

28 February 2022

218144

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Department of Planning and Environment

Dear Mr Alvarez,

PP-2021-6800 355 & 375 CHURCH STREET, PARRAMATTA RESPONSE TO REQUEST FOR GATEWAY DETERMINATION REVIEW

This letter has been prepared by Ethos Urban on behalf of Stockland who have entered into a Development Agreement with McDonald's for the site mentioned above. The purpose of this letter is to respond to the Gateway Review Request submitted by City of Parramatta Council (Council) in relation to Planning Proposal PP-2021-6800 for land at 355-375 Church Street, Parramatta. It directly responds to the justification provided by Council in their Gateway Determination Review dated January 2022 and is intended to assist the Independent Planning Commission (IPC) in its consideration of Council's Gateway Review Request. The letter sets out the reasons why the Gateway Review should not be supported and why the Gateway Determination issued by the Department of Planning and Environment (DPE), dated 14th December 2021, should remain in its current form. The following should be read in conjunction with the Traffic Review Statement prepared by Colston Budd Rogers & Kafes Pty Ltd (CBR&K) at **Attachment A**.

1.1 Response to Gateway Review Request

The following provides a response to justification provided by Council within their Gateway Review Request dated January 2022.

Table 1 Response to Gateway Review Request

Justification within Council's Gateway Review Request	Response
Traffic Impacts	
<i>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 queuing 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.</i>	<p>A traffic review has been conducted by CBRK and is made available in Attachment A. The review finds the following:</p> <p>Current Conditions</p> <ul style="list-style-type: none"> The site generates some 240 to 275 vehicles per hour (two way) in the weekday am and pm peak hours. 36% of traffic entering the site uses the McDonalds drive through. Current intersections operate at a satisfactory or better level during the am and pm peak hours. <p>Impact of Planning Proposal</p> <ul style="list-style-type: none"> Traffic generation as a result of the proposal would in fact reduce to 236 and 247 vehicles per hour (two way) during the weekday am and pm periods. This reduction occurs as a result of the parking reduction (from 60 to 30 spaces) and the reduced visual exposure of the drive through given it will be located behind the building frontage and no longer be visible from the street. Change in access to left entry only from Victoria Road would result in 25% less traffic using the Victoria Road access.

Justification within Council’s Gateway Review Request	Response
	<ul style="list-style-type: none"> • Traffic modelling confirms that all adjacent intersections will continue to operate at satisfactory or better levels during weekday am and pm peak hours. • All traffic will now also exit via Ross Street, significantly reducing the number of vehicle movements and crossings occurring along this street. This change to the Victoria Road access from entry and exit in all directions to left in only will therefore lead to a reduction in pedestrian/vehicle conflict.
	<p>Impact of Removing Drive-through</p> <p>As discussed in the paper prepared by CBRK, prohibition of the drive-through will in fact lead to the following adverse outcomes for the site.</p> <ul style="list-style-type: none"> • An increase in demand for on-site and on-street parking as customers would have to enter the store rather than use a drive through. • Delays in the car park as customers will have to wait for a parking space. • Increase demand for home deliveries and associated additional traffic movements (e.g. Uber Eats, Deliveroo etc). <p>Ultimately, any increase in traffic with home deliveries and customers waiting for parking would offset the reduction in traffic associated with the removal of the drive-through. The removal of the McDonald’s drive-through would have no material effect on the operation of the surrounding road network and is suitable to be kept as an integral component of any future McDonalds on site.</p>
<p>Inappropriate Use of Site</p>	
<p><i>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.</i></p>	<p>The Council’s Gateway Review Request seeks to assert that the site is located centrally within the CBD, when in fact it is located on the fringe of Parramatta CBD where car use is frequent. As acknowledged by Council in the Draft Parramatta CBD Public Car Parking Strategy 2017-2023 (the Strategy) dated 05 April 2017,</p> <p>“56% of workers drive to Parramatta CBD for work” and “By 2036, the number of trip to Parramatta CBD could potentially increase by two to three times current levels ... [and] by 2056, the number could swell to four times”.</p> <p>As stated in Council’s own Parking Strategy, trip generation is expected to increase within the CBD, which directly contradicts the Council’s statement and assertion in the Gateway Review Request.</p> <p>It’s worth noting that despite expected increases in trip generation, the number of car parking spaces serving McDonald’s is proposed to halve from 60 to 30 as a result of this proposal. The proposal is therefore seeking to positively respond to the Council’s strategy of less CBD parking, and retention of the drive-through facility is integral to enabling this 50% reduction of parking spaces.</p>

Justification within Council’s Gateway Review Request	Response
	<p>Finally, in an effort to deliver a proposal for the site that reflects the intention of council to reduce private vehicle uses, the applicant is willing to accept:</p> <ul style="list-style-type: none"> • A ‘sunset’ clause to relating to the proposed parking rate that will expire in 5 years from the date of the notification of the LEP amendment, and • A requirement to demonstrate the adaptive re-use potential of the drive through facility, as required by a site-specific DCP.
Environmental Outcomes	
<p><i>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.</i></p>	<p>McDonald’s has proudly provided drive-through facilities in all forms including enclosed drive through facilities. Various mitigation measures can be demonstrated through the DA and assessment stage that include the use of sleeved louvers and ventilation stacks to manage vehicular emissions, much in the same way all basement car parks work.</p> <p>With regards to noise impacts from vehicles, its noted that the drive-through will sit behind the façade of the building, and at the rear of solid internal walls. Noise from vehicles will therefore be internalised and there is not expected to be any adverse impacts on other occupants within the building. This will be demonstrated at DA stage with the preparation of a detailed Noise Impact Assessment.</p>
Response to Matters Raised by the Department	
<p><i>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.</i></p> <ul style="list-style-type: none"> • <i>A drive through facility is not a classified land use, but rather a component of uses already permitted in the zone.</i> • <i>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.</i> • <i>A site-specific DCP is being prepared which includes controls that seek to discourage a drive-through facility.</i> <p><i>These matters raised by the Department are addressed as follows:</i></p> <ul style="list-style-type: none"> • <i>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.</i> 	<ul style="list-style-type: none"> • The proposed development is intending to seek development consent for the use of a take-away food and drink premises that includes a drive through during the DA stage. We agree with Council that determination of the acceptability of the drive-through is most appropriately dealt with at the development application stage. For this reason we consider it inappropriate to include a statutory control that prohibits a drive-through facility that denies the opportunity for that drive through to be the subject of a full and proper merit-based assessment.

Justification within Council’s Gateway Review Request	Response
<ul style="list-style-type: none"> 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. <p><i>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.</i></p>	<ul style="list-style-type: none"> It is unusual for LEPs to include a provision prohibiting a drive-through facility in association with a takeaway food and drink premises. If anything, the opposite is common, i.e. a Schedule 1 LEP amendment which would specifically allow such a form of development for land in a zone that would otherwise not permit such development. It is our strong view that a DCP control that requires a full merit-based assessment of the drive-through facility at development application stage is the most appropriate approach for the very reason that it provides a framework that then must be considered and addressed as part of any future application. Such an approach enables the Council to make an informed merit based decision at the development application stage. This is an entirely reasonable approach consistent with best practice planning. Response as per above, whilst also noting that no technical justification has been provided for the LEP or DCP restriction the use of a drive-through facility. The proposed restriction is simply being sought on the back of a ‘gut feel’ from Council that it’s not a good outcome for the site.

As evident in **Table 1**, each matter provided to justify Council’s request for a Gateway Determination Review lacks any evidence or merit, and instead is put forward on the basis of Council’s own uncertainty with the proposal, despite technical evidence confirming otherwise.

1.2 Additional Supporting Comments

In addition to our submissions in direct response to the Council’s points of justification, we are pleased to provide below some additional reasons as to why DPE should not endorse Councillors’ resolution to prohibit a drive-through facility via the LEP.

The Strategic and site-specific merit of the proposal has previously been endorsed and confirmed by Council, DPIE and the Independent Planning Commission

In July 2020 Councillors supported the PP lodged in 2018. The PP was in response to the concerns of then JRPP that McDonald’s 2015 DA was a “lost opportunity to present a major architectural feature” on the subject site, leading to the withdrawal of that DA and commencement of discussions around a PP in accordance with the CBD Planning Strategy.

The strategic merit and the site-specific merit of Stockland’s original PP – which incorporated a bespoke car parking rate and a redesigned drive-through facility for McDonald’s – had been thoroughly assessed and supported by reports lodged with the PP, and was supported by the Council, IPC and DPE through to Gateway Determination.

This position is put in question by Council’s recent resolution of 11 October 2021 in relation to the drive-through facility. During that meeting, eight Councillors who supported the PP in July 2020, changed their position without explanation and without their revised position being supported by any studies or investigations. The amended component of the Council’s PP, being the removal of the drive-through facility, does not have site-specific merit.

Council’s position on amended PP is inconsistent with Ministerial section 9.1 direction

The Councillors’ position was not consistent with the section 9.1 Local Planning Directions relating to Employment and Resources Land, Direction 1.1, Business and Industrial Zones. The direction applies in this case because Parramatta City Council, as a relevant planning authority is preparing a PP that will affect land within an existing business zone, in this case B4 Mixed Use.

The objectives of the direction are to:

- Encourage employment growth in suitable locations,
- Protect employment land in business zones, and
- Support the viability of identified centres

The section 9.1 direction, relevantly requires the Council's PP to:

- Give effect to the objectives of the section 9.1 direction
- Retain the areas and locations of existing business zones,
- Not reduce the total potential floor space area for employment uses and related public services in business zones: 1.1(4).

What the Councillors have proposed does not protect employment land. The decision to remove/prohibit a drive-through facility as part of the LEP amendment will involve a partial 'down-zoning' of the site, affect the feasibility of the proposed McDonald's and the feasibility of the project as a whole, and as such is inconsistent with the direction.

The decision is not justified by an approved strategy which identifies the land, nor a study prepared in support of the PP, as would be required in accordance with 1.1(5) of the direction.

No changes are proposed by the planning proposal to the existing B4 Mixed Use zoning to warrant the prohibition of a permissible use

Commercial premises, which includes takeaway food and drink premises, are permissible with development consent in the B4 zone. The proposed prohibition would change the permissible uses on the site and would be a form of down-zoning which is not justified nor appropriate.

Mandating a prohibition without testing is not appropriate

No prohibition of a drive-through facility should be included in the LEP amendment. Whether a drive-through facility should be permitted for the takeaway food and drink premises should be considered at the DA stage, after a full merits assessment. This will include consideration by the consent authority of the objectives of the B4 Mixed Use zone, and a detailed impact assessment.

There is an opportunity to rejuvenate, improve and present a major architectural feature on the site, and to improve the current traffic issues

McDonald's has operated successfully on the site for decades. Their minimum requirements to support a redevelopment and rejuvenation of the site whilst balancing commercial imperatives for the ongoing operations of their business includes the continuation of a drive-through facility, convenient access to the drive-through, and adequate customer car parking.

The reference scheme, which was submitted in support of the PP, will allow a better designed drive-through facility and access arrangements to the site, to meet the changing character of the area and the needs of residents and workers in the area.

Stockland and McDonald's are committed to ensuring both convenient and safe outcomes with respect to the local traffic network, public transport movements, and to enhance pedestrian safety and amenity. In this regard, the proposed arrangement for access to the drive-through from Victoria Road and Ross Street represents a significant and marked improvement from the current situation, which is currently a "free-for-all" in terms of left and right turns into and out of the site.

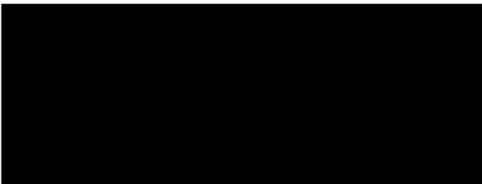
As per the Council officer's recommendations, a potential adaptive re-use of the drive-through and some of the additional car parking was developed. It was intended that the site specific DCP would provide that any DA demonstrates the potential adaptive re-use.

We would welcome the opportunity to work closely with Council, local stakeholders and the community during the DA lodgement and exhibition period to ensure our proposal creates better outcomes than currently in place.

1.3 Recommendation

Based on the considerations presented above, we recommend that the IPC and DPE deny the Gateway Determination Review submitted by Council and that the Gateway Determination as drafted by DPE should remain in its current form.

Yours sincerely,



Ben Craig
Director



Ben Porges
Urbanist

