

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

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**Date Received:** 16/08/2004

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**Subject:**

**Summary**

*Tabled Mr Ingham*

*GPSC4*

*16/8/04*

**SUBMISSION TO THE LEGISLATIVE  
COUNCIL INQUIRY WITH RESPECT TO  
PREMISES AT ORANGE GROVE ROAD,  
LIVERPOOL**

**Prepared on behalf of  
WESTFIELD LIMITED**

**By  
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**August 2004  
Job No. 04047**

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## 1. INTRODUCTION

My name is Neil Ingham, I am a Director of Ingham Planning Pty Limited who conduct business from Suite 19, 303 Pacific Highway, Lindfield. A copy of my CV is attached as **Appendix 1**.

## 2. THE PERMISSIBILITY OF RETAIL USES WITHIN LIVERPOOL CITY COUNCIL AREA

The permissibility of uses within the Liverpool City Council area is controlled by Liverpool Local Environmental Plan 1997 and amendments to that Plan.

Within the LEP, Clause 9 defines which uses are permissible without consent, which uses are permissible with consent and which uses are prohibited within each of the zones of the LEP. Within the Industrial 4(b) Zone “bulky goods salesrooms and showrooms” are permissible subject to consent. Warehouse or distribution centres”.

“Restaurants” and “shops” are not permissible uses.

Within any environmental planning instrument (LEP or other type of instrument) there is absolutely no point or benefit in looking for some use to be innominate if it falls within the definition of a use found within the LEP. Clause 6 of the LEP sets out the definitions of the uses found within Clause 9. (see **Appendix 2**).

Clause 6 is set out in **Appendix 3** – Definitions of Liverpool LEP 1997.

The definition of “bulky goods salesrooms and showrooms” is identified in **Appendix 3**.

The definition of “restaurant” is as follows.

*“Restaurant means a building or place, the principle purpose of which is the provision of food to people for consumption on the premises or to provide take-away meals.”*

It is quite clear that the purported approved use of the site does not fall within these definitions.

The definition of “shop” was in the LEP as follows.

*“Shop means a building or place used for selling items, whether by retail or auction, or for hiring or displaying items for the purpose of selling or hiring them (whether the items are goods or materials).”*

It is apparent that the goods being sold on the premises are being sold by retail. There is no ground upon which it might be suggested that the proposed use is some undefined innominate use when it falls squarely within the definition of “shops”.

This matter is further expanded upon in Part 8 of the LEP dealing with industrial zones. Within the Industrial 4(b) Zone the following are said to be the objectives of the zone.

Clauses 50 and 51 of Liverpool LEP 1997 relating to industrial zones are set out in **Appendix 4**.

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Clause 50(2) of Liverpool LEP 1997 states as follows.

*"50(2) The objectives of the 4(b) Zone are:*

- (a) to set aside sufficient land to be used primarily for a broad range of industrial land uses, and*
- (b) to permit a range of land uses which serve the industrial areas, and*
- (c) to permit a range of land uses which are compatible with industrial areas, and*
- (d) to permit retail development only where:
  - (i) it is ancillary to and associated with an industrial use of the land in the zone, or*
  - (ii) it services the daily convenience needs of the local workforce, or*
  - (iii) it is for the purpose of bulky goods retailing, or*
  - (iv) it is a motor vehicle oriented land use,**

*and only if it does not have an adverse impact on the viability of the business areas of Liverpool, and*

- (e) to promote a high standard of urban design, particularly along arterial roads."*

It would appear perfectly clear from Clause 50(2)(d) that retail uses are not permitted unless they comply with the provisions of the clause. In terms of retail outlets which sell clothing they would only be permitted if they were ancillary to and associated with an industrial use of the land in the zone. This would require the manufacture of the clothing items within the industrial use and the sale of those items from the factory premises. Alternatively some items of clothing might be able to be sold if they serve the daily convenience needs of the local workforce. It would be difficult to conceive of the uses on the subject Orange Grove Road premises being required to service the daily convenience needs of the local workforce.

I cannot therefore understand how it could have been suggested that the uses which have been purported to be approved on the site could have been approved under the Liverpool LEP 1997.

### **3. PUBLIC POLICY AND THE LOCATION OF RETAIL CENTRES**

Since at least 1985 the Public Policy has existed to control the location of significant retailing to major centres. In a publication titled "A Centre's Policy for the Sydney Region" prepared by The Department of Environmental Planning in July 1985, the following comment is made relating to why a centre's policy is needed.

*"Although the dominance of private transport has meant that high accessibility is not restricted to centres, centres still provide the vital focus for services and transport facilities. While there may often be savings for an individual employer to locate outside a centre, for the community as a whole, there are still considerable benefits from concentrating many retail, commercial and community services in centres. This is especially true for people who do not have easy access to private transport. The young, old, poor, disabled and one car families are all prime beneficiaries of a strong centres policy.*

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*A centres policy is extremely important to the future of the public transport system, concentration of jobs and services in centres facilitates both present and future public transport servicing."*

Further on in the same section the following comment is made.

*"It is this difference between community benefits and individual benefits which is at the heart of most planning policies, and this is especially true for a centres policy."*

The Policy points out that the concept of encouraging the development of centres has been a longstanding Sydney metropolitan planning principle. The County of Cumberland Planning Scheme (1951) attempted to limit growth in the CBD and to promote strong district centres. This was continued in the Sydney Region Outline Plan (1968) which was a plan to cope with the expansion of Sydney. Liverpool was one of the centres identified in the County of Cumberland Planning Scheme and also in the Sydney Region Outline Plan. It has, in fact, been consistently identified as one of the major centres of the Sydney metropolitan area since 1951.

The most recent public policy to emerge in relation to centres relates to the documents entitled "Integrating Land Use and Transport" and to the publication of draft State Environmental Planning Policy No.66 – Integration of Land Use and Transport. This Policy has a number of documents which form part of the policy and provide background information to the Policy. Parts of these documents and others relating to "Centres Policy" have been attached to this submission as part of **Appendices 5 – 10**.

In 1992 the Premier of New South Wales made a statement relating to a vision for the future of metropolitan Sydney. He said the following.

*"One of the major problems in Sydney's urban development has been the lack of adequate co-ordination between transport and land use planning. This has contributed to urban sprawl, a heavy reliance on private transport and, consequently, increased levels of air pollution."*

As the document entitled "Improving Transport Choice", part of the integrating land use and transport package, states in relation to retail location:-

*"Retailing forms the foundation of most centres and ensures their continued viability and vitality. It is also one of the main generators of travel. It is crucial to have well located retail areas.*

- retail functions should be ideally located in a network of attractive and vibrant, mixed use centres of all sizes and functions, and closely aligned with the public transport system. A vibrant centre protects and maximises the use of community investment, encourages continued private and public investment in the centre, and fosters growth, competition, innovation and further investment confidence.*
  - dispersed, isolated retail locations should be avoided because they are car dependent and incur significant community and environmental costs.*
  - retail format alone (eg. bulky goods, big box) should not be a justification for an isolated location.*
  - integration of retail functions encourages single multi-purpose trips, particularly when pedestrians can move freely within a centre."*
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These comments and extracts from other policy documents make it abundantly clear that the centre which exists at Orange Grove Road is not consistent with the policy. There is a public purpose in ensuring that facilities such as presently exist at Orange Grove Road are located in centres as this will be of benefit to the total community, as opposed to a segment of the community. It will ensure that people do not undertake trips which are unnecessary or lengthy and will minimise the car emission of greenhouse gases and the ability of all members of the community to access the goods being sold.

If this public policy objective is overridden at Orange Grove Road then there is no reason why it would or should not be overridden elsewhere, with the public policy simply falling to the ground to the disbenefit to the community at large.

#### 4. THE TIMING OF ACTIONS RELATING TO THE DEVELOPMENT

The use of the site was purportedly approved on the 15<sup>th</sup> November, 2002. In April of 2003 the development consent was notified under Section 101 of the Environmental Planning and Assessment Act, 1979. On the 17<sup>th</sup> June, 2003, Westfield Management Limited and Kent Street Pty Limited commenced proceedings in the Land & Environment Court to challenge the development consent for the proposed use at 12 Orange Grove Road, Warwick Farm. On 24<sup>th</sup> November, 2003, Liverpool Council issued an Interim Occupation Certificate for the development.

It was therefore some five months after the owners of site were aware of a legal issue relating to the consent that any occupation of the premises was possible. Any party wishing to occupy the premises could have been made aware of the legal challenge to the consent well prior to occupation to ensure that they were not disadvantaged by the results of the challenge.

The decision of Liverpool City Council to prepare a draft Local Environmental Plan occurred on the 12<sup>th</sup> December, 2003, this draft LEP intended to allow approval of the use which had previously been unlawfully approved.

The hearing before the Land & Environment Court occurred on the 18<sup>th</sup> and 19<sup>th</sup> December, 2003, and the Judgement was handed down on the 16<sup>th</sup> January, 2004. An appeal relating to the Judgement of the Land & Environment Court was filed on the 28<sup>th</sup> January, 2004 and was heard before the Court of Appeal on the 3<sup>rd</sup> March, 2004. The Court of Appeal handed down its Judgement relating to the matter on the 31<sup>st</sup> March, 2004.

On the 22<sup>nd</sup> March, 2004, I wrote to Liverpool to Gabriel Kibble, the Administrator of Liverpool City Council (see **Appendix 11**), setting out the reasons why I believed the draft Local Environmental Plan to change the permissible uses on the site and allow the unlawful use which had taken place to continue was inconsistent with the longstanding Centres Policy of the Government as contained in draft SEPP 66, but is also incapable of being implemented in any meaningful way. The definition of "outlet centre" which requires the majority of stock being offered for sale "*below normal retail prices and/or be surplus, out of season, seconds or samples*" is simply not possible for any authority to determine prior to the use being operational.

Allowing a development to continue which is inconsistent and contrary to expressed and longstanding Government policy is not a logical outcome. It is not in the interests of the community as a whole and does not accord with longstanding and relevant planning practice.

## 5. CONCLUSION

It is my opinion that Diane Beamer, the Assistant Planning Minister, has undertaken her responsibilities appropriately in refusing to make the Plan requested by Liverpool City Council. To do otherwise would be inconsistent with and prejudice the implementation of longstanding planning policy and would be inappropriate.



**NEIL INGHAM**