

Planning Proposal

Draft Liverpool Local Environmental Plan 2008 Amendment – Restricted Premises

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Background

This planning proposal has been drafted in accordance with Section 55 of the Environmental Planning and Assessment Act 1979 (the Act) and the Department of Planning and Infrastructure's guide to preparing planning controls.

This planning proposal pertains to controls on the location of 'restricted premises' within the Liverpool Local Government Area (LGA). Council is concerned with the proliferation of such businesses in inappropriate locations and is seeking to ensure that future development for the purposes of 'restricted premises' occurs in locations which are less likely to cause offence.

Council sought to prohibit 'restricted premises' in the B2 Local Centre, B3 Commercial Core and B4 Mixed Use zones under draft Amendment No.32 to the Liverpool Local Environmental Plan (LEP) 2008. The changes to permissibility which were proposed at that time were not supported in the Gateway determination due to inconsistency with the Standard Instrument LEP. As no changes to the land use table for each of the above stated zones is being proposed, the planning proposal is consistent with the Standard Instrument LEP.

The changes being proposed aim to limit the permissibility of restricted premises in locations adjacent to residential land and in close proximity to land frequented by children for care, recreational or cultural purposes.

The definition of 'restricted premises' provided by the Liverpool Local Environmental Plan (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.

The Hill PDA Floorspace Survey December 2011 identified five (5) businesses fitting the definition of 'restricted premises' operating in the southern part of the Liverpool City Centre in late 2011. The five businesses had a combined retail floorspace of 317sqm. There has been no additional 'restricted premises' floorspace created in Liverpool since the survey was conducted.

It is noted that the operation of these premises is strictly controlled. As an example, Pt 16 S 578(E)(2) of the Crimes Act 1900 and s49 of the Classification (Publications, Films and Computer Games) Enforcement Act 1995 No 63 apply to 'restricted premises' and control signage, advertising and displays.

Council will be seeking to amend the Liverpool Development Control Plan (DCP) 2008 through a separate process. The proposed amendment will seek to establish guidelines for signage, siting, design and operation of restricted premises which are to be considered in the assessment of 'restricted premises' in the future. It is the intent of Council that draft DCP Amendment No.11 will be exhibited concurrently with this planning proposal.

Delegation of Plan Making Function to Council

Council is seeking an authorisation to make the plan for this planning proposal. Council's response to the evaluation criteria for the delegation of plan making function is provided below;

	Council Response	Department Assessment
	Y/N	Y/N
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y	
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y	
Are appropriate maps included to identify the location of the site and the intent of the amendment?	N/A	
Does the planning proposal contain details related to proposed consultation?	Y	
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?	Y	
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y	
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y	
Minor Mapping Error Amendments		
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?	N	
Heritage LEPS		
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?	N	
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?	N	
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?	N	
Reclassifications		
Is there an associated spot rezoning with the reclassification?	N/A	
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?	N/A	
Is the planning proposal proposed to rectify an anomaly in a classification?	N/A	
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?	N/A	

Will the draft LEP discharge any interests in public land under section 30 of the <i>Local Government Act, 1993</i> ?	N/A	
If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?	N/A	
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) <i>Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land</i> ?	N/A	
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?	N/A	
Spot Rezoning		
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?	N/A	
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	N/A	
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?	N/A	
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?	N/A	
Does the planning proposal create an exception to a mapped development standard?	N/A	
Section 73A matters		
Does the proposed instrument a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?; b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land? (NOTE – the Minister (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).	N	

Part 1 - Objectives

The objective of this planning proposal is to ensure that any future development for the purposes of a 'restricted premises' is appropriately located. It is proposed to add a local provision to the Liverpool LEP 2008 which prohibits 'restricted premises' on land which is opposite or adjacent to land which is primarily zoned for residential purposes, land upon which a community facility which is frequented by children is constructed, or an existing 'restricted premises' or sex service premises. Further, the consent authority must consider the impact of the proposed development on areas of high pedestrian activity, any land frequented by children, and whether the appearance of the premises is sufficiently discreet.

For the purposes of achieving the desired outcome of this planning proposal, restricted premises will also be prohibited from being located on land which is opposite or adjacent to land upon which there is a current approval for sex service premises, restricted premises, or a land-use which is likely to be frequented by children.

The proposed local provision, which is outlined in Part 2 of this planning proposal, aims to control the proliferation and clustering of 'restricted premises'. Such clusters result in unattractive and undesirable streetscapes and may therefore impact upon the amenity of Liverpool's centres, particularly the Liverpool City Centre.

Part 2 - Explanation of provisions

The objectives of this planning proposal will be implemented through the addition of the local clause provided below, under 'Part 7 Additional Local Provisions' of the Liverpool LEP 2008.

The draft clause is a compilation of similar clauses in the LEP's of other Western Sydney local government areas (LGA), being Penrith (Clause 6.15), Camden (Clause 7.7) and Parramatta (Clause 6.8).

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), place 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 a current development consent for 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.

Part 3 - Justification

A. Need for the Planning Proposal

1. Is the planning proposal a result of any strategic study or report?

The planning proposal is not the result of any strategic study or report. The changes being proposed are part of a broader City Centre Revitalisation Strategy being undertaken by Council which aims to reinvigorate the Liverpool City Centre and promote economic prosperity. Proliferation of 'restricted premises' is likely to result in an unattractive streetscape which is inconsistent with the outcomes being sought by the current revitalisation strategy.

While the intent of this planning proposal is to limit the development of 'restricted premises' in inappropriate locations in the Liverpool City Centre, the proposed changes will also affect smaller centres. The local provision will apply to development across the LGA and will ensure that any future development of 'restricted premises' in smaller centres is discreet and contextually appropriate.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Council considers that an amendment to the Liverpool LEP 2008 is the most appropriate method of ensuring that any future development for the purposes of a 'restricted premises' is appropriately located and discreet. A proposed amendment to the Liverpool DCP 2008 will supplement this planning proposal through the provision of further guidelines relating to the development of 'restricted premises'.

B. Relationship to Strategic Planning Framework

3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Sydney Metropolitan Strategy

While the planning proposal does not relate directly to any of the actions outlined in the *Metropolitan Plan for Sydney 2036*, the proposed planning controls are generally consistent with the strategic directions of 'Growing and Renewing Centres' and 'Achieving Equity, Liveability and Social Inclusion'.

Draft Metropolitan Strategy for Sydney to 2031

This planning proposal is generally consistent with the objectives, policies and actions outlined in the draft strategy. Of particular relevance to this planning proposal are;

Objective 7: Deliver well-designed and active centres that attract investment and growth; and

Objective 8: Create socially inclusive places that promote social, cultural and recreational opportunities.

Liverpool is the Regional City for the South-West Subregion of Sydney. The city is anticipated to experience significant growth by 2031, both in terms of population and employment. This planning proposal is part of a broader objective to promote an attractive streetscape which is appealing to businesses and families alike and attracts investment and renewal.

Under the proposed changes, any future development for the purposes of a 'restricted premises' must be considerate of community facilities, schools, any land which is frequented by children and areas of high pedestrian activity. This will promote greater amenity for Liverpool residents and visitors to the city.

South West Draft Subregional Strategy

The Draft South West Subregional Strategy is the strategic land use planning framework to guide the sustainable growth of South West Sydney.

It translates priorities of the Sydney Metropolitan Strategy to the local level. According to the Strategy, South West Sydney will experience growth in the vicinity of some 155,000 new dwellings over the next 19 years.

As stated previously, this planning proposal is part of a broader City Centre Strategy which aims to increase the appeal of the Liverpool City Centre, promote investment and improve liveability and amenity. The changes which are being proposed are generally consistent with the policies outlined by the draft subregional strategy which aim to strengthen Liverpool as the Regional City for South-West Sydney and promote economic prosperity in the city.

4. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Growing Liverpool 2023 identifies social and community priorities for Liverpool and proposes strategies that work towards and sustain a better quality of life and increased prosperity within the community. The Strategy focuses on seven future directions. These areas have been developed to build on the work undertaken in the previous community strategic plan.

Growing Liverpool 2023 has been developed as a result of intensive and ongoing community consultation with various stakeholders, including local residents, businesses and government representatives.

The planning proposal is consistent with the future directions outlined in Growing Liverpool 2023, being;

- Vibrant Prosperous City
- Liveable Safe City
- Healthy Inclusive City

- Proud Engaged City
- Natural Sustainable City
- Accessible Connected City
- Leading Proactive Council

5. Is the planning proposal consistent with the applicable state environmental planning policies?

The planning proposal is not inconsistent with any state environmental planning policies.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Various Section 117 Ministerial Directions apply to this planning proposal. These are discussed below:

S.117 Direction No. and Title	Contents of S.117 Direction	Planning Proposal	Comply
1.1- Business and Industrial Zones	The objective of this direction is to encourage employment growth in suitable locations, protect employment land in business and industrial zones and support the viability of identified strategic centres.	The planning proposal is consistent with the objectives of this direction and will not result in any loss of employment area. It is the intent of the proposal to enhance the centres within the Liverpool LGA, and particularly the Liverpool City Centre through an improved streetscape, especially in locations which are frequented by children.	Yes
3.4 - Integrating land use and transport	Planning Proposal must be consistent with DUAP publications <i>"Improving Transport Choice"</i> and <i>"The Right Place for Business and Services"</i> .	Restricted premises are currently permitted in Liverpool on land zoned B2 Local Centre, B3 Commercial Core and B4 Mixed Use. No change to the permissibility of this use in these zones is being proposed. These zones are typically located in highly accessible locations and therefore consistent with the aims, objectives and principles of these publications.	Yes
6.1 – Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development through minimising the inclusion of provisions which require concurrence, consultation or referral to a Minister or public authority.	This planning proposal does not include any provisions which would require a development application to be referred to a Minister or public authority, nor does it identify development as designated development. The planning proposal is therefore consistent with this direction.	Yes

S.117 Direction No. and Title	Contents of S.117 Direction	Planning Proposal	Comply
7.0 - Metropolitan Planning	Planning proposals shall be consistent with the NSW Government's Metropolitan Plan for Sydney 2036 published in December 2010.	The planning proposal is consistent with the overall intent of the Plan and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.	Yes

C. Environmental, Social and Economic Impact

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

This planning proposal will not have an adverse affect on any critical habitat or threatened species, populations or ecological communities, or their habitats.

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The planning proposal will not result in any negative environmental effects.

9. How has the planning proposal adequately addressed any social and economic effects?

The intent of this planning proposal is to achieve positive social and economic outcomes through controlling the proliferation of restricted premises in inappropriate locations, particularly in those locations where children are likely to be exposed to their existence.

This planning proposal is part of a broader City Centre Revitalisation Strategy which aims to increase confidence and investment in the Liverpool City Centre, in line with its role as the Regional City for South-West Sydney. Restricting the proliferation of these types of developments in highly visible locations will advance the achievement of this vision.

D. State and Commonwealth Interests

10. Is there adequate public infrastructure for the planning proposal?

The planning proposal does not result in extensive additional development and is therefore unlikely to place additional demands on public infrastructure.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

This proposal is seeking gateway determination. The public authorities required to be consulted as part of this proposal are yet to be determined. Council recommends the following public authorities are consulted prior to gazettal of this proposal;

- New South Wales Police Force
- Fairfield City Council
- Campbelltown City Council

- Bankstown City Council
- Camden Council

Part 4 - Maps

No changes to the Liverpool LEP 2008 maps are proposed.

Part 5 - Community Consultation

Council considers this planning proposal to be low impact and therefore suggests that community consultation, involving exhibition of the planning proposal and supporting documentation, is undertaken for a period of 14 days.

Part 6 – Project Timeline

Council estimates that a timeframe of 6 months, from the issue of a Gateway determination, is required to complete the process.

Timeframe	Action
6 March 2014	Receive Gateway Determination from Department of Planning and Infrastructure
7 April 2014	Completion of reports required by Department of Planning and Infrastructure
7 April 2014 – 28 April 2014	Public authority consultation period
5 May 2014 – 19 May 2014	Public exhibition period
20 May 2014 – 25 June 2014	Post exhibition review and consideration of submissions
25 June 2014	Report to Council
7 July 2014	Anticipated date of submission to the Department of Planning and Infrastructure to finalise the LEP
18 August 2014	Review of Planning Proposal by DP&I and finalisation of LEP