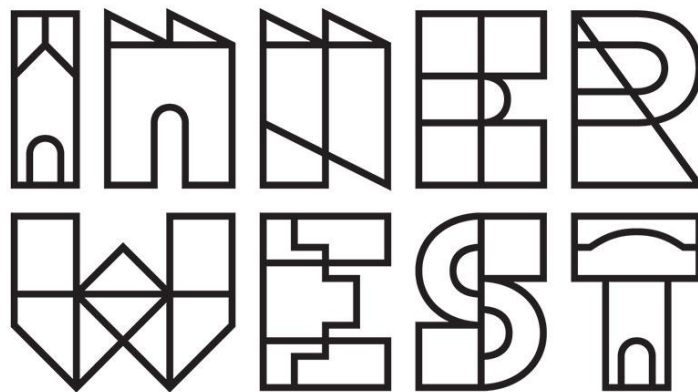


AGENDA 1

Distributed on 5 August 2022



COUNCIL MEETING

TUESDAY 9 AUGUST 2022

6.30pm

The following report appear as late item as information required for the preparation of the reports was not available at the time of distribution of the Business Paper.

ITEM	Page
C0822(1) Item 34 Update - MOD/2021/0376 at 750 Princes Highway,Tempe (Bunnings Tempe)	3

Item No: C0822(1) Item 34

Subject: UPDATE - MOD/2021/0376 AT 750 PRINCES HIGHWAY, TEMPE
(BUNNINGS TEMPE)

Prepared By: Harjeet Atwal - Senior Manager Planning

Authorised By: Simone Plummer - Director Planning

RECOMMENDATION

That Council receive and note the report.

DISCUSSION

Below is a brief background summary of recent history of Bunnings Tempe modification application and an update of recent actions.

MOD/2021/0376 was considered by the SECPP on 31 March 2022 and the matter was deferred. Refer to Attachment 1 for the Record of Deferral dated 13 April 2022. The Panel deferred the determination of MOD/2021/0376 for Council to undertake the following tasks:

- Re-exhibition of MOD/2021/0376 and relevant documentation to the public. This has been completed and re-exhibition was undertaken between 27 May and 17 June 2022.
- Seek feedback and approval from Transport for NSW (TfNSW) of the traffic measures within this area. Council has issued written correspondence seeking feedback from TfNSW and Council is awaiting feedback.
- Local Traffic Committee conclude its consideration of the Local Area Traffic Management (LATM) study.

In relation to the Tempe South LATM study, The Local Traffic Committee considered the report on 20 June 2022 and recommended to re-exhibit the draft report.

The main changes since the last public exhibition comprise of the following proposals:

- Soft closure 'No Entry' for northbound traffic into Union Street at the signalized intersection of Smith Street and Princes Highway
- 10km/h Shared Zone in Union Street from Princes Highway to School Lane, including contrasting pavement threshold, installation of mountable kerbs
- Partial road closure of Brooklyn Street (exit only at Princes Highway), which would only be required to complement the No Entry closure at Union Street traffic signals.

Should the recommendation be adopted by Council at its meeting to be held on 9 August 2022, a 28-day Public Exhibition on the LATM study can commence, with letters distributed to residents in the study area inviting them to comment on the draft study.

Advice of Bunnings Class 1 Appeal to the Land and Environment Court

The Chair of the SECPP wrote to Council (Refer Attachment 2 – Correspondence dated 14 July from the Chair of the SECPP) in July advising a determination meeting has been scheduled for MOD/2021/0376 on 1 September 2022. A response for the General Manager was drafted highlighting actions taken to satisfy the deferred tasks and requesting further time to conclude the LATM study appropriately. While the letter was in drafting Council was advised by Bunnings that it had lodged a Class 1 Appeal in the Land and Environment Court – being an appeal against a deemed refusal. The General Manager's letter was revised to accommodate the advice of the appeal and is provided at Attachment 3 – General Manager Letter to SECPP.

In such cases where an applicant lodges a deemed refusal appeal on a matter that is under the consideration of the Planning Panel, the assessment officer is required to continue the assessment of the application. The Council is required to provide to the Planning Panel the proposed statement of facts and contentions and continue to keep the Panel informed of subsequent negotiations and exchanges of documents in the lead up to a hearing in the Court. The Panel may choose to take a more active role in a council's conduct of the appeal.

Feasibility Study

In accordance with Council resolution on 12 April 2022, an independent study commenced examining the access/egress options to the Bunnings Tempe site including provision of traffic signals allowing direct connections from the proposed Bunnings site (728-750 Princes Highway, Tempe) to Princes Highway. The proposed traffic signals would change the vehicle access arrangements for the site with the incoming and outgoing traffic flow altered to minimise Bunnings traffic impact on local roads.

Previously RMS (now Transport for NSW) has not supported the provision of traffic signals directly onto Princes Highway due to the close proximity of existing traffic signals and the associated 'see through' effect. Recent communications from Transport for NSW (TfNSW) indicated that they may be able to review their position on the matter, provided that the relevant assessments be undertaken.

Inner West Council sought comments from TfNSW to ensure that the feasibility study is undertaken in accordance with their guidelines and requirements. A project scope was issued by TfNSW covering a range of issues and this was adopted in the scope of the proposed feasibility study. The scope of the study includes consideration of road safety implications, transport network impacts, site specific constraints and community/resident impacts.

Council subsequently engaged *Traffix* to commence the feasibility study. The timeframe for the project will comprise of:

- Stage 1 investigation works: early August 2022 (draft report expected 5 August 2022)
- Stage 2 liaising with Bunnings, Ikea and TfNSW: Mid-late August 2022

As part of the study, Council staff seek to hold discussions between Council, Ikea and Bunnings on internal design changes to support revised entry and exit arrangements. These discussions will take place at stage 2 and will follow after the technical investigation has drawn to a close.

The feasibility study outcomes do not form part of the development consent provided to Bunnings by the original decision of the SECPP. Effective provision for traffic signals to manage traffic generated by the development is dependent upon Bunnings including this as part of a further modified development application. This would require them to modify their design layouts at their cost.

In the event the applicant decides not to take up the opportunity to modify the consent and include traffic signals, they are able to progress with the original consent, pursuing the adoption of the Tempe South LATM scheme as required under conditions 68A of the original development approval.

Recent SECPP Communications

On 3 August 2022 Senior Manager Planning received a meeting invitation from the Panel Secretariat of the SECPP for a briefing on 19 August 2022. Clarity was provided in a follow up phone call that having received the General Manager's letter requesting a deferral the Chair wishes to understand the complexities around the consideration of the application and the community engagement of the LATM scheme, especially given the notice of a Class 1 Appeal by the Applicant to the Land and Environment Court.

At this meeting it is likely the Chair will decide how the Panel wishes to proceed in the light of the Appeal and relevant timeframes for an outcome on the LATM scheme engagement.

Update on Feasibility Study

A draft feasibility study has been provided this week to council officers and is currently under review.

FINANCIAL IMPLICATIONS

Nil.

ATTACHMENTS

1. [↓](#) SECPP the Record of Deferral dated 13 April 2022
2. [↓](#) Correspondence dated 14 July from the Chair of the Sydney Eastern City Planning Panel
3. [↓](#) General Manager Letter to SECPP



**Planning
Panels**

RECORD OF DEFERRAL

SYDNEY EASTERN CITY PLANNING PANEL

DATE OF DEFERRAL	13 April 2022
PANEL MEMBERS	Carl Scully (Chair), Jan Murrell, Sue Francis, Philippa Scott
APOLOGIES	Deb Laidlaw, Brian McDonald
DECLARATIONS OF INTEREST	Darcy Byrne declared a conflict of interest and did not participate.

Public meeting held Public Teleconference on 31 March 2022, opened at 1.30pm and closed at 3.35pm.
Papers circulated electronically on 13 April 2022.

MATTER DEFERRED

PPSSEC-171- Inner West - MOD/2021/0376 – 750 Princes Highway, Tempe – Bunnings Tempe (as described in Schedule 1).

REASONS FOR DEFERRAL

The Panel agreed to defer the determination of the matter until all the necessary notification and assessments under the relevant parts of the Act have been completed. This includes section 4.55(3) that requires the consent authority to have regard to the original reasons for the imposition of conditions in any assessment.

The Panel does not agree with the assessing officer that the amendments to the modifications by the Applicant, submitted in November and further amended in February do not require notification. In the opinion of the Panel, given the reasons in the original approval for the imposition of conditions relating to local traffic then any proposed modification to conditions 68 A and 112 warrant notification.

As such, the Panel considers the matter should be deferred to allow the necessary processes to occur and for a supplementary assessment report to be completed and referred back to the Panel for determination in a timely manner. Furthermore, there should be clarity and certainty in any modified condition as to the traffic measures required to mitigate impacts on local streets. In this regard measures that require approval from TfNSW, including the proposed soft road closure, should be sought.





Given that the Panel in its original decision did so with the knowledge that a signalised intersection at the Princes Highway was not to be provided, because of no approval from TfNSW, the Panel cannot through this modification impose such a requirement. The Panel now notes that the LATM study required by the condition of consent has been completed and submitted to the Local Traffic Committee (LTC) for approval. The Panel requests that the LTC conclude, as soon as possible, its consideration of that study in order not to circumvent the consent already granted to this development.

While the Panel notes many of the submissions requested a deferral to allow TfNSW to reconsider the question of a signalised intersection from Princes Highway this does not form part of the reasons for the Panel's deferral for the majority of members. Panel Member Philippa Scott did give some weight to the consideration of the possibility of a signalised intersection in agreeing to the deferral.

The original approval clearly was based on no signalised intersection but rather an LATM to manage local traffic impacts arising from the development. Should sometime in the future TfNSW consider a signalised intersection to be acceptable it would be up to the Applicant to submit a modification to its proposal to facilitate this change. It is not open for the Panel to modify the original approval which must be done through a modification application from the Applicant. The Panel recognises that the Council may wish to continue to pursue the signalised intersection with the State Government.

When the Panel has received a supplementary assessment report from Council responding to the matters raised above the Panel will hold another public determination meeting.

The decision to defer the matter was unanimous. However, Philippa Scott had differing reasons for the deferral. The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

PANEL MEMBERS	
 Carl Scully (Chair)	 Jan Murrell
 Sue Francis	 Philippa Scott

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSEC-171 – Inner West – MOD/2021/0376
2	PROPOSED DEVELOPMENT	To modify modified Determination No. MOD/2020/0096 dated 18 September 2020 to reduce on-site car parking, reconfigure the internal layout, carry out alterations to achieve NCC compliance, provision of roof services, façade changes and addition of internal ceiling fans and modify conditions of consent.
3	STREET ADDRESS	750 Princes Highway, Tempe
4	APPLICANT/OWNER	Bunnings Properties Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.55(2) Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy No. 64 – Advertising and Signage State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy (State and Regional Development) 2011 Marrickville Local Environmental Plan 2011 Draft Inner West Local Environmental Plan 2020 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Marrickville Development Control Plan 2011 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council Assessment Report: 17 March 2022 Written submissions during public exhibition: 44 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Jack Breen on behalf of Facebook page Safe Traffic Plan for Bunnings Tempe, Carly Green, Gemma Scott, Ben Steware, Rebecca Curran, Yasmin Bell, Angus Hughson, Katrina Widauer, Graham Griffith, Scott Liddicoat, Asma Tbessi, Martin Walters, Juliet Barr, Clr Justine Langford, Mayor Darcy Byrne, Clr Mat Howard, Annie Pettitt, Alyse Harvison, Liz Walker, Jenny Griffith, Tim Mills, Katherine Murphy,

		<p>Kat Costigan</p> <ul style="list-style-type: none"> ○ Council assessment officer – Andrew Newman, Ruba Osman, Martin Amy ○ On behalf of the applicant – Aaron Sutherland, Gary Turner ○ Total number of unique submissions received by way of objection: 44
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Applicant Briefing: 9 December 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Jan Murrell, Chris Wilson ○ <u>Council assessment staff</u>: Luke Murtas, Ruba Osman, Asher Richardson, Joe Bertacco, Andrew Newman ○ <u>Applicant representatives</u>: Phillip Drew, Aaron Sutherland, Gary Turner <p><u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues</p> • Site inspection: Panel members visited the site independently, prior to 31 March 2022 • Final briefing to discuss council's recommendation: 31 March 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Carl Scully (Chair), Jan Murrell, Sue Francis, Philippa Scott ○ <u>Council assessment staff</u>: Andrew Newman, Ruba Osman, Martin Amy
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report



14 July 2022

Mr Peter Gainsford
General Manager
Inner West Council

Dear Mr Gainsford

I write in my capacity as Chair of the Sydney Eastern City Planning Panel and in respect of MOD/2021/0376 known as Bunnings Tempe, located at 750 Princes Highway, Tempe. A requirement of the original consent was that the Applicant complete a Local Area Traffic Study to the satisfaction of the Local Traffic Committee. That study has been completed yet the committee keeps deferring consideration of it.

As a result, the Applicant was placed in a position of having to lodge a modification application in an endeavour to activate a consent properly given. This should not have been necessary. An ongoing issue for councillors, council staff, the community and now it would seem, the traffic committee, is to press the case for access off the Princes Highway. This is an issue for council to take up with TfNSW and the NSW State Government and not one which should be used to stymie a statutory consent granted by the Sydney Eastern City Planning Panel. The issue is not a matter to be either resolved or considered by this Panel.

I have attached a copy of the Record of Deferral made by the Panel in relation to the modification application on 13 April 2022 and refer you to the remarks of the Panel on this issue. I would appreciate it if you would be able to encourage the Traffic Committee at its next meeting to consider and resolve upon the completed traffic study without any account being taken of the lack of access of the Princes Highway.

I wish to also advise that I have requested the Planning Panels Secretariat to list this matter for determination on 1 September 2022, at which time I will encourage the Panel to conclude the matter. I request that the appropriate staff of council provide a completed supplementary assessment at least 14 days prior to that date.

Yours sincerely,

Mr Carl Scully
Chair
Sydney Eastern City Planning Panel

Planning Panels Secretariat

4PSQ 12 Darcy Street, Parramatta NSW 2150 | Locked Bag 5022, Parramatta NSW 2124 | T 02 8217 2060 |
www.planningportal.nsw.gov.au/planningpanels



1 August 2022

Mr Carl Scully
Chair
Sydney Eastern City Planning Panel

By email: enquiry@planningpanels.nsw.gov.au

Dear Mr Scully

APPLICATION NUMBER: MOD/2021/0376
SECPP REFERENCE: PPSSEC-171
PROPERTY: 750 PRINCES HIGHWAY TEMPE

Thank you for your letter dated 14 July 2022 regarding the progress and determination of the modification application (MOD/2021/0376) at 750 Princes Highway, Tempe (Bunnings Tempe).

As a result of the deferral issued by the Panel on 13 April 2022, Council staff have worked toward addressing the matters raised. To date, the following actions have been undertaken:

- Re-notification of MOD/2021/0376 and relevant documentation to the public was undertaken between 27 May and 17 June 2022.
- Council's Local Traffic Committee (LTC) at its meeting on 20 June 2022 endorsed the re-exhibition of the Tempe South LATM study. Should the recommendation be adopted by Council at its meeting to be held on 9 August 2022, a 28-day public exhibition on the LATM study can commence, with letters to be distributed to the residents in the study area inviting them to comment on the revised draft study. A review of the submissions will be reported to a subsequent LTC meeting and the finalisation of the study is expected to be adopted by Council on 25 October 2022.

Additionally, Council wrote to Transport for NSW (TfNSW) on 7 June 2022 seeking their comments on the LATM study, particularly the 'soft closure' from Smith Street into Union Street and a shared zone on Union Street.

Council understands that concurrent investigation into the feasibility of traffic lights at Princes Highway is a separate process that is not a consideration for the current modification application. However, the Panel identified in its record of deferral that Council's Local Traffic Committee had not concluded its consideration of the study. To draw this conclusion to a close, Council has also sought comment from and been advised by TfNSW that the agency is unwilling to provide a final comment on the LATM and associated traffic

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measures such as the soft closures until a feasibility study is completed and reviewed by TfNSW.

Furthermore, Bunnings Properties PTY LTD have recently filed a Class 1 Appeal in the Land and Environment Court on the basis of a deemed refusal for MOD/2021/0376.

Council is unable to finalise the LATM study by 1 September 2022. On this basis and given the lodgement of the Appeal, it is requested that the Panel review its determination date, and allow further time in order for Council to complete the associated engagement and review of the LATM study.

Please advise if you wish to review the Statement of Facts and Contentions prior to filing and serving. For this and any other information regarding this application, contact the assessing officer, Andrew Newman on 02 9392 5370 or andrew.newman@innerwest.nsw.gov.au

Should you require further information regarding the LATM, please contact Council's Acting Director Infrastructure Manod Wickramasinghe on 9392 5638.

Kind regards,

Peter Gainsford
General Manager