewable on Council’s DA Tracker.
- Notification signs placed on the site.

The re-notification included all documentation associated with the application (as amended in February 2022). The Tempe South LATM Study – Final Report dated 6 July 2021 (including appendices) was also viewable on Council’s DA Tracker as a document associated with the application.

Given the above, the deferral requirement to notify the application as amended has been completed.

(ii) Comment from Transport for NSW

The deferral requested the following in relation to comment from TfNSW in relation to the LATM study elements that would require their approval:

...there should be clarity and certainty in any modified condition as to the traffic measures required to mitigate impacts on local streets. In this regard measures that require approval from TfNSW, including the proposed soft road closure, should be sought.

Council wrote to TfNSW on 7 June 2022 seeking their comments on the LATM study dated 6 July 2021, particularly the 'soft closure' from Smith Street into Union Street and a shared zone

on Union Street. TfNSW has responded indicating that it is unwilling to provide final comment on the LATM Study and associated traffic measures such as soft closures until the feasibility study of proposed traffic signals on the Princes Highway is completed and reviewed by TfNSW. This position was reaffirmed by TfNSW on 19 July 2022 at a meeting held with Council staff facilitated by the Department of Planning's Planning Delivery Unit.

As such, given TfNSW's position that the feasibility study into traffic lights must be complete before a comment can be provided, Council has been unable to obtain a final comment on the LATM traffic measures that require TfNSW approval at this time.

Notwithstanding, the recommended modified conditions of consent contained within the original Assessment Report at Attachment A include a secondary option for traffic mitigation measures to local streets in the event the 'soft closure' from Smith Street to Union Street and other measures that require further TfNSW approval are not supported by the agency. These secondary option measures, outlined in proposed condition 1A part b), have been reviewed by Council's Traffic Engineers (as part of the original assessment report presented to the Panel on 31 March 2022) and are considered satisfactory local road improvements to manage traffic impacts in the circumstance TfNSW approval cannot be obtained for the preferred measures outlined in the LATM study.

(iii) Local Traffic Committee Consideration of LATM study

The deferral requested the following in relation to the Local Traffic Committee's (LTC) final consideration of the LATM study:

"Given that the Panel in its original decision did so with the knowledge that a signalised intersection at the Princes Highway was not to be provided, because of no approval from TfNSW, the Panel cannot through this modification impose such a requirement. The Panel now notes that the LATM study required by the condition of consent has been completed and submitted to the Local Traffic Committee (LTC) for approval. The Panel requests that the LTC conclude, as soon as possible, its consideration of that study in order not to circumvent the consent already granted to this development."

The LTC considered the LATM study on 20 June 2022 and recommended to re-exhibit the LATM study, due to changes in the report since the previous exhibition in early 2021.

The main changes since the last public exhibition as part of the LTC process, includes the following:

- Soft closure 'No Entry' for northbound traffic into Union Street at the signalised intersection of Smith Street and Princes Highway
- 10km/h Shared Zone in Union Street from Princes Highway to School Lane, including contrasting pavement threshold, installation of mountable kerbs
- Partial road closure of Brooklyn Street (exit only at Princes Highway), which would only be required to complement the No Entry closure at Union Street traffic signals.

The proposal to exhibit the LATM required endorsement from Council.

The Council adopted the recommendation of LTC on 9 August 2022 at its general meeting. Following this, a 28-day exhibition period commenced which is due to end on 8 September 2022. The LTC will consider the LATM and community feedback at its meeting on 19 September 2022.

Given the above, the LTC consideration of the LATM study is ongoing at the time of writing this report.

4. Submissions

The application was notified in accordance with the Community Engagement Framework from 28 September 2021 to 12 October 2021 to surrounding properties.

44 submissions were received in response to the initial notification. The issues raised in the submissions were addressed in Council's Assessment Report at Attachment A.

The application was re-notified in accordance with the Community Engagement Framework from 27 May 2022 to 17 June 2022 to surrounding properties.

75 submissions were received in response to the re-notification. A number of submissions raised the same concerns as the initial notification and responses to these matters can be found in Council's Assessment Report at Attachment A.

New concerns raised in the submissions received as part of the re-notification of the application are discussed under the respective headings below:

Issue: *Bunnings DA MOD/2021/0376 seeks to take the LATM plan out of the Council's hands and consider the unresolved/unapproved July 2021 version of the document as final. This will jeopardise the hard work that is underway by Council on the Traffic Lights Feasibility Study and the further work that is needed to finalise the LATM.*

Comment: The SECPP is aware that a concurrent feasibility study is underway and that the LTC is still finalising its consideration of the LATM study and that the LTC may wish to recommend changes to the LATM study based on community feedback. It is noted that the application as approved does not accommodate traffic lights and any proposal for traffic lights to be incorporated into the proposed would need to be proposed by the applicant. Notwithstanding, the Panel will decide on the application with the information at hand, including knowledge of the ongoing LTC process and community expectations.

Issue: *The LATM in its current form is not sufficient in scope as it fails to properly assess the impact of motorists ignoring the no left hand turn sign on Smith Street which would create dangerous conditions for pedestrians wanting to access the wetlands, reserves and childcare facilities on Holbeach Avenue.*

A hard closure could be implemented between Smith and South Street. This will eliminate the temptation of customers turning left onto Smith Street as they exit Bunnings. Anything less than a hard closure will be ignored by customers. Local residents can then use Holbeach Avenue if they wish to travel North.

Comment: Under the LATM study a 'Right turn only' restriction is proposed at the Smith Street driveway. Council will examine ways to physically restrict left turns out of the Bunnings driveway into Smith Street. A permanent road closure would likely create adverse impacts for other members of the community and a short section of No Entry/One way restriction would be subject to compliance issues, and as such was not considered under the LATM study.

Issue: *... the scope of the LATM should widen to include Brooklyn Street, Brooklyn Lane and School Lane. As Union Street would be closed from Smith Street, there may*

be dangerous repercussions from cars exiting Bunnings on Smith Street, turning right on to the Princes Highway and then left onto Brooklyn.

Comment: The LATM study considered traffic impacts in these laneways as well as Brooklyn Street and additional traffic on these roads were negligible. A closure is proposed for Brooklyn Street which is to be implemented together with the 'Left and Right Turn Only' and 'No Entry' restriction at Smith Street from Union Street.

Issue: *The LATM should be updated to reflect that the feasibility study would supersede the need for many of the traffic treatments in the document.*

Comment: The feasibility study outcomes are a separate matter to the assessment and determination of this modification application. Additionally, the feasibility study is investigating traffic lights and as discussed in the Assessment Report at Attachment A, a signalised intersection was not supported by Transport for NSW during the original application and the extent of modification required to the development to adapt to a signalised intersection is beyond the scope of this application. The application was approved on the basis a signalised intersection was not possible and therefore an LATM that requires a signalised intersection is beyond the scope of the approval.

Issue: *Bunnings should make their vehicle exit the road that runs along behind the Salvation Army. Tempe is already inundated with traffic and parked cars from airport workers, the Gateway project and Tempe Tyres customers.*

Comment: This option would require design changes that are beyond the scope of this application. The entry and exit point to the site have already been approved and are not proposed to be altered by the modification application.

Issue: *The footpath along the Princes Highway should be upgraded to include a physical barrier.*

Comment: Such a provision would be a matter for TfNSW to consider outside of the LATM process. If a barrier is required, this could be canvassed at a later date.

Issue: *South Street should become a 10km/h shared zone.*

Comment: This was considered under the LATM and a shared zone is not proposed at this location, as the street is already treated traffic calming devices.

Issue: *The soft closure of Union Street from Smith Street and the 10km/h shared zone stated in the LATM is supported, however, it should be amended to include the full length of Union Street. The Union-Edwin Street intersection is always busy with school children, pedestrians and families entering Tempe Public School, therefore the 10km/h speed limit for Union Street is supported.*

Comment: Under the TfNSW guidelines the 10km/h shared zone cannot overlap with the 40km/h school zone, and such arrangements will require the removal of the school zone, flashing 40 signs, 40 patches, and dragons teeth markings. Traffic and parking infringements, including demerit points on a school zone will no longer be applicable.

Issue: *Drivers of heavy and long vehicles are consistently flouting the no-left turn from Princes Highway into Gannon Street during peak hours particularly. The power*

pole on this corner has already been completely knocked down, and there was a recent death of a pedestrian walking past the Tempe bus depot.

Comment: Whilst Council supports measures for pedestrian safety, this would be a matter for TfNSW. It is also noted that non-compliance with signage in other street does not negate or erode the merits of the traffic calming measures proposed in the LATM.

Issue: *The Council plans to use Union Street, School Lane and Brooklyn Street as a safe bicycle route (LR7), but this proposal will place cyclists in great danger if these streets are allowed to become a rat-run from Bunnings.*

Comment: As part of the approval, some of the existing site is being dedicated to allow increased footpath and verge area to facilitate bicycle routes. Furthermore, the safety of the local streets in relation to cycling is not considered to be adversely impacted subject to appropriate traffic mitigation measures within the LATM study and appropriate conditions of consent which are outlined in Council's Assessment Report at Attachment A.

5. Conclusion

Following the deferral of the application by the SECPP on 13 April 2022, Council staff have worked to address the reasons for deferral.

The renotification of the application has occurred and has been completed, with the application being notified (as amended February 2022) from 27 May 2022 to 17 June 2022 in accordance with Council's Community Engagement Framework.

However, at this time Council has been unsuccessful in obtaining a final comment on the LATM matters requiring approval from Transport for NSW and Council's LTC has not finalised their consideration of the LATM study.

Should the Panel be of a mind to support the application, notwithstanding the outstanding matters identified above, recommended modified conditions can be found in Part 9 of Council's original Assessment Report at Attachment A.