

25 June 2015

Mr Lee Mulvey
Director Metropolitan Delivery
NSW Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir

Pre-Gateway Review Request – Planning Proposal at Greenway Supacenta, No. 1183-1185 The Horsley Drive, Wetherill Park

1 Introduction

This letter and accompanying documents have been prepared on behalf of Gaintak Investments Pty Ltd and is a request for Pre-Gateway review of a planning proposal submitted to Fairfield Council (Council). This letter provides the proponent's justification for why a review is warranted.

The objective of the proposed LEP amendment is to address the prohibition of existing and lawful commercial premises within the Greenway Supacenta bulky goods retail centre which occurred as a direct result of the conversion of the *Fairfield Local Environmental Plan 1994* (FLEP 1994) to the standard template instrument, the *Fairfield Local Environmental Plan 2013* (FLEP 2013).

It is our submission that Council did not properly recognise the site existing site specific controls in the FLEP 1994 and as a result this has now led to an inadvertent situation where the uses are prohibited. The proposed objective is simply to rectify this anomaly, which is resulting in adverse impacts on the economic viability and operation of the centre. The Planning Proposal relates only to Units 1 – 7, located within a two storey building to the south of the site, known as Greenway Plaza.

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 Planning and Assessment Act 1979* (EP&A Act). To rectify this, the Planning Proposal sought to introduce an amendment to Schedule 1 Additional Permitted Uses as follows:

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

- (1) This clause applies to part Lot 1 in DP709356 and 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 purposes of a shop is permitted under this Clause, the retail floor area must not exceed 1,500 square metres.”*

The Schedule 1 amendment is accompanied by a Key Sites Map which identifies the land to which the new clause applies. As it is not the proponent's intention to establish a supermarket on the site, a provision to restrict the floor space of any single retail tenancy to 1,500sqm is also proposed.

During their assessment, Council staff recognised the merit of the proposal and recommended that further consideration be given to amending the provisions to formalise the existing retail/commercial uses. Despite recommending that Council formally write to the Department of Planning and Environment (DP&E) to seek advice on how the amendment should best proceed, Council voted not to support the Planning Proposal at the Outcomes Committee held on 12 May 2015.

Councillors have a clear agenda to restrict retail, business and office uses, which are an established feature of this part of the site and are both compatible and complementary to the predominant use of the site for bulky goods retail. The decision not to permit the planning proposal is contrary to the recommendation of Council officers and inconsistent with the findings of both the Economic Statement and the peer review of this document.

In addition to this letter, the following information has been provided in this request:

- A completed Pre-Gateway Review application form.
- A copy of the Planning Proposal Report prepared by Urbis dated November 2014 including Site Plan, Draft Key Sites Map, Economic Statement and Traffic Statement (Appendix A).
- A copy of correspondence dated 6 November 2014 between Council and Urbis advising key matters to address in Planning Proposal (Appendix B)
- A copy of correspondence between Council and Urbis during the assessment period. (Appendix C).
- A copy of Council's Agenda and Minutes for the Outcomes Committee meeting held 10 March 2014 (Appendix D).
- A copy of Council's Agenda (including the Peer Review at Attachment A) and Minutes for the Outcomes Committee meeting held 12 May 2015 (Appendix E)
- A copy of correspondence dated 21 May 2015 between Council and Urbis advising of the outcome of the Outcomes Committee meeting (Appendix F).
- An electronic copy of the above documentation (CD).
- The relevant application fee: \$5,000

2 Background

2.1 PRELIMINARY CONSULTATION WITH COUNCIL

Prior to lodgement of the Planning Proposal a meeting was held with Council staff on **24 October 2014** to discuss the planning proposal. In an advice letter, dated **6 November 2014** Council officers confirmed the requirements for the planning proposal submission (**Appendix B**).

Council staff identified that under the FLEP 1994, 'supermarkets' were a prohibited use and that any amendment to the FLEP 2013 would need to reflect this provision. To address this, the proposed new clause provides for a maximum area of 1,500sqm for any individual tenancy. This would exclude medium to large supermarkets.

The planning proposal was lodged with Fairfield City Council on **28 November 2014**.

2.2 ECONOMIC IMPACT ASSESSMENT PEER REVIEW

On **14 January 2014** Council wrote to applicant to advise that it would have the Economic Statement peer reviewed. Prepared by Norling Consulting Pty Ltd, the Peer Review found that:

“On balance, the conclusion of the Economic Statement that there is unlikely to be any adverse economic impacts associated with the proposed LEP amendment is supported (subject to supermarket comments in the next section) due mainly to:

- (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.”*

In respect of the supermarket potential, the Peer Review recommended that the shop floorspace limit be reduced from 1,500sqm to between 500sqm and 1,000sqm, which would prevent the operation of larger-sized IGA supermarkets as well as ALDI and full-time supermarkets. It is noted that Unit 1B, comprises a gross leasable area (GLA) of 1,178sqm and would exceed this.

2.3 COUNCIL MEETINGS AND RESOLUTION

The planning proposal was referred to the Outcomes Committee on **10 March 2013** with a recommendation that:

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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.*
 - 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. *The Applicant be advised of Council’s decision in this matter.”*

As outlined in Section 3.2 of this letter, whilst we have concerns with the approach, specifically the prohibition on ‘supermarkets’ and the introduction of a 500sqm shop floorspace cap, we welcomed the opportunity to be involved in discussions with the DP&E, with a view of realising a satisfactory outcome for both the proponent and Council.

At this meeting, Council resolved to defer the matter, pending discussion at a future Councillor Briefing. The briefing subsequently took place on **21 April 2015**. It is understood that Councillors did not raise any concerns with the proposal at this session.

The planning proposal was referred back to the Outcomes Committee on **12 May 2015**, with the same staff recommendation as previously proposed. Contrary to the recommendation, Council resolved:

“That Council refuse the planning proposal for additional permitted uses of commercial premises at ground floor and business/office premises at mezzanine level on part of Lot 1 DP1136897 No 1183-1185 The Horsley Drive, Wetherill Park for the following reasons:

- 1.1. The proposal creates an undesirable precedent for the establishment of commercial, business and office premises on other employment lands in Fairfield City.*
- 1.2. There are insufficient safeguards provided in the planning proposal against uncontrolled expansion of commercial, business and office premises on the subject site. This would be counter to the desired function of the site to continue to operate as a service centre to cater for the day to day needs of the surrounding industrial workforce.*
- 1.3. The potential detrimental impacts of the proposal on the commercial viability of existing town centres of Fairfield City.*
- 1.4. The lack of planning and economic justification provided in the planning proposal for the establishment of a broad range of commercial, business and office uses on the site.*
- 1.5. There is sufficient scope for established uses to continue to operate on the site under existing use rights provisions of the Environmental Planning and Assessment Act, and associated Regulation, in line with the historic industrial service order function of the site.”*

It is our opinion that the merits of the proposal have not been considered by Council and that the reasons for refusal are unfounded. Our response to each reason for refusal is provided in Section 3.1 on this letter.

3 Justification for Pre-Gateway Review

3.1 RESPONSE TO REASONS FOR REFUSAL

Council’s reasons for refusal are considered unfounded and do not acknowledge the justification provided in the planning proposal. A response to each reason is provided below.

- 1.1. The proposal creates an undesirable precedent for the establishment of commercial, business and office premises on other employment lands in Fairfield City.*

The planning proposal will not create an undesirable precedent for other centres given:

- The site was previously recognised by Council as capable of accommodating ancillary commercial and business uses, as evidenced by the introduction of site specific controls (Clause 25G of FLEP 1994). The introduction of site specific controls in 2003 was subject to a detailed analysis of the potential for the site to perform an industrial service centre role.
- The current land use zoning and range of permissible uses do not reflect the existing (and lawful) land uses present on the site and therefore there is a need to review the zoning of this portion of the site.

- The Greenway Supacenta site has specific characteristics that distinguish it from other bulky goods retail sites. Its location on the periphery of the Wetherill Park employment precinct make it ideally positioned in terms of providing important services and facilities for the local workforce.
- 1.2. *There are insufficient safeguards provided in the planning proposal against uncontrolled expansion of commercial, business and office premises on the subject site. This would be counter to the desired function of the site to continue to operate as a service centre to cater for the day to day needs of the surrounding industrial workforce.*

It is our opinion that the planning proposal contains sufficient safeguards and will not result in an expansion of commercial, business or office premises on the site given:

- No changes are proposed to the quantum of shop, business or office floor space currently available within the site. The shopping centre will remain primarily a bulky goods retail outlet with the general retail / commercial uses playing a complementary and subsidiary role to that use.
- The proposed LEP amendment includes an amendment to the Key Sites Map, which strictly limits area to which additional permitted uses would apply. The applicable area is consistent with Clause 25G of FLEP 1994.
- Greenway Supacenta is primarily a bulky goods retail centre providing large format homemaker retailing for households within the Fairfield LGA (40% of the centre's existing floorspace is used for bulky goods retailing). The area covered by the planning proposal comprises just 11% of the total GLA for the site.

- 1.3. *The potential detrimental impacts of the proposal on the commercial viability of existing town centres of Fairfield City.*

There are unlikely to be any adverse impacts of the proposal on the commercial viability of the existing town centres of Fairfield City given:

- The Economic Statement finds that the existing units perform an established role within the Fairfield LGA centres hierarchy, primarily as a top-up destination for the bulky goods customers of the Supacenta and that centres in the vicinity of the subject site continue to perform strongly. This concludes that the proposal will not result in any adverse economic impacts.
- The Economic Statement finds that the outlook for both Prairiewood and Wetherill Park 'Market Town' centre is positive and neither appears to have been adversely affected by the ongoing operation of Greenway Plaza.
- The proposal will not result in an intensification of the existing retail and commercial uses; hence the impact on viability of existing centres would be negligible.
- The Peer Review concludes that on balance, there is unlikely to be any adverse economic impacts associated with the proposed LEP amendment, primarily due to the ongoing need for an industrial service centre, the amendment perpetuating existing use rights and the projected population of the Fairfield LGA.

- 1.4. *The lack of planning and economic justification provided in the planning proposal for the establishment of a broad range of commercial, business and office uses on the site.*

The planning proposal includes significant amount of justification for the existing commercial, business and office uses. A summary of the compelling reasons is provided in Section 3.3.

- 1.5. *There is sufficient scope for established uses to continue to operate on the site under existing use rights provisions of the Environmental Planning and Assessment Act, and associated Regulation, in line with the historic industrial service order function of the site."*

As you can appreciate, the reliance on existing use rights is incredibly restrictive and results in a number of uncertainties, given:

- The existing retail, business and office uses must rely on existing use rights as the basis of permissibility necessitating a development application to be lodged for extremely minor proposals which would typically be dealt with as exempt or complying development (e.g. retail fit out tenancies). The cost and time implications of the DA process impacts on the ability of the centre to attract new tenants.
- Two DAs for *commercial premises* are currently being assessed by Fairfield City Council. In these applications it has been necessary to demonstrate that there has been no abandonment of the existing use rights. This has obvious time and cost implications and results in uncertainty for both the landowner and prospective tenants.
- Under the current regime there is no incentive to establish permissible uses, such as *bulk goods premises*, given development consent for these uses would result in an abandonment of existing use rights.
- The Peer Review prepared on behalf of Council recognises that "...centre management and new tenants would experience difficulties in circumstances where existing use rights have been extinguished".

3.2 RESPONSE TO RECOMMENDATIONS

Whilst the staff report to Council acknowledges the merit of the proposal and the historic use of the site, we do not support the prohibition on supermarkets, the maximum floorspace provision or an amendment to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP).

Prohibition on Supermarkets

Supermarkets are not defined within FLEP 2013 (or in any other relevant legislative document). It is therefore not considered appropriate to introduce a clause that would specifically exclude supermarkets as a permissible use within the site.

Whilst it is not the intention of the proponent to provide a supermarket on this site, by virtue of existing use rights, there is currently potential to establish a supermarket on the site. A maximum floorspace provision (per unit) is considered the most appropriate mechanism to limit the intensity of retail development.

Proposed Maximum Floorspace

The Peer Review recommends a maximum floorspace of between 500sqm and 1,000sqm. However, both the recommendation of the Peer Review and Council staff does not acknowledge the size of the existing tenancies, specifically Unit 1B. At 1,178sqm, this would significantly exceed the maximum floorspace control proposed, which compromises the intent and function of this.

Whilst we maintain that a maximum floorspace of 1,500sqm per tenancy is appropriate for this site, the proponent is willing to consider an alternative, providing it fairly reflects the size of the existing tenancies within this portion of the site.

As identified in the Peer Review, a floorspace between 1,000sqm and 1,500sqm would exclude a typical ALDI supermarket, Coles, Woolworths, Super IGA supermarkets and the majority of mid-sized IGA supermarkets.

3.3 JUSTIFICATION FOR THE PRE-GATEWAY REVIEW

Our analysis of the proposed provisions, the strategic context and a review of economic assessments demonstrate that the Planning Proposal has considerable merit and should be approved. The Request to Prepare a Planning Proposal submitted to Council was prepared in accordance with the DPE's *A Guide to Preparing Local Environmental Plans*. In addition to the above, this pre-gateway review is warranted for the following compelling reasons:

Unlikely to be any Adverse Economic Impacts

The planning proposal is accompanied by an Economic Statement which provides an assessment of the potential economic impacts of the proposed LEP amendment. The analysis confirms that the proposal will not result in the potential adverse economic impacts as follows:

- Existing retail activity within the centre is not having any adverse impact on the Fairfield Centres hierarchy. Centres in the vicinity of the site are experience strong trade.
- The retail tenancies perform an ancillary role to the principal focus of the centre, being for bulky goods retail.
- The office tenancies within the mezzanine level are complementary to the prevailing land uses.
- Greenway Plaza plays a role in providing convenient retail options for the local Wetherill Park workforce. There is currently limited provisions locally.
- The existing planning controls are having an adverse economic impact on the operation of the Greenway Supacenta, causing time and cost delays associated with minor development application matters. Given the prominent location of Units 1-7 vacancies have a knock-on impact on the appearance and vitality of the entire site. Addressing the existing planning controls as proposed will ameliorate these impacts and assist in improving the performance of the centre generally.
- Based on official population trends for the Fairfield LGA and forecast per capital spending growth, retail expenditure is forecast to increase by around \$40 million per annum between 2013 and 2026, equal to an additional \$447 million in total.

The Peer Review prepared on behalf of Council concludes that the LEP is supported subject to a limitation of shop floorspace between 500sqm and 1,000sqm. This review acknowledges that the extent of the impact is dependent upon whether Wetherill Park Market Town is refurbished or expanded. There is sufficient evidence to suggest that there will not be any adverse economic impact on this centre given:

- The site specific DCP controls for Wetherill Park Market Town facilitate a significant increase in the intensity of development when compared to the existing single storey commercial centre. The controls permit a maximum building height of four storeys, provide for new commercial/retail floor space to be provided at the ground level and encourage a mix of uses. The provision of residential uses adjacent to commercial will improve the viability of this centre.
- According to the PCA Shopping Centre Database there are plans to refurbish the centre.

- The Economic Statement finds that the outlook for this centre is positive and does not appear to have been adversely affected by the ongoing operation of Greenway Plaza.

The floorspace cap recommended in Peer Review does not take into consideration the existing size of one tenancy, being 1,178sqm. In the interest of orderly planning, it is strongly recommended that any maximum floorspace provision take into consideration the size of the existing tenancies.

On the balance the proposed LEP amendment will result in positive economic impacts as it will:

- Maintain jobs to support the local population.
- Ensure the ongoing vitality and viability of Greenway Supacent by eliminating the time and cost impediments created by the current planning controls.
- The proposal will allow for the continued role of Greenway Supacenta as a service centre, providing a limited level of retail and business floor space to meet the day to day needs of the local workforce.

Consistent with Strategic Metropolitan Planning

The proposal is consistent with *A Plan for Growing Sydney* as follows:

- The proposal will not impact on regionally significant employment lands. It does not involve any change to the zoning or existing uses which currently exist.
- The proposal will help to ensure the continued vitality and viability of the Greenway Supacenta and as such will help to retain local jobs.
- The site will continue to be utilised to provide local employment.

As the South West Subregional Strategy has not been released, the draft West Central Subregional Strategy is the applicable document. The proposal is consistent with the objectives of the Subregional Strategy, as detailed in the Planning Proposal report for the following reasons:

- The site is identified as being within the Wetherill Park employment area, which is recognised as being the largest employment precinct in the West Central Subregion. The proposal will help to ensure that Greenway Supacenta continues to perform its established role as an Industrial Service Centre, accommodating important local facilities and services which catering to the day-to-day needs of the local workforce.
- The employment target for the subregion is 134,000 new jobs to 2031. Whilst the proposed LEP amendment will not facilitate the creation of additional jobs, given the uses are existing, it will allow for the retention of employment in the longer term.

Public Interest

The proposal is in the public interest as it will:

- Allow for a relatively minor area of the site to continue to serve as an industrial service centre providing a limited level of retail and business facilities to an established employment area in the long term
- Support the ongoing economic vitality of the centre through the provision of controls that historically reflect the uses on the site. The reliance of existing use rights are resulting in

substantial delays and economic uncertainty, which hinders the ability of the centre to attract new tenants, thereby having an adverse impact on job creation.

- Improve the opportunities for a range of shopping to be done in a single journey by maintaining local scale retail and business facilities.

No Traffic Impacts

The proposal will not involve any changes to the existing uses or quantum of floor space within the site. Existing parking, traffic and access arrangements are currently satisfactory and will remain unchanged.

4 Conclusion

Accordingly, we do not believe that Council has given adequate consideration to the merits of a genuine proposal, which only seeks to 'normalise' the planning controls and reduce the necessity to use existing rights for minor operation manners.

In its current form the FLEP 2013 fails to reasonably and fairly recognise the existing land uses on the site and does not recognise the economic and social benefits of the centre. The proposed LEP amendment will reinstate the additional permitted uses that have historically been provided for on this part of the site.

Should you have any queries in respect to this request please do not hesitate to contact the undersigned on (02) 8233 9959.

Yours sincerely,



Tim Blythe
Regional Director, Urban Planning

Appendices

Appendix A - Planning Proposal Report prepared by Urbis dated November 2014.

Appendix B - Correspondence dated 6 November 2014 between Council and Urbis advising key matters to consider in Planning Proposal.

Appendix C – Correspondence between Council and Urbis during the Council's assessment period.

Appendix D - Council's Agenda and Minutes for the Outcomes Committee meeting held 10 March 2014.

Appendix E – Council's Agenda (including Attachment A) and Minutes for the Outcomes Committee meeting held 12 May 2015.

Appendix F – Correspondence dated 21 May 2015 between Council and Urbis advising of the outcome of the Outcomes Committee meeting.