

14 September 2017

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Executive Director, Regions
Department of Planning and Environment
320 Pitt Street, Sydney NSW 2000

Attn: Brendan Metcalfe

Request for Planning Proposal Gateway Condition 2-6 Cavill Avenue, Ashfield

This letter has been prepared by Ethos Urban on behalf of Barana Group, as owners of 2-6 Cavill Avenue, Ashfield (the Site). It relates to a Planning Proposal prepared for the Site that, amongst other things, sought to rezone a portion of land from R2 to B4 under the *Ashfield Local Environment Plan 2013*. A key element of the planning proposal has been the use of the two fingers of land fronting the Avenue for vehicular and pedestrian access (refer to **Figure 1** and **2** below).

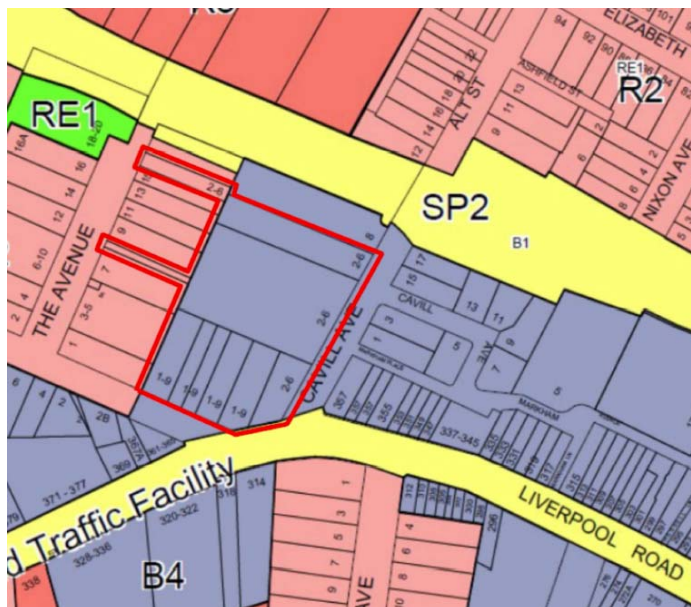


Figure 1- Extract of the existing zoning map, with the Site outlined in red

Source: Ashfield LEP 2013 + Ethos Urban

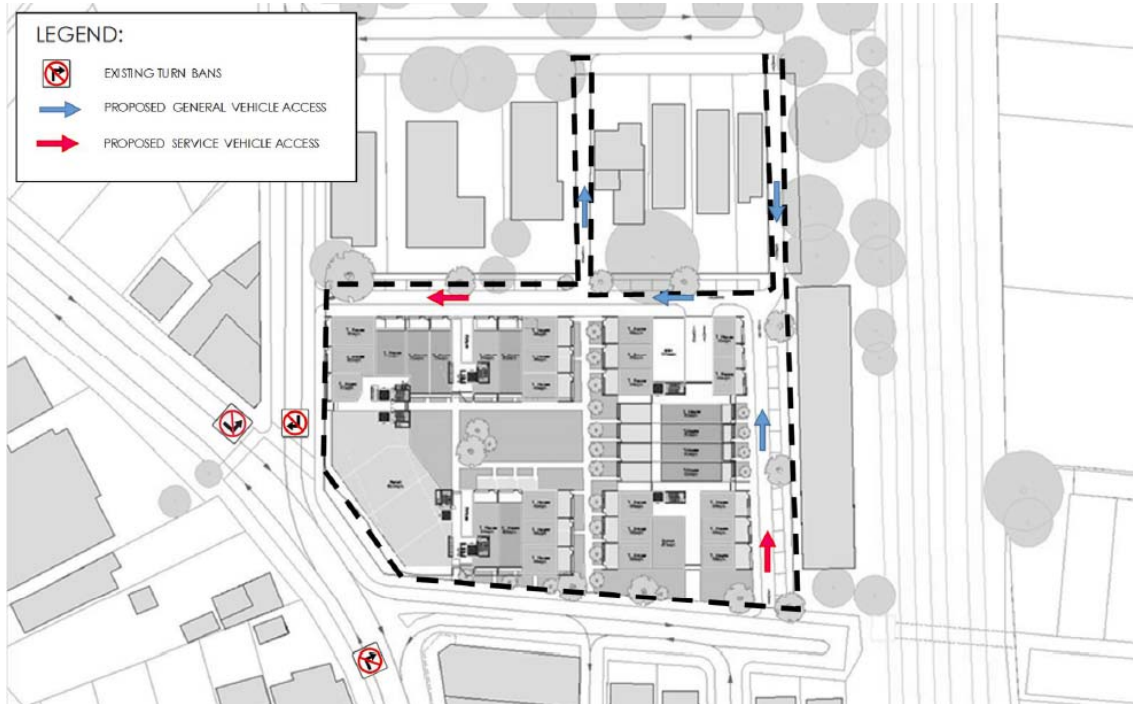


Figure 2- Proposed vehicle access arrangements

Source: The Transport Planning Partnership

Subject Land

The portion of the Site referred to above as these fingers is presently zoned R2 is being used as through-site links, which allows access to the existing commercial buildings on site and movement between The Avenue and Cavill Avenue (refer to **Figure 3**). They are not currently developed with buildings, and owing to the size of land, do not present any realistic opportunities for future development of buildings. It is intended to retain these links for vehicle and pedestrian access through any future redevelopment of the Site.



Figure 3 – Existing through-site links used for vehicle access from The Avenue to Cavill Avenue

Background

In December 2016, Barana Group lodged a preliminary Planning Proposal with Inner West Council, which partly sought to rezone the existing R2 Low Density Residential portion of the Site, to B4 Mixed Use commensurate with the remaining Site.

On 25 July 2017, Inner West Council then resolved to forward the Planning Proposal to the Minister of Planning for a Gateway Determination in accordance with Section 56 of the *Environmental Planning and Assessment Act 1979*, subject to the recommendations outlined in their report. One of these recommendations was to retain properties off The Avenue as “zoned R2- Low Density Residential to match the character of the street and present building typologies. “Roads” are permissible in an R2 Zoning and so these properties will be able to use this land for access to The Avenue if required.” Accordingly, the Planning Proposal was amended to remove references to the proposed rezoning.

The Permissible Use of the Land

Whilst we have no objection to preserving the R2 zoning for these portions of the Site, we are concerned that there may be legal and permissibility issues that may arise in the future if not addressed now in the planning proposal stage. As the Department is aware the Court has held in cases such as *Site Plus Pty Ltd v Wollongong City Council* [2014] NSWLEC 125, and *Chamwell v Strathfield Municipal Council* [2008] NSWLEC 4, that a private access road takes on the character of the development it services and is not defined as a ‘road’.

Accordingly, the through-site links can only be permissibly used for vehicle access if the land use zone also permits residential flat buildings, shop top housing, commercial tenancies etc on this portion of the Site. Under the Ashfield LEP 2013, each of these uses are prohibited within the R2 zone and as such the through-site links cannot be used to permissibly access development on the remainder of the Site. Accordingly, we would welcome further investigation into an alternative land use (i.e. B4) or site-specific provision enabling a private access road to permissibly use these existing through-site links on the site.

Options Analysis

The following options were considered to rectify this permissibility issue when drafting the initial Planning Proposal:

- **Option 1 - Rezone to B4** – this represents the simplest and most comprehensive solution, because it would ensure that any use permitted on the remainder of the Site under the B4 zone, could also be accessed through these through-site links. In view of the scale and location of these sections of the Site, there isn’t any realistic opportunity to build on these portions of land as a result of the rezoning.

- **Option 2 - Schedule 1 Additional permitted uses** – a site-specific provision could be included in Schedule 1 of the Ashfield LEP 2013 allowing for specific uses on these portions of Site, or it could expressly permit any development for the purposes of access (private or otherwise) to development on the remainder of the Site zoned B4.
- **Remove the through-site links** – if no amendment is supported, the existing through-site links will have to be removed. This would be a poor outcome on the grounds of vehicle circulation and general permeability. Both Council and the Architectural Excellence Panel were supportive of the retention of these through-site links, which tie in with public domain improvements set to be commenced by Council. Council's Traffic Engineer also raised no objection to the Proposal, noting that the development could achieve adequate existing vehicular access off Cavill Avenue and The Avenue.

Conclusion

Accordingly, we request that the Gateway determination stage consider how a private access road can be permissibly created on these through-site links, potentially through a rezoning or a site-specific provision in Schedule 1 of the Ashfield LEP. This amendment could ensure that the existing vehicle access points used by the commercial towers are maintained and improved as part of the future redevelopment of the Site. Given the scale and location of these sections of the Site, there wouldn't be any realistic opportunity to build on these portions of land.

Yours sincerely,



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