

*\*Tabled by Mr Smith,  
wed 18 August  
M. Foley*

**From:** Gary Prattley  
**To:** Alex Smith  
**Date:** 16/04/2004 1:54:20 pm  
**Subject:** Re: Fwd: Factory Outlets LEP - Liverpool - Briefing Notes

Alex,

Please see attached revised briefing note which has been approved by Gary Prattley.

Kind regards,  
Karinne

>>> Alex Smith 16/04/2004 11:58:09 am >>>

Gary,

Much appreciated . There was an issue I was asked to clarify and that was the situation re the potential for litigation ( ie the State to be included ) if the Minister approves the LEP . I would appreciate this point being covered .

Thank you .

Alex

This message is intended for the addressee named and may contain confidential information. If you are not the intended recipient, please delete it and notify the sender. Views expressed in this message are those of the individual sender, and are not necessarily the views of the Premier's Department.

>>> Gary Prattley 16/04/2004 11:22:58 am >>>

Alex,

Attached are three previous briefing notes prepared on this issue which hopefully will assit in the interim.

We are currently preparing a consolidated and updated briefing note for the Premier which I will forward as soon as I can.

Regards,  
Gary

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**INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES**

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**METROPOLITAN LAND AND RESOUCE PLANNING**

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**[for information]****Purpose:**

- To advise on a draft LEP proposing to make factory outlet retailing permissible on two sites in Liverpool Council LGA.

**Background:**

- Liverpool Council resolved on 13 April 2004 to ask the Minister to make a draft LEP that proposes 14,500 sqm factory outlet retailing on a site at Orange Grove Road, Warwick Farm. The exhibited LEP also proposed to permit 20,000 sqm factory outlet retailing on a site at Crossroads, owned by AMP, but Council resolved on 13 April 2004 to defer consideration of that matter from the draft LEP.
- There is currently an existing 14,500 sqm outlet centre operating at Orange Grove Road that was granted consent by Council under a DA that was subsequently ruled unlawful by the L&E Court following an appeal made by Westfield Management Ltd.
- An appeal made by the operator of the centre, Gazcorp Pty Ltd, against this decision to the Court of Appeal was dismissed on 31 March 2004 when the Court ordered that the building must not be used for factory retailing under the development consent granted by Council after 28 April 2004.
- The Orange Grove Road centre was opened by Minister Knowles and provides over 600 full and part-time jobs.
- Objections were made to the draft LEP by Westfield and the Property Council Shopping Centres Group asserting that the impacts on Liverpool town centre would be unacceptable and that the proposed definition of an outlet centre is unworkable.
- Prior to the Council decision on 13 April the Dept had requested Council to supply it with further information on the benefits associated with the two proposed factory outlets in order that their merits could be assessed in relation to the Dept's ILUT/draft SEPP66 policy position of no special consideration being given to factory outlet proposals in out-of-centre locations unless special circumstances can be shown to apply. Details of this position are set out in Annexure 1.
- AMP made submissions to both Ministers in support of the plan, and made a presentation to Michael Meagher of Minister Beamer's office. It claims the proposal will not significantly impact on Liverpool and that its involvement as a 50/50 joint venture partner with Westfield on a \$150M extension of Westfield Shoppingtown in Liverpool currently being built indicates its confidence in the future of that centre.

**Issue:**

- To update on the current position in the consideration of the draft LEP.

**Consideration:**

- Differing claims have been made about the potential impacts of the two proposals. These need consideration in relation to the Department's policy assessment criteria. Council is yet to supply an independent assessment of either proposal in relation to these criteria and has been asked to do so. The Department has offered to assist Council in briefing its consultants in order that they can supply such an assessment as soon as possible.
- When such a report has been supplied and assessed the plan can be reported to the Minister for consideration. The Minister would need to approve the plan by Wednesday 21<sup>st</sup> April if it is to be gazetted in time to avoid closure of the centre and the associated loss of jobs. The Minister has indicated this is her preferred position, subject to reviewing the independent assessment.
- It is understood that Council is currently considering instructing its consultants to prepare the report required for the Orange Grove Road site but that it is not currently considering doing so for the Crossroads site.

**Recommendation:**

That the above be noted.

Contact Officer: David Birds  
Team Leader  
16 April 2004  
Tel 9895 7603

Gary Prattley  
Executive Director  
Sydney Regional and Local Planning

## ANNEXURE 1

### Notes on Departmental Policy on Factory and Bulky Goods Retailing

In summary, the current position on such proposals is:

- DIPNR supports the development of innovation in the retail sector and wishes to ensure that planning does not stifle such innovation nor deny a range of consumer choice of retail formats.
- The planning system seeks to support investment in the vitality of new and existing centres and the employment and service benefits they efficiently deliver. It also acknowledges that there are some circumstances when non-centre activity provides a community benefit.
- The principal reference point for current policy guidance is the *Integration of Land Use and Transport (ILUT) Policy* package that was released in 2001. This package included an approved Government policy statement, guidelines for implementation and the statutory component: Draft SEPP 66. The package aims to support investment confidence in centres and provide better access to jobs and services and better use of State and community assets. The policy recognises that there is a community and environmental cost of dispersed commercial activity and poor design - especially where this leads to the degradation of activity and employment centres or loss of industrial lands.
- The *Draft SEPP 66 Integration of Land Use and Transport* applies to rezoning and development decisions relating to 'trip generators' such as offices and shopping centres (including factory and bulky goods retail outlets).
- The Policy component of the package specifically refers to factory outlets as follows: *...these comprise sales of manufactured goods often described as 'seconds' or 'surplus', usually at discounted prices. These should be treated like normal retailing outlets unless they are genuinely ancillary to on-site manufacturing and used only occasionally. Other forms of factory outlets are simply shops seeking low rents and could be encouraged to agglomerate in existing declining centres where they can play a positive role in their revitalisation.*
- The Policy states that where there is a genuine need to locate retail development (such as factory outlets) in a non-centre location *...alternatives may be acceptable when a net community benefit is clearly established. That is, proposals must ensure that there will be no detrimental effect on public investment in centres and that private investment certainty in centres is maintained. They should also be able to provide the same performance as a centre, with suitable accessibility to: manage travel demand, utilise public transport; and moderate car use.*
- Industry consultation undertaken in a review of emerging retail formats indicates a preference for purpose designed discount fashion outlets. Such formats are encouraged in the right location for trip generating retail activity.
- The key relevant elements of the ILUT policy package referred to above are proposed to be incorporated in the State Planning and Metropolitan Strategy that are currently being prepared. The draft SEPP is proposed to remain in place until covered by this work.
- It is also important that Councils keep abreast of emerging commercial / retail land supply trends and needs and ensure that strategic planning identifies suitable areas / arrangements consistent with State policy directions.

## BULKY GOODS RETAIL OUTLETS – LIVERPOOL

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### ISSUE:

Draft LEP proposal to make factory outlet retailing permissible at two sites in Liverpool Local Government Area.

### BACKGROUND:

The attached two briefing notes have been provided by the Department of Infrastructure, Planning and Natural Resources (DIPNR) to provide a background to the issue of complaint by Westfield.

Annexure A deals with the process to be undertaken by the Administrator of Liverpool Council in progressing a new LEP making factory outlet retailing permissible at two sites:

- (i) Crossroads – owned by AMP (a proposal for 20,000 sqm); and
- (ii) Orange Grove Road (an existing 15,000 sqm site).

Annexure B deals with advice provided to the Minister about the AMP proposal for the Crossroads site.

### Orange Grove Road Proposal:

The Orange Grove Road outlet centre was granted approval by Liverpool Council under a DA. Westfield has challenged the proposal and is opposed to the development.

The DA was subsequently ruled unlawful by the Land and Environment Court.

The decision was upheld in a subsequent appeal by Liverpool Council.

The centre was opened by Minister Knowles on 21 November 2003 and it is understood that around 400-500 people are employed at the facility.

Liverpool Council (via the Administrator) has drafted a new LEP which will in effect make the development permissible and thereby overcome the previous court decisions. This is an issue Westfield opposes – given the implications for its own business.

The New LEP has to be approved by the Minister before 28 April 2004. If not, the factory outlet and thereby the businesses engaged there, will have to close. Upwards of 400-500 people would then be unemployed.

### Crossroads Site:

It is understood from DIPNR that the Administrator is separating the Crossroads site from the Orange Grove Road site in the draft LEP.

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The Crossroads site does not currently exist whereas the Orange Grove Road site is an existing facility with a range of small businesses and considerable existing employment.

It may be that no further action occurs on the Crossroads site but that will be a matter for future determination as it will not be part of the action to legitimise the current development at Orange Grove Road.

**CURRENT SITUATION:**

There are a range of legal issues that need to be considered by DIPNR in giving advice to the Minister on the proposal for a new LEP.

Some of the issues of concern go to the definition of 'outlet centres' and the complexities of such descriptions.

Clearly, Westfield perceives the current site as a threat to the company's business at Liverpool. It is assumed Westfield feels aggrieved given two decisions by the court overturning the original approval.

The preferred course of action at this point in time would be to indicate to Westfield the fact that DIPNR is reviewing the applications by the Administrator. Further, that until consideration is given to the issues that arise out of that process then it is difficult to indicate an outcome.

It is assumed Westfield will continue to lobby and pressure government given the deadline facing the existing businesses if an amendment is not made.

I am attempting to obtain additional material from DIPNR, however, in the light of the urgency of this matter this briefing is provided for the Premier's information.

Alex Smith  
Executive Director & Chief of Staff  
Office of the Director General

Director General

Premier

# Annexure A

**INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES**

[SYDNEY REGION WEST]

[for information]

**Purpose:**

To advise the Minister on a proposal from AMP Capital Investors for bulky goods retailing and a factory outlet retail centre at the Crossroads site in Casula.

**Background:**

- AMP Capital Investors is the owner of the Crossroads site which is located at the intersection of the Western Sydney Orbital and the M5 Motorway in Casula within Liverpool LGA.
- Approximately a third of the site is currently zoned 4(b) Industrial where bulky goods retail is permitted and some of this has already been developed for such retailing. The remainder is currently zoned 4(a) Industrial where bulky goods and most other forms of retailing are prohibited.
- AMP now proposes an additional 18,000sqm bulky goods retailing and a factory outlet retail centre of 20,000sqm at the site.
- Liverpool City Council has prepared and exhibited a local environmental plan to rezone the site to support the proposal. Council has commissioned an independent analysis of the economic impact of the proposal to address concerns raised by objectors and the Department.
- The LEP also proposes to rezone a site at Orange Grove Road, Warwick Farm to facilitate a 15,000sqm factory outlet centre at Orange Grove Road, Warwick Farm. Whilst Council has already granted development consent for that proposal the legality of the consent has been successfully challenged in the Land and Environment Court in a challenge based on the assertion that the use for which consent was granted is not permissible under the existing LEP. That ruling is currently the subject of an appeal to the Court of Appeal for which a call over will be held on 18 March 2004.

**Issue:**

- To advise the Minister on the matter to assist in considering a request for a briefing on the matter from AMP Capital Investors.

**Consideration:**

- An economic impact statement prepared for AMP and submitted in support of the Crossroads proposal claims that it's combined impacts with the Orange Grove Road proposal on Liverpool and any other nearby centres would be acceptable. However Council has not carried out an independent analysis of this assertion.
- Westfield, as owner of the nearby Liverpool Shoppingtown centre has made a detailed submission on the draft LEP claiming that the combined impacts of the proposals on the Liverpool CBD would be too high and that the plan allows for even more floorspace than has currently been identified.
- The differing interpretations made about the potential economic impacts of the Orange Grove Road and Crossroads proposals by Westfield and AMP need clarification before the LEP can proceed further. The Department has advised Council that an independent analysis should be carried of the impact of the proposals to justify their retail and traffic impacts in relation to draft SEPP66 and the impact of the loss of employment land before the plan can proceed further. Council is currently working towards this. The Department has asked Council to supply this study before it can be determined if Council may proceed to use its delegated S69 powers to progress the plan.
- The draft LEP is also subject to a holding objection from the RTA which is concerned about the traffic impact of the proposal.

- The Department has taken no role in the Court proceedings relating to the Orange Grove Road property and has not commented on the legality of the development consent at any stage. However it is understood that Minister Knowles opened the premises on 21 November 2003 and that there are currently about 392 people directly employed at the centre.

**Recommendation:**

That above be noted.

Contact Officer: David Birds  
Team Leader  
16 February 2004  
Tel 9895 7603

Stephen Driscoll  
**Regional Planning Coordinator**  
**Sydney Region West**



# Annexure B

## INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

[SYDNEY REGION WEST]

[for decision]

### Purpose:

- To advise the Executive Director on a draft LEP proposing to make factory outlet retailing permissible on two sites in Liverpool Council LGA and to establish how the LEP will be assessed.

### Background:

- The draft LEP proposes to make factory outlet retailing permissible on two sites:
  - 1 Crossroads – owned by AMP – proposal for 20,000sqm; and
  - 2 Orange Grove Road – an existing 15,000sqm outlet centre granted consent by Council under a DA subsequently ruled unlawful by the L&E Court following an appeal. An appeal to the Court of Appeal is outstanding and yet to be heard. Minister Knowles opened the centre.
- The LEP has been exhibited and objections have been made by Westfield and the Property Council Shopping Centres Group. These assert that the impact on Liverpool town centre would be unacceptable and that the proposed definition of an outlet centre is unworkable in practise.
- The Dept has requested an independent economic impact report and further information on the potential traffic impact and loss of industrial land before it can be confirmed that Council can use delegations under S69.
- AMP has made submissions to both Ministers in support of the plan, and has made a presentation to Michael Meagher of Minister Beamer's office who subsequently asked for an outline of the Department's views on such matters. This was supplied in liaison with the Metro Strategy team and stated that the ILUT/draft SEPP66 approach of no special consideration for factory outlets would normally be applied. A copy forms Annexure 1.
- AMP claims the proposal will not significantly impact on Liverpool and is backed by expert reports from Peter Leyshon and KPMG. AMP also contends that its involvement as a 50/50 joint venture partner with Westfield on a \$150M extension of Westfield Shoppingtown in Liverpool currently being built indicates its confidence in the future of that centre despite the likely competition from its proposed \$95M investment at Crossroads.
- Council indicates it has now obtained an expert report from HillPDA supporting the proposed LEP and a report is likely to be made to the first meeting of the 'new' Council on 13 April seeking approval to proceed to S69 stage. It claims it has also received a PC opinion that the plan can be made.

### Issue:

- To confirm how the Department will assess the draft LEP.

### Consideration:

- Since Council originally resolved to progress the LEP an Administrator has been appointed to control of the Council. At this stage it is unclear what the Administrator's views are on the draft LEP. These are likely to become clearer once the matter has been considered by the first meeting of the new Council since the Administrator's appointment on 13 April.
- If and when Council submits its independent economic impact assessment and the other information the Department has requested this will be assessed in relation to the requirements of the ILUT/draft SEPP66 package and any other relevant considerations.
- It is apparent that differing interpretations have been made about the potential economic impacts of the proposals. These will need clarification before the LEP can

proceed further and Council will need to reconcile these differences before it can permitted to use its Section 69 delegation to progress the plan.

- The workability of the legal definition of outlet centre that is proposed in the draft plan will also need careful consideration before the plan can be made and this may need further consideration in association with PC.

**Recommendation:**

That the approach to the consideration of the draft plan outlined above be agreed.

Contact Officer: David Birds  
Team Leader  
24 March 2004  
Tel 9895 7603

(Endorsed)

Stephen Driscoll  
**Regional Planning Coordinator**  
**Sydney Region West**

Gary Prattley  
**Executive Director**  
**Sydney Regional and Local Planning**

## ANNEXURE 1

### Advice to Michael Meagher of Minister Beamer's Office concerning Departmental Policy on Factory and Bulky Goods Retailing Issued 25 February 2004

In summary, our current position on such proposals is:

- DIPNR supports the development of innovation in the retail sector and wishes to ensure that planning does not stifle such innovation nor deny a range of consumer choice of retail formats.
- The planning system seeks to support investment in the vitality of new and existing centres and the employment and service benefits they efficiently deliver. It also acknowledges that there are some circumstances when non-centre activity provides a community benefit.
- The principal reference point for current policy guidance is the *Integration of Land Use and Transport (ILUT) Policy* package that was released in 2001. This package included an approved Government policy statement, guidelines for implementation and the statutory component: Draft SEPP 66. The package aims to support investment confidence in centres and provide better access to jobs and services and better use of State and community assets. The policy recognises that there is a community and environmental cost of dispersed commercial activity and poor design - especially where this leads to the degradation of activity and employment centres or loss of industrial lands.
- The *Draft SEPP 66 Integration of Land Use and Transport* applies to rezoning and development decisions relating to 'trip generators' such as offices and shopping centres (including factory and bulky goods retail outlets).
- The Policy component of the package specifically refers to factory outlets as follows: *...these comprise sales of manufactured goods often described as 'seconds' or 'surplus', usually at discounted prices. These should be treated like normal retailing outlets unless they are genuinely ancillary to on-site manufacturing and used only occasionally. Other forms of factory outlets are simply shops seeking low rents and could be encouraged to agglomerate in existing declining centres where they can play a positive role in their revitalisation.*
- The Policy states that where there is a genuine need to locate retail development (such as factory outlets) in a non-centre location *...alternatives may be acceptable when a net community benefit is clearly established. That is, proposals must ensure that there will be no detrimental effect on public investment in centres and that private investment certainty in centres is maintained. They should also be able to provide the same performance as a centre, with suitable accessibility to: manage travel demand, utilise public transport; and moderate car use.*
- Industry consultation undertaken in a review of emerging retail formats indicates a preference for purpose designed discount fashion outlets. Such formats are encouraged in the right location for trip generating retail activity.
- The key relevant elements of the ILUT policy package referred to above are proposed to be incorporated in the State Planning and Metropolitan Strategy that are currently being prepared. The draft SEPP is proposed to remain in place until covered by this work.
- It is also important that Councils keep abreast of emerging commercial / retail land supply trends and needs and ensure that strategic planning identifies suitable areas / arrangements consistent with State policy directions.

In relation to the Crossroads proposal, as discussed, Council has been asked to commission its own independent economic impact analysis on the proposal. It will be asked to assess the merits of the LEP in relation to this and the requirements of the ILUT package in its S68 submission to the Department and thus will need to demonstrate appropriate net community benefit associated with the proposal if it is to proceed.

## INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

*[Planning – Sydney Region West]*

*[Action required: for decision]*

### **Purpose:**

To advise the Director-General on a request from Westfield for a meeting to discuss its current Land and Environment Court action challenging the legality of a development consent granted by Liverpool Council for the use of premises at 12 Orange Grove Road, Warwick Farm as a factory retail outlet.

### **Background**

Westfield and AMP, the joint owners of Westfield Shoppingtown in Liverpool, have commenced proceedings in the Land and Environment Court against Gazcorp Pty Ltd & Ors Property and Liverpool Council challenging the legality of a development consent granted by Council for the use of premises at 12 Orange Grove Road, Warwick Farm as a factory retail outlet.

Council had previously granted development consent for about 5,000 sqm bulky goods retail floorspace at the site. The proposed factory retail outlet would replace this use.

Westfield has indicated in correspondence to the Director-General that an affidavit from the General Manager of Council suggests that the site will soon be rezoned to regularize the use. However, Council officers advise that no report has been made to Council on any proposed LEP as Council considers the proposed use to be permissible

Officers advise that Council intends to await the outcome of the Court case, which it appears to consider is purely a matter generated by competition between the main parties to the action, and to subsequently undertake take any further action that is required as a consequence.

### **Issue:**

Westfield wishes to know if the Department is aware of any rezoning proposal from Council, whether it proposes to support such a proposal and if it will join Westfield in the Court proceedings.

### **Comment**

The Department has not received any notification from Council of any proposed rezoning affecting the subject site and Council officers have advised that Council does not have any intention to promote such a proposal at present.

If, in due course, Council resolves to promote an amending LEP to rezone the subject site the merits of such an LEP would be assessed at the Section 54 stage, when the Department would consider if the matter raises issues of State or regional significance that need resolution before the LEP could proceed. However it appears that the proposal raises only local planning issues that are matters for consideration by Council.

It appears that the Court action will establish the legality of the proposed use. If this then identifies the need for the site to be rezoned for the proposal to proceed the Department will consider any amending LEP that is forthcoming in the normal manner at that time.

In the meantime it is recommended that the Department does not join the applicants in their action, that no further action is taken and that the Director-General declines the invitation to meet with Westfield.

### **Recommendation**

That the above information is noted, that the Director-General declines the invitation to meet with Westfield to discuss the matter and signs the attached letter tagged 'A' advising Westfield accordingly.

Contact Officer: David Birds  
Sydney Region West  
10 November 2003  
Tel 9895 7603

David Birds  
Acting Regional Planning Co-ordinator  
Sydney Region West

Contact:  
Phone:  
Fax:  
Email:

Our ref: DGC03/1165  
Your ref:  
File:

Mr G Miles  
Director – Development & Asset Management  
Westfield Limited  
Level 21, 100 William Street  
Sydney NSW 2011

Dear Mr Miles

**Subject: Westfield Management Limited & Anor v Gazcorp Pty Limited & Ors**

Thank you for your letter concerning the above matter which I understand is listed for hearing before the Court on 18 and 19 December 2003.

I can confirm that the Department has not received notification from Liverpool City Council of any proposal to rezone the site concerned. Furthermore I understand that Council does not intend to promote such a proposal at present as it considers that the development consent that it has granted for the site is legally valid.

If the impending Court action establishes that the consent is invalid and Council subsequently resolves to promote an amending local environmental plan to rezone the site to facilitate the development, the Department would assess the merits of such a plan in the appropriate manner under the relevant statutory processes.

In the meantime it would not be appropriate for the Department to join the applicants in proceedings.

Thank you for drawing this matter to my attention.

Yours sincerely

Jennifer Westacott  
**Director-General**