

Item No: C0916 Item 8**Subject:** PLANNING PROPOSAL FOR 55-63 SMITH STREET, SUMMER HILL**File Ref:** 16/4718/106676.16**Prepared By:** Con Colotouros - Senior Strategic Planner & Projects, Ashfield**Authorised By:** Phil Sarin - Director, Planning and Environment**SUMMARY**

This Planning Proposal application seeks to permit additional land uses on the subject site. It has been put on preliminary public exhibition and public submissions have been received and are commented on in this report. This process is in place in order for Council to understand from the community what the key issues of concern are, so that they be able to be addressed upfront in the process. Consideration of the application was later deferred pending the applicant submitting additional information. This report recommends that Council agree to particular additional land uses for the reasons stated in **Part 5** of the report, being *Office premises, Business premises, Recreation facility (indoor), Self Storage Units*.

RECOMMENDATION**THAT:**

1. Council resolve to progress a Planning Proposal to amend Ashfield Local Environmental Plan (LEP) 2013 to add the following additional uses to "Schedule 1 – Additional Permitted Uses" of the LEP for the properties at 55-63 Smith Street Summer Hill:
 - Office premises
 - Business premises
 - Recreation facility (indoor)
 - Self Storage Unitsand that the applicant's Planning Proposal be amended to reflect the Council's resolution;
2. accompanying the Planning Proposal there must be a site specific Development Control Plan produced by the applicant addressing the matters covered in the planning report, with the content being approved by Council;
3. Council forward the Planning Proposal as amended in clause (1) to the Department of Planning and Environment for Gateway Determination to allow the LEP plan making process to commence under Section 56 of the Environmental Planning and Assessment Act 1979 (EP&A Act);
4. Council resolve to request The Department of Planning and Environment to issue a written authorization to Council's General Manager to exercise and implement delegations in accordance with Section 23 of the EP& A Act 1979 to facilitate the plan making process following the Gateway Determination;
5. following Gateway Determination by the Department of Planning and Environment, the Planning Proposal be progressed by Council, be put on formal public exhibition, and procedures carried out as required under the EP& A Act 1979, with a later report on the public exhibition being submitted to the Council for consideration on whether to continue to finalise the Planning Proposal; and
6. people who made a submission as part of the preliminary community engagement process be advised of Council's decision.

1.0 OVERVIEW OF PLANNING PROPOSAL

55-63 Smith Street, Summer Hill is currently zoned R3 - Medium Density Residential under the Ashfield LEP 2013 (see **Figure 1**).

Under the previous Ashfield LEP 1985, 55-63 Smith was originally zoned as a "Light Industrial" site, and later rezoned to "2C – Residential". The buildings currently on the site reflect the previous light industrial zoning and the site has had various types of land use approvals/development consents, some of which continue up to this point in time.

The current property owner wishes to continue using the existing buildings, and to have non-residential uses. However, due the current R3 - Medium Density Residential zoning the site owner is having difficulty obtaining tenants for those buildings because the zoning in the main does not permit many business/employment land uses. In addition, there is an ongoing reliance on using 'existing use rights' to continue any existing approved use. For example, there is an approval for second hand furniture storage in one of the buildings on the site, and if the premises were vacated, only the same or a very similar land use could use the building.

Given this situation, the property owner has submitted a Planning Proposal (in **Attachment 1**) to permit additional land uses on the site as follows:

- Office Premises
- Business Premises
- Recreational Facilities (indoor)
- Warehouse or Distribution Centres
- Light Industries
- Self Storage Units

The Planning Proposal proposes to keep the current land zoning, and to add the above proposed land uses into the *Schedule 1- Additional permitted uses* of the Ashfield LEP 2013.

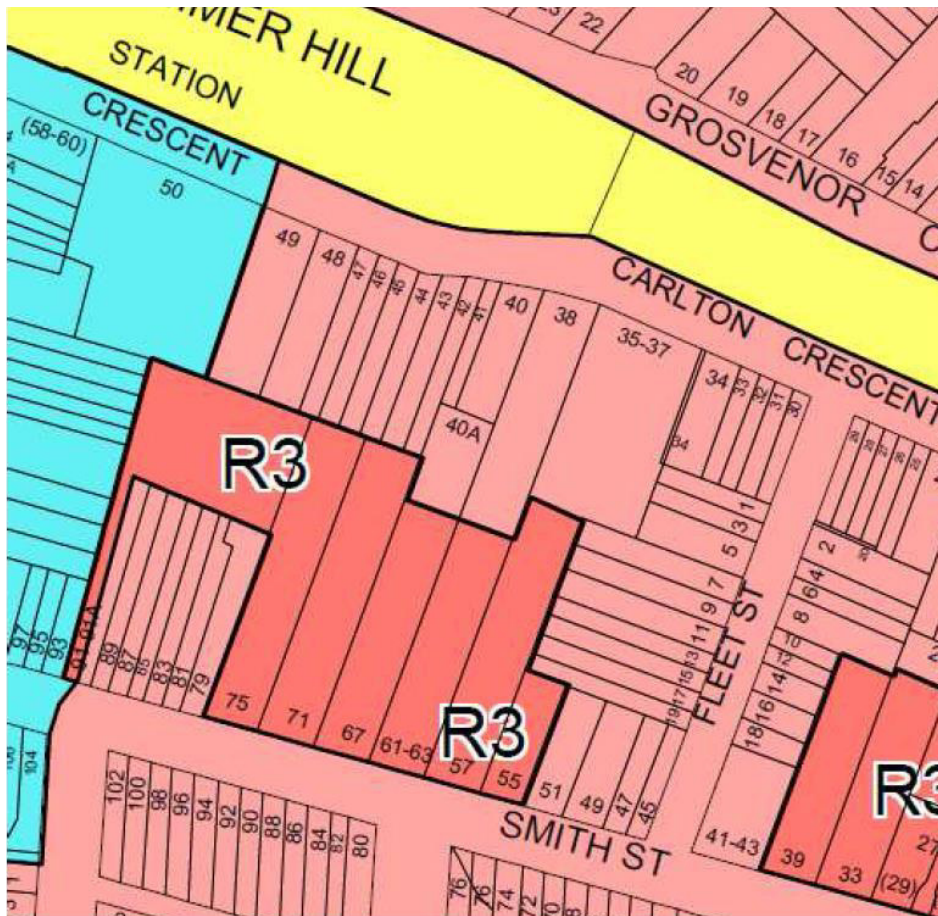


Figure 1 Extract - Ashfield LEP 2013 Land Zoning Map showing 55-63 Smith Street Summer Hill and existing R3 – Medium Density Zone

A Planning Proposal is a document that explains the intended effect of a proposed Local Environmental Plan (LEP) amendment and provides the justification for proceeding, produced in accordance with the Department Guidelines -A Guide to preparing Planning Proposals. The applicant's Planning Proposal essentially argues that the additional land uses sought are reasonable, that there will be benefits as the building use and surrounding land will remain activated, the buildings will be improved in appearance, that the proposed uses will provide local services, and that the proposal fits within the parameters of Council's Urban Planning Strategy 2010.

The proposal was lodged in late 2015, and was put on preliminary exhibition in order to obtain public feedback. Submissions received are commented in **Part 4** of this report. (The application was later deferred by the applicant pending additional information being placed in the Planning Proposal, see **Part 5** below).

2.0 LOCAL CONTEXT

As shown in **Figure 2** the site is surrounded mostly by houses and apartments to the east, north and south. The neighbouring site to the west has a 3 storey residential development currently completing construction, which will also retain and reuse the heritage building at 67 Smith Street and maintain its front garden setting.



Figure 2 Aerial photograph

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Figure 3 – Buildings along Smith Street

3.0 EXISTING BUILDINGS AND APPROVED LAND USES.

It is necessary to understand the existing or potential land uses on the site, by way of existing development approvals. **Figure 4** shows a diagrammatic plan of the site, with the premises containing several different building parts. Also shown are previous development applications. The site also contains a driveway leading to an internal loading dock.

It is noted that under Clause 41(f) of the EP&A Regulations 2000 an existing light industrial use has scope to change to another light industrial use or to a commercial use, and Clause 45 of the Regulations also enables changes in the proportions in which various parts of a building may be used. However, the applicant advises this does not apply to his site because the existing previously approved uses under the previous Ashfield LEP1985, shown below in **Figure 4**, do not fit under any of the current LEP light industrial and commercial use definitions, and that attempts to lodge development applications with Council has confirmed such advice. The owner must therefore only continue to use the buildings in the same or very similar form to that approved, provided the previous approvals are still active.

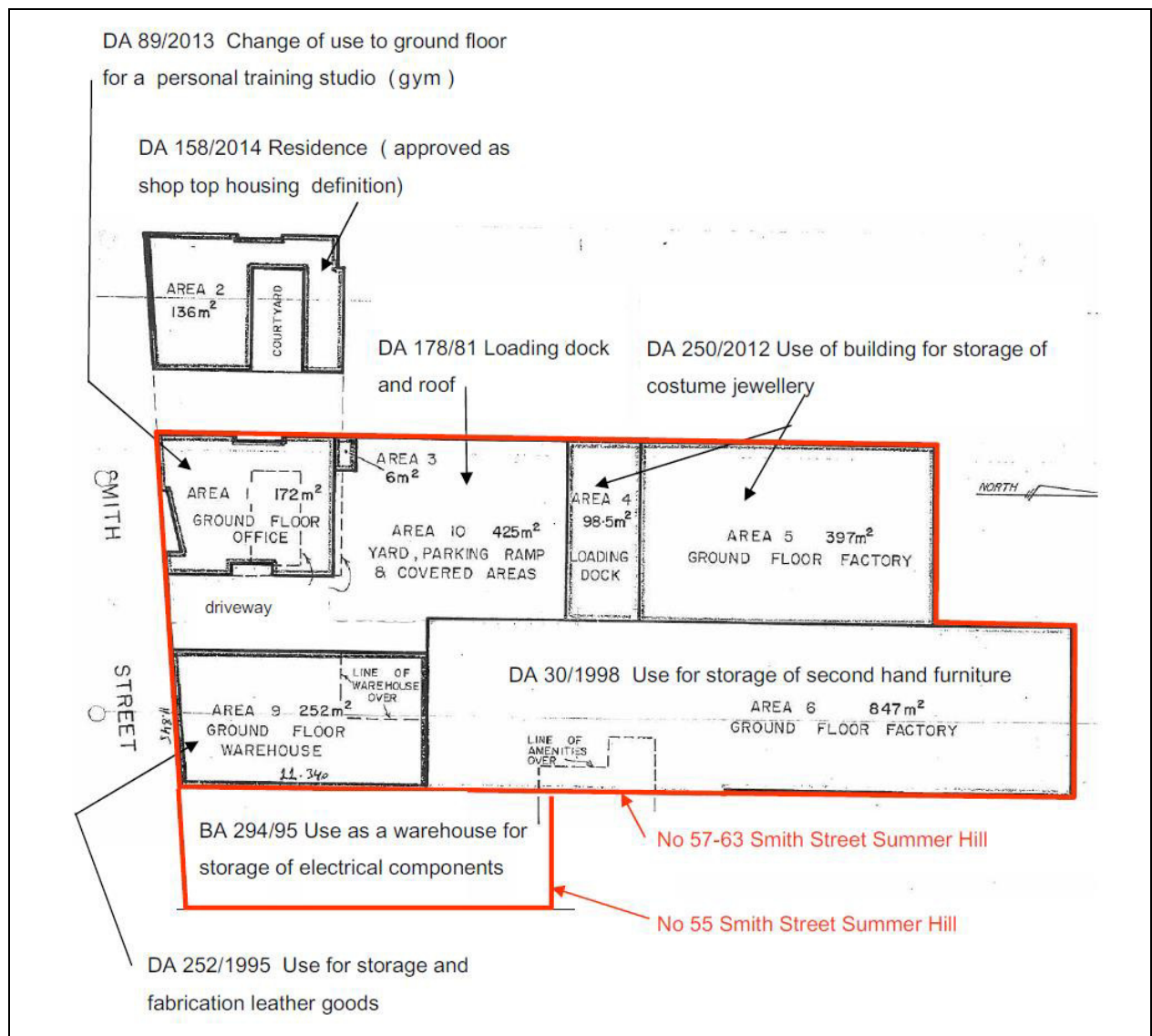


Figure 4- Approved Development Applications

4.0 PRELIMINARY NOTIFICATION AND PUBLIC SUBMISSIONS

The Planning Proposal was notified between 3 November and 4 December 2015. The following submissions (originals contained in **Attachment 2**) were received:

Table 1

Persons making submission	Issues raised	Officer Response
Leanne Findlay Summer Hill	Additional uses proposed could destroy the streetscape and atmosphere of Summer Hill.	It is agreed that any new land uses should not compromise the streetscape and atmosphere of Summer Hill. Refer to Part 5 and Attachment 4 of this report which examines the impacts of each of the proposed land uses.
	Proposes uses are not consistent with the zoning.	Some, not all, of the proposed land uses technically fit under the umbrella of objective no 3 of the R3 – Medium Density Residential zone of the Ashfield LEP 2013 which states: <i>“To enable other land uses that provide facilities or services to meet the day to day needs of residents”</i> . Refer to Part 5 of this report.
	Adverse effect on adjacent heritage item at 67 Smith street and opposite Quarantine Conservation Area (off Smith Street).	It is agreed that any building form that results from new land uses should not compromise the setting of the adjacent heritage item and Conservation Area. However, this is not a land zoning issue and the application does not pertain to building work.
David Rollinson Summer Hill	Former Ashfield Council previously considered (under the Ashfield LEP 1985) whether a light industrial zoning for the site should remain and determined that such a land use was not suitable for the site.	It was the current land owners who sought the change to the zoning - this was in the context of knowing at the time that the then ‘existing use rights’ provisions would allow a change from an existing non-conforming (not permissible in the LEP) use to another non- conforming use, e.g. from a factory use to a shop. However, the planning legislation was subsequently changed for existing use rights, removing the ability to have different types of non-conforming land uses. It was also understood at the time of the previous rezoning under the Ashfield LEP 1985 that the existing approved building uses more characteristic of a light industrial zoning could continue to operate, as has been the case in order to keep the premises activated.

	The site is abutted by residential uses and it is not appropriate to bring back a light industrial use that would impact on resident amenity.	It is agreed that any new land uses should not affect the amenity of adjacent residential properties - Part 5 and the referenced Attachment 4 of this report examines the impacts of each of the proposed land uses.
	Redevelopment of the site for medium density residential should occur.	Redevelopment is a matter for the site owner to determine whether to pursue, such as demolition and construction of new medium density residential development. Consideration of the current and short term future is required, and a situation where buildings are left empty or derelict should be avoided, and would be contrary to the economic and orderly use of the site.
	The Real Estate agency on behalf of the owner has been receiving interest in occupying the premises.	The site owner has advised that he has difficulties finding tenants that would meet the exact criteria of each of the previous development consents.
	Under Clause 41(f) of the EP&A Regulations 2000 an existing light industrial use has scope to change to another light industrial use or to a commercial use and Clause 45 also enables changes in the proportions in which various parts of a building may be used, and so the additional use proposed are not necessary.	The applicant says that the existing approved uses (shown above in Figure 4) do not fit under any of the light industrial and commercial use definitions and he cannot rely on the Regulations. The applicant advises that he has attempted to lodge development application with Council and has also received such advice.

After the preliminary exhibition period the following submissions were received.

Thea Norton Croydon	Objects to any noise generating activities, such as <i>Recreation Facilities (indoor)</i> on the basis that the existing gym use at the front of the site is causing noise problems, primarily due to an absence of adequate development consent conditions. This noise results from keeping front doors open, having a noisy internal operation and playing loud music. Complaints have been lodged with Council. Agrees that location is appropriate for some commercial uses, and storage facilities.	The site owner was formally advised the noise complaint, and the operator of the gym advised that operations would be modified. No further complaints from local residents have been received. Any potential future indoor gym should have development consent conditions applied to control noise issues, such as having adequate window glazing, noise isolating airlocks for front entries, and restricted hours of operation. A site specific DCP could draw attention to this issue.
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5.0 Conclusion on acceptable additional land uses.

Following completion of the public exhibition a meeting was held with the applicant to discuss the proposal and which land uses were considered by Council officers to fit within the R3 zone land uses objectives. The applicant agreed to defer Council's determination of the Planning Proposal, and chose to update the Planning Proposal (as contained in **Attachment 1-** March 2016), and to also supply a site layout plan showing how the existing buildings and land uses could be accommodated (**Attachment 4** received in July 2016). This also included advising that a "Self Storage Units" land use (such as for use by local residents) could be considered in lieu of a "Storage Premises" (as originally applied for). The applicant's explanatory letter and site layout diagram in **Attachment 4** shows how the existing building can accommodate a mix of proposed uses under the maximum 0.7:1 FSR in the Ashfield LEP and how car parking and servicing can be accommodated on the site.

Attachment 3 analyses each of the proposed uses, and in addition identifies that the proposed *Light Industry, Warehouse and Distribution, and Storage Premises* land uses do not technically meet the explicit objectives of the R3 Zone in the Ashfield LEP 2013 which state: "*To enable other land uses that provide facilities or services to meet the day to day needs of residents*".

The remaining propose land uses of *Office premises, Business premises, Recreation facility (indoor), Self Storage Units* technically fit within the objectives of the R3 Zone in the Ashfield LEP 2013, and should be supported by Council for the following reasons:

- the existing buildings will continue to be used, achieving an orderly and economic use of the site, potentially improving the condition and appearance of the existing buildings and thereby ensuring activation of the area for public safety and streetscape amenity, and ensuring the buildings are not left derelict.
- these land uses can potentially be managed via development consent conditions to have a low impact on neighbouring residential properties.
- land uses conform to Council Urban Planning Strategy 2010 – which is also a requirement of the Department's Planning Proposal guidelines for fitting in with local strategies. Relevant parts of the Urban Strategy include Part 6 - A Thriving Place to do Business - Part 04 – Foster Local Business, Part 7 - Sustainable Environments - Part 05 – in that the additional uses make more use of public transport - given the site is within close walking distance to the train station, and reuse of existing buildings.

Pursuant to the Department's guidelines, the applicant's Planning Proposal should also be updated to provide the necessary timelines, and any other detailed information required for the proposal's documentation to be complete.

A site specific Development Control Plan should be produced and focus on the following issues.

- Any future development application for each building compartment will need to document the building operations for the entire site, to ensure that the requirements of a DCP are met, such as car parking and servicing.
- No nuisance caused to adjacent residential properties, including controlling hours of operation, and noise attenuation.
- Location of on-site employee car parking.
- Location of on-site vehicular deliveries.
- Location of waste storage areas.
- Improvement of the current building appearance and potential enhancement of the historic streetscape.

The Development Control Plan should be prepared at the applicant's cost and be forwarded to Council for review and approval.

6.0 NEXT STEPS

The Council is required to determine whether or not to proceed with the Planning Proposal. If Council resolves to proceed with the Planning Proposal the next steps are to follow the Department of Planning & Environment's LEP plan making process.

To summarise:

1. Council considers whether to initially support the Planning Proposal including the amendments proposed by Council officers and to commence the LEP plan making process (current stage).
2. The Planning Proposal incorporating any amendments is submitted to Department of Planning and Environment.
3. Department of Planning and Environment undertakes an assessment and, if supportive of the Proposal, will issue a Gateway Determination which will give Council the authority to continue the process and specify whether any additional studies are required.
4. Council formally exhibits the Planning Proposal.
5. Council considers submissions received and following community engagement decides whether or not to amend/re-exhibit the proposal and submit it to Minister /Department of Planning and Environment for gazettal if the plan making function is delegated to Council.
6. The plan is then notified and comes into effect.

7.0 LEP (PLAN-MAKING) DELEGATION FORMER ASHFIELD LGA

In November 2012 the Minister for NSW Planning & Infrastructure delegated certain powers to Council to make and determine an LEP amendment. This enables Council to exercise the Minister's Plan making functions after the Gateway Determination stage (i.e. to draft and make the LEP in addition to the standard steps). The delegations operate when Council requests NSW Planning and Environment to issue a 'Written Authorisation to Exercise Delegation' (called the Authorisation). This Authorisation can be issued to Inner West Council as part of the Gateway Determination.

The previous Ashfield Council resolved to use the delegation on the proviso that the previous Ashfield Council General Manager exercises the delegation with prior approval from Council whenever a Planning Proposal is processed. The delegation was subsequently granted. The Department's "Guidance for merged Councils on planning functions" advises this delegation can continue. It is therefore recommended that Council give the current General Manager authorisation to exercise the relevant delegation.

CONCLUSION

Council is now required to determine whether to proceed with the Planning Proposal, and to forward it to the Department of Planning and Environment for a Gateway Determination. This will put Council in control of the process and lead to the formal public exhibition and later Council assessment of the Planning Proposal as to whether the proposed LEP amendments should be gazetted.

It is recommended Council endorse the Planning Proposal in an amended form as proposed by the Council officers report in **Part 5** limiting the additional land uses to "Office premises", "Business premises", "Recreation facility (indoor)" and "Self Storage Units". Council should also require preparation of a site specific Development Control Plan to ensure that the land uses have a low and satisfactory impact on adjoining residential premises.

It is also recommended that Council seek permission from the Gateway Panel to use the Council 'Authorisation' to process the Planning Proposal and authorise the General Manager to activate the delegation as part of the plan-making process.

ATTACHMENTS

1. [Planning Proposal](#)
2. [Public Submissions](#)
3. [Applicant's Letter and Site Layout](#)
4. [Land Use Analysis](#)