

Item No: C0418 Item 12

Subject: VICTORIA ROAD PRECINCT, MARRICKVILLE - DEVELOPMENT CONTROL PLAN AMENDMENT

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SUMMARY

The Victoria Road Planning Proposal was approved by the gazettal of an amendment to the Marrickville Local Environmental Plan (MLEP) 2011 on 1 December 2017. Council is now required to consider associated amendments to the Marrickville Development Control Plan (MDCP) in order to support the amended LEP.

Since the gazettal of the MLEP amendment, Council officers have been working with the proponent to prepare draft amendments to the MDCP. The draft MDCP amendment (**Attachment 1**) is now recommended for public exhibition.

RECOMMENDATION

THAT:

- 1. The shadowing diagrams for Wicks Park within this report be included in the draft Victoria Road Precinct (Precinct 47) amendment to the Marrickville Development Control Plan 2011 at Attachment 1.**
 - 2. Council resolves to publicly exhibit the draft Victoria Road Precinct (Precinct 47) amendment to the Marrickville Development Control Plan 2011 (April 2018 version) at Attachment 1.**
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BACKGROUND

On 1 May 2012, the former Marrickville Council resolved to advise the proponent that Council would consider revised planning controls for the Victoria Road precinct and invited the proponent to submit a planning proposal.

On 21 May 2014, the proponent submitted a preliminary planning proposal to the former Marrickville Council. On 2 September 2014, Council resolved to forward the preliminary planning proposal to the Department of Planning for Gateway Determination. In December 2014, the Department requested that the proposal be withdrawn in order to allow additional studies to be undertaken to inform a revised planning proposal.

On 7 August 2015, the proponent submitted a revised planning proposal to the former Marrickville Council. The key differences between the original (2014) preliminary planning proposal and the revised planning proposal were:

- a reduction in number of apartments proposed from approximately 3,100 to approximately 1,100;
 - land use zones that permit residential uses were restricted to the area between 25-30 ANEF contour, which is in the southern part of the precinct only (previously, residential uses were proposed in areas above the 30 ANEF contour);
 - minor amendments to street and block layouts;
 - an employment strategy was included;
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- acoustic studies and an aircraft noise strategy was included;
- an affordable housing contribution was proposed, which was 3% of 'developable residential floor area' and has since been amended to 5% of 'accountable gross floor area'; and
- specific LEP provisions for which amendment was sought were identified.

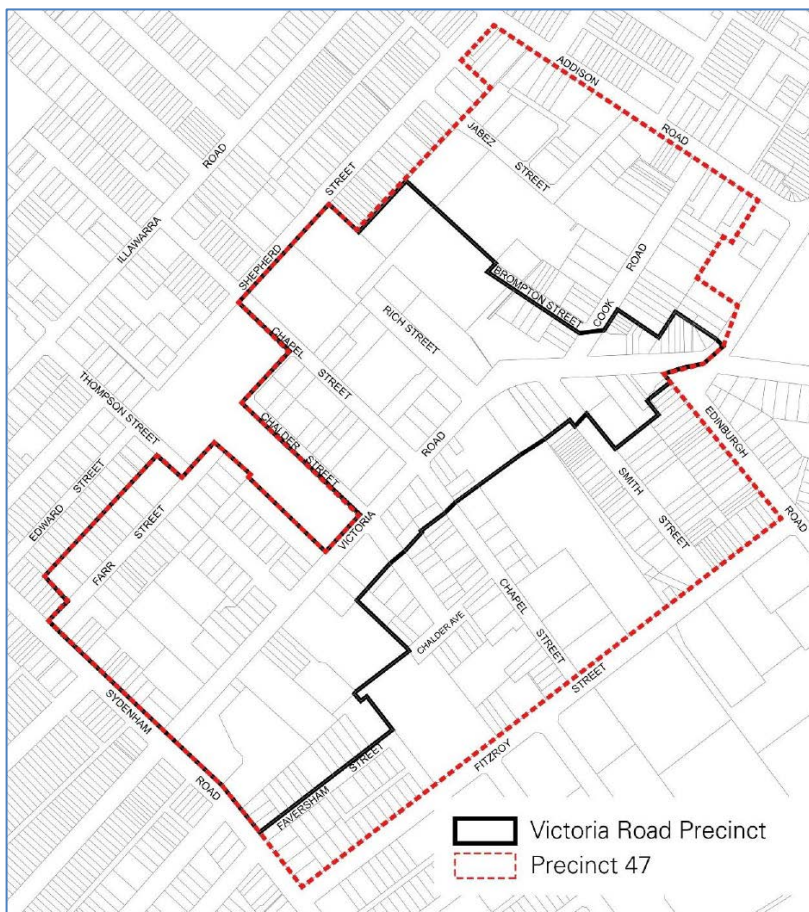


Image 1: Map indicating the area encompassed by the Victoria Road Precinct Planning Proposal (outlined in black) that forms part of Precinct 47 (identified in red dash) as defined under Marrickville Development Control Plan 2011.

The former Marrickville Council considered the revised planning proposal at its 3 November 2015 meeting, and resolved to submit the planning proposal in the form lodged by the proponent to the Department for Gateway Determination.

On 14 March 2016, the Department issued a Gateway Determination for the planning proposal subject to a number of conditions. The conditions on the Gateway Determination required the proponent to make a number of amendments to the planning proposal, and submit the updated planning proposal to the Department for review and approval prior to public exhibition.

The proponent submitted the updated planning proposal to the Department on 14 July 2016 and on 6 September 2016 the Department advised Council that "the Gateway conditions have been sufficiently satisfied and the proposal should proceed to public exhibition".

The planning proposal was publicly exhibited from 23 September 2016 to 23 November 2016 and in accordance with the Gateway Determination was referred to Transport for NSW (TfNSW), Roads and Maritime Services (RMS), Sydney Airport Corporation (SACL),

Department of Infrastructure and Regional Development, Department of Education and Training, Energy Australia, Telstra and Sydney Water.

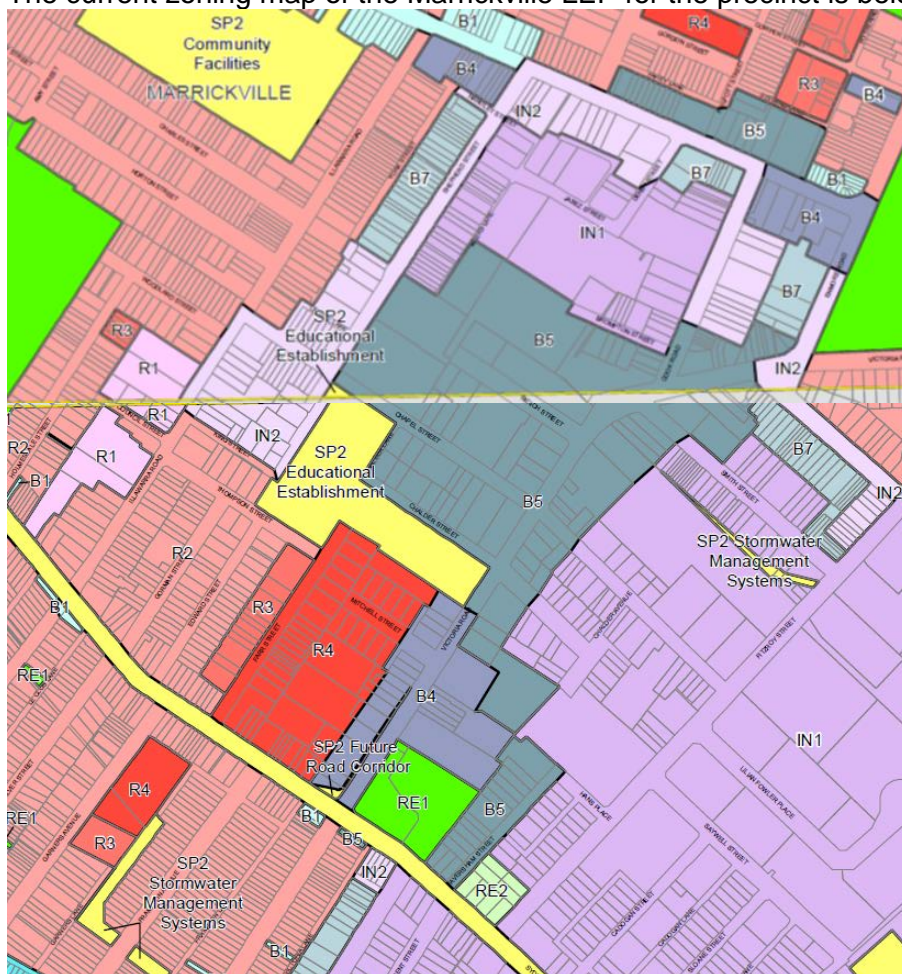
On 27 June 2017, Council considered the Planning Proposal post exhibition and resolved as follows:

"Council forwards the Victoria Road Planning Proposal to the Minister for Planning indicating its support for the Proposal subject to:

- 1. resolution of matters the subject of an unresolved objection from the Roads and Maritime Service;*
- 2. there is to be no change to the existing IN1 – General Industrial zoning on the south eastern side of Victoria Road. This land forms part of the core Sydenham / Marrickville Industrial Area and should be preserved in line with the recommendations of the Marrickville Employment Lands Study and subsequent Review. Council will further consider its position subject to review of the Sydenham to Bankstown Urban Renewal Corridor Strategy;*
- 3. with the exception of the properties on the north western side of Farr Street to be zoned R3 – Medium Density Residential, no properties in the precinct are to be zoned residential; the Danias Timbers Site / Timber Yards Sub-precinct to be zoned B4 – Mixed Use (along Victoria Road and Sydenham Road) and B7 – Business Park (for the remainder of the sub-precinct) with an appropriate mix of employment and residential uses to be provided via site specific provision. The remainder of the precinct north-west of Victoria Road and north of Chalder Street to be zoned B5 – Business Development;*
- 4. any intersection upgrade works necessitated by the planning proposal cannot require the acquisition of parts of Wicks Park or properties outside the area covered by the planning proposal;*
- 5. the planning proposal must adequately deal with infrastructure planning, funding and delivery (including any required property acquisitions) in consultation with Council;*
- 6. the planning proposal must reflect the urban design and built form recommendations provided by Rod Simpson and Council's Architectural Excellence Panel;*
- 7. affordable housing being provided in accordance with the requirements of the Inner West Council Affordable Housing Policy;*
- 8. the planning proposal cannot result in the loss of any existing areas of public open space and adequate new additional areas of public open space must be provided to service the new resident and worker population (e.g. an expansion and embellishment of Wicks Park);*
- 9. the planning proposal must provide suitable mechanisms to deliver the new laneways and road connections required to service the rezoning and stated vision for the Victoria Road corridor; and*
- 10. the planning proposal must adequately deal with identified potential heritage."*

On 1 December 2017 the MLEP amendment was gazetted, refer to **Attachment 2** for the gazettal determination letter. New Clause 6.17 was inserted into the MLEP which requires the preparation of a Development Control Plan (DCP) for the land prior to any development consent being granted. Clause 6.18 was also inserted which requires satisfactory arrangements to be made with the State regarding public infrastructure, most specifically some widening at the intersection of Victoria and Sydenham Roads.

The current zoning map of the Marrickville LEP for the precinct is below.



Zone

- B1 Neighbourhood Centre
- B2 Local Centre
- B4 Mixed Use
- B5 Business Development
- B6 Enterprise Corridor
- B7 Business Park
- IN1 General Industrial
- IN2 Light Industrial
- R1 General Residential
- R2 Low Density Residential
- R3 Medium Density Residential
- R4 High Density Residential
- RE1 Public Recreation
- RE2 Private Recreation
- SP1 Special Activities
- SP2 Infrastructure
- W1 Natural Waterways
- W2 Recreational Waterways

The current height of buildings map of the Marrickville LEP in the precinct is below.

Maximum Building Height (m)

J	9.5
L	11.0
N	14.0
P	17.0
Q	20.0
S	23.0
T1	26.0
T2	29.0
U	32

Maximum Building Height (RL m)

41-60


DRAFT DEVELOPMENT CONTROL PLAN ASSESSMENT AND COMMENT

The proponent has provided a table with each of the latest proposed amendments and a comment on each at **Attachment 3**.

Since the gazettal of the LEP amendment, significant changes included the confirmation of the location and size of the Rich Street Public Open Space, further wording to ensure building heights are under the height limits required by the airport, and inclusion of road widening requirements (not impacting Wicks Park) at the intersection of Victoria and Sydenham Roads have been introduced to the draft MDCP amendment.

Officers requested the proponent to reconsider proposed pocket parks near Farr Street as they would reduce the ability for traffic to circulate in the immediate precinct. The proponent

considered this, provided further information on traffic circulation (**Attachment 4**), and has elected to retain the proposed pocket parks in the draft MDCP amendment.

Officers also requested further laneways, parallel to Victoria and Sydenham Roads, to be included to assist access and circulation. Again, the proponent provided further information on traffic circulation (**Attachment 4**) and elected not to add further laneways. This matter will be referred to Council's Road and Traffic team for further consideration during the exhibition period.

The applicant also removed 'potential heritage items' from the draft MDCP amendment to add to clarity of which items are heritage and must be considered. This matter will be referred to Council's Heritage Advice team during the exhibition period.

Another significant modification is a change to the proposed orientation and location of the building to the north of Wicks Park to reduce overshadowing of the park.

The three diagrams below show the extent of shadowing initially proposed for Wicks Park.



The three diagrams below show the latest proposed extent of shadowing of Wicks Park under the latest version of the MDCP amendment. Afternoon shadowing in winter has been almost eliminated, midday winter shadowing has been reduced, and morning winter shadowing is similar to initially proposed. This latest level of shadowing is considered much more acceptable than initially proposed.



The following table outlines issues that have been raised during the planning proposal process, and a comment on each.

Issue	Comment
Issues to be considered from Councils June 2017 support of the planning proposal	
Unresolved objection from Roads and Maritime Services	The RMS objection was resolved at the gazettal of the LEP, the proponent must come to satisfactory arrangements with the State. The proponent is currently in discussion with RMS on this matter.
No change to the IN1 zoning on south eastern side of Victoria Road	The LEP amendment has been made and the zonings are as per the gazetted MLEP.
With the exception of the properties on the north western side of Farr Street to be zoned R3, no properties in the precinct are zoned residential; The Danias Timbers Site / Timber Yards Sub-precinct is to be zoned B4 and B7 – with an appropriate mix of employment and residential uses to be provided via a site specific provision. The remainder of the precinct north-west of Victoria Road and north of Chalder Street are zoned B5.	
Any intersection upgrade works necessitated by the planning proposal cannot require the acquisition of parts of Wicks Park or properties outside the area covered by the planning proposal.	The road widening does not impact upon Wicks Park.
The planning proposal must adequately deal with infrastructure planning, funding and delivery (including any required property acquisitions) in consultation with Council.	The proponent is in the process of discussing the Developer Contribution (formerly s94) and a Voluntary Planning Agreement. It is anticipated this will be resolved during the exhibition period.
The planning proposal must reflect the urban design and built form recommendations provided by Rod Simpson and Council's Architectural Excellence Panel.	The planning proposal and MDCP amendment was refined based upon this feedback, however given the changes to the MDCP amendment it is considered prudent to refer the latest draft MDCP amendment to the Panel for comment during the exhibition period.
Affordable housing being provided in accordance with the requirements of the Inner West Council Affordable Housing Policy.	This is not normally a matter for a specific DCP and is expected to be addressed in a VPA.
The planning proposal cannot result in the loss of any existing areas of public open space and adequate new additional areas of public open space must be provided to service the new resident and worker population (e.g. an expansion and embellishment of Wicks Park).	The latest draft MDCP amendment shows the location and size of a park in the Rich Street area of at least 1,200m ² , two pocket parks of about 700m ² and no change to Wicks Park. This is considered acceptable.
The planning proposal must provide suitable mechanisms to deliver the new laneways and road connections required to service the rezoning and stated vision for the Victoria Road corridor.	The applicant has decided to not improve vehicle circulation by removing the pocket parks and adding laneways parallel to Victoria and Sydenham Roads. This will be referred to Council's Roads and Traffic team during the exhibition period.
The planning proposal must adequately deal	The proponent has removed 'potential'

with identified potential heritage.	heritage items from the DCP to aid clarity. This will be referred to Council's Heritage Advice team during the exhibition period.
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It is considered that the issues identified have been resolved to sufficient extent to enable formal exhibition of the draft MDCP amendment. Some referrals will be conducted during the exhibition period in order to have the final feedback considered by Council post-exhibition.

New Clause 6.17(3) of the Marrickville LEP requires the DCP to address nine matters. An assessment of the nine matters is included in the table below.

Requirement	Comment
The upgrading of road networks and intersections on the land and surrounding areas.	The draft DCP shows this. The proponent must also come to satisfactory arrangements with the State to upgrade the Sydenham/Victoria intersection in line with the requirements of the LEP.
Transport connections on the land and within surrounding areas (including the layout of laneways, bicycle routes and other connections).	The DCP shows good access and connectivity to main thoroughfares for vehicles, bicycles and pedestrians. The applicant has updated the DCP based on Council officer feedback. During the exhibition period a final referral to Council's Roads/Traffic branch will be undertaken to ensure they are fully satisfied with the DCP requirements.
The protection of items and areas of heritage significance.	This is included in the draft DCP. During the exhibition period a final referral to Council's Heritage Advice branch will be undertaken to ensure they are fully satisfied with the DCP requirements.
The management and mitigation of the impact of existing industrial development in the surrounding areas on the amenity of proposed residential development on the land.	The draft DCP addresses this through careful controls around built form and noise to ensure minimal impact on the industrial land uses from the residential development.
The impacts of the development on the surrounding residential and industrial areas and the amenity of the neighbourhood.	The draft DCP addresses this through careful controls around built form, movement network, public open space and noise to ensure minimal impact on the industrial land uses from the residential development.
The mitigation of aircraft noise (including through building design and the use of appropriate building materials).	The draft DCP addresses this through careful controls around built form and noise. Particular noise requirements have been developed for the precinct, and Sydney Airport has endorsed this requirements as acceptable
The management of drainage and flood risks.	The draft DCP addresses this through careful controls around stormwater management. A major drain requires upgrade, the funding of which is being negotiated through developer contributions or a Voluntary Planning Agreement (VPA).
A network of active and passive recreation	The latest draft MDCP amendment shows the

areas.	location and size of a park in the Rich Street area of at least 1200m ² , two pocket parks of about 700m ² and no change to Wicks Park. This is considered acceptable.
The protection of public open spaces (including from overshadowing).	The extent of shadowing of Wicks Park has been significantly reduced under the latest version of the MDCP amendment. Afternoon shadowing in winter has been almost eliminated, midday winter shadowing has been reduced, and morning winter shadowing is similar to initially proposed. This latest level of shadowing is considered much more acceptable than initially proposed.

DEVELOPER CONTRIBUTION AND VOLUNTARY PLANNING AGREEMENT

The proponent is in the process of discussing the Developer Contribution (formerly s94), which may include works-in-kind, and a Voluntary Planning Agreement (VPA) for the proposal. It is anticipated this will be resolved during the exhibition period and before to the final DCP is adopted.

ROADS AND MARITIME SERVICES (RMS) SUBMISSION

It is noted that RMS did not support the planning proposal during the exhibition period for the LEP amendment. RMS was concerned that the cumulative impacts of the residential development had not been adequately assessed. The Department considered the position of RMS and decided to gazette the LEP amendment with a 'satisfactory arrangements' clause (6.18) and a road widening reserve along Victoria Road and at the intersection of Sydenham Road.

The proponent is working with the Department to satisfy this clause in terms of road design and construction prior to any development consent being granted. Council will be consulted during this process. The draft DCP has been refined to be consistent with the LEP zoning map and to ensure the satisfaction of this clause will not impact on the LEP itself. It is noted that the design for the intersection must not impact upon Wicks Park and must be kept within the road corridor zone.

FINANCIAL IMPLICATIONS

Nil.

OTHER STAFF COMMENTS

The draft MDCP amendment will be referred to the Traffic and Heritage branches of Council and the Architectural Excellent Panel for further advice during the exhibition period.

Sydney Airports Corporation Limited has been consulted on the latest draft of the DCP and is satisfied with its requirements. Specific care has been taken to ensure SACL is satisfied with the heights and locations of the buildings. All development applications over 15.24m in height are required to be referred to SACL under the Civil Aviation (Building) Regulations.

It is proposed to undertake a number of referrals during the exhibition period to ensure certain sections of Council are fully satisfied with the draft DCP. Internal referrals have previously been conducted and the majority of matters raised have been addressed. The final round of

referrals refer to the latest set of refinements to the DCP and are technical changes to certain elements of the DCP. It is not considered that these refinements are significant enough to delay exhibition, and any minor changes to the draft DCP recommended by Council departments can be considered at post-exhibition stage when a further report will be presented to Council for consideration.

PUBLIC CONSULTATION

The Planning Proposal was placed on exhibition from 23 September 2016 to 23 November 2016. 549 individual submissions were logged by Council. Submissions were received via an online submission form on the Your Say Inner West website, by email and directly posted to Council. The Engagement Report which provides a summary of the supportive and non-supportive comments received during the public consultation period is at **Attachment 6**.

It is noted that this exhibition was the formal exhibition of the LEP amendment. A draft DCP was prepared to support the LEP amendment and was exhibited as an appendix to the LEP. Council never resolved to exhibit that draft DCP, it only resolved to send the planning proposal to the Department for Gateway determination. The draft DCP was therefore never exhibited under the conditions of Council having resolved to exhibit it. The draft DCP has also evolved substantially since the exhibition of the LEP amendment, including many issues that were resolved by the gazettal of the LEP.

The Environmental Planning and Assessment Act 1979 requires draft DCPs to be exhibited for 28 days. The proponent contends that appropriate DCP exhibition has occurred and has provided a submission and legal advice to that end. This submission is at **Attachment 5**.

Council's Strategic Planning Staff and General Counsel disagree with the proponent and recommend that the draft DCP be placed on formal exhibition. It is important that the DCP be exhibited for the purposes of legality, transparency and public participation in the planning process (noting that an exhibition process that does not conform to the requirements of the Act could result in the DCP having being made unlawfully and, therefore, susceptible to legal challenge).

In the event that Council agrees with the proponent and does not require the latest draft MDCP amendment to be exhibited, it is considered that it would be premature to approve it as further referrals are required as detailed in this report, certain infrastructure requirements need resolution, developer contributions require resolution and the Voluntary Planning Agreement process requires finalisation. Staff propose to undertake these activities during the exhibition period in order to finalise the DCP in a timely manner.

CONCLUSION

The Victoria Road Planning Proposal has been gazetted and the associated DCP amendment is now needs to be progressed. The draft DCP has significantly changed since it was previously exhibited with the draft LEP and has evolved to a state where formal exhibition can now be undertaken. A small number of outstanding items require addressing by way of referrals, however these can be completed during the exhibition period.

It is therefore recommended that the draft DCP amendment for the Victoria Road Precinct, Marrickville be placed on formal public exhibition for 28 days. Following this, and the resolution of outstanding referral matters, a further report will be presented to Council to consider any submissions, and final feedback from the referral process. During this time, the developer contribution and VPA process will also be progressed.

ATTACHMENTS

1. Draft Victoria Road Development Control Plan
2. Determination notice of LEP amendment
3. Summary table of latest modifications to the DCP amendment
4. Further Information from Proponent on Traffic Circulation
5. Proponents letter and legal advice contending that exhibition is not required
6. Engagement report from exhibition of LEP amendment