

**INQUIRY INTO THE APPROVAL OF THE DESIGNER
OUTLETS CENTER - LIVERPOOL**

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Subject:

Summary

SHOPPING CENTRE

COUNCIL OF AUSTRALIA

NSW LEGISLATIVE COUNCIL INQUIRY INTO THE APPROVAL OF THE DESIGNER OUTLETS CENTRE AT ORANGE GROVE ROAD, LIVERPOOL

Submission by the Shopping Centre Council of Australia

1. Summary

This submission by the Shopping Centre Council of Australia outlines why the SCCA, on behalf of its members, has taken a strong public policy position on this issue, and details the representations we have made (such as submissions, letters and meetings) to advocate this policy position to Liverpool Council, the NSW Government, the NSW Opposition and the public more generally.

The proposed Liverpool Local Environmental Plan (LEP) Amendment 92 contravened State planning policies – *Integrating Land Use and Transport* and *The Right Place for Business and Services* – and draft State Environmental Planning Policy 66 (SEPP 66).

If the Liverpool LEP amendment had been allowed to proceed it would have undermined planning and zoning laws in NSW and eroded investor confidence in the State's planning system.

To retrospectively rezone this site – to make lawful what the courts had declared an unlawful land use – would have made a mockery of the planning system in this State. As Justice Lloyd, of the Land and Environment Court of NSW, said in his decision in this matter on 16 January 2004: "The system of planning control in this State could be set at naught if a use of land which is prohibited by an environmental planning instrument is allowed to continue. The whole system of planning control is dependent upon the orderly enforcement of environmental law."

Such an outcome would obviously not be in the interests of our members or of the NSW community more generally.

Public debate on this issue has overlooked the plight of retailers and retail employees in surrounding shopping centres and in the Liverpool CBD who have located in the proper commercial zones. While these retailers always anticipate additional competition they assume such competition will be fair competition and that their prospective competitors will be required to also locate in the proper commercial/retail zones and therefore their cost structures will be similar. The opening of this illegal centre has had a substantial impact on the turnover of these other retailers and on the staff they employ.

These are the "forgotten people" in this debate.

The SCCA believes the NSW Government must now take action to prevent such a situation arising again by ensuring that local councils comply with the State planning policies *Integrating Land Use and Transport* and *The Right Place for Business and Services* and should immediately gazette State Environmental Planning Policy 66.

2. Background

The SCCA is the retail property policy arm of the Property Council of Australia and represents the owners and managers of shopping centres. The members of the SCCA are: AMP Capital Investors, Centro Properties Group, CFS Gandel Retail Trust, Deutsche Asset Management (Australia), FPD Savills/Byvan, Intro International, Jones Lang LaSalle, Leda Holdings, Lend Lease Retail, Macquarie CountryWide Trust, McConaghy Group, Mirvac, Perron Group, QIC, Stockland, Westfield Group and the Yu Feng Group.

Public planning policies are obviously a major focus of our advocacy efforts across the country, as they are for the Property Council of Australia. We devote a great deal of our time to preparing submissions on planning issues on behalf of our members. One of our major concerns is to ensure the consistent implementation of metropolitan 'centres' policies. Our submission on the proposed Liverpool LEP Amendment 92 was just one of a number of submissions we have lodged with various levels of government in this regard, all of which are available on our website: www.propertyoz.com.au/scca/

3. Centres Policies

All state and territory governments, and the Australian Government, have committed themselves to some form of urban or metropolitan 'centres' policy.

Centres policies seek to ensure sustainable urban development by concentrating commercial and retail activities (i.e. major trip-generating activities) in, or adjacent to, designated urban centres of various sizes and functions which are closely aligned with the public transport system. The objective is to reduce unnecessary car use and traffic congestion and maximise the use of public transport and other infrastructure investment in existing centres.

Centres policies, if they are properly enforced, also give confidence to governments in terms of their own investment decision-making. Concentrating retail, commercial and public facilities in designated 'centres' optimises the investment of taxpayers' funds in public infrastructure such as public transport, roads and utilities.

Retail developments that are permitted outside these urban centres will inevitably generate their own demand for road and transport infrastructure and, in a constant climate of scarce public resources, these will inevitably be at the expense of continuing public investment in designated urban centres. Such out-of-centre developments, if they are permitted, will therefore inevitably undermine existing urban centres.

Out-of-centre developments which generate significant transport demand (such as major retail developments) are therefore to be discouraged because of their significant community and environmental cost. Centres policies do, however, recognise the special needs of genuine bulky goods retailing (which often needs more space for the display and handling of bulky goods) by allowing such retailing to be clustered in special bulky goods zones on industrial land if there is no land available in commercial/retail zones. It should be noted, however, that many bulky goods stores are in fact located in or adjacent to urban centres.

All Australian Planning and Transport Ministers have committed to the centres policies approach through the *National Charter of Integrated Land Use and Transport Planning*, which "seeks to ensure that the bulk of goods and services are located at hubs and linked effectively by an efficient transport system" which "allows for the optimisation of investment decisions and better use to be made of existing infrastructure and services".

At the State level, planning policies have been introduced across the country to encourage development in centres and restrict out-of-centre developments. These include the Melbourne 2030 strategy, Adelaide's Metropolitan Planning Strategy, Western Australia's Metropolitan Centres Policy, and, in NSW, *Integrating Land Use and Transport, The Right Place for Business and Services*, and draft State Environmental Planning Policy 66 (SEPP 66).

4. SCCA Support for Centre Policies

The Property Council of Australia is a strong supporter of centres policies and the Shopping Centre Council has also been a strong supporter since its inception in May 1998.

By seeking to concentrate retail/commercial activities and public facilities in a network of metropolitan centres with public transport access, such policies:

- protect the private and public investment in metropolitan centres;
- provide greater certainty for investment decisions on shopping centre developments and redevelopments;
- ensure there is a level playing field for all retail developments; and
- ensure sustainable urban development.

This is reflected in the SCCA's Planning Policy which states:

The objective of the SCCA's planning policy is 'one rule for all types of retail centre development'. The SCCA's planning policy seeks to encourage investment in existing urban or activity centres in order to:

- *provide greater certainty for investment decisions on shopping centre and retail/activity centre development within an accepted retail hierarchy;*
- *protect the private and public investment in centres and encourage full use of this infrastructure; and*
- *ensure there is a level playing field for competitive retail development and that development proposals are assessed on a consistent basis.*

To achieve this objective the SCCA will encourage State and Territory Governments to introduce and enforce metropolitan centre policies that recognise, protect and promote the retail hierarchy in accordance with urban planning principles.

5. NSW Centres Policy and Draft SEPP 66

The concentration of commercial and retail activities in centres has been the basis of NSW planning strategies for over 40 years.

The 1951 County of Cumberland Planning Scheme sought to promote district centres including Bondi Junction, Burwood, Chatswood, Hornsby, Liverpool, and Parramatta. In 1980 a Review of the Sydney Region Outline Plan recommended the centres policy be maintained with more emphasis on implementation. In 1985, the Government released the "Centres Policy for the Sydney Region", Policy 6 of which stated that "the preferred location for all retail developments is existing centres". This was reinforced in 1995 by the "Cities for the 21st Century" policy which required that councils "discourage the dispersal of commercial and retail activity into industrial zones." The Draft Retail Policy followed in 1996.

During this period, many shopping centre developers (like some outlet centre developers today) wanted to locate in stand alone, out-of-centre locations, as they were in the United States. They were, however, largely prevented from doing so and instead required to locate in existing centres. That is why today, the vast majority of major Sydney shopping centres are located in urban centres, with obvious community and environmental benefits. Some other States, which did not impose such requirements decades ago, are now confronting the problems that dispersed retail development has generated.

In 2001, the NSW Government released a package of planning policies to consolidate and reinforce these planning strategies - *Integrating Land Use and Transport, The Right Place for Business and Services* and draft SEPP 66.

The Right Place for Business and Services policy aims to:

"encourage a network of vibrant, accessible mixed use centres which are closely aligned with and accessible by public transport, walking and cycling. Responsive planning, consistent decision making and good design and management are needed to ensure that:

- *there are development opportunities in centres for businesses and services*
- *community investment in infrastructure is protected*
- *investor confidence in centres is maintained."*

The policy also aims to "*minimise dispersed trip-generating development that can only be accessed by cars*" and states that "*any proposal to rezone land for trip-generating businesses or services should conform to a local strategy which incorporates the policy objectives*" (p.5). In relation to retail development, the policy states that "*shops typically generate high trip levels and those serving more than a neighbourhood catchment should always be located in centres and be provided with pedestrian, cycling and public transport access.*"

The SCCA lodged a submission with the then Planning NSW strongly supporting the policies in December 2001.

6. Consequences of Failure to Implement or Enforce Centres Policies

If centres policies are not implemented or are not implemented consistently, then planning laws are undermined and investor confidence in the planning system collapses. If the planning system ceases to provide reasonable confidence for shopping centre developers, and creates doubts and uncertainty among those who provide the funds for these developments, then investment risk for such projects obviously increases. This has three major consequences for shopping centres.

First, overall investment in shopping centres will decline if investment risk increases and that will be to the disadvantage of retailers and customers. Superannuation funds and listed property trusts are the major sources of investment funds for shopping centres and these institutions tend to be low risk investors. Fund managers will be less willing to commit very large amounts of capital for development or redevelopment if the sector becomes riskier because of planning uncertainties.

Second, shopping centre project quality will deteriorate if investment risk increases. When shopping centre owners have confidence in the planning system they can take a longer-term view of their investment. Owners can build quality into shopping-centre developments in terms of design, construction, materials and fitout. If there is planning uncertainty, however, less money will be committed to projects and the quality of design and standards of appearance will be compromised.

Third, if investment risk increases then investment in community infrastructure as part of shopping centre developments will inevitably suffer. Working in a relatively stable planning environment, shopping centre developers can afford to make a substantial commitment to infrastructure such as town centres, roads, bus and rail interchanges, meeting rooms, libraries and child minding centres. If planning uncertainty increases investment risk then shopping centre developers will be reluctant to make such commitments.

It is not only shopping centre owners and developers, however, who look to the planning system to provide reasonable confidence in their investments. So do the retailers who sign leases in these shopping centres or in other locations in established town centres. These are substantial investments and they should not be jeopardised by retailers who somehow manage to evade the same planning requirements. (This is discussed in more detail later in the submission).

Although all governments have endorsed the principle of centres-based urban planning, implementation of the policy is largely up to local councils through their Local Environmental Plans (LEPs) and the development consents they grant.

A growing problem in a number of jurisdictions is that implementation of centres policies by local councils is ad hoc, inconsistent, and (as in the development the subject of this inquiry) fundamentally flawed, particularly in relation to the approval of large out-of-centre retail developments. This has been particularly apparent in relation to new retail formats such as factory outlet centres.

7. Outlet Centres and Other Retail Formats

Factory, warehouse, or clearance outlet centres (which are, in effect, another form of shopping centre) are increasingly seeking to develop in industrial zones. There appears to be a deliberate strategy on the part of some outlet centres of locating outside established commercial and retail zones in order to take advantage of cheap industrial land. Due to a lack of clear planning definitions of these new retail formats, many of these developments are approved by councils as bulky goods developments even though their retail offer is quite different.

Outlet centres that have sought to get around planning restrictions have claimed they are a specialist form of retailing, similar to bulky goods retailing, and therefore require special planning rules. These developments, however, are simply shopping centres by a different name, albeit centres with a much lower standard of finish, presentation and fitout than most traditional shopping centres. The average tenancies in outlet centres are usually of a similar size to tenancies in shopping centres and the centres don't need the larger spaces required for the handling of bulky goods. There is no reason why they should have special and more advantageous planning rules applied to them.

This was recognised by Justice Lloyd in the Land and Environment Court decision on the Orange Grove Road outlet centre when he stated that "*the use in the present case is that of a retail shopping centre.*"

The Right Place for Business and Services policy also states (p.12) that factory outlets

"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 goes on to state that regulation "*is often required to stop bulky goods outlets selling non-bulky goods. This practice impacts on centres and raises community costs beyond any benefit. Where such concerns exist, councils are encouraged to apply floorspace limits or restrictions on the types of goods for sale. This is a fair restriction in return for the cost and locational advantages not available to other retail outlets.*"

There is no evidence that cheap industrial land is required by the operators of outlet centres in order to be viable or to maintain low prices. There are many examples of factory clearance outlets which have located in the proper commercial and retail zones and have done so quite successfully. Birkenhead Point is just one example in Sydney. In Melbourne, two outlet centres are being developed by major chains in a commercial zone adjacent to the CBD, while a Harbour Town outlet centre is operating on commercial/retail land in the Perth CBD.

As for the argument that overheads, such as land costs and hence rent, need to be low because the retail margins are lower on surplus stock or end-of-line stock, we would like to bring the Committee's attention to a recent article in the Australian Financial Review on 5 August 2004 (copy **attached**) which reported that a factory outlet centre on airport land at Moorabbin (which cost only \$40 million to establish) had a yearly turnover of more than \$100 million, with individual retailers turning over an average of \$1 million per annum. Compare this with the Australia Fair shopping centre on the Gold Coast (which cost \$161 million) which the article also reported has an annual turnover of about \$216 million.

8. SCCA Position on Outlet Centres

It is this strategy of seeking to locate factory outlet centres outside normal commercial/retail zones that has led to concern from the SCCA. We must emphasise that our members do not object to competition from other retail formats. It is the consumer who benefits from this competition. But the competition must be fair competition and there must be a level playing field for all parties.

We do not object to genuine bulky goods stores being located in areas that have been appropriately zoned for this purpose. Nor have we objected to outlet centres located in commercial and retail zones.

Our concern is with those developments that claim either that because a proportion of their retail offer is bulky, they should be allowed to locate in bulky goods or industrial zones, or that they are a special form of retailing and should be exempt from the planning rules applying to retail development.

Allowing these new formats to locate outside commercial and retail zones not only undermines the *Integrating Land Use and Transport Policy* and draft SEPP 66 and threatens the viability of existing urban centres (and the public and private investment in them), but their location in industrial zones, where land is much cheaper than in retail/commercial zones, provides them with an unfair advantage in terms of the rents on offer.

If an outlet centre is permitted to operate in an industrial zone it is clearly in an advantageous position because it can offer lower rents due to the much lower cost of its land. This is not fair to retailers in shopping centres, and in other retail locations, who pay rents that reflect the higher cost of land in those commercial/retail zones.

It is completely inequitable that retailers who have signed leases in shopping centres, or in shopping strips, should suddenly find themselves confronted by a competitor, paying lower rents because of an industrial zoning, and in a location where it was never envisaged they would face competition.

The suggestion that factory clearance outlets deserve special and more advantageous planning rules is simply pandering to one group of investors who wish to be given a competitive advantage over other investors. If such an advantage is being given to one retail format what justification is there for refusing the same advantage to other retail formats? Any shopping centre would be able to deliver lower prices through its retailers if it was permitted to locate on cheap industrial land.

In addition, these developments compete with light industrial, warehouse and wholesale distribution uses, reducing the availability of suitably zoned land for such purposes. A research report by Jones Lang LaSalle in 2001 noted: "Concern is now starting to mount over bulky goods development competing with light industrial, warehouse and wholesale distribution uses, reducing the availability of suitably zoned land for such purposes. It is also likely that such competition for land has increased the average price of industrial land in some locations."

We made these points in a media release on 2 August 2004 (copy **attached**) in response to reported comments by the NSW Opposition Leader, Mr Brogden, that "there is clearly a place for cheap retail centres on industrial land" and that factory outlet centres needed to be on cheap industrial-zoned land to maintain low prices. As we noted, any shopping centre allowed to operate on cheap industrial land would be able to offer 'low prices'. If factory outlet centres can locate on industrial land, why not allow all retailers to locate on industrial land so that they can offer lower prices?

9. SCCA Concerns with Implementation of Centres Policies

The SCCA and the Property Council of Australia have raised these concerns about the implementation of centres policies with a number of state governments, including the NSW Government, and have consistently argued that governments must establish a mechanism to ensure that councils comply with centres policies.

In NSW, we were particularly concerned at the delay in gazetting and formalising draft SEPP 66. (Although it should be noted that even as a draft SEPP, local councils are still required to take it into consideration.) We raised these concerns in letters to the Minister for Infrastructure and Planning and the Minister for Planning Administration in October 2003 seeking the gazettal of draft SEPP 66 to ensure that the *Integrating Land Use and Transport* and *Right Place for Business and Services* policies are in fact implemented by local councils. The letters (which are **attached**) also sought meetings with the Ministers to discuss these concerns.

The SCCA's Executive Director, Milton Cockburn, and the Property Council of Australia NSW Executive Director, Ken Morrison, met with the Minister for Planning Administration, Ms Beamer, on 20 January 2004 and urged that draft SEPP 66 be gazetted. Milton Cockburn met with Mr Knowles' Deputy Chief of Staff, Emilio Ferrer, on 28 January 2004 to explain our concerns over the delay in gazetting SEPP 66 and to seek a meeting with the Minister on SEPP 66. Both Milton Cockburn and Ken Morrison subsequently met with the Minister for Infrastructure and Planning, Mr Knowles, on 19 March 2004 and again urged that the Government gazette draft SEPP 66 or introduce an equivalent mechanism to ensure that local councils actually comply with the *Integrating Land Use and Transport* and the *Right Place for Business and Services* policies. We followed this up with a letter to Mr Knowles on 24 March 2004 (copy **attached**).

This was also the focus of a further meeting with Mr Knowles, and Milton Cockburn and Ken Morrison, on 22 April 2004, with discussions concentrating on the Sydney metropolitan strategy consultations, which had been launched that morning, and on the role of centres policies within this metropolitan strategy.

10. SCCA Involvement in Liverpool Proposed LEP Amendment

The SCCA's involvement in the Liverpool case began on 9 December 2003 when we first became aware of Liverpool Council's proposals to amend its Local Environmental Plan. As we were unable to access the Liverpool Council website, we telephoned the Council and spoke to Mr Phillip Jemison who advised that on the previous night Council had agreed to exhibit a draft amendment to the Liverpool LEP in the New Year. Mr Jemison also emailed us a copy of the report to Council.

On 15 January 2004, we again rang Mr Jemison and were advised that the LEP Amendment was now on public exhibition and Mr Jemison emailed us a copy of the amendment.

The proposed LEP amendment was to:

- a) rezone part of the Crossroads site from 4(a) Industrial to 4(b) Industrial – Special;
- b) introduce a new definition for 'Outlet Centre'; and
- c) amend schedule 4 (additional uses) to permit an Outlet Centre at the Crossroads site and 12-16 Orange Grove Road, Liverpool.

The proposed amendment was of great concern to our members for the reasons set out below and it was agreed that because the issue fell within the SCCA's Planning Policy, the SCCA should lodge a submission opposing the LEP Amendment.

Our concerns with the LEP Amendment were reinforced after the Land and Environment Court handed down its decision on 16 January, finding that Liverpool Council's approval of the change of use from a bulky goods warehouse to a clearance outlet, was clearly a prohibited use under the industrial-special zoning. The Land and Environment Court refused this change of use and the NSW Court of Appeal upheld this refusal. As Mr Justice Lloyd, the judge in the Land and Environment Court at first instance, said: "The system of planning control in the State could be set at nought if a use of land which is prohibited by an environmental planning instrument is allowed to continue. The whole system of planning control is dependent upon the orderly enforcement of environmental law."

We prepared and lodged a submission with Liverpool Council on 2 February 2004, (copy of submission **attached**). We later received legal advice on the proposed definition of 'outlet centre' which formed the basis of a supplementary submission to Liverpool Council on 6 February 2004 (copy **attached**). As with all SCCA submissions, these submissions to Liverpool Council were posted on our website.

11. SCCA concerns with proposed Liverpool LEP Amendment

The key concern with the LEP amendment proposed by Liverpool Council was the proposal to introduce a definition of 'outlet centre' and then apply special planning rules to such 'outlet centres' to allow them to locate on industrial land.

As noted above, this was completely contrary to State planning policies *Integrating Land Use and Transport* and *The Right Place for Business and Services*, and draft SEPP 66. The associated proposal to allow two 'outlet centres' to locate in industrial zones (including retrospective validation for the Orange Grove Road outlet centre) was not only contrary to draft SEPP 66, it was also completely unfair to those retailers located on appropriately zoned retail land (whose prices must reflect the rents they pay for that land) to suddenly find themselves confronted by competitors, paying lower rents because of an industrial zoning and therefore able to charge lower retail prices.

Due to our concerns about the broader implications for the NSW planning system we also forwarded copies of our submissions to Liverpool Council, to the Minister for Planning Administration and the Minister for Infrastructure and Planning on 19 February 2004, with covering letters urging the Ministers not to approve the proposed LEP amendment (copies of letters **attached**).

At the meeting with Mr Knowles on 19 March 2004 (referred to earlier) to discuss draft SEPP 66, we also raised the Liverpool Council issue as an example of the need to gazette draft SEPP 66 and left a copy of our letter of 19 February with the Minister.

Following the Court of Appeal's decision on 31 March upholding the Land and Environment Court's decision, we wrote to the Administrator of Liverpool Council urging her not approve the LEP amendment (copy of letter attached). We also addressed the Liverpool Council meeting on 13 April 2004 outlining the concerns we had raised in our submissions on the draft LEP amendment.

Nevertheless the Council Administrator decided, in our view wrongly, to proceed with the LEP Amendment in relation to the Orange Grove Road rezoning and the factory outlet definition and refer it to the Department of Infrastructure, Planning and Natural Resources for approval by the Minister for Planning Administration.

After the decision by the Minister not to approve the LEP Amendment we issued a media statement in an attempt to correct some of the inaccuracies which were being reported about this issue. This is **attached**. We also wrote on 23 July to the Leader of the Opposition, Mr Brogden, to express our concerns about comments he had made on this issue. This is **attached**.

12. The Impact of Unfair Competition on Retailers in the Liverpool CBD

While public attention has focussed on the plight of retailers and employees of the Orange Grove Road centre, the plight of retailers and employees in surrounding shopping centres, located in the proper commercial/retail zones, has been ignored. These people are the "forgotten people" in this debate. These retailers have also invested in their shops. These retailers and their employees also have mortgages and bills to pay.

To give an indication of the impact this illegal development has had on retailers and employees in the surrounding area, we have surveyed five retailers at Westfield Liverpool shopping centre. None of the retailers wanted to be identified because of the fear that additional publicity could have on their business.

Retailer A (manager, women's fashion retail chain)

This retailer is part of a major chain and says Christmas 2003 sales were fair, although below budget, and believes that this was probably caused by the fact that, according to feedback from customers, traffic in and out of the new outlet centre was so congested that customers returned to Westfield Liverpool to shop. According to the retailer, however, the last six months has been "horrid" and the store's turnover is now around \$60,000 below budget. The retailer says the loss of traffic flow past their shop in the centre is very noticeable. The retailer has discussed this with other women's fashion retailers in the centre and all report the same effect. The retailer has not yet had to lay off casual staff because of the retailer's concern about losing valuable and highly trained staff members. The retailer has, however, had to cut back staff hours of work substantially and therefore the income of staff has been significantly reduced. The retailer has also had to eliminate a casual position required to cover lunch time on weekends. The retailer wants to hold on to existing staff but it has got to the stage that if one of the staff left, the staff member would not be replaced. In this retailer's view it is now a "waste of time" to open on Thursday night

and Saturday and that Sundays is not much better. "I've got staff twiddling their thumbs on these days." Staff are now being sent home early on these days. The retailer says the impact in the last few weeks, with publicity over the centre's closure, has been particularly severe. "I hope the decision is not reversed. If we have gone through all this and then it is allowed to continue it will be a disaster."

Retailer B (independent retailer, men's fashion)

This retailer estimates turnover is down between 30% and 50% on weekdays, down by around 50%-60% on Saturday and between 80% and 90% on Sundays. In July 2003 the retailer used to take around \$3,000 on a Sunday, but on the last Sunday in July 2004 the retailer took only \$500. This retailer believes it is not worth opening on Sundays any more. "Half of what I took last Thursday I took between 9am and 11am. It took me the rest of the day, until 9pm, to take the same amount." The retailer used to employ two casual staff. One worked one day a week – to permit the retailer to have a day off – but was laid off in February. Another casual worked around 19 hours a week – more in busy periods – but had to be laid off last month. The retailer is now working seven days a week and the retailer's spouse comes in to relieve for an hour so that the retailer can have a lunch break. The retailer's mortgage is \$300,000 and the retailer believes liquidation is only a month or so away.

This retailer was approached by a leasing representative to take premises in the Orange Grove Road Centre and inspected premises there. The retailer was informed of the pending legal action by their solicitor not by the leasing representative. When the retailer asked the leasing representative about the legal action the retailer was told: "Don't worry about that. Relax" The retailer disputes claims that retailers have spent, on average, hundreds of thousands of dollars on fit outs at the Orange Grove Road centre. "There's no way it would cost have cost me more than \$15,000 to fit it out. About the only money I would have had to spend was on racks and they would have been of a cheaper quality." The retailer's fit out in their present premises, which are only around 10 square metres larger, cost around \$90,000.

Retailer C (manager, discount men's wear chain)

Most clothing items in this store are sold at discounted prices and twice a year the store holds '50% off' sales. This retailer believes this is why the store has not been as badly affected as other retailers in the centre. The retailer has not had to cut back on staff. The retailer says around 80% of their store's customers are regulars and the feedback from these customers is that the retailer's prices are better than those at similar shops at the Orange Grove Road centre. Retailer C believes their store is an example of how customers already have access to discounted goods in shopping centres.

The retailer said the recent publicity over the outlet centre's closure had impacted on them significantly.

Retailer D (independent retailer, men's fashion)

This retailer says that midweek and on Saturday turnover has fallen by at least 30% and on Sundays and Thursday nights it has fallen by around 50%. On Saturday the retailer used to employ 5 or 6 staff and now employs only 2 or 3 staff. On Sundays the retailer employed 4 staff and now employs only 2 staff. Mid week the retailer still employs the same number of staff (2) but has eliminated a casual position that used to cover for staff at lunchtime. The retailer estimates the fall in turnover has been even worse over the last three weeks because of the publicity over the closure. The retailer says what is really hurting now is the need to discount stock by as much as 20% in order to make a sale. This means the margin on sales to meet fixed overheads is much less. "I'm not panicking yet but if there was a chance they did not close I

would be. I would not stay here if it was going to stay open." (The retailer's lease has two years to run.)

Retailer E (independent retailer, youth wear)

The retailer estimates that overall sales are down around 10% but is particularly affected on Thursday nights and at weekends. "Many of the labels I stock are also sold down there." This retailer says it is particularly bad at the end of the season since they are also trying to sell out-of-season stock at discounted prices. The retailer still has the same number of casual staff during the week (3) but has had to cut back on staff hours, which means staff income has fallen. The retailer has eliminated one casual position (normally worked from 3-5 hours) on Saturdays and has also eliminated two casual positions on Sundays.

13. Conclusion

In summary, the SCCA believes strongly that the NSW Government made the right decision not to approve the Liverpool LEP Amendment.

To have approved the LEP Amendment would have eroded the orderly land use planning system in this State. It would also have been in defiance of the *Integrating Land Use and Transport* and *Right Place for Business and Services* policies, and draft SEPP 66, which the Government has advocated. It would have sent a signal to other developers who do not want to conform to the same planning rules as everyone else that they can bend the planning rules secure in the knowledge that illegal developments will simply be retrospectively legalised. All citizens of NSW would inevitably suffer from the demise of an orderly planning system and from the 'anything goes' approach that would take its place.

This decision was not, as some are claiming, about a planning technicality. As Justice Lloyd stated in his judgment on the Orange Grove development: "*Allowing a retail shopping centre on land on which shops are prohibited cannot be regarded as a mere technical breach [of the planning laws]*".

The SCCA urges the NSW Government to take action to prevent such a situation arising again by ensuring that local councils comply with the *Integrating Land use and Transport* and *The Right Place for Business and Services* policies when drafting and enforcing Local Environmental Plans. The Government should immediately gazette draft SEPP 66.

14. Contact

The Shopping Centre Council would be happy to discuss any aspect of this submission. Please do not hesitate to contact:

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