

Urban Taskforce

A U S T R A L I A

3 March 2008

General Manager
Liverpool City Council
Locked Bag 7064
LIVERPOOL BC NSW 1871

Dear Sir

Re: Draft Liverpool Local Environmental Plan: File No 2006/1650

We write in response to your current exhibition of the Draft Liverpool Local Environmental Plan 2008.

The Urban Taskforce represents Australia's most prominent property developers and equity financiers.

We are vitally interested that Liverpool's Local Environmental Plan, when gazetted, is a comprehensive, user friendly plan that presents an efficient and effective urban planning instrument, promotes the right investment within the Liverpool Local Government Area and that achieves this via an equitable balance between the different, often competing, objectives inherent within urban development.

With these aims in mind we have reviewed the draft Local Environment Plan and we wish to present a number of comments for Council's consideration. Many of our comments are queries of clarification on topics and matters that we suggest you may wish to supplement with additional information or other measure. Other comments represent more fundamental concerns with the structure and approach adopted by the Local Environmental Plan, which we seek you to review and amend.

Our comments are addressed in the order that they are presented in the draft Local Environmental Plan.

1. Clause 8: Repeal of other Local Planning Instruments: Liverpool City Centre Local Environmental Plan 2007

We note that the Liverpool LEP 2008 will repeal the Liverpool City Centre Local Environmental Plan 2007. Although the City Centre LEP has only recently been gazetted, we have identified a number of problems with the LEP that we hope will be addressed. Specifically our concerns rest with the utility and economic viability of the Civic Improvement Plans (CIP). We note that many of the FSR and height controls (and associated development visions) are unrealistic. For example, it is unlikely that Liverpool will be a financially attractive location for investment in a 30+ storey (i.e. 100 metre) residential or commercial tower in the foreseeable future (and in the life of the LEP/CIP). This questions the ability of S.94A to realise all funds for public works and special projects if the availability of funds has been determined purely on the development potential permissible by the LEP. It also questions the viability of the added incentives built into the "City Centre LEP/CIP model" to source contributions due to an increase in the range of permissible FSR and height controls.

If we use a high density residential development in the Liverpool City Centre as an example, it has a residential S.94A levy, at 2%.

The S.94 contribution for City Centre residential development under the Liverpool Contributions 2001 Plan varies. However, for a 2 bedroom multi-unit dwelling it was \$2,392 per dwelling (Nov 07). Floor Space Ratio and Height were subject to the controls in Liverpool Development Control Plan No. 30 - City Centre Development.

If we focus on a 100 (2 x bedroom) apartment building as a hypothetical example of a potential development it would have an S.94 and S.94A Contribution as follows:

- **S.94 Contribution under the 2001 Plan:** (2,392 x 100) of \$239,200 (\$2,392 per dwelling);
- **S.94A Plan based on 100sqm GFA per unit and indicative construction cost of \$2,200 per sqm:** total GFA of 10,000 sqm. Equates to a total construction value of \$22 million. This in turn would incur a S.94A levy of \$440,000 (2% of cost), or \$4,400 per dwelling.

If the new FSR and Height controls in the new Plans double the development potential to say 200 units, the construction value would increase to \$44 million, and the levy per dwelling would remain the same at \$4,400.00.

For commercial development the possible difference between past and current contributions may be more severe as the Liverpool S.94 Contributions Plan 2001 limited the payment of S.94 contributions to car parking if 100% of the required car parking was not provided within the site.

We recognise that this cannot be considered a thorough or dependable development feasibility exercise or comparison. It also does not take account of potential increased or reduced construction costs for different development forms, potential increased land values sought by vendors, equity, interest or other factors. It assumes a static sale price for dwellings between the two scenarios.

Nevertheless it illustrates that the benefits that may be accrued by a developer by the increased FSR and Height controls must be sought from savings in other project costs, which also amortise the savings that would have been made under the previous plans. This may be achieved by land banking, fast sales rates and limited product supply where they create dynamic development conditions. However these conditions are not currently present in any of the Centres, and are unlikely to be in the foreseeable future.

Thus, even based on this simple exercise, we have a concern that there may be little added value or incentive in the opportunities presented by an increase in FSR/Height limits coupled with the new S.94A Contribution in Liverpool, where there is negligible tension between Height and FSR controls and market demand to construct and market new commercial or residential floor space.

We request that Council undertake financial modelling to test whether the City Centre opportunities in its LEP 2008 controls are economically attractive compared to the previous controls and contributions and have the ability to realise the funds envisaged in the CIPs.

2. Clauses 11 and 12 Land Use Table and Map

The comments in this part should also be read in conjunction with our comments regarding definitions in Heading 10 of this submission below.

Our review of the range of permissible uses raises a number of inconsistencies between zones and impracticalities in terms of the realistic realisation of uses in certain zones. Some of these inconsistencies and impracticalities are presented below and we request that they be reviewed in order that a consistent and logical approach to the distribution of land uses across the zones in the Liverpool LGA is achieved. For example:

- (i). 'Cemeteries' and 'Mortuaries' are permissible together only in the IN1 and IN3 zones. We consider that it is unlikely that they will seek, or Council will support, a location in an industrial area on land earmarked for employment uses?
- (ii). Conversely rural areas are often the traditional home for such uses. However 'Mortuaries' are a prohibited use in all rural zones?
- (iii). 'Bulky Goods Premises' are only permissible, with no restrictions, in only one 'non centre' commercial zone in the LGA: B5 'Business Development'. This zone is restricted to a limited number of locations that have no regard to the arterial road network within the LGA, (particularly around the M7 Motorway, where such uses will seek to locate in the future as the western corridor becomes established and consolidated, and where logically, on orderly planning grounds, such car oriented activities should be located)? Furthermore, "Business Premises" are a prohibited use in the B5 'Business Development' zone, in defiance of the achievement of the objectives of the zone?
- (iv). 'Child Care Facilities', 'Registered Clubs' and 'Education Establishments' are proposed to be no longer permissible in the rural zones within the Liverpool LGA, despite the fact that the rural areas of the LGA are home to many such large and significant establishments. (Conversely churches and 'health consulting rooms; remain permissible uses in some rural zones). Has council investigated the supply of alternative development sites and locations within the urban zones with sufficient size and viable purchase price to accommodate these de-facto community services, to replace previous the opportunities lost with the change in permissible land use regime in the rural zones?
- (v). Conversely, where many of the uses are permissible (for example "Educational Establishments' in the RU5 – Large Lot Residential' Zone), we would suggest that such uses are antipathetic to the objectives of the zone;
- (vi). Conversely the range of urban uses, which are permissible in the RU4 'Rural Small Holdings' zone are wide, encompassing uses such as 'Entertainment Facilities', indoor recreation facilities, hospitals and churches, but do not include child care centres, schools or registered clubs?
- (vii). 'Function Centres' and 'food and drink' premises are prohibited uses in the RU2 'Rural Landscape' zone, despite such locations (with high scenic value) being attractive to such enterprises?
- (viii). 'Hardware and building supplies' are permissible in only one zone in the Liverpool LGA: the 'B6 'Enterprise corridor', despite associated uses such as 'bulky goods', 'landscape and garden supplies' and "timber and building supplies; being permissible in the 'B5 – Business Development' zone?
- (ix). Importantly, 'hardware and building supplies' is not defined in the LEP?
- (x). 'Landscape and garden supplies' are prohibited in all rural zones in the LGA, despite there being some logic to locate such uses in some rural zoned lands?

- (xi). All residential uses, with the exception of 'Group homes' and 'shop top housing' are prohibited in all centre zones (B1, B2 and B3) in the Liverpool LGA, effectively precluding a residential – only type development, particularly in the Liverpool CBD?
- (xii). We query why 'Multi Dwelling Housing' is permissible in the 'B6 – Enterprise Corridor' Zone, but not a "residential Flat Building"?
- (xiii). We query why the IN2 – Light Industrial Zone is the only location for 'Recreation Facilities (major) as a separate use. We would expect favoured locations for such activities to be found in established open space or other recreation areas?
- (xiv). The extent of the permissible range of retail activities in the B1 – Neighbourhood Centre' zone requires clarification. Whilst the first objective seeks 'small scale' retail premises, the second objective supports a 'medium scale' supermarket? Does the definition of 'neighbourhood shops' support a medium sized supermarket (say 3,000 – 3,500 sqm)?
- (xv). 'Serviced apartments' and 'backpackers' accommodation are prohibited uses in the B3 – Commercial Core zone, despite such uses being vital components of a city centre's economy. Strangely, 'sex service premises' however, are permissible in the B3 zone?
- (xvi). Ironically, the centre zone which provides greatest scope for tourist and visitor accommodation is the 'B2 Local Centre' zone?
- (xvii). 'Restaurants' and "'Take away food premises' are prohibited in the B1 – Neighbourhood Centre' zone, despite such uses having a legitimate place in such centres?
- (xviii). 'Water Recreation Structures' are permissible in a large number of zones including the rural, residential and centre zones. We query why piers, wharves, boat launching ramps and jetties receive such prominence in the zones and do not fit under another definition?

3. Clause 17: Complying Development

Clause 17, 3(g) prohibits complying development where a 'tree' is required to be removed. The LEP defers the definition of 'tree' to a subsequent DCP. A 'tree' should be defined in the dictionary, and linked to Schedule 6 (Exempt trees).

Clause 17, 3(h) prohibits complying development where the previous use of the land was for, inter alia, "intensive livestock agriculture" without evidence that the site is not contaminated. The definition (in the dictionary) for this term includes keeping of cattle. We have a strong concern that this requirement is too broad. Much of the traditional land use of the Liverpool LGA has been for grazing of cattle. This clause will capture, for example, every purchaser of a home-site intending to build a new home on land appropriately zoned, but never developed in the past. It will place an unreasonable, costly and extremely onerous obligation on that household to demonstrate that there is no contamination. This clause should not apply to land that has been rezoned to urban purposes, where there is a reasonable expectation that such issues will have been addressed at the rezoning and subdivision consent stages.

4. Clause 19: Minimum Subdivision Lot Size

We note that the Draft LEP departs from the traditional approach whereby lot sizes are linked to the applicable zone that applies to the land. We have two major concerns with this approach:

- It introduces unnecessary complexity into the statutory planning process in an environment where both the development industry and Government are united in reducing planning complexity;

- In the case of this LEP, in new residential areas it introduces inconsistencies. For example the new "Smart Growth" Precinct in Middleton Grange (where master planned higher densities are being sought) the subdivision lot size plan provides for large areas of minimum 500 sqm lots. In the neighbouring new release area of West Hoxton, (a traditional subdivision subject to DCP 31) a minimum lot size of 300 sqm applies.

5. Clauses 21, 22 and 24: Height of Buildings and Floor Space Ratio; and Exceptions to Standards

The Draft LEP 2008 departs from the conventional approach of controlling built form, particularly dwellings, with DCP controls on height, site coverage and setbacks and instead introduces a prescriptive statutory LEP regime of FSR and Height controls that require the concurrence of the Director General for any objection to the height or FSR standard (via a referral and report to the Department of Planning). We have grave concerns with the operability and impacts of this approach. They are:

- It introduces unnecessary complexity into the statutory planning process in an environment where both the development industry and Government are united in reducing planning complexity;
- It introduces another layer of bureaucracy via the involvement of the NSW Department of Planning in local government planning matters. This is particularly significant where there is both an industry wide acknowledgement that there is a shortage of town planners in NSW to deal with such increases in workload in comparatively minor matters, and an acknowledgment that the NSW State Government does not have the budgetary resources to manage the resulting obligations to address the increase in work load in a timely and efficient manner, particularly as all LGA's in NSW move to this new approach with their draft LEP in the next five years; and
- A uniform application of FSR to the development of residential allotments favours large lot, large house developments, and penalises small lot integrated housing/subdivision developments. This erodes the achievement of objectives to increase density and penalises the type of development (master planned and architecturally designed higher density developments), to deliver the type of housing and amenities that the market expects in higher density housing forms.

We note that the draft exhibited DCP for the Oran Park and Turner Road precincts in the South West Growth Centre sought to introduce a sliding scale of FSR controls on residential development. After due consideration this approach was abandoned and not pursued in the final, adopted, DCP. If the approach was found to be deficient in the Growth Centres, we are concerned that it will not work in established and new release areas such as the Liverpool LGA. We request that this approach be reviewed and abandoned.

6. Clause 28: Development Near Zone Boundaries

We note that the optional 'fuzzy line' clause has been included in the Draft LEP. We support this approach as often its purpose has been to rectify drafting errors (which are not infrequent). In this context we are concerned that exclusions have been proposed whereby land in the B3 and environmental zones have been excluded. The drafting of these zones is not immune to errors. Importantly the values and exact boundaries of environmental areas are rarely known or plottable by survey at rezoning time.

We request that this clause be extended to cover all zones in the LEP.

7. Clause 38: Crown Developments

We note in subclause (12) reference to the Department of Natural Resources. This Department was dissolved in April 2007 and its functions variously absorbed by the new Department of Water and Energy or the new Department of Environment and Climate Change.

8. Clause 49: Car Parking in Liverpool City Centre

We note the definition of 'gross floor area' in this part differs from that in the Dictionary. There is no Clause in Part 7 that provides for any inconsistency between this part and another part of the LEP (As there is in Part 6 Clause 40). In any event we do not consider that a well structured statutory planning document should contain any inconsistencies.

We query the intention of Subclause (5). Is the LEP enabling residential development to be provided with no car parking? We suggest greater clarity is required if this is the intention.

9. Clause 60(2) Residential Flat Buildings

This clause is partly redundant and superfluous as it refers to 'Residential Flat Buildings' in the B1 – neighbourhood Centre and B2 – Local Centre Zones, where such use is prohibited in both zones. (See comments under Heading No.2).

10. Dictionary

We experienced significant difficulties in interpreting the range of permissible uses in each zone based on the Table of Uses in Clause 11 and the Dictionary.

To clarify matters, we were forced to refer to the Department's LEP Practice Note pn06-003 (Dated September 2006) to determine whether the permissibility of certain uses fell under a 'group term', whether they were prohibited by lack of reference in Column 3 (permitted with Consent) of the Table, or where they stood in relation to the definition of other, similar, uses. It is inappropriate that a reader of the LEP must refer to a professional practice note to determine the permissibility of a particular use. We request that the relationship between 'group terms' and the definition of specific uses be clarified in both the table in Clause 11 and the Dictionary to assist readability.

We note that the Draft LEP does not include the amendments to the Standard Template that were gazetted on 14 December 2007. The Draft LEP should be withdrawn, redrafted and re-exhibited.

In conclusion we have significant concerns with the clarity and operability of the Draft Liverpool Local Environmental Plan 2008. Our concerns become magnified when we recognise that the Draft Liverpool LEP 2008 represents one of the first LEPs to be exhibited that adopts the LEP Template format. We have a concern that the flaws contained in this Draft LEP will become manifest in the other LEPs to come.

We strongly request that Council, with the Department, withdraw the Draft LEP, redraft the LEP, taking into consideration our comments presented herein, and re-exhibit the LEP for further comment.

Whilst this action will necessarily slow the implementation of the new LEP format, we believe that it is of paramount importance that the first LEP is devoid of major flaws, errors and inconsistencies.

The investment in time spent in the review of the document will be a good investment for the development industry, local government and communities of NSW.

Yours faithfully

Urban Taskforce Australia

A handwritten signature in black ink that reads "Aaron Gadiel". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Aaron Gadiel
Chief Executive Officer