

Appendix D

Agenda and Minutes for Outcomes Committee Meeting held 10 March 2015

Outcomes Committee



MINUTES

DATE OF MEETING: 10 March 2015

LOCATION: Lunch Room

TIME: 6.30pm

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- 21:** Revised 2013-2017 Delivery Program 6 Monthly Report for July to December 2014
File Number: 14/05715

RECOMMENDATION: (Carbone/Le)

That Council receive and note the Revised 2013-2017 Delivery Program 6 Monthly Report for July to December 2014.

CARRIED

SECTION B

‘Matters submitted to the Committee for decision subject to the Right of Referral’

- 22:** **Subject:** Planning Proposal Greenway Plaza Additional Permitted Uses
Premises: 1183-1185 The Horsley Drive Wetherill Park
Applicant: Urbis
Owner: Gaintak Investments Pty Ltd
Directors - Han Van Giang, Leang Giang, Paul Ying Cheong and Ai Ngoh Chan
Zoning: Zone B5 Business Development (FLEP 2013)
File Number: 14/21626

Councillor	Type of Interest	Nature of Interest	Action Taken/ Explanation Given
Yeung	Less than Significant Non-Pecuniary	I know the Applicant Mr Paul Cheong.	This will not influence my decision.

MOTION: (Carbone/Le)

That this matter be referred to the Ordinary Council Meeting to be held on 24 March 2015.

A division was taken with the following results:

Aye	Nay
Mayor Carbone Councillor Le Councillor Ly Councillor White Councillor Yeung	
Total=(5)	Total=(0)

CARRIED

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- 23:** Fairfield City Wide Development Control Plan 2013 - Draft Amendment No.8
(Industrial/Residential Interface)
File Number: 14/14034

MOTION: (Carbone/Le)

That:

1. Council adopt the draft amendments to the Fairfield City Wide Development Control Plan (DCP) 2013, known as Amendment No. 8, as publicly exhibited.
2. The draft amendments to the Fairfield City Wide DCP commence on the date of publication of a Public Notice in the local newspaper, in accordance with Clause 21 of the Environmental Planning and Assessment Regulation.

A division was taken with the following results:

Aye	Nay
Mayor Carbone	
Councillor Le	
Councillor Ly	
Councillor White	
Councillor Yeung	
Total=(5)	Total=(0)

CARRIED

- 24:** Proposed Changes to Family Day Care
File Number: 10/01975

Councillor Molluso arrived (6.32pm) to the meeting.

MOTION: (Carbone/Le)

That Council adopt Option 3 as outlined in the report, as the preferred model for Family Day Care from 1 July 2015.

CARRIED

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AGENDA

DATE OF MEETING:	10 March 2015
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SUBJECT: Planning Proposal Greenway Plaza Additional Permitted Uses
Premises: 1183-1185 The Horsley Drive Wetherill Park
Applicant: Urbis
Owner: Gaintak Investments Pty Ltd
Directors - Han Van Giang, Leang Giang, Paul Ying Cheong and Ai Ngoh Chan
Zoning: Zone B5 Business Development (FLEP 2013)

FILE NUMBER: 14/21626

REPORT BY: Anjele Vu, Strategic Land Use Planner

RECOMMENDATION:

That:

1. Council write to the Department of Planning and Environment (DP&E) seeking in principle support for the following approach to allow additional permitted uses (Commercial Premises at ground floor – Units 1 to 7 and Business and Office Premises at mezzanine level – Units 1 to 6), on part of Lot 1 in DP 1136897 No. 1183-1185 The Horsley Drive, Wetherill Park (Greenway Plaza):
 - 1.1 Amendment to Schedule 1 Additional Permitted Uses of the Fairfield Local Environmental Plan (FLEP) 2013 enabling the proposed uses but including provisions specifically prohibiting ‘supermarkets’.
 - 1.2 Inclusion of a floor space cap of 500m² for each individual tenancy as part of the proposed amendment to Schedule 1 of the FLEP 2013, and
 - 1.3 Preparation of an amendment to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 under Schedule 3 – Complying Development Codes to ensure that the *General Commercial and Industrial Code* is varied in its application to the subject site.
2. A further report be submitted to Council on the advice provided by the DP&E.
3. Council write to the Applicant advising them of the decision.

Note: This report deals with a planning decision made in the exercise of a function of Council under the EP&A Act and a division needs to be called.

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SUPPORTING DOCUMENTS:

AT-A	Economic Impact Statement Peer Review Report - Prepared by Norling	4 Pages
AT-B	Planning Proposal prepared by Urbis	58 Pages

CITY PLAN

This report is linked to *Theme 2 Places and Infrastructure* in the Fairfield City Plan.

SUMMARY

Council is in receipt of a Planning Proposal (**Attachment B**) prepared by Urbis Planning Consultants on behalf of Gaintak Investment Pty Ltd seeking to amend Schedule 1 Additional Permitted Uses of the Fairfield Local Environmental Plan (FLEP) 2013 to formalise use of part of the ground floor and mezzanine level of the existing building at 1183-1185 The Horsley Drive, Wetherill Park (Greenway Supacenta) for retail (shops) and business uses respectively.

Currently the existing retail and business uses on part of the ground floor and mezzanine level of the Greenway Supacenta rely on existing use rights under the NSW Environmental Planning and Assessment Act 1979. It is noted that these uses were permitted under the previous LEP 1994 through a local clause, however the NSW Department of Planning and Environment (DP&E) did not support the transfer of these provisions to the current FLEP 2013 on the basis that they were too restrictive and would establish a 'sub zone'.

Given the previous decision by the DP&E not to allow the formalisation of the subject development during the preparation of the FLEP 2013, it is recommended that Council seek in principle support from the DP&E to the scope of the amendment sought to the FLEP 2013 as outlined in the recommendation to this report, prior to Council considering the planning proposal further.

As detailed further in this report assessment of the proposal also indicates that amendments would be required to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (SEPP) to ensure that the provisions of the SEPP do not override/compromise the proposed amendments to the LEP.

Upon receipt of this advice from the Department, a further report would be submitted to Council for its consideration with regard to whether the planning proposal should proceed.

EXISTING SITE

The site is the Greenway Supacenta (below), an existing industrial service centre, and comprises land known as Lot 1 in DP 1136897 No. 1183-1185 The Horsley Drive, Wetherill Park.

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The site is located between The Horsley Drive, Elizabeth Street and Canley Vale Road. It comprises an area of approximately 5.75ha. Land uses consist of general retail, bulky goods retail, restaurants, food outlets, offices and associated car parking.

Land to the north, east and west of the site consists predominantly of low density bulky goods retail outlets on large lots. Land to the south comprises residential land uses, predominantly low density dwelling houses separated from the site by The Horsley Drive.

Figure 1 Site Location (Source – Urbis)



The existing shopping centre comprises 2 building components which are separated by at grade car parking:

- Greenway Supacenta bulky goods retail outlet: L-shaped building which wraps around the northern and western sides of the site accommodating large format retail tenancies which accommodate a range of bulky goods retail uses.
- **Greenway Plaza:** Centrally located within the site and comprising 2 wings:
 - Northern wing: Single storey building accommodating bulky goods uses.
 - Southern wing: 2- storey building. The ground floor of the building (Units 1-7) accommodates a mix of general retail and business uses. The mezzanine level (Units 1-6) accommodates commercial offices.

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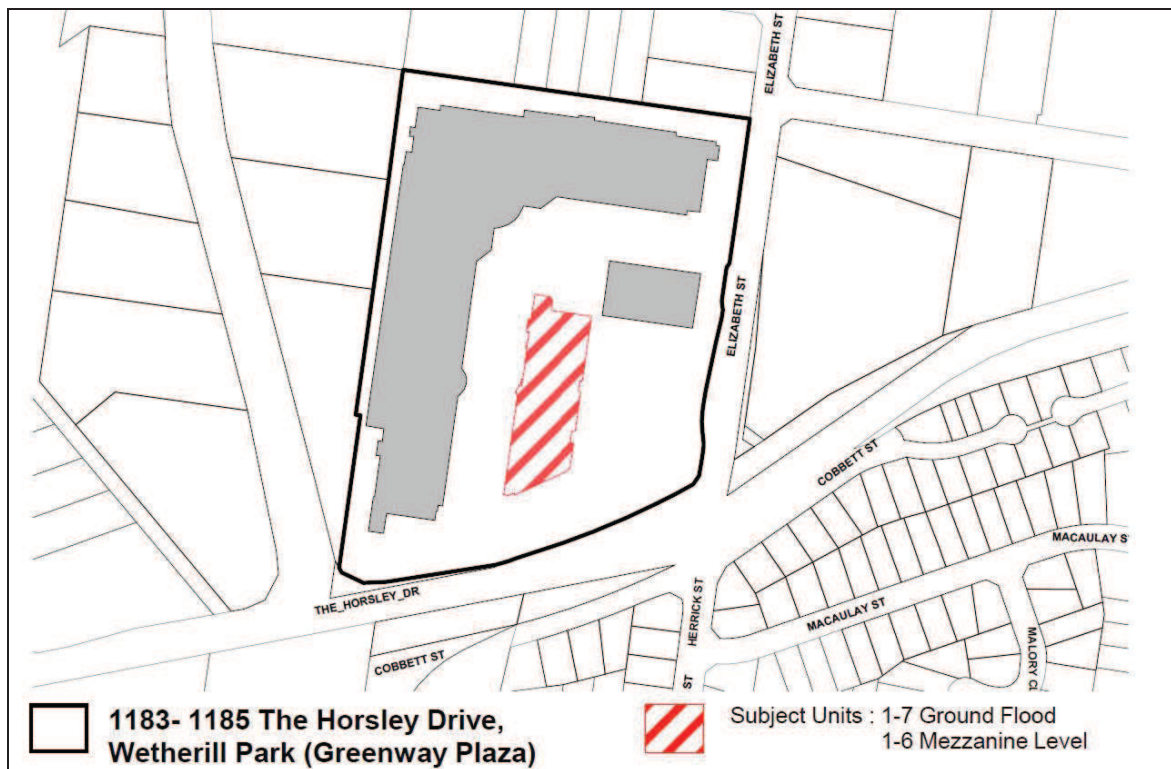
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Greenway Plaza now forms part of the Greenway Supacenta site as the site has been amalgamated.

The proposal relates to the existing retail, business and offices tenancies situated at ground floor and mezzanine level of the southern wing of Greenway Plaza (Units 1-7 ground floor and Units 1-6 mezzanine level) as illustrated in Figure 2 below.

Figure 2 – Site Plan



Retail and commercial uses were first established on the site during the 1980's under a historic planning instrument and evolved further under a local clause included under the FLEP 1994. As detailed under the next section of this report, the DP&E did not support inclusion of this clause into the FLEP 2013 with the retail/commercial uses now relying on existing use right provisions of the Environmental Planning and Assessment Act 1979.

BACKGROUND – PLANNING CONTROLS

Fairfield Local Environmental Plan 1994

Under the previous FLEP 1994 the site was zoned 4(c) Special industrial. Under this zoning retail and commercial uses were prohibited, however clause 25G of the LEP Permitted “shops” and “business premises” within Units 1-7 ground floor level and “business premises” within Units 1-6 mezzanine level of that part of the site shown in Figure 2 above.

This clause aimed to facilitate a mix of land uses on the land, including bulky goods salesrooms or showrooms, light industry, refreshment rooms, warehouses, business premises and shops, but specifically prohibited supermarkets.

Fairfield Local Environmental Plan 2013

The FLEP 2013 was gazetted on 17 May 2013 (replacing FLEP 1994) and rezoned the whole of the site to B5 Business Development. The B5 zone generally permitted the same range of bulky good, light industrial and associated uses on the site as the previous 4(c) Special Industrial zone.

However, under FLEP 2013 the NSW DP&E did not agree to transfer of the site specific provisions of Clause 25G (which permitted retail, business and office premises) to the site based on the view that the local clause created a 'sub zone'.

As a consequence, existing retail and commercial uses established within Units 1-7 on the ground floor level and Units 1-6 on the mezzanine level now rely on existing use rights under the NSW EP&A Act.

As these uses are currently not permissible within the B5 zone the Applicant has submitted a Planning Proposal to amend the FLEP 2013 to permit the retail and commercial uses on the ground floor and mezzanine levels. The primary intention of this request is twofold and relate to:

- Avoiding the need to submit development applications to Council each time there is a change of retail or commercial use or need for internal fit outs or works on the ground floor or mezzanine levels of the building
- Allowing applications for change of use and internal works to be considered by private certifiers under the SEPP (Exempt and Complying Development Codes).

THE PLANNING PROPOSAL

This Planning Proposal submitted by Urbis seeks to allow shops, business premises and office premises as additional permitted uses by amending Schedule 1 Additional Permitted Uses and the Key Sites Map of the FLEP 2013. The Applicant submits that there is a need to review the zoning of the site for the following reasons:

- In its current form FLEP 2013 does not recognise the existing land uses on the site as reflected in the planning controls that applied under FLEP 1994.
- Existing and future tenancies must rely on "existing use right provisions" to operate. This is costly and creates difficulty for both the Applicant and Council to administer.
- The introduction of FLEP 2013, and in particular the repeal of site specific provisions which permitted commercial uses within the site, amounted to a significant "down zoning" of the subject land. This has resulted in adverse economic impacts on the land owners.

The proposed amendment to the LEP is detailed below:

20 Use of certain land at 1183-1185 The Horsley Drive, Wetherill Park

- 1) *This clause applies to part Lot 1 in DP 709356 being land identified as Site 21 on the Key Sites Map.*
- 2) *Development for the following uses is permitted with consent:*
 - a. *Commercial premises at ground floor level; and*
 - b. *Business and office premises at mezzanine level*
- 3) *If development for the purpose of a shop is permitted under this Clause, the retail floor area must not exceed 1500square metres.*

Issues

Economic Impact

The Applicant has submitted an economic impact statement which states that there is unlikely to be any adverse economic impacts associated with the proposed LEP amendment based upon the following key arguments:

- a) The amendment seeks to maintain an existing situation;
- b) There is projected significant growth in the City's retail expenditure base, sufficient to support the entry of new retailers;
- c) The 2 closest centres (Stocklands and Wetherill Park) have plans to refurbish and/or extend;
- d) The Greenway Supacentra would continue to operate as a bulky goods centre; and
- e) Tenancies 1-7 primarily serve as a top-up (in addition to regular shopping trips) destination for bulky goods customers and the surrounding industrial workforce.

Supermarket Potential

The Applicant has acknowledged that the previous Clause 25G of the FLEP 1994 specifically prohibited a supermarket on the subject site.

The planning proposal (**Attachment B**) states that a supermarket is not proposed within the subject site. Furthermore, in order to alleviate Councils concern regarding this issue the Applicant has proposed a floor space cap limiting any single shop tenancy to not exceed 1, 500sqm.

Peer Review

The economic impact statement submitted by the Applicant has been peer reviewed by Councils economic advisor - Norling Consulting. The peer review report (**Attachment A**) concluded that there is unlikely to be any adverse economic impacts associated with the proposed LEP amendment if it is supported (subject to the advice in relation to supermarket issues detailed under the next section of this report) as:

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- a) The ongoing need for an industrial service centre within the Wetherill Park industrial precinct;
- b) The amendment perpetuating existing use rights; and
- c) Projected population growth in the City would increase its retail expenditure base.

The report also highlighted that the large scale of Joe's Fruit World (1,178sqm) operates more to a larger customer market rather than top-up shopping needs of bulky goods shoppers and the industrial workforce. It is more likely that it has developed its own clientele and competes more directly with Wetherill Park Market Town and Stockland Wetherill Park for the fruit and vegetable spending market.

The proposed floor space limitation provided by the Applicants planning consultant (of 1500sqm) was also reviewed with Norling providing the following advice:

Such a limitation would not be effective in preventing the operation of a supermarket from the subject site. The standard ALDI supermarket module in Australia commenced at around 1300sqm, although is now believed to have increased to about 1400sqm. Whilst the larger Supa IGA supermarkets are typically larger than 1500sqm, smaller IGA supermarkets can range from about 150sqm to 400sqm for IGA X-press convenience stores to between 500sqm and 1500sqm for mid-sized IGA supermarkets.

Whilst the operation of a supermarket from Greenway Supacenta is likely to adversely impact upon the operation of the existing Wetherill Park Market Town, the scale of impact is likely to be acceptable if its size is less than 500sqm and unacceptable if greater than 1000sqm .

A limitation of 500sqm would allow for the operation of a smaller IGA X-press convenience store to operate at Greenway Supacenta, which is considered an appropriate use for that industrial service, whilst preventing the operation of mid-and larger-sized IGA supermarket as well as ALDI and full-line supermarkets. A limitation of 1000sqm would allow for the operation of smaller IGA X-press convenience stores and some mid-sized IGA supermarkets as well as ALDI and full-line supermarkets.

Officer Comments

Information submitted with the planning proposal indicates that the floor area of existing tenancies range between 23sqm and 451sqm except for Joes Fruit World, being the largest existing retail use currently on the site, is 1178sqm.

If the maximum retail floor area is to be capped at 1500sqm as proposed by the Application, this would potentially enable Joe's Fruit World to expand by 322sqm. According to the Peer Review, this outcome would not be appropriate given that Joes Fruit World is already operating at a scale that service a larger catchment than intended for this industrial service centre.

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By implementing a maximum floor area control of 500m² the new LEP 2013 controls would be more restrictive than the previous LEP 1994 provisions. However, by restricting the floor area of the retail shops on the site to an appropriate scale/size, it would ensure that future tenancies would not grow large enough to detract the viability of nearby town centres.

Notwithstanding the above, it is noted that the advice from Norling indicates that a maximum floor space cap of 500sqm would still enable the development of small convenience/retail stores which would meet the day to day needs of the immediate industrial workforce and would not impact on other centres in the Centre.

The only variation to this arrangement is in regard to Joe's Fruit world which has an existing floor area (1,178sqm) and services a larger customer market than juts the top-up shopping needs of bulky goods shoppers and the industrial workforce

In this regard, to ensure enhance certainty that the site remain a service centre it is proposed that Council again make a request to the DP&E that Supermarkets be listed as a prohibited use on the site. It is noted that Council's previous request for this measure was not supported by the Department.

However, recent LEPs implemented in other parts of the State indicate that the Department is now demonstrating some degree of flexibility in relation to the contents of local clauses/provisions. Conversely it is also acknowledged that currently there is no NSW Standard LEP definition of 'supermarket' (with this use falling under the definition of 'Shops') and could represent a critical obstacle to obtaining the Departments support to the listing supermarket as a prohibited use.

State Environmental Planning Policy (Exempt and Complying Development Code) 2008

It is important to note that the SEPP contains provisions that allow internal alterations and additions and change of a permitted use on a site to another permitted use without the need for development consent.

However the provisions of the SEPP do not apply to a site relying on existing use right provisions under the EP&A Act and is currently the case in relation to Greenway Plaza. In addition it is important to note that under State Legislation the provisions of the SEPP override provisions contained in an LEP.

In this respect it is considered that under the proposed terms of the Applicant's planning proposal scope would be created for establishment of a supermarket on the site by utilising the provisions of the SEPP (Exempt and Complying Codes) to undertake internal works and amalgamate the existing smaller tenancies into a larger area that could lead to establishment of a supermarket on the site.

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In addition, should Council agree to considering the planning proposal further, it is recommended that it seek a variation to the SEPP for the Greenway site to ensure that the proposed LEP controls outlined previously in this report are not overridden by the provisions of the SEPP. It is noted that there is a precedent for this with the Schedule 3 of the SEPP listing variations to the SEPP for specific sites or locations.

CONCLUSION

It is concluded that the general intention of the planning proposal to amend provisions in the FLEP 2013 to formalise the existing retail/commercial uses that were permitted under the previous FLEP 1994 should be considered further. This is consistent with Council's original intention for the site which sought to transfer the relevant provisions in the FLEP 1994 into the FLEP 2013.

However, at this stage there are a number of unknowns relating to the range of LEP controls recommended by Council Officers including support from the NSW DP&E to the prohibition on supermarkets on the site and cap on maximum floor area for retail/commercial tenancies of 500m².

Most importantly, it is noted that an amendment is required to the SEPP (Exempt and Complying) to ensure that the units benefitting from existing use rights on the ground and mezzanine levels of the building cannot be expanded to facilitate establishment of larger retailing formats on the site including a supermarket. This would be an unacceptable planning outcome and beyond the current industrial service function of the site.

In this regard, given these uncertainties, it is recommended Council first write to the DP&E seeking their in-principle support to the proposed scope of LEP amendments detailed in the recommendation to this report and associated exemption from the SEPP prior to Council considering the planning proposal any further.

A further report will be submitted to Council upon receipt of the advice from the DP&E and consideration of whether Council should support the planning proposal.

Anjele Vu
Strategic Land Use Planner

Authorisation:
Acting Manager Strategic Planning
Group Manager City & Community Development

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***** END OF ITEM 22 *****

Appendix E

Agenda and Minutes for Outcomes Committee Meeting held 12 May 2015.

