

**Draft Amendment No. 22 to Liverpool Local Environmental Plan 2008**

Proposal Title : Draft Amendment No. 22 to Liverpool Local Environmental Plan 2008

Proposal Summary : To permit (with Liverpool Council's consent) the use of an existing building for retail purposes, which is located at 5 Viscount Place, Warwick Farm, by adding the additional use of 'retail premises' to Liverpool Local Environmental Plan 2008 for the site and limiting the floor area for retail purposes.

PP Number : PP\_2011\_LPOOL\_010\_00      Dop File No : 11/09398-1

**Proposal Details**

|                                   |                    |                      |                        |
|-----------------------------------|--------------------|----------------------|------------------------|
| Date Planning Proposal Received : | 04-Oct-2011        | LGA covered :        | Liverpool              |
| Region :                          | Sydney Region West | RPA :                | Liverpool City Council |
| State Electorate :                | LIVERPOOL          | Section of the Act : | 55 - Planning Proposal |
| LEP Type :                        | Spot Rezoning      |                      |                        |

**Location Details**

|               |                                                                                                                               |            |           |
|---------------|-------------------------------------------------------------------------------------------------------------------------------|------------|-----------|
| Street :      | 5 Viscount Place                                                                                                              |            |           |
| Suburb :      | Warwick Farm                                                                                                                  | City :     | Liverpool |
|               |                                                                                                                               | Postcode : | 2170      |
| Land Parcel : | Lot 121 DP 876962 - B5 Business Development Zone                                                                              |            |           |
| Street :      |                                                                                                                               |            |           |
| Suburb :      |                                                                                                                               | City :     |           |
|               |                                                                                                                               | Postcode : |           |
| Land Parcel : | Single storey building currently used for weekend markets - forms part of the Liverpool Mega Centre bulky goods retail centre |            |           |

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## Draft Amendment No. 22 to Liverpool Local Environmental Plan 2008

### Land Release Data

|                                                                                  |                                                                                                                                                                                                                                                                                                                               |                                                            |            |
|----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|------------|
| Growth Centre :                                                                  | <b>Sydney South West</b>                                                                                                                                                                                                                                                                                                      | Release Area Name :                                        |            |
| Regional / Sub<br>Regional Strategy :                                            | <b>Metro South West subregion</b>                                                                                                                                                                                                                                                                                             | Consistent with Strategy :                                 | <b>No</b>  |
| MDP Number :                                                                     |                                                                                                                                                                                                                                                                                                                               | Date of Release :                                          |            |
| Area of Release (Ha) :                                                           |                                                                                                                                                                                                                                                                                                                               | Type of Release (eg<br>Residential /<br>Employment land) : |            |
| No. of Lots :                                                                    | <b>0</b>                                                                                                                                                                                                                                                                                                                      | No. of Dwellings<br>(where relevant) :                     | <b>0</b>   |
| Gross Floor Area :                                                               | <b>15,000.00</b>                                                                                                                                                                                                                                                                                                              | No of Jobs Created :                                       | <b>400</b> |
| The NSW Government<br>Lobbyists Code of<br>Conduct has been<br>complied with :   | <b>Yes</b>                                                                                                                                                                                                                                                                                                                    |                                                            |            |
| If No, comment :                                                                 | <b>The Department's record of contact with registered lobbyists has been examined and has indicated that there were phone contacts with a registered lobbyists on two occasions in relation to the proposal.</b>                                                                                                              |                                                            |            |
| Have there been<br>meetings or<br>communications with<br>registered lobbyists? : | <b>Yes</b>                                                                                                                                                                                                                                                                                                                    |                                                            |            |
| If Yes, comment :                                                                | <b>The Department has had phone conversations with a registered lobbyist, Mr Bill Pickering (Hugo Halliday PR &amp; Marketing) who is the representative for Gazcorp Pty. Ltd., the proponent, on 29 May, 2013 and 31 May, 2013. The Department provided Mr Pickering with information on the progress of the draft plan.</b> |                                                            |            |

### Supporting notes

Internal Supporting Notes : **To the best of the knowledge of the regional team, the Department's Code of Practice in relation to communications and meetings with Lobbyists has been complied with. Sydney Region West has not met with any lobbyist in relation to this proposal, nor has the Regional Director been advised of any meetings between other departmental officers and lobbyists concerning the proposal at the time of the planning proposal being reported to the LEP Panel.**

**Note: the estimate of '400 jobs created' (above) does not take into consideration, existing 200 - 300 part-time jobs associated with the current use of the building as a week-end market. It is assumed these existing jobs would be subsumed into the 400 figure.**

**Note: The Planning Proposal was received by the Sydney West Planning Team on 8 September 2011. Further information was sought from Liverpool Council, which was provided and received on 4 October 2011.**

External Supporting Notes :

### Adequacy Assessment

#### Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **Council advises that: the proposal will facilitate the reuse of the existing weekend market building as a retail outlet centre. Such a use would be defined as a 'retail premises' under**

the Liverpool LEP which is prohibited in the B5 Business Development Zone that applies to the land.

It is considered that Council's statement of the objective is adequate.

**Explanation of provisions provided - s55(2)(b)**

Is an explanation of provisions provided? **Yes**

Comment :

**Council advises that:**

- \* the planning proposal would amend Liverpool LEP 2008 by adding an additional use of 'retail premises' for the subject land;
- \* limit the area of a retail premises to 15,000 sqm; and
- \* limit the size of any single tenancy to 1,200 sqm.

**Council goes on to confirm that this proposal would:**

- \* retain the current B5 Business Development Zone for the site,
- \* provide an additional use on the site for 'retail premises' and
- \* specifies that the floor area will be limited to 19,000 sqm (i.e. the total floor area of the existing building, including the area of the building's basement), as well as,
- \* limiting the size of any single tenancy to 1,200 sqm.

Given the above inconsistency between the proposed 15,000 sqm and 19,000 sqm floor area limitation (above), council officers were contacted and it was confirmed that the adopted planning proposal seeks to limit the total floor area to 19,000 sqm.

**Justification - s55 (2)(c)**

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

- \* May need the Director General's agreement

**1.1 Business and Industrial Zones  
2.1 Environment Protection Zones  
2.3 Heritage Conservation  
3.4 Integrating Land Use and Transport  
4.3 Flood Prone Land  
6.1 Approval and Referral Requirements  
6.2 Reserving Land for Public Purposes  
6.3 Site Specific Provisions  
7.1 Implementation of the Metropolitan Plan for Sydney 2036**

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

**SEPP No 1—Development Standards  
SEPP No 4—Development Without Consent and Miscellaneous  
Exempt and Complying Development  
SEPP No 6—Number of Storeys in a Building  
SEPP No 32—Urban Consolidation (Redevelopment of Urban Land)  
SEPP No 55—Remediation of Land  
SEPP No 64—Advertising and Signage  
SEPP (Exempt and Complying Development Codes) 2008  
SEPP (Infrastructure) 2007  
SEPP (Temporary Structures and Places of Public Entertainment)  
2007  
SEPP (Affordable Rental Housing) 2009**

e) List any other matters that need to be considered :

**The regional team agrees with Council that there are no inconsistencies with the relevant section 117 directions as identified by Council: 2.1, 2.3, 3.4, 6.1, and 6.2.**

**Further consideration is given to directions 1.1 Business and Industrial Zones, 4.3 Flood Prone Land, 6.3 Site Specific Provisions and 7.1 Implementing the Metropolitan Strategy, as follows:**

#### **1.1 Business and Industrial Zones**

The direction applies when a RPA prepares a planning proposal that will affect land within an existing business zone.

The planning proposal is technically inconsistent with item (4)(c) of the direction as the proposal will reduce the total potential floor space area for employment uses that are permissible under the B5 zone.

Council has contended that the proposal is not inconsistent with the direction as it will broaden the range of employment generating uses. While this is the case, the proposal - by its presence, would reduce the ability of currently permitted uses under the B5 zone to be present on the site.

Should the Gateway determine that the proposal proceeds, it is considered that this matter is of a minor nature and the delegate's endorsement is recommended on that basis.

#### **4.3 Flood Prone Land**

Council has advised that: the land is flood prone. However the proposed land use is not sensitive and as demonstrated by existing development scope is available to accommodate development with sufficient flood protection and mitigation.

#### **Regional Team Comment:**

It is noted that clause 7.8 Flood planning of the Liverpool LEP 2008 contains heads of consideration which Council is required to consider before granting development consent on a flood planning area and flood prone land.

The main objectives of the provisions are to:

- \* maintain the existing flood regime and flow conveyance capacity;
- \* avoid significant impacts on flood behaviour;
- \* limit the use to those which are compatible with flow conveyance function and flood hazard; and
- \* to minimise the risk to human life and damage to property from flooding.

As the building (and associated car park facilities) currently exist, the nature and character of the proposed additional use is not considered to be a significant change to existing uses on the site.

Further, the provisions of clause 7.8 of Liverpool LEP 2008 will require detailed assessment of development on the land, on its own merit, when submitted to Council. These provisions, amongst other things, will ensure that the development can occur on the site without any detrimental impact on the surrounding development and properties, as well as, not adversely impacting upon the environment, flood regime, and safe occupation and evacuation of the land.

In these circumstances, and given that:

- \* the land is currently zoned B5 Business Development and
- \* that the proposal does not seek a change of zone but the use an existing building on the site,

any technical inconsistency with section 117 direction 4.3 is considered to be of minor significance and the delegate's approval is sought on this basis.

#### **6.3 Site Specific Provisions**

The direction requires that a planning proposal that will amend another environmental planning instrument (EPI), in this case Liverpool LEP 2008, in order to allow particular development to be carried out must either:

- (a) allow that land use to be carried out in the zone the land is situated on, or
- (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained

- in that zone, or  
(c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.

It is considered that the planning proposal is inconsistent with items (a), (b) and (c) (above).

The proposal will:

- (a) introduce a site specific permissible use that will not apply to the B5 zone across the LGA,
- (b) not rezone the site, and
- (c) allow the use without introducing a site specific development standard (i.e. a particular overall floor area and tenancy specific floor area), not specifically and currently included in Liverpool LEP 2008.

**Regional Team Comment:**

Council has considered rezoning the site to a B6 Enterprise Corridor Zone. Council has also considered the merits of introducing a definition of 'retail factory outlet' into the LEP.

Council is of the view that it is advantageous to retain the B5 zone to allow bulky goods retailing to remain a permissible future land use option.

Council has rejected defining 'outlet retailing' - as this use is not defined in the Standard Instrument LEP and past attempts to develop an appropriate local definition for outlet retailing have failed.

Should the Gateway determine that the proposal should proceed as proposed, this matter is considered to be of a minor nature and the delegate's approval to the inconsistency is recommended.

**7.1 Implementation of the Metropolitan Plan for Sydney 2036**

Council considers that the proposal is consistent with the Metropolitan Plan.

**Regional Team Comments:**

It is not agreed with Council that the proposal is consistent with the Metropolitan Plan and, accordingly, Council has not appropriately addressed this direction.

Consideration of the Metropolitan Plan is particularly important as it contains departmentally endorsed elements of the draft centres policy.

**The Metropolitan Plan notes:**

- \* Liverpool is identified as the Regional City serving Sydney's south west and parts of the West Central Subregion. It is a major employment destination, transport hub and the main regional shopping centre for the south west. The Strategy notes it is essential for growth opportunities to be nurtured to make the city increasingly attractive and retain its capacity for employment and investment growth. In doing so, improvements in job containment and promotion of equity of access to jobs will be anticipated, to support the substantial future population (p.34).
- \* The Department of Planning and councils will use subregional strategies, local strategic planning and LEPs to carefully identify opportunities for new centres in existing urban areas that are distant from existing centres.
- \* Consideration should also be given to the impact of a new centre upon facilities and services in existing centres (see action B3.1 of the 2036 Metropolitan Plan).

In these circumstances, it is considered that the proposal should be considered, particularly, in terms of its impact upon the city centre and whether the subject site is

suitable for a retail outlet, as the proposal inherently seeks to create elements of a 'de facto centre' at the Orange Grove location.

In this regard, the Metropolitan Plan advises:

- \* that retailing should be in centres and that these centres are to have at their disposal high capacity public transport services, and
- \* that while bulky goods areas may cluster outside centres, these clusters are for bulky goods purposes and not for other retail uses.

Centres are seen as growing into viable mixed use locations. It is not considered that the Orange Grove site will be able to become a vibrant mixed use centre - given its size, current use and location - adjacent to an industrial zone. It is anticipated that a vibrant centre would hold the ability to expand its retail component and accommodate residential development to complement and use the retail activity. The site's characteristics and constraints would impede this style of development.

**Inconsistency**

The direction permits inconsistency with the direction only if the Relevant Planning Authority can satisfy the Director General (or delegate) that the extent of the inconsistency with the Metropolitan Plan is of:

(a) minor significance, and

(b) the planning proposal achieves the overall intent of the Plan and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.

It is considered that Council has not justified the inconsistency and it is recommended that Council be asked to address this matter to allow the Gateway to further consider the planning proposal.

This matter is discussed further in this report.

Have inconsistencies with items a), b) and d) being adequately justified? No

If No, explain :

The proposal's supporting studies do not adequately consider:

- \* in depth, the ability for the Liverpool CBD or other centres to accommodate a proposal of this nature, and
- \* do not demonstrate how the Orange Grove site would be able to become a vibrant livable centre, should the proposal proceed.

**Mapping Provided - s55(2)(e)**

Is mapping provided? Yes

If No, comment :

No mapping amendments are proposed by Council, as the current planning proposal does not entail any alterations to the zoning, floor space ratio, height of buildings or minimum lot size maps.

However, a site map, location aerial photo and zoning extract have been provided - which are sufficient for the purposes of the proposal.

**Community consultation - s55(2)(e)**

Has community consultation been proposed? Yes

Comment :

Council has advised: 'The Gateway Determination will stipulate the required community consultation. The written notice and display materials will be in accordance with the document 'A guide to preparing local environmental plans'.

### **Additional Director General's requirements**

Are there any additional Director General's requirements? Yes

If Yes, reasons :                      **There is a need for a broader study of retail activities and centres in the area. This matter is discussed further in the report.**

### **Overall adequacy of the proposal**

Does the proposal meet the adequacy criteria? No

If No, comment :                      **While the proposal generally meets the 'adequacy criteria' - to varying degrees - the proposal is considered to be deficient in not providing an appropriate supporting study/advice that particularly addresses the ability of the Liverpool CBD, and other locations, to accommodate the proposed use.**

**In particular, council's advice/studies do not address the framework provided by the draft Centres Policy 'sequential test'. Consideration of the proposal under this framework is considered to be critical in understanding the planning merits of the proposal. Without this information, it is considered that the criteria has not been fully met.**

**This matter is further discussed.**

### **Proposal Assessment**

#### **Principal LEP:**

Due Date :

Comments in relation to Principal LEP :                      **The Liverpool Principal LEP was made in August 2008. The planning proposal seeks to make an amendment to the Principal LEP.**

#### **Assessment Criteria**

Need for planning proposal :

**Liverpool Council received an application to amend Liverpool Local Environmental Plan 2008 to facilitate the re-use of an existing 'weekend market' building for a retail outlet centre. The subject site forms part of the commercial hub known as the Orange Grove Mega Centre complex located at the intersection of Viscount Place and Orange Grove Road, Warwick Farm.**

**Council advises, it is anticipated that the current single storey building would be converted to 63 discount outlets for the sale of clothing, electrical goods, home wares and the like. Such a use would be defined as a 'retail premises' under the Liverpool LEP, which is prohibited under the land's current B5 Business Development Zone.**

**It is understood that the premises would also offer the sale of food, which is permitted within the current B5 Business Development Zone. Subject to development approval, the site would likely trade from 10:00 am to 6:00 pm, seven days a week. This is consistent with the trading hours of the adjoining mega centre.**

**Council has taken the view that it is preferable to facilitate the proposal by the addition of an additional use clause in Schedule 1 of Liverpool Local Environmental Plan 2008 to permit 'retail premises' with limitations on total retail floorspace and individual retail tenancies.**

**Council contends that by amending Schedule 1 of the LEP, the underlying zone is maintained (i.e. B5) and consequently, the ability to use the site for bulky goods retailing is retained without requiring another subsequent LEP amendment, should this use be proposed in the future.**

**The planning proposal is not a result of any strategic study or report. The proposal is in**

response to an identified development opportunity on the site.

**Studies:**

The proposal for development of the retailing outlet on the site is, however, supported by a number of studies, which include a net community benefit test. These studies are:

**Economic Impact Assessment (EIA) (Leyshon, May 2011)**

The report has been prepared on the basis that the site will be rezoned to B6 Enterprise Corridor and the existing building will be used for 'outlet retailing' with a maximum floor area of 14,500 sqm.

The report indicates that:

- \* The regional population (Liverpool, Fairfield, Campbelltown, Camden and Wollondilly LGAs) is increasing, along with annual retail spending.
- \* The projected scale of spending growth would support an increase in retail floor space area.
- \* The nature of the proposed outlet will entail a wide catchment area (i.e. estimated that 40% of the centre's sales will be made by Liverpool residents, 45% from regional residents and 15% from residents outside the region).
- \* The share of retailing expenditure captured by the proposed development is unlikely to account for more than 5% of total available spending in the Liverpool LGA in 2011.
- \* Consequently, it is concluded that the proposed development would have minimal impact upon existing centres.

**Hill PDA - Peer Review (July 2011)**

Hill PDA was commissioned by Liverpool City Council to undertake an independent review of the Leyshon EIA. In summary, Hill has considered the proposal in a "Planning Policy Context" against:

- \*the draft Activity Centres Policy (2009),
- \*draft Competition SEPP (July 2010),
- \*Draft South West Subregional Strategy (2007),
- \*Liverpool City Centres Review (2006) and Liverpool LEP 2008.

**Of particular relevance:**

**Centres Policy**

- \* the draft Activity Centres Policy provides six key principles and the proposal is inconsistent with:
  - (1) the need to reinforce the importance of centres and clustering business activities and
  - (2) the need to ensure the planning system is flexible, allowing centres to grow and new centres to form.

**Sequential Test**

- \* the draft policy includes a 'sequential test' and considers site suitability criteria. The sequential approach examines the ability of suitable land within existing, or adjacent to, existing centres to accommodate the proposed development. Sites should then be analysed using the site suitability criteria assessment. Hill notes that this process has not been undertaken by the proponent.

**Draft South West Subregional Strategy**

- \* In respect of the draft South West Subregional Strategy (2007), Hill notes that the strategy identifies the Orange Grove area as being a bulky goods cluster and that consideration should be given to expanding the bulky goods retail offer in this location, whilst limiting expansion in other locations.
- \* The proposal does not comprise bulky goods uses and, therefore, does not make a positive contribution to the strategy in this regard.



**Metropolitan Plan**

- \* Further, under action B4.1 of the Metropolitan Plan, it is stated: "...the net community benefit criteria and specific criteria relating to bulky goods retail outlets included in 'The Right Place for Business and Services' (supporting draft SEPP 66) will continue to apply as a merit based test for any major development applications and spot rezonings". Hill notes that the proponent has not undertaken this work.

**Hill's considerations**

- \* In reviewing the EIA, and making certain assumptions (and under different scenarios), Hill is of the view that an immediate impact on the Liverpool CBD will be slightly below a 10% loss in trade.
- \* Further, that while a brand outlet at Orange Grove is likely to worsen the performance of the Liverpool Westfield store, the proposed development would need to impact upon Westfields to a greater degree before it threatens its economic sustainability.
- \* In addition, over time - impacts will lessen with growth in trade area expenditure. According to Hill, in less than 5 years it is likely that trading levels will resume in the CBD to their 2011 levels. Consequently, Hill concludes that the impacts are more short term rather than long term and are 'manageable'. In respect of other centres, the impacts on all other centres are immediately below 5% loss in turnover and are therefore considered insignificant by Hill.
- \* Hill concludes that there is a forecast increase in trade by 2015 as a result of both population growth and real growth in retail spending of existing residents. Therefore, Liverpool CBD and all centres in the surrounding hierarchy would continue to experience an increase in retail expenditure captured to 2015 despite the opening of an outlet centre at Orange Grove.

During June and July 2011, Leyshon Consulting and SJB Planning provided further information to Liverpool Council. Issues addressed included:

- \* Demand/Location of Bulky Goods Floorspace,
- \* The Right Place for Business and Services,
- \* Community and Economic Benefits.

**In summary:**

**Bulky Goods**

Leyshon acknowledged that, in theory, while the proposal would reduce the supply of land for bulky goods retailing there are a number of mitigating factors, as follows:

- \* the majority of the site has not been used for bulky goods retailing since 2002 but for an outlet centre or weekend markets;
- \* the adjacent Mega Centre has considerable vacancies and there is no evidence of pressure to develop additional bulky premises at this time;
- \* Liverpool LEP 2008 has zoned land for bulky goods opportunities in other locations, and
- \* in the future, there is a likelihood of land being zoned for bulky goods purposes in other locations.

**The Right Place for Business and Services**

The policy 'Integrating Land Use and Transport - The Right Place for Business and Services' was part of a suite of policies associated with draft SEPP 66 - 'Integration of Land Use and Transport'. While the SEPP did not

proceed, Liverpool Council asked the proponent to address the matter.

SJB Planning has addressed the objectives of the Policy and in summary, contends that the proposal:

- \* would not result in the creation of a new centre;
- \* would effectively cluster a factory outlet with a bulky goods centre, thereby utilising existing transport infrastructure; and
- \* avoid a dispersal of traffic generating uses, while using existing public transport services (in close proximity to the Liverpool CBD); as well as,
- \* supporting the viability of the existing bulky goods Mega Centre.

#### **Community and Economic Benefit**

A Net Community Benefit Test was provided as an attachment to SJB Planning's letter of 29 July 2011 and has been included in Council's planning proposal (see Attachment 1 of the planning proposal).

#### **Traffic and Parking Assessment Report (Dobinson & Associates, May 2011)**

This study concludes that parking is sufficient to accommodate the needs of the proposal and that the road network will also be able to acceptably accommodate traffic generated by the proposal.

#### **Planning Team Comments:**

The sequential test included in a revision of the departmental draft Centres Policy (March 2011) has not been addressed by council or the proponent. While the policy is not endorsed by the department/government, and has no formal weight, the approach provides a useful framework to justify the proposal. As such, council officers were previously asked to consider the proposal in terms of the test.

While this was not done, it is noted that a table is included in the council report of 29 August 2011 (see page 8) that addresses possible sites for an outlet centre.

It is considered that council's consideration of possible sites is relatively rudimentary.

The studies and report provide little information on the extent of floor area required to accommodate the identified retail need or how it can be configured to a site. For example, sites are found unsuitable because of the need for amalgamation without further explanation and, it appears, that detailed consideration has not been given to the ability (or otherwise) to expand existing centres.

In addition, there does not appear to have been any consideration given to expanding FSR or other building controls on existing sites located within centres, to accommodate a proposal of this nature.

It is particularly noted that limited consideration has been given to the Liverpool CBD area. For example, a preliminary assessment of the Liverpool CBD shows that there are three large, at-grade car parks within the CBD core. Two are located in Bathurst Street, one in Elizabeth Street and there is a large bus interchange adjacent to the rail station (identified on the attached aerial photo). These facilities may be capable of being redeveloped for commercial purposes, while not diminishing their transport related functions in the long term (i.e. disruption would occur during any construction period).

#### **Conclusion**

A review of the studies and Council's report highlights that:

- \* there will be some, short term economic impact upon the Liverpool CBD, particularly upon the trading of the Westfields Liverpool store, which is an under performing centre (Hill PDA, July, 2011);
- \* in-depth consideration has not been given to opportunities to locate the proposal within the Liverpool CBD or other centres;

- \* the information provided in the Net Community Benefit Test is relatively cursory and it would be appropriate for Council to re-examine the proposal with the aid of the sequential test; and
- \* thorough consideration has not been given to the need to retain/protect land zoned to permit bulky goods retailing within the Liverpool LGA.

Furthermore, Council has not given consideration to the cumulative impact of other associated planning proposals.

Attached is a schedule (and supporting map) of recent Liverpool planning proposals that have been endorsed to proceed by the Gateway, that:

- (1)\* rezone land from the B5 Business Development Zone to B6 Enterprise corridor at Orange Grove, including lifting the maximum gross floor area from 1,000 sqm to 1,600 sqm for retail development within the B6 Zone;
- (2)\* create a B6 Zone Enterprise Corridor Zone at Newbridge Road, Moorebank;
- (3)\* create a B6 Enterprise Zone at Heathcote Road, Moorebank; and
- (4)\* in addition, there is a planning proposal lodged with Liverpool Council (but not submitted to the Department at this time) to allow retailing (as an additional use) on land zoned B5 at Crossroads.

\* Identifying numbers (above) are shown on the attached map.

It is also noted that a further rezoning proposal has Gateway endorsement to allow bulky goods retailing at Hoxton Park (not shown on the attached diagram) as an additional use on land zoned for industrial purposes.

**Comment:**

It is acknowledged that the Liverpool principal plan was made in 2008 and that it is reasonable for amendments to be made to the plan over time. However, the number of planning proposals (above) may indicate that there is a need for Council to consider a review of its retail hierarchy, and its ability to ensure that sufficient land is maintained for future bulky goods retailing, to ensure that there is a contemporary and robust strategic base for Council's decisions.

Consistency with strategic planning framework :

Consideration is given to the planning framework, as follows:

**Metropolitan Plan for Sydney 2036**

While the Plan is not endorsed by the current government, the planning principles of the plan are sound and were formerly endorsed by the then Department of Planning. Accordingly, relevant plan principles have been used for assessment purposes in this report.

Under Strategic Direction B - Growing and Renewing Centres of the Metropolitan Plan, a strategic direction for centres is identified by a number of objectives and actions, namely:

"....the concentration of a greater range of activities near one another in centres, well served by public transport, makes it easier for people to go about their daily activities and assists in creating lively, functional places in which to live, work, socialise and invest. The benefits of concentrating activities in centres include:

- \* improved access to retail, office, health, education, leisure and entertainment facilities and community and personal service;
- \* increased opportunities for a greater diversity of dwellings and more diverse communities;
- \* encouraging collaboration, healthy competition and innovation among businesses through clustering;
- \* making better use of infrastructure, and making public transport improvements more viable;
- \* promoting sustainable and accessible transport and healthier communities by

- increasing walking, cycling and public transport options for more people by making more activities available in one location;
- \* slowing the growth of greenhouse gas emissions by reducing the number of car journeys needed to address services;
- \* reducing pressure for development to occur in less accessible locations, and
- \* creating vibrant places which operate as a focus for community activity and events, and which help to build social inclusion" (see page 58 of the Plan).

The Plan defines a centre as a place where varying concentrations and combinations of retail, commercial, civic, cultural and residential uses are focused around transport facilities (see page 59 of the Plan).

Under Objective B1 of the Plan, for various social and logistic reasons - detailed in the Plan (see pp 62/64), the location of commercial development in the central part of existing or planned centres is supported.

Under Action B3.1 of the Plan (see page 73), the appropriateness of locations for new centres is specified. Particular mention is made that consideration is to be given to the impact of a new centre upon services in existing centres. Further, that planning for a new centre should focus commercial development in the core of that centre around a public transport hub (which in some areas may be a high frequency bus stop), rather than being dispersed throughout the entire walking catchment of the centre.

**Regional Team Comment:**

It is acknowledged that the proposal does not in itself propose the creation of a centre on the subject site but the use of an underutilized building.

However, the proposal does recommend the establishment of a retail outlet on land that should exhibit the majority of characteristics of a centre (as indicated above) and, therefore, the proposal requires to be considered in this context.

There are two matters of concern:

- (1) from a planning perspective, it has not been sufficiently demonstrated that there are no other reasonable and better options than permitting the proposed use on the Orange Grove site, and
- (2) whether proper consideration has been given to the impact the proposal may hold on the ability of the area to meet future bulky goods retailing demand in appropriate locations.

In regard to item (2) (above), it is noted that the Metropolitan Plan (page 62) indicates that: retailing that requires large floor areas, such as bulky goods premises, cannot always be readily accommodated in existing centres. Subregional planning and local planning will need to identify locations for subregional clusters for this kind of retail development which support the economic development of centres in those subregions. The B5 Business Development Zone is generally an appropriate zone in which to cluster this kind of development.

**Draft South West Subregional Strategy**

The strategy provides that 'retail' will generally be located in the commercial core and mixed zones in centres. The inclusion of measures to prevent retail activities in other areas:

- \* will provide certainty for investors in office and retail in centres, and
- \* will ensure that ad-hoc 'out-of-centre' development does not have additional cost impacts for Government and the community.

These measures include: the application of the net community criteria included in The Right Place for Business and Service (see page 67 of the Strategy).

In respect of the Orange Grove site, the Strategy comments that: consideration should be given to expanding bulky goods retailing whilst limiting expansion in other locations (page 33).

It is accordingly considered that the proposal is not consistent with the intent of the draft subregional strategy, in this regard.

**Liverpool City Centres Hierarchy Review (2006)**

Council's review recognised the continued importance of three 'specialised centres' which provide opportunities for bulky goods retailing, home wares and other specialised retailing, namely:

- \* Orange Grove Road;
- \* The Crossroads at Casula; and
- \* Sappho Road, Warwick Farm.

The review recommended that Council reinforce these nodes rather than create new nodes in Liverpool and limit additional retail premises at these sites.

Environmental social  
economic impacts :

As discussed in this report.

**Assessment Process**

Proposal type : **Inconsistent**      Community Consultation      **28 Days**  
Period :

Timeframe to make      **12 Month**      Delegation :      **DDG**  
LEP :

Public Authority      **Fire and Rescue NSW**  
Consultation - 56(2)(d) : **Transport for NSW - Roads and Maritime Services**  
**Adjoining LGAs**

Is Public Hearing by the PAC required?      **No**

(2)(a) Should the matter proceed ?      **No**

If no, provide reasons :      **The reports commissioned and received by Council are not structured to address all key planning issues. Rather, the reports identify the ability to capture investment in this particular type of retail activity at the Orange Grove site.**

Particularly, the reports are focused on the nature of the factory outlet model and that it draws customers from a wide trading area. This approach is predicated on the view that the Orange Grove site is an appropriate location to capture this investment opportunity, where - in fact - other sites may be better located. For example, a more favourably positioned site may exist within the trading area that is located in another nearby local government area.

While it is laudable that Council wishes to maximise investment and jobs in its local government area, these factors are not solely primary planning considerations - especially when it is implied that the context appears to secure investment and jobs possibly over a nearby local government area.

However, it is considered that the argument regarding jobs is fairly irrelevant, as none of the studies model an increase in overall expenditure or employment due to the proposed factory outlet. Rather, all the economic studies imply that these jobs and expenditure will be moved from one place to another.

The investment imperative is more relevant as it is important to facilitate new investments in retail services and, broadening the range of investors, promotes competition and access. As much as the planning decisions need to be cognisant to ensure new investment opportunities are facilitated, the investment outcome should not solely determine the planning decision. The need to attract and facilitate investment still needs to be guided by sound planning decisions.

The planning decision, in this instance, needs to be answered by considering whether or not the proposed location has the correct locational characteristics for the proposed activity.

In particular, are the externalities associated with retail activity, such as:

- \* greater use of invested public infrastructure and access to services,
- \* coalescence of activity to create vibrancy and useable public spaces,
- \* overall reduction in transport needs through single destination trips,

going to be maximised and captured by existing (or proposed) government investments in infrastructure.

None of the economic studies (or other studies) address these fundamental planning issues.

It is the consideration of the locational characteristics of the site (and alternate sites) against these considerations that needs to be undertaken so as to ascertain the planning merit associated with the proposal.

#### **Conclusion**

It is considered that the planning proposal is inconsistent with the policy directions highlighted in this report. Accordingly a merit based decision is to be made over whether the proposal should proceed.

It is further considered that the studies and advice provided by Council are insufficient and do not allow an informed merit based decision to be made.

It is accordingly recommended that the Gateway determines that the proposal does not proceed at this time and invites Council to resubmit the proposal with a revised/fresh supporting study and advice, as follows:

1. Completion of the Sequential Test and Site Suitability Criteria (Draft Centers Policy, March 2011) in detail, particularly addressing whether or not the proposed location has the correct locational characteristics for the proposed activity, as compared to other sites.

This review should be sufficiently detailed so that it addresses issues, including, but not limited to:

- \* the extent of floor area required to accommodate the identified retail need or how it can be configured to a site;
- \* detailed consideration of amalgamation of land holdings to facilitate the proposed use within centres;
- \* detailed consideration of the ability (or otherwise) to expand existing centres and demonstration of consideration being given to expanding FSR on existing sites located within centres, to accommodate a proposal of this nature;
- \* use of existing at-grade car parking facilities (or other suitable locations) within the Liverpool CBD, to accommodate a proposal of this nature.

- 2(a) Council's advice over whether sufficient land is zoned for bulky goods retailing to meet forecast demand for this purpose, and

- 2(b) whether Council believes that, in view of the number of recent Liverpool planning proposals associated with centres, whether it would be appropriate for Council's retail hierarchy (prepared in 2007) to be reviewed to ensure it is current and allows informed strategic decisions to be made by Council.

Resubmission - s56(2)(b) : **Yes**

If Yes, provide reasons : **A further study/advice is required.**

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Identify any additional studies, if required :

**Other - provide details below**

If Other, provide reasons :

**A study/advice addressing particular planning matters is required - as discussed in this report.**

Identify any internal consultations, if required :

**No internal consultation required**

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

### Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Resubmit**

S.117 directions :

- 1.1 Business and Industrial Zones**
- 2.1 Environment Protection Zones**
- 2.3 Heritage Conservation**
- 3.4 Integrating Land Use and Transport**
- 4.3 Flood Prone Land**
- 6.1 Approval and Referral Requirements**
- 6.2 Reserving Land for Public Purposes**
- 6.3 Site Specific Provisions**
- 7.1 Implementation of the Metropolitan Plan for Sydney 2036**

Additional Information :

**It is recommended that the proposal be resubmitted by Liverpool City Council with further advice/studies that address the Sequential Test and Site Suitability Criteria (Draft Centres Policy, March 2011) in detail, particularly addressing whether or not the proposed location has the correct locational characteristics for the proposed activity, as compared to other sites.**

**This review should be sufficiently detailed so that it addresses issues, including, but not limited to:**

- \* the extent of floor area required to accommodate the identified retail need or how it can be configured to a site;**
- \* detailed consideration of amalgamation of land holdings to facilitate the proposed use within centres;**
- \* detailed consideration of the ability (or otherwise) to expand existing centres and demonstration of consideration being given to expanding FSR on existing sites located within centres, to accommodate a proposal of this nature;**
- \* use of existing at-grade car parking facilities (or other suitable locations) within the Liverpool CBD, to accommodate a proposal of this nature.**

**Furthermore:**

- \* Council be requested to justify the inconsistency with section 117 direction - 7.1 Implementation of the Metropolitan Plan for Sydney 2036, to satisfy item (5) of that direction, paying particular attention to Direction B - Growing and Renewing Centres, Objective B1 and Action B3.1, of that plan.**
- \* Liverpool City Council be requested to provide detailed advice over whether sufficient land is zoned for bulky goods retailing in appropriate locations to meet forecast demand for this purpose, and**
- \* whether Council believes that, in view of the number of recent Liverpool planning proposals involving centres, it would be appropriate for Council's retail hierarchy to be reviewed to ensure it is current and allows informed strategic decisions to be made by Council. Council's advice should be**

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sufficiently detailed to support its contention in this regard.

Should it be determined that the planning proposal is to proceed without the benefit of further studies and/or advice, the proposal proceeds with the following conditions:

(1) The Director General's delegate agrees that any inconsistency with section 117 directions:

- \* 1.1 Business and Industrial Zones;
  - \* 4.3 Flood Prone Land; and
  - \* 6.3 Site Specific Provisions;
- are justified as minor matters.

Further, the Gateway forms the view that the inconsistency with section 117 direction 7.1 - Implementation of the Metropolitan Plan for Sydney 2036, is justified in terms of item (5) of that direction. Alternatively, the Gateway seeks Council's justification prior to agency/community consultation.

(2) Community consultation for 28 days;

(3) Consultation with the Roads and Traffic Authority, NSW Fire Brigades and adjoining local government councils.

(4) The timeframe for completing the local environmental plan is to be 12 months from the week following the date of the Gateway determination.

Supporting Reasons : Further study/advice is required to allow the Gateway to make an informed, merit based decision.

### Panel Recommendation

Recommendation Date : 13-Oct-2011

Gateway Recommendation : Passed with Conditions

Panel

The Planning Proposal should not proceed for the following reasons:

Recommendation :

1. The planning proposal is inconsistent with the draft South West Regional Strategy, in that the Orange Grove area is identified as a bulky goods cluster. The inconsistency with S117 Direction 7.1 Implementation of the Metropolitan Plan for Sydney 2036 has not been adequately justified and therefore is not of minor significance.

2. The planning proposal does not clearly identify how the introduction of retail premises to the Orange Grove centre is influenced by any retail hierarchy strategic assessment and does not adequately justify that the Orange Grove site is a suitable location for such a land use in such close proximity to the Liverpool CBD.

3. The planning proposal has not adequately assessed why a 10% loss in trade is an acceptable benchmark and why a 5% loss in trade to other centres is considered insignificant.

4. A satisfactory assessment of the cumulative impact of retail expansion on high street retailers and the potential future opportunities of retail development within the Liverpool CBD has not been undertaken, and therefore the proposal is not supported at this stage.

5. The planning proposal is inconsistent with S117 Direction 3.4 Integrating Land Use and Transport. The Council has not satisfactorily argued consistency with the aims, objectives and principles of the Department's policy document The Right Place for Business and Services, which seeks to foster growth in centres, protect and maximise community investment in centres and encourage continuing private and public investment in centres, and thus the inconsistency is not considered to be minor.

### Gateway Determination

Decision Date : 20-Dec-2011

Gateway Determination : Passed with Conditions

Decision made by : Deputy Director General, Plan Making & Urban Renewal



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Gateway Determination : On 18 August 2012, the DG approved an extension of time to complete the Planning Proposal, extending the time frame by 6 months (from 13 months to 19 months). This PP is currently being monitored as a "24 month to complete" LEP

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On 13 January 2012 the DDG issued a revised Gateway Determination to limit the floor space area of retail premises to 19,000sq.m rather than 15,000sq.m which had been specified in the Gateway Determination of 20 December 2011.

According to the revised Gateway Determination this is now a 13 Month planning Proposal (being monitored as a 24 Month planning proposal)

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The Planning Proposal should proceed subject to the following conditions:

1. Council is to amend the planning proposal to include an explanation showing why the impact and loss in trade to the Liverpool CBD is justified and articulate how the introduction of retail at the subject site can be appropriately accommodated.
  2. Council is to elaborate and provide additional information in relation to the level of consistency of the planning proposal with S117 Directions, particularly as they relate to applicable local and regional strategies.
  3. Council is not to commence public exhibition of the planning proposal until the requirements of condition 1 and 2 of this Gateway determination have been undertaken and the planning proposal amended accordingly.
  4. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
    - (a) the planning proposal must be made publicly available for 28 days; and
    - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 4.5 of A Guide to Preparing LEPs (Department of Planning 2009).
  7. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
    - Adjoining Local Government Areas
    - Roads and Traffic Authority
    - Fire and Rescue NSW
- Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.
8. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
  9. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Exhibition period : 28 Days

LEP Timeframe : 24 Month

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### Implementation

Gateway effective date : 27-Dec-2011

Exhibition start date : 03-Oct-2012

Exhibition end date : 31-Oct-2012

Exhibition duration : 29

Public hearing :

Date :

Date advice received from RPA : 09-Jan-2013

Days with RPA : 380

### LEP Assessment

Days with DoP : 43

Number of submissions : 21

Additional studies conducted : Yes

Agency consultation consistent with recommendation : Yes

If No, comment :

Agency Objections : Yes

If Yes, comment : AGENCY CONSULTATION

In accordance with the Gateway Determination, Council has consulted with the following public authorities

- Adjoining Local Government Areas;
- Roads and Maritime Services (RMS); and
- Fire and Rescue NSW

The RMS and Fire and Rescue NSW have not responded to the consultation. Sutherland, Campbelltown and Penrith Councils have not made objections.

Fairfield City Council has raised objections and the issues raised are as follows:

- The Sequential Test did not consider the capacity of Bonnyrigg Town Centre and Fairfield Town Centre to meet capacity needs;
- Hill PDA peer review's reliance on historical data to predict future retail floor space;
- Hill PDA peer review's assumption that between 2-4% impact on Fairfield City Centres by 2015 is not considered insignificant;
- the planning proposal is in conflict with actions of Metropolitan Plan and relevant s117 Direction 7.1 Metropolitan Planning;
- the planning proposal is in conflict with the draft SW Subregional Strategy which nominates the site for bulky goods retailing;
- the planning proposal is contrary to the Liverpool Centres Hierarchy Review which identifies the site for bulky goods retailing;
- inconsistencies with the SEPP (Exempt and Complying Development Codes) in terms of the application of the proposed single tenancy controls; and
- concern over the ability of Council to limit the development of 'Factory outlets' under Standard Instrument LEP format given that 'retail premises' allow retail formats that are not 'factory outlet' format.

Council has also consulted Cabramatta Chamber of Commerce who objected to the planning proposal. The issues raised were related to traffic and flooding.

The outcomes of the public authority consultation are discussed in detail in the Council's planning proposal (attachment 4).

Documentation consistent  
with Gateway :

If No, comment :

Consideration of the issues raised by Council are addressed in the next section under the title "Issues Consideration"

Yes

#### **GATEWAY DETERMINATION REQUIREMENTS**

##### **JUSTIFICATION OF IMPACT ON TRADE TO THE LIVERPOOL CBD**

A Condition of the Gateway Determination requires the planning proposal to include a justification of the impact and loss in trade to the Liverpool CBD and an explanation of how this out-of-centre retail intensification could be accommodated.

In response to this condition, Council commissioned the Liverpool Cumulative Economic Impact Study (Hill PDA, July 2012) and a subsequent peer review by Hill PDA on Leyshon's Economic Impact Assessment submitted with the proposal.

The Liverpool Cumulative Economic Impact Study found the proponent's intended use of the site, a 'brand outlet centre', would have a low to moderate impact on retail in the Liverpool CBD and a Brand Outlet in Campbelltown (both -5.8%) and low level impacts on 16 other surrounding centres (0.6% to 2.2%)

The review further concluded that such a development may provide some offset in loss of trade as the development may draw consumers from a wide area attracting residents who would not otherwise visit the LGA for retail shopping.

##### **CONSISTENCY WITH S117 DIRECTION 7.1 METROPOLITAN PLANNING IN TERMS OF LOCAL AND REGIONAL STRATEGIES**

Council has advised that the Orange Grove area is identified in the draft South West Subregional Strategy as being a bulky goods cluster. The proposed retail outlet centre uses generally do not comprise of bulky goods and therefore the proposed development does not make a positive contribution to the Strategy. Further, Council states that the proposed retail outlet centres possesses similar characteristics to bulky goods retail in terms of consumer behaviour and will contribute to protect the viability of the existing bulky goods retail stores at the Orange Grove Road Mega Centre.

A Sequential Test was undertaken by Council (Attachment 3 to the Council report) that identifies that feasible locations are not readily available to accommodate the proposed development in a range of nearby existing centres and edge of centre locations. Note - this finding is disputed in submissions and this is assessed in the next section.

A Net Community Benefit Test prepared by Council considered that the planning proposal:

- . will facilitate efficient use of the site;
- . is located within 2km walking catchment of the Liverpool Regional Centre, as identified in the Metropolitan Strategy for Sydney 2036;
- . will not create a precedent and will complement the existing bulky goods centre;
- . will not have significant impacts on the surrounding land/public domain;
- . will create additional employment and will not reduce existing employment generating lands;
- . is serviced by transport and other public infrastructure and will deliver economic benefits without any need for further public investment in infrastructure;
- . advantages in co-locating retail uses where there are already services available; and
- . will not have significant trading impact on the existing centres in the LGA.

The assessment considered that not proceeding with the planning proposal will be a loss of potential economic benefits and investment in addition to the loss of competition between retailers.

#### **COMMUNITY CONSULTATION**

The Planning Proposal and Development Application (DA-920/2012) were concurrently publicly exhibited for 28 days between 11 July, 2012 and 8 August, 2012. Council received 21 submissions including 8 submissions objecting to the Planning Proposal/DA and 11 submissions supporting the Planning Proposal/DA (including a petition organised by the applicant).

The Council has advised that the major issues raised include:

- concerns that the planning mechanism could possibly provide for inappropriate higher-level retail uses;
- concerns about ad-hoc planning decisions made for the Liverpool LGA;
- concerns about the impact the proposed development will have on the Liverpool City Centre and other defined centres;
- concern that the proposed development will dilute the existing bulky goods node; and
- concern that the proposed development is inconsistent with planning policy.

Details of the submissions are at Attachment 5 to the Council's planning proposal.

#### **COUNCIL RESOLUTION**

Liverpool Council, at its meeting of 28 November, 2012, considered the Council report (attached) which recommended that the additional use adopted be 'brand outlet premises', however, Council adopted the planning proposal with the exhibited use of 'retail premises', but limited to 19,000sqm total floor space and 1,200sqm floor space per tenancy.

The proposed 'retail premises' as a Schedule 1 additional permitted use on the site will allow many uses in addition to the intended brand outlet centre. The Standard Instrument LEP does not have a definition for 'brand outlet premises'.

Council has stated that the proposed retail outlet centre possesses similar characteristics to bulky goods retail in terms of consumer behaviour and will contribute to protect the viability of the existing bulky goods retail stores at the Orange Grove Road Mega Centre.

Further exemption of the site from Part 2, Subdivision 10A and Part 5 Subdivision 2 Change of use of premises - SEPP (Exempt and Complying Codes) 2008, is also proposed by Council in order to uphold the 1,200sqm restriction.

Council also resolved to identify the site as a "Stand Alone Centre", as the site:

- will be a feasible location to accommodate future demand;
- will increase employment generating activities on land that is currently underutilised (i.e. used for weekend markets);
- provide for an additional 400 jobs currently in a location that is serviced by infrastructure.

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#### **ISSUES CONSIDERATION**

Liverpool Council has based its assessment on the findings of the Liverpool

Cumulative Economic Impact Study and the peer review which are discussed in the above sections of this report, including a Sequential Test and Net Community Benefit Test as discussed in the above "Gateway Determination Requirements" section.

Analysis of the Council's planning proposal can be summarised as follows:

#### **DRAFTING**

Submissions from Fairfield Council, the Shopping Centre Council of Australia (SCCA) and Westfields raise concerns regarding the proposed clause to restrict retail development in the Planning Proposal. Council's approach of permitting retail development, but restricting individual retail premises to no greater than 1200m<sup>2</sup> and the total retail on the site to 19000m<sup>2</sup> is to ensure that large general retailers (supermarkets) that will anchor further retail activity are not permitted.

This approach is contrary to the advice of Council officers and the supporting studies, which recommended the instrument restrict retail activity to being the type of activity defined as "factory outlet". The Standard Instrument, however, does not make distinctions between "factory outlet" and "retail" uses and it does not define a supermarket as a use.

Council's adopted approach (i.e. floor space) provides less clarity around what activity is desired but provides a more measurable (and therefore enforceable) definition of what is permitted.

#### **RETAIL IMPACT**

Submissions from Fairfield Council, SCCA and Westfields also raised various concerns regarding the potential impact on existing centres arising from the Planning Proposal.

Liverpool Council's studies noted that Orange Grove does not have the features and public investment of surrounding existing centres and considered the ability of these existing centres' to meet future growth, in particular, the provision of a "direct factory outlet" type facility. Whilst Orange Grove may not have these infrastructure features presently, if existing centres can not provide for growth, it is sensible for new centres to be created and, given the existing bulky goods retail activity at Orange Grove, the site offers potential as a good place for such new investment.

In this regard, concerns were raised in submissions regarding Liverpool Council's response to the Department's draft Sequential Test. In particular, Council's conclusion that a new centre was required is challenged on the basis that:

- The analysis of the ability of existing centres to expand and facilitate a factory outlet type facility excluded consideration of Bonnyrigg or Fairfield. Bonnyrigg is approximately 3.5 km from Orange Grove, located on the Liverpool to Parramatta T-Way, and has two development applications for expansion. Similarly Fairfield is approximately 5 km away, on the main rail line and is considered to have significant existing excess capacity; and
- Westfields contends that there is currently sufficient capacity to grow the Liverpool City Centre for the same purpose.

These concerns are not without merit and, in particular with regard to Bonnyrigg and Fairfield, should have been addressed by Council's studies. It will be a less than ideal outcome if centres without public infrastructure are allowed to retail whilst there are centres with the required public infrastructure (where land is

dearer) and the capacity to facilitate this development.

In this light, it is important that careful consideration be given to the impact of retail expansion at Orange Grove on centres which have public transport infrastructure or the existing public infrastructure investment. Key findings of the impact analysis are as follows:

- The impact of the proposed Orange Grove development does not appear to be significant, but it is also not a level of impact that should be immediately dismissed. The most significant expected impact will be on the Liverpool City Centre and the Brands on Sale site (Campbelltown), both to experience a 5.8% reduction in retail trade. Whilst other surrounding centres will experience lower impacts in the range of 0.6% and 2.2%, there are 16 of these centres and the cumulative impact is relatively significant. It may be argued that poorly justified growth of new centres will undermine confidence to invest in existing centres across a wide area.
- All of these centres will experience a return to above current trading levels within 5 years. However, Fairfield Council's submission makes the valid point that this finding is based on an expected growth in retail expenditure of 1.2%, and that based on recent growth rates for retail a figure of 0.5% would be more reasonable. It is difficult to attribute certainty to either forecast, but it is worth noting that if retail growth is slower than expected, the time taken for retail trade in surrounding centres to recover could be longer than the expected 5 years.

#### **SGS INDEPENDENT PEER REVIEW**

In response to a number of concerns regarding the proposal and the submissions, SGS Economics and Planning, in May 2013, carried out an independent peer review of the cumulative economic impact of the proposed retail development at Orange Grove on the surrounding centres (Tag SGS).

The study reviewed Council's assessment of the planning proposal and key submissions including the impact on Bonnyrigg and Fairfield centres.

The study concludes that whilst some of the concerns raised in submissions had merit, the key findings regarding economic impact as reported to Council (in the HillPDA report) are supported. In particular, the impacts on Liverpool CBD and other centres within a reasonably defined primary trade area will not feel a significant trading impact in the first year of operation given various assumed development scenarios at the subject site.

The SGS study notes that a shift away from outlet retail to more supermarket or discount department store retail would likely have significant impacts – particularly on Liverpool CBD and Westfield as its retail anchor. The study recommends the need for planning controls that ensure only outlet retailing on the site and restrict general retail uses to minimum levels (i.e. levels that have been shown to have insignificant impact through retail modelling).

It is considered that the planning proposal has addressed this concern by setting a maximum size for shops within the proposed development of 1200sqm and an overall limit of 19,000sqm of total retail, thereby ensuring that department (or mini-department) stores cannot be established.

#### **APPLICATION OF S94**

Westfields raise concern that development within the Liverpool City Centre is currently subject to a s94A levy (3% of value of development for the city centre and 2% for the surrounding residential development) and there are no similar

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levies/provisions relating to Orange Grove.

Given that Orange Grove does not have existing public infrastructure investments and, if the centre is to grow, public infrastructure for amenity and transport purposes will be required, this is a valid concern.

Council officers have (informally) advised that apart from contributions as part of the DA process, no other agreements or plans in relation to contributions towards public infrastructure have been considered.

### SEPP (EXEMPT AND COMPLYING CODES) 2008

An amendment to the SEPP (Exempt and Complying Codes) 2008, has been inserted to the amending instrument to exempt the site from the application of the Schedule 2 Exempt development codes - variations and Schedule 3 Complying development codes - variations.

### SUMMARY

Although the above issues discussed are relevant, on balance it can be concluded that:

- . it is not considered that the proposal will have significant long term retail trade impact and loss in trade to Liverpool CBD or other surrounding centres;
- . the planning proposal will facilitate efficient use of the site which is otherwise used only during weekends;
- . the proposed additional use applies to the a specific site and is unlikely to create a precedent;
- . the proposal will create 400 additional jobs and will not reduce the existing land zoned and identified in the draft SW Subregional Strategy for bulky goods and employment generating lands.

In response to the concerns raised in the submissions on the use of Orange Grove for non retail outlets (department or mini-department) stores, it is proposed Liverpool City Council be advised that the LEP is primarily to facilitate a brand factory outlet on the site and the importance of Council ensuring through any development consent that Council issues that this is the case.

The proponent (Gazcorp), SCCA and Westfields are also to be advised along the same lines.

Proceed to Draft LEP :

Yes

If No, comment :

Have all necessary changes requested by Council / Department / Agency / Other been made?

Yes

If No, comment :

### LEP Determination

Date sent to legal : 20-Feb-2013

Total Days at PC : 16

Total Days at Legal/DoP : 89

### PC Dates Details

**Draft Amendment No. 22 to Liverpool Local Environmental Plan 2008**

Date sent to PC : 11-Mar-2013      Date returned from PC : 26-Mar-2013      Days at PC : 16

Other referrals :      Date Sent :      Date Received :

Elapsed Days : 148

Date PC provided an opinion that draft LEP could be made : 26-Mar-2013

Have changes been made to the draft LEP after obtaining final PC opinion? No

Determination Date :      Determination Decision :

Decision made by :

Link to Legislation Website :

Internal Supporting notes :

**Documents**

| Document File Name                                 | DocumentType Name        | Is Public |
|----------------------------------------------------|--------------------------|-----------|
| Covering letter and planning proposal.pdf          | Proposal Covering Letter | Yes       |
| Council_Report.pdf                                 | Proposal                 | Yes       |
| Council_Report_Attachment_3.pdf                    | Proposal                 | Yes       |
| Traffic_and_Parking_Assessment_Report_Dobinson.pdf | Study                    | Yes       |
| Economic_Impact_Assessment_Leyshon.pdf             | Study                    | Yes       |
| Leyshon_advice_June_2011.pdf                       | Study                    | No        |
| SJB_advice_23_June_2011.pdf                        | Study                    | Yes       |
| Extract_Draft_Centres_Policy_Principles.pdf        | Study                    | Yes       |
| Extracts_Metropolitan_Plan.pdf                     | Study                    | Yes       |
| Extract_Draft_South_West_Subregional_Strategy.pdf  | Study                    | Yes       |
| The_Right_Place_for_Businesses_and_Services.pdf    | Study                    | Yes       |
| Planning_Proposals_Description.pdf                 | Study                    | No        |
| Planning_Proposals.pdf                             | Study                    | No        |
| Liverpool_CBD_Carparks.pdf                         | Photograph               | Yes       |
| Sequential_Test.pdf                                | Study                    | No        |
| Peer_Review_HillPDA.pdf                            | Study                    | Yes       |
| SJB_advice_29_July_2011.pdf                        | Study                    | Yes       |
| 4.01 Liverpool Gateway YES.pdf                     | Determination Document   | Yes       |
| 4.02 Liverpool PR Report.pdf                       | Determination Document   | Yes       |
| 4.03 Liverpool GD Report YES.pdf                   | Determination Document   | Yes       |
| 4.01 Liverpool Revised Gateway.pdf                 | Determination Document   | Yes       |
| 4.00 Liverpool Planning Team Report.pdf            | Determination Document   | Yes       |
| Revised_Gateway_Determination.pdf                  | Determination Document   | Yes       |
| Tag_SGS_-_SGS_peer_review.pdf                      | Determination Document   | No        |