

GMPG 01	Draft amendment to Liverpool Local Environmental Plan 2008 - Restricted Premises
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Strategic Direction	Liveable Safe City Improve the community's sense of safety in Liverpool
Key Policy	Liverpool Local Environment Plan 2008
File Ref	014412.2014
Report By	Tanya O'Brien – Manager, Strategic Planning
Approved By	Carole Todd – Acting Group Manager, Planning and Growth

EXECUTIVE SUMMARY

At its meeting dated 28 August 2013, Council resolved to "review the controls for restricted premises to further discourage this business activity from operating in the B3 Commercial Core zone and Liverpool CBD."

Following this, Council sought to prohibit 'restricted premises' in the B2 Local Centre, B3 Commercial Core and B4 Mixed Use zones as part of Draft Amendment No.32 to the Liverpool Local Environmental Plan (LEP) 2008. These proposed changes were not supported by the NSW Department of Planning and Infrastructure (DP&I) due to inconsistency with the Standard Instrument LEP.

The attached planning proposal addresses this inconsistency and identifies locations in which 'restricted premises' are not appropriate. The draft amendment will prohibit 'restricted premises' on land;

- which is opposite or adjacent to land zoned primarily for residential purposes, land which is used for community purposes (such as schools, places of public worship and recreational facilities);
- on which there is an existing restricted premises or sex service premises and;
- which is opposite or adjacent to land upon which there is a current approval for a community use, or use as a sex service premises or restricted premises.

The draft amendment will also ensure that the impact of a proposed 'restricted premises' on existing land uses is a consideration in the assessment of any future development for these purposes.

RECOMMENDATION

That Council:

1. Endorses the attached draft planning proposal and authorises Council officers to forward a copy to the Department of Planning and Infrastructure seeking a Gateway determination.
2. Agrees that subject to Gateway approval, public authority consultation and public exhibition proceed in accordance with the determination.
3. Authorises public exhibition of the attached Draft Amendment to the Liverpool Development Control Plan 2008.
4. Notes that the outcomes of public authority consultation and public exhibition will be reported to a future meeting of Council.

REPORT

Background

The definition of 'restricted premises' provided by the Liverpool LEP 2008 is as follows;

"Restricted Premises means premises that, due to their nature, restrict access to patrons or customers over 18 years of age, and includes sex shops and similar premises, but does not include a pub, hotel or motel accommodation, home occupation (sex services) or sex services premises."

At its meeting dated 28 August 2013, Council resolved (inter alia) to "review the controls for restricted premises to further discourage this business activity from operating in the B3 Commercial [Core] zone and Liverpool CBD."

Council sought to remove 'restricted premises' as a permissible use in the B2 Local Centre, B3 Commercial Core and B4 Mixed Use zones and to add these uses as permissible with consent in the B6 Enterprise Corridor, IN1 General Industrial and IN2 Light Industrial zones as part of Draft Amendment No.32 to the Liverpool LEP 2008.

The Gateway determination was not supportive of the proposed changes to the permissibility of 'restricted premises' due to inconsistency with the Standard Instrument LEP. The determination stated that these changes should be removed from the planning proposal prior to undertaking public exhibition. Further, the determination stated that Council is to update the planning proposal prior to undertaking public exhibition, to provide strategic justification to address why restricted premises are an appropriate land use in the B6 Enterprise Corridor, IN1 General Industrial and IN2 Light Industrial zones. Council has since written to the DP&I advising that its review of planning controls, having regard to restricted premises, will be pursued through a separate planning proposal.

The *Standard Instrument (Local Environmental Plans) Order 2006* stipulates that restricted premises are a compulsory use 'permitted with consent' in the B2, B3 and B4 zones. To address Council's concerns regarding the proliferation of these uses, the attached planning proposal will insert a clause under 'Part 7 Additional Local Provisions' of the Liverpool LEP 2008. The local provision will ensure that the impact of 'restricted premises' on land which is used for community purposes, areas of high pedestrian activity, and land frequented by children are considered prior to consent being granted for development of this nature.

A benchmarking review of planning controls for 'restricted premises' in western Sydney was conducted, and found that locational controls were commonly used to ensure that these developments are appropriately located. The draft local clause provided below has been produced through compiling existing controls in the Penrith, Camden and Parramatta LEPs. The Department of Planning and Infrastructure has advised Council that this approach is appropriate.

Part 7 Additional Local Provisions

The planning proposal outlines Council's intent to add a clause to the Liverpool LEP 2008 which prohibits 'restricted premises' on land opposite or adjacent to land which is used for certain purposes. Further, the proposed clause stipulates that the consent authority must consider the impact of the proposed development on existing land uses and areas of high pedestrian activity. The draft clause is as follows;

7.33 Restricted premises

- (1) *The objective of this clause is to ensure that restricted premises are not visually prominent from public places or other locations regularly frequented by children.*
- (2) *Development consent must not be granted to development for the purposes of restricted premises if the premises will be located on land that abuts, or is separated only by a road from land:*
 - (a) *in Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential or R4 High Density Residential; or*
 - (b) *that is used for community, school (including pre-school and child care centres), places of public worship or children's sporting or recreational activities, or*
 - (c) *that is used for sex services premises or restricted premises.*
 - (d) *on which there is an approval for development for the purposes of any of those land uses identified by either (b) or (c).*
- (3) *In deciding whether to grant consent to development for the purposes of restricted premises, the consent authority must consider:*
 - (a) *the impact of the proposed development on places of high pedestrian activity, and*
 - (b) *the impact of the proposed development on land frequented by children for care, recreational or cultural purposes, and*
 - (c) *whether the appearance of the restricted premises is sufficiently discreet.*

Draft Amendment No.11 to the Liverpool Development Control Plan 2008

The draft amendment to the Liverpool Development Control Plan (DCP) 2008 consists of changes to controls for 'restricted premises' and sex service premises. The DCP amendment will provide further design controls for these types of developments to ensure that their location, appearance and signage are discreet and contextually appropriate.

The proposed amendment will make existing controls for sex service premises in industrial zones and in the Liverpool City Centre consistent and expand controls relating to restricted premises. The attached draft DCP controls incorporate the planning principal established by the Land and Environment Court in paragraph 18 of *Martyn v Hornsby Shire Council [2004] NSWLEC 614*.

It is intended that the draft DCP amendment and the planning proposal will be exhibited concurrently.

Conclusion

At its meeting dated 28 August 2013, Council expressed concern regarding the proliferation of 'restricted premises' in the Liverpool City Centre and resolved to review the controls which relate to such developments.

'Restricted premises' are a compulsory use in the B2, B3 and B4 zones under the *Standard Instrument Order (Local Environmental Plans) 2006*, the prohibition of this use within these zones is therefore not possible. The attached planning proposal seeks to ensure that the location of any future 'restricted premises' in Liverpool is such that it will cause minimal offence and have minimal impact on the streetscape.

It is recommended that Council proceeds with this amendment to the Liverpool Local Environmental Plan 2008 and forward the attached planning proposal to the Department of Planning and Infrastructure seeking a Gateway determination.

CONSIDERATIONS

Economic and Financial	There are no financial implications for Council resulting from this report.
Environmental and Sustainability	There are no environmental and sustainability considerations
Social and Cultural	There are benefits to social and cultural cohesion.
Civic Leadership and Governance	There are no civic leadership and governance considerations.

ATTACHMENTS

1. Draft Planning Proposal (under separate cover)
2. Draft Amendment to Liverpool Development Control Plan 2008 (under separate cover)