



# GATEWAY REVIEW

## Justification Assessment

**Purpose:** To request that the Independent Planning Commission review the Gateway determination, taking into account information provided by Council and to provide advice regarding the merit of the review request.

<b>DPE ref:</b>	GR-2022-5
<b>LGA:</b>	City of Parramatta
<b>LEP to be Amended:</b>	Parramatta LEP 2011
<b>Address/ Location:</b>	355 and 375 Church Street, Parramatta Lot 1 DP 668821 and Lot 1000 DP 791977 respectively)
<b>Proposal:</b>	Introduce a site-specific maximum car parking rate for take away food and drink premises.
<b>Review request made by:</b>	<input checked="" type="checkbox"/> The council
	<input type="checkbox"/> A proponent
<b>Reason for review:</b>	<input type="checkbox"/> A determination has been made that the planning proposal should not proceed.
	<input type="checkbox"/> A determination has been made that the planning proposal should be resubmitted to the Gateway.
	<input checked="" type="checkbox"/> A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

### Background information

<b>Details of the planning proposal</b>	<p>On 9 November 2021 Council submitted a planning proposal to the Department to introduce a site-specific maximum car parking rate for take away food and drink premises at 355 and 375 Church Street, Parramatta (PP-2021-6800) (<b>Attachment A</b>). The proposal also seeks to prohibit any 'drive-through facility' associated with this use.</p> <p><b>Site description</b></p> <p>The site is bounded by Church Street, Victoria Road and Ross Street, leaving an isolated site at 385 Church Street (<b>Figure 1</b>). The isolated site comprises a three-storey mixed use development, with retail and office space. Development to the west of the site comprises a 5-storey mixed use development.</p> <p>The site is located at the northern end of the Parramatta CBD Precinct, approximately 1km from Parramatta Railway Station. The site is also situated adjacent to the Parramatta Light Rail (PLR) Stage 1 corridor, with a future Light Rail stop at the junction of Church Street and Victoria Road</p>
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**Figure 1 Site location of planning proposal**

**Background**

City of Parramatta Council has been progressing the Parramatta CBD Planning Proposal (CBD PP, PP-2020-2616), which is currently with the Department for finalisation. The CBD PP proposes increased height and density for the site.

In order to expedite the CBD PP outcomes, a site specific planning proposal had been previously progressed by the proponent. This proposal also included bespoke parking rates related to the takeaway food and drink premises use proposed. These car parking rates were subject to a previous Gateway Review, and were supported to be retained by the Commission (GR-2021-4 dated 23 April 2021 (**Attachment E**)).

The Department provided correspondence to Council dated 14 July 2021 suggesting Council consider amending the proposal to only relate to matters which are not aligned with the CBD PP.

The revised planning proposal, subject to this review, seeks to amend Parramatta Local Environmental Plan 2011 (*LEP 2011*) by introducing site-specific parking rates for historical take away food and drink premises and the prohibition of a drive-through facility.

<p><b>Reason for Gateway determination</b></p>	<p>On 14 December 2021, a Gateway determination to proceed was issued, subject to conditions (<b>Attachment Gateway</b>). The Department considered that the proposal had sufficient strategic and site-specific merit, gave effect to the Central City District Plan and is consistent with the Parramatta Local</p>
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	<p>Strategic Planning Statement (LSPS) and all relevant section 9.1 Ministerial Directions and SEPPs.</p> <p>The planning proposal is considered the best means of enabling the addition of site-specific parking provisions for historical take away food and drink premises as the Parramatta LEP 2011.</p> <p>However, the proposal seeks to prohibit drive-through facilities for historical take away food and drink premises on the site through a LEP amendment. Council resolved on 11 October 2021 that a “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.”</p> <p>The Department does not support this component of the proposal and the Gateway determination includes a condition to amend the proposal prior to exhibition to remove references to the prohibition of a drive-through. A “drive-through facility” is not classified as a land use under the PLEP 2011, rather is a component of uses already permitted in the zone.</p> <p>The Department considers management of a drive through on site would be best addressed and facilitated through an update to the DCP rather than an LEP amendment and considered through the Development Application process. Council’s report notes that a site-specific DCP to support the planning proposal is being prepared and will include controls for the drive-through facility.</p> <p>The Gateway determination condition relating to the drive-through states:</p> <ol style="list-style-type: none"> <li>1. <i>Prior to public exhibition, the planning proposal is to be amended as follows:</i> <ol style="list-style-type: none"> <li>(a) <i>remove reference to any provisions seeking to prohibit/restrict a drive-through facility for Take Away Food and Drink premises on the subject site</i></li> </ol> </li> </ol> <p>On 3 February 2022, Council requested a Gateway determination review to remove this condition from the Gateway.</p>
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## Council views

<p><b>Council justification</b></p>	<p>Council initiated a Gateway determination review on 3 February 2022 (<b>Attachment Request</b>). The review aims to enable the Council resolution of 11 October 2021 to apply a site-specific parking rate for Takeaway Food and Drink premises and the prohibition of a drive-through facility.</p> <p>Council’s review request (<b>Attachment Request</b>) states that the prohibition of the drive-through facility is justified for the following reasons:</p> <p><b>A. Traffic impacts</b></p> <p>A drive-through facility will increase the number of traffic movements in and out of the site at access points proposed on Victoria Road and Ross Street. This could cause traffic conflict and aggravate existing traffic conditions, including performance impacts on existing intersections, queuing of cars onto Victoria Road interfering with traffic flow, particularly so near to the intersection of two major roads, Victoria Road and Church Street.</p> <p><b>B. Inappropriate use of site</b></p> <p>A drive-through facility is not an appropriate ground floor use in a major new high-rise development on a key corner in the Parramatta CBD. Despite the drive-through facility having been operated on the site for many years, the future CBD is envisaged to be developed to a much higher density in the future as a</p>
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	<p>regional centre in the Sydney region, with a corresponding reduction in car focused uses.</p> <p><b>C. Environmental outcomes</b></p> <p>The provision of a drive-through facility in an enclosed ground floor space could lead to poor environmental outcomes particularly from car exhausts and noise. It considered that prohibiting the drive-through facility would be preferable to controlling these impacts rather than through DCP controls.</p> <p><b>D. Response to matters raised by Department</b></p> <p>In summary matters raised by the Department's Gateway assessment (<b>Attachment Gateway</b>):</p> <ul style="list-style-type: none"> <li>- A drive through facility is not a classified land use, but rather a component of uses already permitted in the zone.</li> <li>- The management of a drive through on site would be best addressed and facilitated through an update to the DCP rather than an LEP amendment and considered through the Development Application process.</li> <li>- A site-specific DCP is being prepared which includes controls that seek to discourage a drive-through facility.</li> </ul> <p>Council's review request (<b>Attachment Request</b>) provides the following response to the matters above:</p> <ul style="list-style-type: none"> <li>- The B4 Mixed Use Zone permits 'Commercial premises' with consent. Commercial premises are defined as including 'Retail premises' and Retail premises includes 'food and drink premises', with 'takeaway' food and drink premises a type of food and drink premises. It is not considered that a drive-through facility is a necessary component of a takeaway food and drink premises. These uses are not permitted as of right but only with development consent. It is considered that Council is not precluded from introducing a control in its LEP that would prohibit a component of a permitted use for a particular site.</li> <li>- A provision in a Local Environmental Plan prohibiting the establishment of a drive-through facility is considered preferable to relying on a provision in the Development Control Plan because an LEP provision has the effect of a statute and carries more legal weight in the decision making process than a DCP control.</li> <li>- A site-specific DCP is being prepared which will include controls ensuring that a drive-through facility is not provided on the site, with the intention of supporting an LEP provision.</li> </ul>
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**Proponent comments**

<p><b>Proponent response</b></p>	<p>The proponent response to the Gateway review has been submitted by Ethos Urban (planning consultant) on behalf of Stockland (the developer), who have entered into a Development Agreement with McDonald's (the owner) for the site (<b>Attachment Proponent</b>).</p> <p>The proponent does not support the Gateway review request and has responded to Council's justifications as follows:</p> <p><b>A. Traffic impacts</b></p> <p>A traffic review conducted by CBRK on behalf of the proponent (<b>Attachment Proponent Traffic Review</b>) reports the following traffic impacts:</p> <ul style="list-style-type: none"> <li>- Traffic generation as a result of the proposal would reduce marginally from the existing development during the weekday am and pm periods due to</li> </ul>
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reduced parking provision and visual exposure of the drive-through to the street.

- Change in access to left entry only from Victoria Road would result in 25% less traffic using the Victoria Road access.
- Traffic modelling shows that all adjacent intersections will continue to operate at satisfactory or better levels during weekday am and pm peak hours.
- The increased use of the Ross Street exit will significantly reduce vehicle movements and crossings occurring along this street and pedestrian/vehicle conflict.

Adverse impacts will result from the removal of the drive-through facility including:

- Increased demand for on-site and on-street parking from customers who would have to enter the store rather than use the drive-through.
- Delays in customer car parking waiting times.
- Additional traffic movements from increased home deliveries.

#### **B. Inappropriate use of site**

The proponent states Council's Draft Parramatta CBD Public Car Parking Strategy 2017-2023 predicts an increase of trip generation within the CBD, which contradicts Councils' Gateway review request which states that the planning proposal seeks to reduced car focused uses in the CBD.

The number of car parking spaces serving the existing premises is proposed to halve from 60 to 30 as a result of this proposal. Therefore, the proposal responds positively to the Council's strategy of less CBD parking, and retention of the drive-through facility will assist this response.

The proponent accepts the inclusion of the "sunset" clause for the amended parking rates on the site to expire within 5 years from the date of the notification of the LEP amendment to ensure development on the site is commenced within a reasonable time frame. Further the proponent also accepts the requirement to demonstrate the adaptive re-use potential of the drive-through facility, as required by a site-specific DCP

#### **C. Environmental outcomes**

The owner (McDonald's) manages multiple drive-through facilities and appropriately managed and mitigated any adverse impacts of car fumes and noise. These impacts have been addressed through DAs for previous sites and for this site will also be addressed at the DA stage by use of mitigation measures such as ventilation stacks similar to those used in basement car parks.

Further it is noted that the drive-through will sit behind the façade of the building and at the rear of solid internal walls, therefore noise from vehicles at the drive-through will be internalised and it is not expected to create any adverse impacts on other occupants within a building. The owner states this can be further demonstrated at the DA stage with the preparation of a detailed Noise Impact Assessment.

#### **D. Response to matters raised by Department**

- The proponent agrees that development consent of a drive-through is most appropriately determined at the DA stage and states it is inappropriate to include a statutory prohibition denying the opportunity for DA merit-based assessment.

The proponent states that usually a site specific LEP clause is used to permit rather than prohibit a specific use in a zone, and that DCP controls

	<p>would permit a merit-based assessment of a drive-through facility, consistent with 'best practice planning'.</p> <ul style="list-style-type: none"> <li>- The proponent states there is no technical justification is provided for either an LEP or DCP prohibition of the drive-through facility on site.</li> </ul> <p>E. Additional comments</p> <p>The proponent has also provided the following additional comments:</p> <ul style="list-style-type: none"> <li>- The strategic and site-specific merit of the proposal, including the drive-through facility, was previously endorsed and confirmed by Council, DPIE and the IPC recommendation to allow inclusion of the parking rate for take away food and drink premises on 23 April 2021. The amended component of Council's proposal to remove the drive-through facility does not have site-specific merit.</li> <li>- The proposed prohibition of the drive-through facility is inconsistent with Section 9.1 Ministerial direction 1.1 – Business and Industrial Zones. The proposal does not protect employment land, will involve a partial 'down-zoning' of the site, affect the feasibility of development on the site and is not justified or supported by an approved strategy or study.</li> <li>- The proposed concept plan for the site will improve the drive-through facility design and access arrangements, resulting in convenient and safe outcomes for local traffic, public transport and pedestrian safety and amenity.</li> </ul>
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### Transport for NSW (TfNSW) comments

<p><b>TfNSW response</b></p>	<p>TfNSW was requested to comment on Council's comments concerning traffic impacts of the drive-through facility. TfNSW provided a response on 21 February 2022 agreeing with Council that a drive through facility is generally inappropriate on the site but the land use prohibitions are a planning matters for consideration by DPE (<b>Attachment TfNSW</b>). TfNSW comments include the following:</p> <p><i>"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."</i></p>
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### Assessment

<p><b>Department assessment</b></p>	<p><b>Assessment</b></p> <p>The Department has reviewed the Gateway determination review request from Council as well as responses from the proponent and Transport for NSW. The Department does not consider Council's review to provided any further justification for the prohibition of a drive-through facility on the subject site under the LEP. In summary, the Department recommends the Gateway determination is not amended for the following reasons:</p> <p><b>A. Assessment of traffic impacts</b></p> <p>The Department also notes that the drive-through facility has operated on the site for many years and no comments have been provided by any party about adverse traffic impacts created by its operation.</p> <p>It is considered that the traffic impacts of the drive-through facility, or its removal, should be subject to a traffic study and merit assessment at the DA stage, in accordance with controls provided in a DCP. This is will not be possible if the use is prohibited.</p>
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The Department notes that Council has not provided any evidence base to support their position that the drive through facility will have negative traffic impacts.

**B. Assessment of appropriateness of drive-through on site**

The Department notes that Council’s ‘Draft Parramatta Integrated Transport Plan April 2021’ and ‘Draft Parramatta CBD Parking Strategy May 2021’ recognise that trips to the Parramatta CBD will continue to increase in parallel to increased development density. However, both documents also recommend strategies to create a modal shift from private vehicle use to public transport.

It is considered that the appropriateness of a drive-through facility should be subject to a merit assessment at the DA stage, in accordance with controls provided in a site-specific DCP.

**C. Environmental outcomes**

The Department is satisfied that any adverse amenity impacts of a drive-through facility should be subject to a merit assessment at the DA stage, in accordance with controls provided in a DCP.

**Recommendation**

The Department recommends that no amendments to the Gateway determination are made.

<b>Attachments</b>	<b>Attachment Request</b>	Council gateway review request
	<b>Attachment Gateway</b>	Gateway determination and assessment report
	<b>Attachment A</b>	Planning proposal
	<b>Attachment B</b>	Planning proposal Transport Report prepared by CBR&K – August 2018
	<b>Attachment C</b>	Planning proposal Traffic and Parking Advice prepared by JMT Consulting – 3 February 2020
	<b>Attachment D</b>	TfNSW advice for planning proposal PP-2021-6800 – 1 April 2021 (Appendix 4 to planning proposal)
	<b>Attachment E</b>	IPC Gateway Determination Advice Report on former PP for site – 23 April 2021 (Appendix 3 to planning proposal)
	<b>Attachment Proponent</b>	Response to Gateway review prepared by Ethos Urban – 28 February 2022
	<b>Attachment Proponent Traffic review</b>	Traffic Review Statement prepared by CBR&K – 18 December 2021
	<b>Attachment TfNSW</b>	TfNSW response to Gateway review – provided 21 February 2022

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**COMMISSION'S RECOMMENDATION**

**Reason for review: A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.**

<b>Recommendation</b>	<input type="checkbox"/>	The planning proposal should not proceed past Gateway.
		<input type="checkbox"/> no amendments are suggested to original determination. <input type="checkbox"/> amendments are suggested to the original determination.
	<input type="checkbox"/>	The planning proposal should proceed past Gateway in accordance with the original Determination.

**Any additional comments:**