

Gateway determination review

355 and 375 Church Street, Parramatta
January 2022



**CITY OF
PARRAMATTA**

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1. INTRODUCTION

- 1.1. This report supports the Gateway Determination Review lodged with the Department of Planning, Infrastructure and Environment by the City of Parramatta Council with respect to the draft Planning Proposal for the land at 355 and 375 Church Street, Parramatta (known as the McDonald's restaurant site); see **Figure 1**.



 The Site

Figure 1 – Subject site at 355 and 375 Church Street, Parramatta

- 1.2 This Gateway Determination Review submission package has been prepared consistent with the document *Local Environmental Plan Making Guideline*, December 2021 published by the NSW Department of Planning, Industry and Environment and includes:
- Lodgement within 42 days of intention to lodge review.
 - A completed application form.
 - A copy of the planning proposal and supporting information as submitted with the Gateway Application
 - Justification of why an alteration of the Gateway determination is warranted, including where relevant responses to issues raised by the Gateway decision-maker.
 - It is noted that no disclosure of reportable political donations is required in terms of Section 10.4 of the Environmental Planning and Assessment Act 1979.

2. BACKGROUND

2.1 City of Parramatta Council at its meeting on 11 October 2021 considered a report that recommended next steps for the site-specific Planning Proposal and associated draft site-specific Development Control Plan and Planning Agreement for land at 355 and 375 Church Street, Parramatta.

Council resolved in part:

(b) *That the existing Planning Proposal for 355 – 375 Church Street, Parramatta, be amended to remove provisions consistent with the CBD Planning Proposal, while retaining the provision pertaining to a bespoke parking rate for takeaway food and drink premises at this site but that the proposed takeaway food and drink premises drive through facility be removed from the Planning Proposal.*

(c) *That the amended Planning Proposal (as at Attachment 1) be resubmitted to the DPIE as a new Planning Proposal seeking a new Gateway determination.*

Further details on the Planning Proposal and 11 October 2021 Council Report and Resolution are provided at **Attachment 1**.

2.2 **Figure 2** below is an extract from the Applicant’s urban design report that accompanied the Planning Proposal and illustrates the proposed drive-through facility on the ground floor .

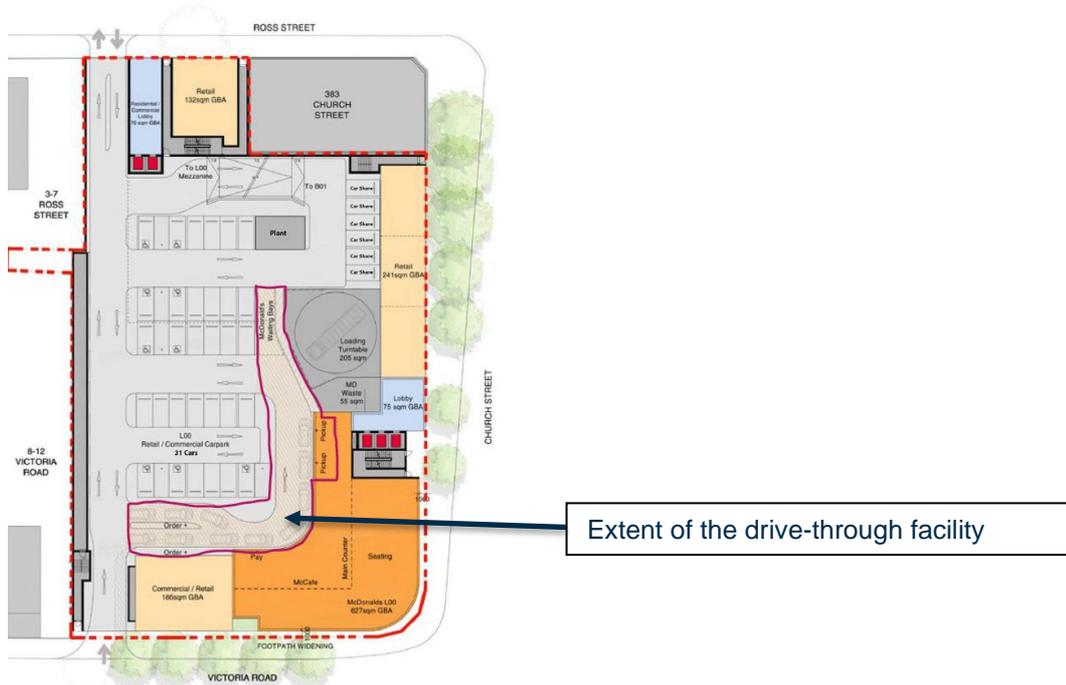


Figure 2: Ground floor plan for the proposed development at 355 and 375 Church Street. The pink line in the figure depicts the extent of the drive-through facility.

2.3 The Planning Proposal as amended and submitted to DPIE included of relevance the following proposed amendment to Parramatta LEP 2011 under the heading Part 2 – Explanation of Provisions:

3. Despite any other provisions of this Plan, development consent must not be granted to development on land to which this clause applies that includes a drive-through facility associated with a Take Away Food and Drink Premises.

2.4 On 14 December 2021, a Gateway determination was received from the Acting Director, Central (GPOP) DPIE as a delegate of the Minister for Planning and Public Places. The determination provided that an amendment to Parramatta LEP 2011 to introduce a site-specific maximum car parking rate and associated sunset clause for takeaway food and drink premises should proceed but subject to the following condition of relevance:

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;

2.5 On 21 December 2021 Council in a letter to DPIE advised of its intention to seek a review of the Gateway determination, and in particular condition 1(a) seeking the removal of that condition, and that it would subsequently submit a formal review request in accordance with the process set out in the new *Local Environmental Plan Making Guideline* (December 2021).

3. JUSTIFICATION FOR REVIEW

- 3.1 It is considered reasonable to include a provision prohibiting a drive-through facility at 355 and 375 Church Street as part of the proposed redevelopment of the site for reasons outlined below.

Traffic impacts

- 3.2 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. Traffic exiting the site from Ross Street with the object of entering Church Street could impose pressure at this intersection of Ross and Church Streets and possibly result in queueing on Ross Street. The drive-through facility on site only has limited provision for 11 queued cars. On a busy occasion with a high demand for takeaway services traffic could bank back out onto Victoria Road causing traffic conflict. Traffic banked back would also interfere with other vehicles trying to enter the site from Victoria Road for other purposes proposed as part of the redevelopment of the site. This situation may be manageable in a suburban context but is less manageable in a busy major CBD such as the Parramatta CBD and for a site fronting two major arterial roads.

Inappropriate use of site

- 3.3 Whilst it is appreciated that there is an existing drive-through facility on the site it is considered inappropriate to incorporate that facility in an intensive mixed-use development on a key corner site. A drive-through facility may have been appropriate in the past when the Parramatta CBD was developed at a much lower density and when people travelled by car for their shopping or commercial services. However, as Parramatta develops as a key CBD in the Sydney metropolitan area with high-rise developments for commercial and residential purposes and where use of public transport is more the norm, there is less place and need for the provision of drive-through facilities.

Environmental outcomes

- 3.4 The provision of a drive-through facility in an enclosed ground floor space could lead to poor environmental outcomes. Cars in the drive-through facility will have their engines running emitting noise and fumes. These could be a nuisance and hazard for other users of the ground floor and for takeaway customer service staff. Controls could be included within the site-specific DCP with the aim of controlling these effects, but it would be better to avoid the effects in the first place.

Response to matters raised by Department

- 3.5 Section 3 of the Department's Gateway assessment report provided the following reasons as to why it introduced the Gateway condition to remove reference to provisions seeking to prohibit the drive-through facility.
- A drive through facility is not a classified land use, but rather a component of uses already permitted in the zone.
 - 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.
 - A site-specific DCP is being prepared which includes controls that seek to discourage a drive-through facility.
- 3.6 These matters raised by the Department are addressed as follows:
- 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. In any case, these uses are not permitted as of right but only with development consent. It is considered that Council is not precluded from including a control in its LEP that would restrict a component of a permitted use for a particular site.

- 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. A provision in a DCP has the effect of a guideline and whilst Council and Applicants must take the guideline into account, the determining authority for the Development Application has some discretion whether to apply a provision based on the circumstances of a proposal and similarly, an applicant can seek to vary the guidelines.
- It is agreed that a site-specific DCP is being prepared which will include controls ensuring that a drive-through facility is not provided the site. These controls are intended to support and reinforce the LEP provision and do not replace the need for a provision in the LEP.

4. CONCLUSION

- 4.1 It is considered that there is a justified case for including a provision in Parramatta LEP 2011 preventing the establishment of a drive-through facility with the associated takeaway food and drink premises on the subject site for the reasons:
- A drive-through facility would aggravate traffic conditions in the area.
 - A drive-through facility is not an appropriate ground floor use in a major new high-rise development on a key corner in a CBD.
 - A drive-through facility would lead to poor environmental outcomes for other people using this ground floor space.
 - It is appropriate to include a provision in an LEP that restricts the establishment of a drive-through facility for the subject site.
 - A provision in an LEP is preferable to a provision in the DCP as it carries greater statute weight, although it is agreed that a provision in the DCP being prepared will support the LEP provision.
- 4.2 Therefore, Council seeks the removal of condition 1(a) of the Gateway determination dated 14 December 2021.