

LIVERPOOL CITY COUNCIL

INDEPENDENT HEARING & ASSESSMENT PANEL REPORT

25 March 2019

Item no:	(leave blank)
Application Number:	RZ-10/2018
Proposed Development:	Planning proposal to amend Schedule 1 of the Liverpool Local Environmental Plan 2008 (LLEP 2008) to include a vehicle sales or hire premises as an additional permitted land use at 36-36A Kookaburra Rd, Prestons (Lot A and B DP 408207).
Property Address	36-36A Kookaburra Rd, Prestons
Legal Description:	Lot A and B DP 408207
Applicant:	Craig Thomas, Logos Property
Land Owner:	Perpetual Corporate Trust Limited ATF LALV Prestons Trust
Recommendation	Proceed to Gateway determination
Assessing Officer:	Luke Oste – Strategic Planner

1. EXECUTIVE SUMMARY

Council has received a planning proposal (**Attachment 1**) to amend Schedule 1 of the Liverpool Local Environmental Plan 2008 (LLEP) to include a *vehicle sales or hire premises* as an *additional permitted land use* at Lot A and B Kookaburra Road, Prestons (Lot A and B DP 408207). The site is currently zoned IN3 Heavy Industrial and the proposed land use (*vehicle sales or hire premises*) is prohibited under the LLEP 2008.

The proposal has been submitted pursuant to Section 3.33 of the *Environmental Planning and Assessment Act (EPAA) 1979* and the proposal is referred to the Liverpool Local Planning Panel in accordance with Section 2.19 of the *EP&A Act 1979* for advice.

Council also received a Development Application (DA-802/2018) for the temporary use of the site for minor retail activities to occur for a maximum of 52 days in any given period of 12 months. The DA was approved by Council on 20 February 2019.

The planning proposal has strategic and site specific merit. The proposal to amend the LLEP 2008 is consistent with *Section 9.1 Directions* and other relevant regional and local plans as identified in this report.

2. SITE DESCRIPTION AND LOCALITY

The Site

This planning proposal is site specific and relates to land at Lot A and Lot B DP 408207 known as Lot A and B Kookaburra Road, Prestons. The site is approximately 1.2km south-west of the M7 connection in the centre of the Prestons Industrial Estate. The site is surrounded by IN3 zoned land to the north, and IN1 zoned land to the south. The nearest residential development is located approximately 235m south of the site, with additional dwellings located approximately 325m to the north-west of the site. Cabramatta Creek and associated bushland is located to the west of the site, forming a border between the Prestons Industrial Estate and the surrounding residential area.



Figure 1 Aerial photograph of subject site (Source: Nearmap)



Figure 2 View of the existing warehouse from Kookaburra Rd

History

- Lots A and B DP 408207 were previously used for agricultural purposes. In 2017 native vegetation was cleared, with the exception of a small portion along the north western corner of the site. The stripping, including the removal of the remaining vegetation, remediation and the capping of Lots A and B was approved under a Complying Development Certificate CDC-1227/2017 and works were carried out accordingly.
- On 13th February 2017 approval was sought to modify consent SSD 7155. The modification included the following which was relevant to the subject site:
 - Reconfigure the layout of the industrial estate to incorporate additional lots. These lots consisted of the subject site (Lots A and B DP 408207).
 - Construction of a new Warehouse 6 on new lots (Lots A and B DP 408207).
 - Warehouse 6 to be used for the storage and distribution (and ancillary retail sale) of vehicle parts.
- The servicing of vehicles use proposed could not be approved as part of SSD_7155 (MOD 3), as the Department of Planning and Environment (DPE) determined that the proposed use would be outside the scope of a Section 4.55(2) application (formerly section 96(2)).
- A complying development certificate was issued on the 8th of August 2018 for the change of use of Warehouse 6 from warehouse and distribution to light industry to allow a vehicle repair station.
- A pre-planning proposal meeting was held to discuss the possibility of enabling an additional permitted on the site to permit Vehicle sales and hire.
- Council received a Development Application (DA-802/2018) on 23 October 2018 for the temporary use of the site for minor retail activities to occur for a maximum of 52 days in any given period of 12 months. This DA was approved by Council on 20 February 2019.

3. DETAILS OF THE PROPOSAL

The proposal seeks to amend the Liverpool Local Environmental Plan (LLEP) 2008 as follows:

Schedule 1 is proposed to be amended by adding the following:

24 Use of certain land at Prestons Industrial Estate

(1) This clause applies to Lot A DP408207; Lot B DP408207 at 36-36A Kookaburra Road, Prestons.

(2) Development for the purposes of a vehicle sale and hire premises is permitted with development consent.

The LLEP 2008 Key Sites Map will need to be amended.

Key features of the temporary use consent under DA-802/2018 are defined below:

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Office	The first-floor administration office includes an open-plan desk area to accommodate seven (7) retail staff associated with the proposed temporary retail use.
Customer Car Parking	17 parking spaces including an accessible parking space are located alongside the ground floor office that have been allocated as customer parking.
Staff Car Parking	7 parking spaces within the existing staff carpark have been allocated as retail staff parking.
Hours of Operation	The temporary use of the site for retail operations is to operate from 9am to 5pm every Friday.
Number of Employees	A maximum of seven (7) staff will be employed as part of the temporary retail component of the warehouse.

4. CONSIDERATIONS FOR STRATEGIC MERIT

The Department's *A guide to preparing planning proposals* includes the following questions to justify the proposal (Section A, Q1 and Q2).

1. *Is the planning proposal a result of any strategic study or report?*
2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

The Planning Proposal seeks to amend Schedule 1 of the LLEP 2008. Although the proposal has not been made as a result of any strategic study or report, it is considered to be the best means of facilitating the intended outcome.

The proponent provides justification as to why the planning proposal is the best means of achieving the intended outcome as follows:

"A planning proposal is the only means of achieving the objectives and intended outcomes for the site as the proposed vehicle sale use is prohibited within the existing IN3 zone and there is limited land within the Prestons catchment which permits vehicle sales."

"Without an amendment to the planning controls, the opportunity to provide a supporting sale use to the surrounding industrial uses (the sale of heavy vehicles) within the precinct would be lost."

The Department's *A guide to preparing planning proposals* includes the following question to delineate consistency with the NSW strategic planning framework (Section B, Q3).

3. *Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?*

The Department includes 'assessment criteria' which provide guidance on assessing a proposal's consistency with matters raised in Question 3. The following table summarises the assessment criteria (Part A of the Assessment Criteria).

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Guideline Assessment Question	Response
<i>Consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; or</i>	This question is addressed in detail below.
<i>Consistent with a relevant local council strategy that has been endorsed by the Department; or</i>	There are no relevant local Council strategies that have been endorsed by the Department to consider.
<i>Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.</i>	There are no notable changes in circumstances that have not been recognised by existing planning controls.

A Plan for Growing Sydney

A Plan for growing Sydney has now been superseded by a Metropolis of Three Cities Regional Plan. Note, the Ministerial direction has not been updated to reflect this.

A Plan for Growing Sydney (Metro Plan) is a NSW Government regional strategy for the Sydney area which replaced the Metropolitan Plan for Sydney 2036. It includes general goals and directions applicable across the Greater Sydney area and more localised sub regional strategies. The proponent didn't provide an assessment, nonetheless the proposal generally aligns with key strategic directions defined in the strategy. Council's assessment responses to key strategic directions are provided below.

Item	Assessment Response
1.9 Support Priority Economic Sectors Action 1.9.2 Support key industrial precincts with appropriate planning controls	The proposal supports Action 1.9.2 as the IN3 zone will not be altered and the proposal will not impact on the industrial land stocks of Liverpool.
South West Subregion ▪ A competitive economy ▪ Priorities for strategic centres	The proposal supports the subregional priority to 'identify and protect strategically important industrial-zoned land'.

A Metropolis of Three Cities (Greater Sydney Region Plan 2018)

Objective 23 of The Greater Sydney Region Plan 2018 focuses on retention and management of existing industrial and urban services land and to ensure it is *safeguarded from competing pressures, especially residential and mixed-use zones*. The proposal is consistent with this objective in that the land remains serviceable for existing and future industrial purposes. This objective is reiterated as Action 51 in the Western City District Plan.

Objective 24 of The Greater Sydney Region Plan 2018 aims to ensure that competing opportunities are managed and land values for industries that are fundamental to the overall economy are protected. The planning proposal justification report states that the proposal "encourages a diverse range of employment opportunities on land already adequately serviced, and therefore meets this objective".

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Western City District Plan

Planning Priority W10 of the Western City District Plan focuses on managing and retaining the industrial precincts of Western Sydney as these areas will be the major long-term industrial/employment land for Greater Sydney. The proposal is consistent with this priority as it will not impact on the zoning or potential future use of land which has been identified as important to protect for industrial employment.

The Department's *A Guide to Preparing Planning Proposals* includes the following question (Section B, Q4)

- 4. Is the planning proposal consistent with Council's local strategy or other local strategic plan?*

Draft Liverpool Industrial Land Study (2018)

SGS Economics and Planning was engaged by Council to investigate Liverpool LGA's industrial land and to provide various recommendations to ensure the sufficient supply of industrial land; to effectively manage existing industrial precincts; and to encourage economic development initiatives. Despite this draft report not being finalised and endorsed by the Department, it has been considered as part of the subject planning proposal.

The planning proposal is consistent with the findings and recommendations of the Draft Liverpool Industrial Land Study (2018) in leveraging the characteristics of the site and wider Prestons Industrial Estate appropriately.

Our Home, Liverpool 2027

Council's *Our Home, Liverpool 2027* is a Community Strategic Plan (CSP) and provides strategic directions that have been identified by the community and the measures that will allow Council to determine progress towards achieving them. The four key directions are: creating connection, strengthening and protecting our environment, generating opportunity and leading through collaboration. The proposal aligns with the third direction (generating opportunity) which states:

Liverpool Council will

- *Attract businesses for economic growth and employment opportunities*
- *Create an attractive environment for investment*

The planning proposal justification report lodged did not address this local plan. Nonetheless, the proposal will support an expanded use of the site and promote employment generating activities in alignment with this plan.

Section 9.1 Directions by the Minister (previously Section 117)

The planning proposal addresses the following directions, pursuant to Section 9.1 of the EP&A Act 1979:

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Direction	Objectives	Council officer comments
9.1 DIRECTIONS		
1.1 Business and Industrial Zones	<i>To encourage employment growth in suitable locations.</i>	Consistent. The proposal is generally consistent with this direction and will provide for employment growth in Prestons.
	<i>To protect employment land in business and industrial zones.</i>	Consistent. The proposal will retain existing IN3 zoned land for employment uses.
	<i>To support the viability of identified strategic centres.</i>	N/A
3.4 Integrating Land Use and Transport	<i>improving access to housing, jobs and services by walking, cycling and public transport</i>	Not consistent. A lack of public transport is present within the area. This inconsistency is of minor significance.
	<i>increasing the choice of available transport and reducing dependence on cars</i>	N/A
	<i>reducing travel demand including the number of trips generated by development and the distances travelled, especially by car</i>	N/A
	<i>supporting the efficient and viable operation of public transport services</i>	N/A
	<i>providing for the efficient movement of freight</i>	Consistent, the proposal will facilitate the colocation of vehicle sales close to Sydney's main freight corridors which will provide for efficient integration of land use and transport infrastructure.
4.3 Flood Prone Land	<i>To ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005.</i>	Consistent. The north-western portion of the site is identified as a flood planning area and containing low and medium flood risk. The proponent has identified that the proposed use would be taking place within the existing building on the site.
	<i>To ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</i>	Council's Flooding Section have reviewed the proposal and provide support noting that the site is affected by the 1% AEP flooding from Cabramatta Creek. The proposal will not have any adverse impact on flooding and there is no objection to the proposal from a flooding perspective given that the issue of flooding has been resolved during the construction of the warehouse building and associated

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		parking areas.
5.10 Implementation of Regional Plans	<i>The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</i>	Consistent, as discussed within this report.
6.3 Site Specific Provisions	<i>The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.</i>	Consistent. The planning proposal will allow the vehicle sales and hire premises land use to be carried out in the zone the land is situated on (IN3).

Liverpool Local Environmental Plan 2008

(a) Zoning

The site is zoned IN3 – Heavy Industrial. An extract of the zoning map is provided below.

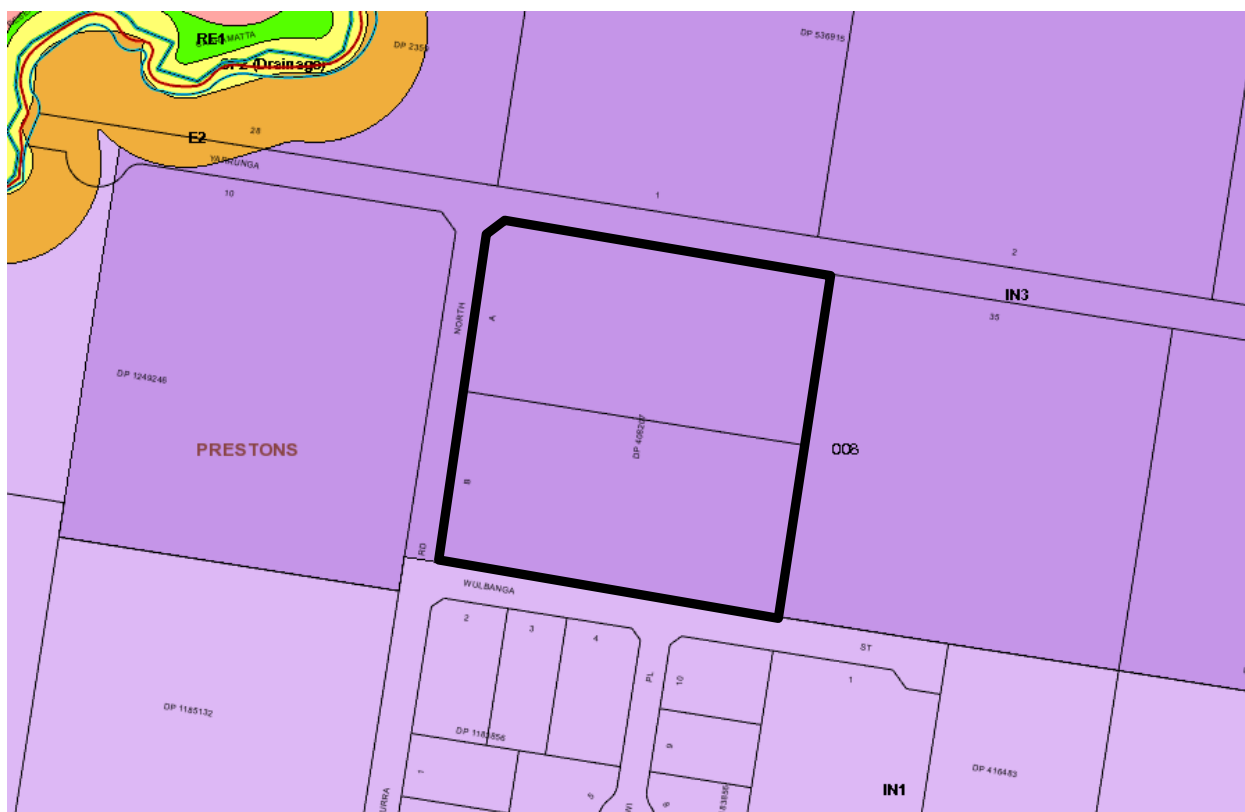


Figure 2 – Extract of LLEP 2008 zoning map

(b) Permissibility

The site is zoned IN3 – Heavy Industrial under Liverpool LEP 2008, within which Vehicle Sales or Hire Premises are identified as a prohibited land use.

Vehicle sales or hire premises are defined by the LLEP 2008 as follows:

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vehicle sales or hire premises means a building or place used for the display, sale or hire of motor vehicles, caravans, boats, trailers, agricultural machinery and the like, whether or not accessories are sold or displayed there.

The current use of the site is a vehicle repair station which is permissible in the IN3 zone.

(c) Objectives

The objectives of the IN3 zone are:

- *To provide suitable areas for those industries that need to be separated from other land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of heavy industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To preserve opportunities for a wide range of industries and similar land uses by prohibiting land uses that detract from or undermine such opportunities.*

The creation of *vehicle sales or hire premises* as an additional permitted use under Schedule 1 of the LLEP is considered consistent with the objectives of the zone. This amendment will support an additional use within an existing warehouse facility which will provide further employment while having minimal impacts on existing and future industrial land uses in the vicinity of the site.

Liverpool Development Control Plan 2008

A Traffic Statement was provided with the planning proposal that was prepared for DA-802/2018 by Transport and Traffic Planning Associates (TTPA). This statement referenced the previous Traffic and Parking Assessment undertaken for the Volvo development TTPA S96 (2) Application (MOD 3) June 2017 (Rev C) which took into account the existing Volvo facility located on the Hume Highway at Chullora. The assessment demonstrates that the Prestons facility will be able to accommodate the limited needs of the proposed retail element.

The parking provisions proposed have been assessed with reference to the Liverpool Development Control Plan 2008 and are supported by Council's Traffic and Transport Section.

5. CONSIDERATIONS FOR SITE-SPECIFIC MERIT

The Department's planning proposal guide includes the following site-specific 'assessment criteria' (Section B, Q3b).

Does the proposal have site-specific merit, having regard to the following:

- 1. the natural environment (including known significant environmental values, resources or hazards) and*
- 2. the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal and*
- 3. the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.*

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Natural environment

The proposal is unlikely to have any measurable impact on the natural environment. The site is industrial and there is no direct connectivity to any natural environmental areas.

Existing and future uses

Vehicle sales on the site would support the existing truck repair operations and would provide a compatible mix of land uses which would not negatively impact land use in the vicinity. The significant scale of the broader Prestons industrial estate, and the nature of these warehouse and distribution uses will benefit from the conveniently collocated retail portion of the site as facilitated by this proposal.

Services and infrastructure

The planning proposal highlights that a full review of available services infrastructure was undertaken during SSD 7155 (as modified) which concluded that all utilities are available at the site. It is noted that the closest bus stop is located over 800m walking distance from the site along Braidwood Drive. It is noted that the Prestons industrial area as a whole is poorly serviced by public transport. The proposed retail use will be capable of operating acceptably despite poor public transport access to the subject site. This issue is considered to be of minor significance.

The minor nature of the additional proposed retail component will not place unacceptable strain on the existing service provision to the overall development. It is noted that a DA consent is in place that permits the temporary use of this retail element currently, with service and infrastructure provision being satisfactory at present.

Flooding

The north-western portion of the site is identified as a flood planning area and containing low and medium flood risk. The proponent has identified that the proposed use would be taking place within the existing building on the site.

Council's Flooding Section have reviewed the proposal and provide support noting that the site is affected by the 1% AEP flooding from Cabramatta Creek. The proposal will not have any adverse impact on flooding and there is no objection to the proposal from a flooding perspective given that the issue of flooding has been resolved during the construction of the warehouse building and associated parking areas.

Statutory considerations / Conditions

A number of conditions would need to be stipulated should the planning proposal be supported in order to maintain the objectives of the IN3 zone. The following points are to be addressed:

- The proposed additional permitted use of vehicle sales or hire premises be confined to within the existing warehouse building only;
- The additional vehicle sales and hire premise use be limited to an ancillary use that is subservient and supportive to the primary vehicle repair station (industrial) use of the site; and
- The external storage area and parking areas are not to be used for the display of vehicles for sales.

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The Department's *A guide to preparing planning proposals* includes the following questions regarding State Environmental Planning Policies (Section B).

Q5 PPG – *Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPP)?*

The proponent provides a review of the relevant SEPPs as provided below.

Policy	Comments
SEPP No. 33 - Hazardous and Offensive Development	The land uses which immediately surround the site are either light industry or warehouse and distribution and accordingly do not generate unacceptable impacts (noise, odour etc) above what is ordinarily anticipated in an industrial precinct.
SEPP 55 – Remediation of Land	All contamination was assessed in detail during the assessment of SSD 7155 (as modified).

It is noted that the site falls within the Georges River Catchments, with the *Greater Metropolitan REP No. 2 – Georges River Catchment* being applicable as a result. The planning proposal is consistent with this REP, given the minor nature of the proposal and the lack of physical works to occur.

Q7 PPG - *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?*

The proposed use will be contained within the existing warehouse and therefore there is a very low likelihood of any adverse impacts on ecological communities or their habitats. It is noted that biodiversity and environmental values to the site were assessed in detail during the assessment of SSD 7155 and conditioned accordingly.

Q8 PPG - *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

Environmental effects were assessed as part of SSD 7155 (as modified), including soil management (salinity) and water management (quantity and quality). Those assessments found the site was suitable for the Volvo operation and relevant ongoing environmental management measures have been implemented.

Q9 PPG - *Has the planning proposal adequately addressed any social and economic effects?*

Council's City Economy section raised no concerns regarding the proposed amendment to permit a minor retail use within the existing warehouse.

There are no notable social implications for the proposal.

Q10 PPG - *Is there adequate public infrastructure for the planning proposal?*

This question has been addressed in Part 6 (site-specific merit 'assessment criteria') of this report. To reiterate, the site is sufficiently serviced to enable the proposed retail use.

Q11 PPG - *What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?*

A Gateway determination will identify which authorities should be consulted.

6. PROPOSED LEP AMENDMENT

In consideration of the amendment sought by the applicant and Council's internal referral responses, the following LLEP amendment is proposed:

Schedule 1 is proposed to be amended as follows:

Use of certain land at Prestons in Zone IN3

- (1) This clause applies to Lot A and B, DP 408207 in Zone Heavy Industrial at Lot A and B Kookaburra Road, Prestons.*
- (2) Development for the purposes of a Vehicle Sales or Hire Premises is permitted with consent as an ancillary component to the dominant industrial use of the site.*
- (3) The proposed additional permitted use of vehicle sales or hire premises is to be confined to within the existing warehouse building only;*
- (4) The external storage area shall not be used for the display of vehicles for sales and no sales of vehicles is allowed to be conducted from the site other than from the inside of the warehouse building.*

Next Steps

The usual process for planning proposal applications, following a review of the application, is for Council officers to finalise the proposal detailing the proposed changes to LLEP 2008 (this report). The Planning Proposal would then be reported to Council for endorsement and subsequently forwarded to the Department of Planning and Environment seeking a Gateway determination.

Following a Gateway determination in support of the Planning Proposal, there will be public authority and community consultations, a public exhibition period and a further report to Council prior to proceeding with the making of any amendment to LLEP 2008.

7. CONCLUSION AND RECOMMENDATION

This report has been prepared following consultation with Council's City Economy, Traffic and Transport, Flooding and Development Assessment sections. Comments provided by Council departments indicate support for the proposal for the reasons outlined in this report.

The above assessment has shown that the proposal is consistent with State and local strategies. There is strategic merit to support the proposal. The proposal also demonstrates site specific merit in that the additional permitted use can support the existing operations while not negatively impacting on current or future land uses in the vicinity.

It is recommended that the planning proposal to allow the additional permitted use for a *vehicle sales or hire premises* on the subject site proceed and that a report be drafted detailing a decision to support the proposal for consideration by Council.

8. ATTACHMENTS

1. Applicant's Planning Proposal