



New South Wales Government
Independent Planning Commission

Gateway Determination Review Request – 355 and 375 Church Street, Parramatta (PP-2021-6800)

Gateway Determination Advice Report

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1 INTRODUCTION

1. On 23 March 2022, the NSW Independent Planning Commission (**Commission**) received a referral from the NSW Department of Planning and Environment (**Department**) requesting advice pursuant to section 2.9(1) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) in relation to a planning proposal and gateway determination in respect of 355 and 375 Church Street, Parramatta (the **Site**), within the City of Parramatta Council Local Government Area (**LGA**).
2. On 9 November 2021, the City of Parramatta Council (**Council**) lodged the planning proposal PP-2021-6800 (the **Planning Proposal**) with the Department, seeking to introduce a site-specific maximum car parking rate for take away food and drink premises and to prohibit drive-through facilities associated with the use of take away food and drink premises at 355 and 375 Church Street, Parramatta.
3. On 14 December 2021, as delegate of the then Minister for Planning and Public Spaces (**Minister**), the Department issued a Gateway Determination that the Planning Proposal should proceed subject to conditions (the **Gateway Determination**).
4. On 3 February 2022, Council wrote to the Department requesting a review of the Gateway Determination, seeking removal of Gateway condition 1(a) which required the Planning Proposal to be amended to remove reference to any provision seeking to prohibit or restrict a drive-through facility for take away food and drink premises at the Site (**Review Request**).
5. On 23 March 2022, the Department requested the Commission consider the merits of the Review Request and provide advice including a clear and concise recommendation to the Minister's delegate as to whether the Gateway Determination should be amended.
6. Professor Mary O'Kane AC, Chair of the Commission, nominated Chris Wilson to constitute the Commission Panel reviewing the Planning Proposal and Gateway Determination and to provide advice concerning the merits of the review request.

2 GATEWAY DETERMINATION REVIEW

2.1 Site and Locality

7. The Site is located at 355 and 375 Church Street, Parramatta, and comprises Lot 1 in DP 668821 and Lot 1000 in DP 791977, respectively. The Site has a total area of approximately 4,796m² and is currently occupied by a vacant low-rise retail building on the south-eastern corner, with the remainder of the Site accommodating an existing McDonald's restaurant with drive-through facility. The location of the Site is illustrated in Figure 1 below.
8. The Site and its surrounds are described in the Department's Gateway Review Justification Assessment Report, dated 21 March 2022 (**Department's Justification Assessment**) as being bound by Church Street (east), Victoria Road (south) and Ross Street (north). The Site adjoins an isolated property at 385 Church Street to the north-east which comprises a three-storey mixed use development with retail and office space. Existing development adjoining the Site to the west comprises a five-storey mixed use development.
9. The Site is located at the northern end of the Parramatta CBD Precinct. Parramatta Railway Station is approximately 1 kilometre from the Site and the Parramatta Light Rail Stage 1 corridor is adjacent to the Site, with a future light rail stop at the junction of Church Street and Victoria Road.

Figure 1 - 355 and 375 Church Street, Parramatta (Source: Department's Gateway Report)



2.2 Background

10. The Department has set out the background of the Planning Proposal in Table 7 of the Gateway Determination Report.
11. On 21 August 2018, a site-specific Planning Proposal request (PP_2020_COPAR_008_00) (**Previous Planning Proposal**) was submitted to Council to amend the Parramatta Local Environmental Plan 2011 (**PLEP**) through the introduction of site-specific clauses, including the introduction of site-specific parking rates for historical take away food and drink premises. The Previous Planning Proposal request was submitted as a joint venture between Stockland and McDonald's (**Proponent**). Council resolved to endorse the Previous Planning Proposal on 13 July 2020 and it was submitted to the Department on 19 August 2020.
12. On 13 November 2020 the Department issued a Gateway Determination. On 29 January 2021, the Proponent requested the Department review the Gateway Determination (GR-2021-4), to delete conditions 1(c) and 1(d) within the Previous Planning Proposal:
 1. *Prior to exhibition, the Planning Proposal be amended as follows...*
 - (c) *Remove the proposed car parking rates for take away food and drink premises and the associated sunset clause;*
 - (d) *Include the isolated site at 383 [sic¹] Church Street within the proposal consistent with the Parramatta CBD Planning Proposal;*

¹ The isolated site is 385 Church Street and was incorrectly referred to as 383 Church Street in the Previous Planning Proposal's Gateway Determination conditions.

13. On 19 March 2021, the Department requested that the Commission review the Previous Planning Proposal and provide advice regarding the merits of the review request and whether the Gateway Determination should be amended.
14. The Commission, in its advice dated 23 April 2021, advised that the Gateway Determination should be amended to delete Gateway conditions 1(c) and 1(d).
15. The Department provided correspondence to Council dated 14 July 2021 suggesting Council consider amending the Previous Planning Proposal to only relate to matters which are not aligned with the Parramatta CBD Planning Proposal (CBD PP, PP-2020-2616).
16. Council, in its meeting on 11 October 2021, resolved that the Previous Planning Proposal be amended to retain the provision pertaining to a bespoke parking rate at the Site but remove the drive-through facility. Council was of the view that “*a drive-through facility associated with a historical take away food and drink premises on the site is not supported as it would aggravate traffic conditions and is an inappropriate ground level use for a key corner site*”. Council resolved that the Planning Proposal be resubmitted to the Department seeking a new Gateway determination. Council’s new Planning Proposal (PP-2021-6800), which is the Planning Proposal subject to this Gateway determination review, was submitted to the Department on 5 November 2021.
17. On 14 December 2021, the Department issued the Gateway Determination subject to conditions. The Department did not support the prohibition of a drive-through facility and the Gateway Determination included a condition to amend the Planning Proposal prior to exhibition to remove references to the prohibition of a drive-through.
18. On 21 December 2021, Council, in a letter to the Department, advised of its intention to seek a review of the Gateway Determination.

2.3 Review Request

19. On 3 February 2022, Council requested a Gateway Determination Review. The review aims to enable the Council resolution of 11 October 2021 to apply a provision which would prohibit a drive-through facility at the Site.
20. Condition 1(a) from the Gateway Determination states:
 1. *Prior to public exhibition, the planning proposal is to be amended as follows:*
 - (a) *remove reference to any provisions seeking to prohibit/restrict a drive-through facility for Take Away Food and Drink premises on the subject site*
21. Council is of the view that the prohibition of the drive-through facility is justified as it is considered to be an inappropriate use of the Site and will result in traffic impacts and poor environmental outcomes (e.g. car exhaust and noise). Council was also of the view that a provision in an LEP is preferable to a provision in a Development Control Plan (DCP) as it carries greater statutory weight, although noted that a provision in the DCP (currently being prepared) will support the LEP provision. Council’s views are set out in Council’s Gateway Determination Review Report, dated January 2022 and in the Department’s Justification Assessment.
22. The Proponent, in its submission dated 28 February 2022, provided a response to Council’s Gateway Determination Review Report. The response sets out reasons why the Gateway Determination issued by the Department should remain in its current form.

23. As described in paragraph 5 above, on 23 March 2022 the Department requested the Commission consider the merits of the Review Request and provide advice including a clear and concise recommendation to the Minister’s delegate as to whether the Gateway Determination should be amended.

3 THE COMMISSION’S CONSIDERATION

3.1 The Commission’s Meetings

24. As part of its advice, the Commission met with various persons as set out in Table 1. All meeting notes were made available on the Commission’s website.

Table 1 – Commission’s Meetings

Meeting	Date of Meeting	Transcript Available on
Department	4 April 2022	7 April 2022
Council	4 April 2022	7 April 2022
Proponent	4 April 2022	7 April 2022

3.2 Material Considered by the Commission

25. In this review, the Commission has carefully considered the following material (**material**):
- the Proponent’s Traffic and Parking Advice prepared by J Milston Transport Consulting Pty Ltd (**JMT**), dated 3 February 2020;
 - the Proponent’s Transport Report prepared by Colston Budd Rogers & Kafes Pty Ltd (**CBRK**), updated August 2020;
 - Transport for NSW (**TfNSW**) Supplementary Advice, dated 1 April 2021;
 - the Commission’s Gateway Determination Advice Report (**Commission’s Advice Report**), dated 23 April 2021;
 - Council’s Planning Proposal as amended, dated November 2021;
 - the Department’s Gateway Determination and Gateway Determination Report, dated 14 December 2021;
 - the Proponent’s Traffic Review Report prepared by CBRK, dated 18 December 2021;
 - Council’s Gateway Determination Review Report, dated January 2022;
 - TfNSW Gateway Condition Review, dated 21 February 2022;
 - the Proponent’s Response to Request for Gateway Determination Review prepared by Ethos Urban Pty Ltd, dated 28 February 2022 (**Proponent’s Response to Review Request**);
 - the Department’s request for Gateway Determination Review, dated 21 March 2022 and the accompanying Gateway Review Justification Assessment; and
 - all comments and presentation material made to the Commission during the meetings outlined in Table 1 above.

3.3 Condition 1(a) Drive-through Facility for Take Away Food and Drink Premises

3.3.1 Inclusion in LEP

26. At its meeting on 11 October 2021, Council resolved that “*the proposed takeaway food and drink premises drive through facility be removed from the Planning Proposal*” (Council’s Gateway Determination Review p.2). Council is of the view that a provision in an LEP “*has the effect of a statute and carries more weight in the decision making process. A provision in a DCP has the effect of a guideline*” (Council’s Gateway Determination Review Report, para.3.6). Council noted that a site-specific DCP is being prepared which will include controls to prohibit a drive-through facility; however, Council stated that this does not replace the need for a provision in the LEP, with the intent of these controls being to support and reinforce the LEP provision (Council Gateway Determination Review Report, p.4-5).
27. In the Department’s Justification Assessment, the Department states that a drive-through facility is not classified as a land use under PLEP and is a component of uses already permitted in the zone.
28. Council contended that while take away food and drink premises are permitted development at the Site, a drive-through facility is not a necessary component of a take away food and drink premise and that Council is not precluded from including a control within the LEP that would restrict a component of a permitted use for a Site.
29. At its meeting with the Commission, the Proponent was of the view that the inclusion of a drive-through facility is most appropriately determined at the DA stage, which would provide the opportunity for the consideration of technical evidence.
30. The Commission agrees with the Department’s position that management of a drive-through facility at the Site would more appropriately be addressed and facilitated through an update to the DCP rather than an LEP amendment. The Commission considers that the prohibition of a drive-through facility at the Site via a provision in the LEP would remove the opportunity to undertake a technical evaluation of the matter and that assessment of the suitability of a drive-through facility at the Site would be more appropriately considered through the DA process.
31. The Commission notes the Department’s evaluation of the Planning Proposal’s consistency with the relevant section 9.1 Directions (Department’s Justification Assessment, section 4.4). With respect to Direction 1.5 Site Specific Provisions (previously Direction 6.3) and in regard to the site-specific bespoke car parking provision, the Department found that the “*planning proposal will not result in overly restrictive provisions and the inconsistency is considered justified*” (Department’s Justification Assessment, p.10). The Commission notes that this element of the Planning Proposal is outside the scope of this advice; however, in respect to the inclusion within the LEP of a site-specific provision that would prohibit a drive-through facility, the Commission finds this would be inconsistent with Direction 1.5.

3.3.2 Appropriate Use of Site

32. Council was of the view that it would be inappropriate to incorporate a drive-through facility in an intensive mixed-use development on a key corner site. Further to this, Council have stated that while a drive-through facility at the Site may have been appropriate in the past, as the Parramatta CBD develops, public transport usage will become more of the norm, placing less need for the provision of a drive-through facility (Council's Gateway Determination Review Report, para. 3.3).
33. The Proponent argues that Council's position is contradictory to the Draft Parramatta CBD Public Car Parking Strategy 2018-2023 (dated 5 April 2017), which predicts an increase in trip generation within the Parramatta CBD (Proponent's Response to Review Request, p.2). The Proponent states that the Site is located on the fringe of Parramatta CBD where car usage is frequent and, in its meeting with the Commission, indicated that the drive-through facility is "*core to the business especially at this location*" with 50 per cent of its trade coming from passing traffic (Proponent's Meeting Transcript, p. 14)
34. In the Commission's Advice Report, with respect to GR-2021-4, the Commission stated:

It should be noted that in 2015, McDonalds with Endeavour Property Group submitted a Development Application (DA) (DA/96/2015) for a staged development of the Site involving the demolition of existing structures; consolidation and subdivision to create two lots; construction of a McDonald's restaurant on proposed Lot A (Stage 1); and concept approval for a future mixed-use development over basement parking on proposed Lot B (Stage 2). The DA was subsequently deferred by the Sydney West Joint Regional Planning Panel (JRPP) because it considered the proposed development to be "a lost opportunity to present a major architectural feature on this significant site which is located at the intersection of two historical roadways within Parramatta" (JRPP Memo, dated 23 November 2015). The JRPP recommended that an amended proposal be developed that responded more adequately to a range of design issues and the opportunities presented by the Site in the context of its Parramatta CBD location (JRPP Memo, dated 23 November 2015).
35. In its meeting with the Commission with respect to the subject Review Request, Council confirmed that a drive-through facility was included in DA/96/2015 (Council meeting transcript, p. 3).
36. In its meeting with the Commission on 7 April 2021, with respect to GR-2021-4, Council was of the view that the proposed bespoke parking rate would not set a precedent in Parramatta CBD as the Site is the only take away food and drink premises with a drive-through facility located on an arterial road in the Parramatta CBD. Council also noted that without the bespoke parking rate, the Site may remain in its current form, with the existing car parking arrangements and poor urban design outcomes (Commission's Advice Report, p.4).
37. Council has also stated that the provision of a drive-through facility in an enclosed ground floor space could lead to poor environmental outcomes, particularly from car exhaust and noise, arguing that prohibition of a drive-through facility would be preferable to controlling these impacts (Council's Gateway Determination Review Report, para. 3.4). The Proponent, in its response, stated that McDonald's has previously provided enclosed drive-through facilities, using various mitigation measures including sleeved louvres and ventilation stacks, details of which could be provided through the DA and assessment process (Proponent's Response to Review Request, p.3).

38. The Commission agrees with the Department that “*the appropriateness of the drive-through facility should be subject to a merit assessment at the DA stage, in accordance with controls provided in a site-specific DCP*” (Department’s Justification Assessment, p.7). The Commission acknowledges Council’s position that with the future development of Parramatta CBD, less demand may be placed on the provision of a drive-through facility at the Site. Nonetheless, the Commission finds that consideration of a drive-through facility at the Site would be more appropriately assessed at the DA stage where a technical evaluation could be undertaken, and the viability of the development given full consideration.

3.3.3 Traffic Impacts

39. Council (Council’s Gateway Determination Review Report, p.4) has put forward the argument that:
- a drive-through facility will increase the number of traffic movements in and out of the Site which could cause traffic conflict and aggravate existing traffic conditions; and
 - while this may be manageable in a suburban context, it is less manageable in a busy CBD, particularly for a site fronting two arterial roads.
40. TfNSW provided advice on 1 April 2021 (TfNSW Supplementary Advice), stating:
- TfNSW is currently building the Parramatta Light Rail (PLR), which is due to be operational by 2023. PLR will be operating on Church Street adjacent to the site, and any interactions from adjoining development including vehicles, service vehicles, bicycles and pedestrians will need to be considered in the preparation of the site-specific DCP. This will include the need for detailed consideration of the drive-through operation of McDonald’s.*
41. In response to the Review Request, TfNSW stated (TfNSW Gateway Condition Review):
- TfNSW would generally support the prohibition of a drive-through facility at this site (or any other sites in proximity to the PLR [Parramatta Light Rail]). Whether this can be incorporated into the LEP or is best facilitated through a site specific development control is a matter for consideration by the Department of Planning.*
42. The advice received from TfNSW indicates that a drive-through facility at the Site warrants detailed consideration and technical evaluation.
43. The Commission notes that Council states the drive-through facility on Site only has provision for 11 queued cars. In its meeting with the Commission, the Proponent stated that RMS guidelines recommend 12 spaces for vehicle queueing for McDonald’s drive-throughs and indicated that the Site would have a 14 vehicle queue capacity from the point of order, with 18 vehicles at the point of order still being within the Site.
44. The Proponent has provided a Traffic Report (updated August 2020) and a Traffic Review (dated 18 December 2021) and Parking Advice (dated 3 February 2020). In its meeting with the Commission, the Proponent provided initial technical information and advice in support of a drive-through facility, including the following information (Proponent’s presentation):
- the Site would be subject to a left turn entry only from Victoria Road;
 - “*the Planning Proposal would decrease traffic movements during peak hours when compared to current conditions*”;
 - “*the proposal will not impact the operation of the surrounding road network*”;
 - there is a probable “average queue of 3 vehicles at the point of pick up”;
 - 18 vehicles at the point of order is well within the site boundary and the probability of this queue length is once every 100 days; and

- *“traffic modelling demonstrates removal of the drive-through would not change intersection level of service”.*
45. The Commission notes that a drive-through facility has operated at the Site for a number of years and no comments have been provided by any party in regard to adverse traffic impacts created by its operation (Department’s Justification Assessment, p.6).
 46. The Commission agrees with the Department that consideration of inclusion or removal of a drive-through facility at the Site should be subject to a traffic study and merit assessment at the DA stage where full and appropriate consideration can be given to the relevant technical evidence and advice. The Commission considers that the lack of detailed technical evaluation to support either the inclusion or prohibition of a drive-through facility further demonstrates that the LEP is not the appropriate mechanism through which to prohibit a specific drive-through facility.

4 THE COMMISSION’S ADVICE

47. The Commission has undertaken a review of the Gateway Determination as requested by the Department, as outlined at paragraph 4. In doing so, the Commission has considered the Material, as outlined at section 3.2, submissions by Council and the Proponent and reasons given for the determination in the Department’s Gateway Determination Report.
48. The Commission is of the opinion that it would be inappropriate to include a provision in the LEP that would prohibit a drive-through facility at the Site and considers that any such prohibition would be more suitably controlled through Council’s DCP which would provide the opportunity for a more thorough and complete assessment and technical evaluation of the merits of the inclusion or removal of a drive-through facility at the Site.
49. The Commission advises the Minister’s delegate that the Gateway Determination issued on 14 December 2021 should be upheld and the Gateway conditions should not be amended for the reasons provided in section 3 of this Gateway Determination Advice Report.



Chris Wilson (Chair)
Member of the Commission