



Ref: 00010423

5th July 2010

Ms Carol Pereira Couch
Joint Regional Planning Panel
Level 13, 301 George Street,
SYDNEY NSW 2001

Attention: Ms Couch

Thank you for the opportunity to provide the JRPP with our response to the issues raised in Leichardt Municipal Council's assessment report for the Balmain Leagues Club Redevelopment (your ref. 2009SYE007). We are concerned that a number of findings in the report are inconsistent, inaccurate and not reflective of discussions and agreements reached with Council officers and the Design Review Panel over the nine months of negotiations since the initial submission in September 2009.

We have provided some background information below on the project history and development application process followed by a section addressing Leichardt Municipal Council's Planning Report where we provide a response to each of the specific items listed in Item 9: Recommendation, page 155 of their report. This response has been prepared by Moss Akbarian and Jenny Watt of Property and Land Consultants, Stuart Macdonald of SJB Planning, Nick Byrne and Koos deKeijzer of dKO Architecture, Jason Veale and Gayle Greer of AECOM and Bruce Masson of Halcrow.

Background History

1. Master Plan Submission

This development has been lodged pursuant to granting of the site specific LEP gazetted on 29 August 2008 approximately three years after the lodgement of the Master Plan by the Balmain Leagues Club ('BLC') for specific rezoning in 2005.

During that period Council resolved to:

1. Prepare briefs and engage independent persons to review Urban Design Issues associated with the proposal and to review traffic and economic issues (13 December 2005)
 2. Commission an independent traffic study to comprehensively look at the traffic implications on the area (28 February 2006).
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3. Provided its support in principle for the Redevelopment of the Tigers Master Plan and asked for reduction of retail and residential components (22 August 2006).
 4. Reaffirm its in principle support for the Redevelopment of the Tigers plans which are within the Master Plan submitted by Tigers, engage consultants with expertise to assist to determine the level of development that is required to achieve an economic viability on all sides within the Master Plan (26 September 2006)
 5. Table the NSW Department of Education and Training's ('DET') concern regarding the placement of the ramp to the pedestrian bridge and obtaining land owner consent from DET for the use of the Rozelle Public School Land and resolved to defer the LEP and DCP for further discussion to address the following (8 May 2007):
 - Floor space ratio and overshadowing
 - Traffic impact
 - Onsite parking
 - Carbon neutrality of the proposal
 - Community benefit of the proposal
 - Urban design in relation o the conservation area
 6. Request Arup to construct a traffic model to determine traffic impacts based on a broad network traffic model (14 August 2007). Also that the Plans submitted to Council on 23 July 2007 addressed Council's concerns with regards to overshadowing impact on Waterloo Street and improve the Solar Access to the public plaza area but raise concern about overshadowing of Darling Street. In that meeting Council resolved to place the LEP on Public Exhibition for 40 days to undertake public consultation during the exhibition period. Further sensitivity testing of the traffic model be carried out.

On 12 March 2008 Council considered the issues raised during the exhibition period between 26 September 2007 and 5 November 2007 (please refer to pages 15 – 16 of Council's report).

Council reduced:

1. FSR from 4.8:1 to 3.9:2
2. Car parking 622 spaces to 520 spaces
3. Residential from 18,561sqm to 13,794sqm
4. Retail 10,785sqm to 9,585sqm
5. Club 4,250sqm to 3,516sqm
6. Overall 35,216sqm to 28,515sqm.

The revised proposal:

1. Was based on the range of land uses located within the Norton Plaza Shopping Centre.
2. Was designed to limit overshadowing.
3. Adopted the minimum rates for onsite car parking in recognition of the sites proximity to existing public transport.

The revised rezoning proposal was exhibited between 9 April 2008 and 7 May 2008 and the Council considered the report containing issues raised in the submissions pursuant to that exhibition on 3 June 2008, those issues (pages 20 – 22 of Council's report).

As it may be observed from the above this project has been the subject of the most intense and massive scrutiny by the Leichhardt Council as well as the Department of Planning over the 3 year period prior to the approval and gazetting of the site specific LEP. During that period a number of major reports including geo-tech, various retail needs analysis and a major traffic study by Ove Arup commissioned by the Council at Balmain Leagues Club's expense were provided. The Council also insisted on, and got a, Voluntary Planning Agreement ('VPA') which amongst other things binds the applicant to build a pedestrian bridge across Victoria Road. As a part of this application Leichhardt Council demanded and received \$750,000 unconditional bank guarantee to secure the Applicant's performance under the VPA. The approved LEP also provided for specific height and bulk limits and areas for residential, commercial, retail and club uses.

2. Development Application

The Applicant has engaged a leading team of consultants with substantial expertise in their respective fields in major developments in this country to work on this project. Given that there was a site specific LEP in place for this project, we commenced consultation with Leichhardt Municipal Council represented by the Mayor and the Council planners prior to the documentation of the Development Application. From the very first meeting we sought and got assurances that should we stay within the limits set by the LEP, the Council will deal with our application in a fast and efficient manner within specific timetables (*email dated 9 February 2009 from the Mayor, Jamie Parker attached*).

Since then, we have designed and documented this project in full consultation with the Council Officers including the Council appointed Design Review Panel, consisting of Architects Peter Smith (Habitation), Phillip Thalys (Hill Thalys), Kerry Clare (Architectus) in the following manner.

Liaison with Council officers and Design Review Panel

- Weekly or bi-weekly meetings with LMC's assessment officers depending on their availability (approximately 20).
- Fortnightly meetings with Council appointed Design Review Panel with a total of 9 meetings.

At the conclusion of this consultation there were some minor areas identified that may require additional input but in summary the requirements/comments from the Design Review Panel were taken on board by the design team and the scheme substantially modified prior to submission. The design panel requested significant levels of detail in relation to facade design and public domain details, all of which was provided at the time of submission.

DA Submission

- 4 September 2009 – DA Submission
- 29 September 2009 – Council had reviewed all of the documentation, provided a 43 page letter covering 37 aspects of the project requesting additional and explanatory information covering many aspects of the project, including; Design Review Panel comments and other referral body comments (RTA, Energy Australia, STA)

- Major areas of concern related to traffic and parking comments, floor space comments and Design Review Panel comments
- 11 November 2009 – All information requested in Council's letter provided 29 September 2009 was provided to Council in the form of amended documentation and reports under cover of a letter detailing those items being addressed
- A number of specific responses were provided progressively on the 16 October, 23 October, 5 November and 11 November 2009. It was provided in this manner to ensure referral bodies could review information as it was provided.
- Design Review Panel meeting held on the 7 January 2010. At this meeting there was in principal agreement that the proposal could be notified and that all items could be addressed prior to notification. Minutes were issued identifying additional information requested and this information, principally additional facade details.

Notification

- Leichhardt Municipal Council issued 20,000 notification letters on the 21 January 2009.
- Notification material including updated drawings and reports in response to LMC and DRP comments was provided to Council on the 20 January with most information unchanged since 11 November 2009.
- LMC became aware that the correspondence email address provided by them in their notification letter was incorrect. Subsequently LMC issued another letter to 20,000 residents with the correct email address and extending the notification period.
- Applicants examined the notification letter which also contained numerous inconsistencies including incorrect notation of buildings (A, B, C – clearly notated on drawings) and incorrect description of the number of units. This had come about as project statistics were amended during the October/November response to Council queries and Council had referred to the original project statistics included in the 4 September submission and not the later versions.
- LMC became aware of these errors and different options were discussed to remedy the incorrect notification period end and starting again, making amendments to the application to ensure there was substantial reasoning for notification to cease. In the end the notification period ran its course during which RTA and STA came back with further demands.
- In February RTA provided advice on the pedestrian bridge over Victoria Road and requested amendments to the submitted design (project bridge documentation had been available since December 2009).
- 18 February 2010 – LMC requested further additional information be provided having conducted yet another review of all the DA documentation available since 11 November 2009.
- The 18 February letter included numerous new items not raised previously by Council including:
 - Requests for Geotechnical Report (not requested in any previous correspondence or meeting from/with Council officers) – refer commentary below
 - Amendments to acoustic reports (available since November 2009)
 - Additional information requested by Social Impact Assessment (provided in October 2009)
 - Amendments to the project design (new request by Council officers and not the design review panel) and never raised / requested previously.

- Numerous **VERY** minor amendments to the plans and elevations (available since November 2009) which would normally be addressed for construction certificate documentation such as direction of door swings on elevations
- Council has made an extraordinary request for us to identify fit out plans of the future Club in response to a submission that questioned whether the Club is going to be rebuilt (requested to 3 March 2010). **The council planners have used this submission as a reason for rejecting the Development Application**
- The applicant responded to the majority of issues with amended plans, elevations and sections on the 22 February 2010.
- LMC subsequently reviewed documentation and provided an amended letter (26 February 2010) with most architectural items addressed. Amendments to other reports were pending. This letter also contained further items requiring resolution such as additional RTA and STA referrals.

Post Notification (notification closed 1 March 2010)

- Of the 20,000 letters issued to residents, approximately 230 submissions were received. Of the submissions there are approximately 200 objections and 40 positive recommendations, of the 200 objections there were only a few referring to relevant planning matters of which no more than 10 related to credible planning issues. Council has also received 800 signatures in support of the development. In addition to the above in excess of 90% of the representative members of Balmain Leagues Club had already endorsed the redevelopment of the Club as proposed by this development application.
- RTA and STA referral letters have been received with LMC having requested the applicant address these items.

The applicant continued working with Leichhardt Council in an attempt to accommodate the majority, if not all of Council's requests. We have therefore provided the Council with substantial information over and above the usual requirements at the DA stage, those include the following:

1. Substantially more detailed in information including 170 drawings
2. Additional borehole log
3. Agreed to provide Inverted storm pipe levels in Victoria Road delayed due to difficulties in closing Victoria Road
4. The internal layout of the club and restaurants
5. Fire engineering concept design report

Initially the Council officers were working with our team of consultants with a positive approach towards achieving a recommendation for approval. To their credit, the Planners and the Mayor have said that they will approve our application provided that it stays within the approved LEP at every public meeting that they were present. At all those meetings either Ms Karen Jones or Mr Peter Conroy explained the council's acceptance of the additional GFA and the additional residential floor due to the fact that one dealt with below ground issues and the other was within the approved envelope. In a meeting with the Mayor, the General Manager of the Council, and the directors and the project manager of the Applicant the council's Director of planning Mr Peter Conroy confirmed that subject to the Applicant providing the council with the result of an additional bore hole result, inverted pipe level in Victoria road, responded to the Acoustic report and obtained owner's consent,

the council planners will recommend for approval of the DA. On a number of occasions the council planners confirmed that they only had minor issues relating to SEPP1 and no issues with GFA and extra Floor.

However, the Deputy Mayor, Ms Michele McKenzie, who has consistently objected to this development is actually trying to derail this application in spite of the LEP approval (*please find attached the Inner West Courier letter from Councillor McKenzie dated 28 January 2010 and letter from David Trodden along with the response from Council*). (ATTACHEMENT 1)

According to the media reports the Leichhardt Councillors, led by Councillor McKenzie were adamant on blocking this Development. They commenced by challenging the Ove Arup report through a \$70,000 on a new traffic study based on traffic on a Saturday morning on Darling Street as opposed to the LEP traffic study which is based on Thursday evening traffic on which base our Development Application has been assessed. Ironically, Ove Arup who were undertaking the new study are the same people who have decided on Thursday's being the high traffic period in their original assessment. According to the media the Councillors then commenced an active campaign to derail months of negotiations and in principle agreement with Rozelle Public School and DET for obtaining rights over an unused part of the School land to use as a ramp for the very pedestrian bridge that the Council has demanded the Applicant to build under the VPA and after receiving the \$750,000 Bank Guarantee from the Applicant. (*please find attached the article in the Inner West Courier 27 May 2010 relating to 'Tigers School Land Battle'*).

As a result the Applicant became seriously concerned that the Planners who were assessing and writing the report on our application were unduly exposed to these Councillors and their various attempts to block this Development from proceeding. For the first time, the Council Planners indicated that they may recommend the application for rejection since 7th July had been set for the JRPP meeting not giving them enough time to properly assess the application. This was alarming because the Development Application was lodged with the Council in September 2009, there were b three advertisements each to 20,000 residents, three public meetings, and the Applicant had been in continuous liaison with the Council for the last 10 months.

The Applicant approached the department of planning and expressed serious concern about the change in the conduct of the planners. They were no longer as readily available for consultation as in the past nor would return telephone calls as promptly as before.

The Applicant entered this process relying on the Government's undertaking that JRPP is set up to assist in a more independent and expeditious decision making process of Development Applications. Our concern was that those undertakings have not materialised when it comes to our application. With Council having two representatives on the JRPP and Council Officers only, being invited to brief and liaise with the JRPP, we were left in an unenviable position. The Planners advised the Applicant's representatives that it had to wait in line with the objectors in order to make a very limited representation to JRPP on the night that they convene to make their decision. That was not a fair position for the applicant who has gone through nearly 5 years of continuous work and millions of dollars in expenditure to arrive in this position. The Applicant's position was not helped by the fact that DRP did not ever provide its report to the Applicant as it clearly undertook to do, and the council Planners failed to provide a copy of their report until the very last opportunity using Ms Jones's absence for two weeks during the last four as an excuse.

The Applicant is now left in an unenviable situation when it has to hastily respond to a recommendation for refusal by the council officers who have unfortunately used all kind of arbitrary, subjective and baseless reasons to block this approval together with the apparent attempt by the councillors to do so. Majority of reasons for refusal have either been used in their final report for the first time or are against the agreed positions arrived at after months of consultation.

Some very obvious examples are as followed:

Bulk, Height, Scale

For the first time the officers have raised this issue as a concern despite the fact that this matter has been extensively debated by the council in the LEP Stage prior to its approval. The officers are deliberately ignoring the approved LEP in line with Councillor's McKenzie's approach. Please refer to the extracts of the council resolutions during the LEP process provided above

Car Parking and Restaurant areas

Despite the council's determination in March 08 to reduce the car parking from 622 to 520 based on Norton Plaza (*please refer to notes on meeting of 12 March 2008 – first paragraph after Item 6, page 2 of this report*), the council planner Mr Conroy picked up an arbitrary allocation of restaurant areas to reduce the car parking to 466 drastically reducing the car parking in line with the publicly declared Councillor's intent on reducing the car parking on this development. The planners have now for the first time recommended refusal on the basis that even the car parking based on their written calculations should be further reduced.

3m dedication on Victoria Street frontage

The council officers have recommended refusal on the basis that one member of the Design Review Panel, Mr Phillip Thalys nominated the dedication of a 3m strip of the site along Victoria Road, using the trees as an excuse and not providing any evidence in support whatsoever. It is important to note that Mr Thalys is neither authorised or possess the expertise to do so. He was not there as a landscape architect. Council's recommendation for refusal is clearly against all declared positions by Ms Jones and Mr Conroy until the publication of these reports.

Pedestrian Bridge

The situation is simple. Council makes the applicant sign a VPA to build a bridge despite a clear knowledge of the difficulties. No one including the council want the bridge. RTA pushes the ramp to the school land. Councillors together with the Minister of education try to sabotage a major development on nearly 2 acres of land for a 10m² of land and 85m of airspace. With respect the Applicant submits that this is the reason why these applications have been allocated to JRPP as opposed to the Councillors.

VPA

The Council officers recommendation that the Development Approval should be deferred until details of every item in the VPA are provided and/or agreed upon contrast the provisions of the VPA and will only result in delays to the Development Approval. This is in a situation where Council has entered into legal documentations with the Applicant and has insisted and got an unprecedented \$750,000 bank guarantee from the Applicant.

Conclusion

As stated above, the Applicant has relied on the JRPP system in arriving at a fair and unbiased assessment based on the merits of its application, it is abundantly clear that such assessment would not have been obtained from Leichhardt Council.

Within the limited time available, we have provided a response to the Council officers objections by our Consultants, including; Mr Stuart Macdonald, himself an ex-Director of Planning of Leichhardt Council and a person who has been involved in this process from the very outset.

We are extremely grateful to the JRPP for the opportunity to provide this report. We respectfully request that the JRPP disregard the Council Planners recommendations for refusal of our Development Application and approve the Development Application in line with the recommendations of our Consultants.

Yours sincerely



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Council recommendation

Pedestrian bridge

The pedestrian bridge is a requirement imposed on the applicant pursuant to the Voluntary Planning Agreement as a community contribution. In our meetings, the Council officers, the mayor, RTA and specifically Council's Design Review Panel have declared the pedestrian bridge to be undesirable (please refer to the panel's advice in the last paragraph of page 47). The applicant has acted upon its obligation to comply with the provision of the bridge pursuant to its obligations under the VPA as there are few feasible avenue to amend or change the VPA.

In that regard the applicant has:

1. Presented the Council with original design of the footbridge with the ramp on the Council footpath
2. Changed the footbridge design in response to a requirement by RTA in February 2010 for standard design bridges
3. Revised the design of the ramp access to the bridge by moving it back to the unused School land along Victoria Road, due to an RTA requirement for a minimum 2.5m wide bicycle and pedestrian path
4. Engaged in discussions with the School Principal and representatives of the Department of Education and Training which included a number of meetings over a 9 month period, at which various details of the bridge were presented, number of site inspections undertaken.
5. Received verbal consent from the School and the representative of the Department to the construction of the footbridge over the School land, subject to the acceptance of the commercial offer to the School and the Department from the applicant.
6. Issued a commercial offer for consideration by the School and the Department (attached).

However, the Leichhardt Councillors lead by Deputy Mayor, Ms Michelle McKenzie have embarked on an unfair campaign in their attempt to derail this application and the gazetted local environmental plan to which she was an objector in the previous Council (please find attached the Article in the Inner West Courier 27 May 2010 'Tigers School Land Battle').

As a result the Minister for Education, herself an objector to this application, (please refer to the attached) intervened in the approval process by dismissing the negotiations with the DET's management and the School Principal as a mistake. The applicant then engaged in meetings and correspondence with the Minister and the P&C representatives. The Minister has finally declared that she would grant consent subject to P&C approval and the commercial offer.

Please find attached the following:

1. Our letter in response to her objections
2. Letter responding to P&C
3. Letter dated 29 June 2010 to the Minister
4. Ministers letter to Tim Camiller
5. Our response to the Minister

It is important to note that prior to the approval of the LEP, the Council was aware of the difficulties in obtaining the approval for the ramp over the School land (*please refer to Item 5 page 2, resolution 8 May 2007, above*). That is why the VPA does not impose a condition on the applicant to provide the bridge until the issue of the occupation certificate for the project otherwise, the completion of the project in order to allow all these negotiations to complete.

We respectfully submit that the ownership of the land for the ramp to the footbridge is not part of this development application and as such the application should not be subject to the land owners consent. The applicant has an obligation to deliver the bridge, not dissimilar to the obligation under the same agreement under the VPA to contribute to upgrading of roads and footpath including the Western side of Darling Street for which no owners consent is required. Furthermore, this is reinforced by the fact that it is possible to find an alternative option for the bridge, prior to the issue of the occupation certificate.

The Planning Report

The commentary below provides the members of the Joint Regional Planning Panel a summary on each of the points in Item 9: Recommendation, page 155 of Council's assessment report. Also attached is a summary programme identifying the consultation process undertaken with Council officers by the development design team.

Item 1 a

The proposal does not satisfy, or has not demonstrated compliance with, the provisions and objectives of Clause 50(1) of the Environmental Planning and Assessment Regulation 2000 on the following grounds:

a) The proposal involves the construction of a pedestrian bridge that forms part of the Voluntary Planning Agreement associated with the development site, partly encroaching the Rozelle Public School site at 663 Darling Street, Rozelle, and the consent of the owner of that land, the Department of Education and Training, has not been obtained or provided;

As we have previously outlined the VPA requires the inclusion of the pedestrian bridge from the development site across Victoria Road.

The development application includes the required bridge.

The design of the bridge, including the areas and widths required for pedestrian access and a ramp, on the north-eastern side of Victoria Road, has been dictated wholly by the Roads and Traffic Authority.

The design requirements of the RTA have changed since the time that the site specific LEP for the subject site and the associated VPA were finalised. In particular improvements to Victoria Road associated with the Iron Cove Bridge widening, the introduction of priority bus lanes and the inclusion of a defined bicycle lane have all occurred since the time of the LEP and VPA.

As a result, the agreed design of the bridge, including the access ramp and pedestrian path along the north-eastern side of Victoria Road has altered. Effectively, the area previously available for the bridge and ramp has been squeezed to the point where additional width is required. This is all a result of attempting to meet the inflexible requirements of the RTA, post the signing of the VPA.

As the RTA is unwilling to negotiate an alternative solution, the applicant has sought access to a sliver the adjoining Rozelle Public School land, in order to try and meet the demands of the RTA and the terms of the VPA.

Despite all genuine efforts to attempt to meet the requirements of the VPA, the NSW Department of Education and Training has yet to provide owners consent to the inclusion of the small section of school land. The applicant has made it clear that it is will meet full commercial terms for the land in question.

The applicant is now in a position where, due to no fault or lack of effort, it is unable to meet the terms of the VPA via this DA.

Item 1 b

The proposal does not satisfy, or has not demonstrated compliance with, the provisions and objectives of Clause 50(1) of the Environmental Planning and Assessment Regulation 2000 on the following grounds:

Inadequate information and detail has been provided by the applicant to determine exact occupancy rates for the club and specialty components identified as restaurants; and

The development application seeks consent for the land uses of leagues club and restaurant spaces, as nominated on the amended drawings.

The location of these land uses are included in order that it is clear where these future uses will occur. The application also nominates that the occupation and fit-out of each of these future uses will be subject to individual development applications.

In the case of the leagues club it is obviously important to include details of the location and allocation of space, as it is recognised that this use must be included on the site.

Reliance on future detailed development applications for the fit-out and occupation of each of these premises is considered a sensible and reasonable approach. For example the Balmain Leagues club are using a separate architectural team that is developing the design of the new club premises. Similarly, it is reasonable to expect that future tenants of individual restaurant and café space will make individual applications reflecting their specific circumstances.

The above approach is entirely consistent with the staged development of large development sites accommodating a range of small and large uses.

Importantly, the DA assessment report acknowledges that the allocation of retail space for future restaurant use is acceptable (page 104 of the report), that there is sufficient car parking provided to meet the range of land uses (page 127).

The future DAs for the detailed fit-out and occupation of the leagues club and the fit-out and occupation of individual restaurants will address the provisions of clause 50(1) of the EPA Regulation.

The independent building assessment report commissioned by the Council and dated 22 June 2010, states:

Based upon experience with similar compliance issues associated with developments of comparable scale and complexity, it is the author's opinion that from a design point of view, it is possible to fire engineer alternative solutions that would enable the relevant BCA Performance Requirements to be satisfied. Such approach is unlikely to result or require wholesale design changes that would

significantly alter or impact upon the configuration of the building. (page 6 Environet Consultancy Pty Ltd BCA Compliance Assessment Balmain Leagues Club 22 June 2010).

It is clear that there is no BCA impediment to the proposed land uses being approved, subject to future fit-out and occupation details.

This matter is readily capable of being addressed by way of inclusion of a condition of consent requiring the lodgement of individual development applications for the fit-out and occupation of that space nominated in the DA for future use

Item 1 (c)

The proposal does not satisfy, or has not demonstrated compliance with, the provisions and objectives of Clause 50(1) of the Environmental Planning and Assessment Regulation 2000 on the following grounds:

c) The lack of consistency between plans, elevations and sections and submitted supporting information and documentation.

There have been numerous discussions with Council assessment officers specifically relating to the adequacy and accuracy of information provided to Council for assessment. There have been a series of council memos requesting additional information or requesting the applicant to amend documentation. Generally these requests identified further detail or clarifications required and in some cases items of error in the documentation. The requested documentation was provided to council officers on every occasion.

We draw your attention to page 133 of the report where council officers describe some of the deemed inconsistencies. The following is only a sample of council requests:

Item 2 (a) –

a) Floor plans that do not nominate where sections run through the building e.g. Drawing DA.153F depicts Sections T, U and V, however, these Sections are not identified on various floor plans;

Sectional notation not described on floorplans. Drawings have been provided to illustrate elevation information and therefore sectional markers have not been provided. This is not an inconsistency or an error.

Item 2 (b) –

The design, materials and heights of fences and gates adjacent to the car parking entrances to Victoria Road and Waterloo Street as identified on Basement 1 floor plan (Drawing DA.07M) are not identified on elevational drawings (e.g. Drawings DA23F and DA26F);

Fences and walls and all elements discussed in council's report are either illustrated correctly or obscured by other portions of the elevation. This is not an inconsistency or error.

Item 2 (c) –

The table identifying car space allocation and numbers on the Basement 3 floor plan (Drawing DA.05M) does not reflect the floor plans (e.g. table nominates 21 displaced spaces, but only 6 nominated on the floor plans.)

The total number of carparking spaces illustrated on this level is correct and tabulates with the total allowed for under the Development Control Plan. The fact that the spaces are not allocated on the plan is irrelevant to the assessment. The retail spaces also aren't shown on the plan at all and neither are the spaces on the other levels of basement carparking. This is not an inconsistency or error.

Item 2 (d) –

Drawings DA.10L-DA.20L (Levels 2-12) provide note/s reading "Refer to DWG... for additional detail" i.e. the drawing number is not provided.

The cross referencing is not complete but the information contained on this drawings is comprehensive and concise. This notation simply refers to a drawings of the building floorplates at an increase scale (as requested by the design review panel 4 days prior to the submission). This is not an inconsistency or error.

Item 2(e) –

The bottom right hand corner of Drawing DA.22F (NW Elevation) reads "NOTE – REFER TO DA104 FOR DETAIL OF BUILDING C NORTH + WEST ELEVATIONS" – REFER TO DA105 FOR DETAIL OF BUILDING B WEST ELEVATION, however, Drawings DA104 and DA105 have not been provided.

Drawings DA 104, as was outlined on the titlepage was a superceded drawing and DA 105 provided to council officers earlier. This is not an inconsistency or error.

Item 2(g)

Drawing DA.24F (Rear Lane) – the widths of basements 3-5 as depicted on this drawing are inconsistent with the floor plans (approximately 2.4m difference); basement structural supports that are identified on the floor plans (e.g. at basements 2, 5 and 6) as running through this section are not depicted on this drawing.

The first part of this comment is blatantly incorrect where both plan and section are correct and consistent. The fact that basement structural supports are not illustrated on plan is irrelevant as the structure is adequately detailed on the plan. To include all structural supports in all sections would mean basement section would become completely illegible. This is not an inconsistency or error.

The above is only a sample of the described inconsistencies. There are a total of 170 drawings available for council officers to comment upon. This is an extremely complex building and in our view illustrated adequately on the documentation. For council officers to determine that the level of information is inadequate is spurious at best. We cannot support council officer's assertion that the level of information is inadequate.

We consider that Council's demands for documentation and detail have exceeded that normally provided as part of a Development Application particularly in relation to Building Code of Australia compliance. We have, however, made every effort to develop the level of requested detail to satisfy council officer demands.

Item 2

Some of the Material Public Benefit Contributions of the Voluntary Planning Agreement relating to the site have not been included in the Development Application, and which are reiterated in the site specific controls of the Leichhardt Development Control Plan 2000.

We have provided all the material in relation to the VPA as and when required by the council including an unprecedented \$750,000 bank guarantee prior to the determination of the DA and many years before any obligation becomes due. We note that this is the council has taken this approach despite repeated confirmation by Ms Karen Jones that all of these items will be conditioned as has been stated in Council's own correspondence dated 23rd of June 2010 (File Ref F07/00203). Please attach

Resolution: Consent Authority to Condition

Item 3

While the proposal involves the construction of a pedestrian bridge as required by the Voluntary Planning Agreement relating to the site, the consent of the owner of No. 663 Darling Street, Rozelle in which the bridge encroaches has not been obtained or provided, which means that all the Material Public Benefit Contributions of the Voluntary Planning Agreement can not be met based on the submitted proposal.

Please refer to discussion above relating to the pedestrian bridge. (Item 1(a))

Item 4

The proposal breaches the total, retail and residential floor space ratio development standards and the number of storeys development standard that apply to the site pursuant to Part 3(4) of the Leichhardt Local Environmental Plan 2000, and the accompanying State Environmental Planning Policy No. 1 Objections have not established that compliance with the standards is unnecessary or unreasonable, nor have they established that the proposal meets the underlying objectives of the site specific planning controls contained in Part 3(2) of the Leichhardt Local Environmental Plan 2000 and Part D of the Leichhardt Development Control Plan 2000.

The SEPP 1 specifically relating to FSR and building height have been the subject of a number of meetings, letters and drawings requested by the Council officers and provided by the applicant. This issue has been at the forefront of our dealings in the assessment process. Council planners have declared their approval of the SEPP1 application and have only required minor additional details until this report.

Council officers have in fact confirmed approval of the additional GFA and number of stories in every public meeting and explained with reasoning outlined as "the additional areas are affecting below ground areas and additional floor being within the LEP height limit."

Number of storeys

The breach of the storeys development standard is in relation to building A, a 13 storey residential tower. The relevant development standard contained within Leichhardt Local Environmental Plan 2000 states:

(4) A consent under subclause (2) must not be granted if the development will result in any of the following:

(h) a building height on the site exceeds a reduced level of 82.0 metres relative to the Australian Height Datum or exceeds twelve storeys.

The DA does comply with the development standard maximum height of RL 82.0 AHD, as acknowledged in the assessment report.

A detailed SEPP 1 objection in relation to compliance with the storeys development standard was lodged with the application.

There is no objective stated within LLEP 2000 in relation to the storeys development standard. The site specific provisions for the subject site do include objective 2 (c), as follows:

(2) Despite any other provision of this Plan (except clause 19 (6) and (7) or a provision of this Part), consent may be granted for mixed use development on the site, but only if, in the opinion of the Council, the following objectives are met:

(c) the development is well designed with articulated height and massing providing a high quality transition to the existing streetscape,

The objective refers only to building height. It is reasonable to assume that the objective of the standard is to limit the height of the building in order to minimise the potential amenity impacts from a tower form and to reasonably control the massing of a tower form.

The site specific DCP provisions within Leichhardt Development Control Plan 2000 include:

D1.5 Layout and Massing

Objective

Enable the redevelopment of the site whilst minimising impacts on the surrounding area.

Rationale

Development within the Balmain Leagues Club Precinct represents a varied building scale from the surrounding area. In facilitating this development, it is integral that the design process seeks to manage and mitigate impacts on surrounding properties.

Design or Planning Principles

The scale, bulk and placement of buildings should be designed with reference to the following:

- *Scale and Form: where the height and scale of development departs from the scale and form of the surrounding area, transitional elements, such as setbacks and variable heights are to be used to reduce impacts, particularly along Waterloo Street and to the rear of the Darling Street properties.*

Again, the DCP provisions refer only to building height, not to the number of storeys.

It is clear that the building layout and massing provisions of the DCP are concerned principally with minimising impacts on surrounding properties. The assessment report (page 100) states that the development complies with this provision. The report also comments, at page 101, that the proposal does not overshadow adjoining properties and meets the solar access provisions of the site specific DCP.

The assessment report, at page 79 states:

Having regard to the above, Council can not concur that the application complies with the objectives of the number of storeys development standard.

This statement is incorrect, as there are no specific objectives relating to number of storeys. The only associated reference within the LLEP2000 and LDCP 2000 is to building height.

The Council's independent BCA assessment report does not take issue with the proposed floor to ceiling heights of 2.7 m and floor to floor heights within tower building A. On the contrary the independent report states that the development is capable of meeting the relevant BCA Performance Requirements and that such an approach is unlikely to result or require wholesale design changes that would significantly alter or impact upon the configuration of the building. In other words there is no technical building reason why the 13 storeys cannot be contained within the maximum building height of RL 82.0 AHD.

In summary, tower building A meets the maximum building height development standard of RL 82.0 AHD. The tower also complies with the prescribed building envelope contained within LDCP 2000. In complying with this maximum building height and building envelope, the assessment report, principally at pages 100-101 makes it very clear that there are no adverse amenity impacts arising from the building height. The proposed building height meets the site specific LEP objective in relation to building height and as such strict compliance with the storeys development standard is considered unreasonable and unnecessary in this case.

Floor space ratio

In relation to the non-compliance with the floor space development standard, again a detailed SEPP 1 objection to compliance with the standard was lodged with the application.

Under the LLEP 2000 gross floor area is defined as:

Gross floor area means the total area of a building's floorplates, measured between the outer edges of the outside walls or the centre line of any party wall, and includes mezzanines, attics, internal car parking spaces, garages, lofts and studios. It does not include projections outside the external walls of the building, paved areas, voids or basements used for car parking, where the car parking area does not protrude more than 1 metre above ground level.

The definition clearly excludes basement car parking. It is considered that this LLEP 2000 specific definition of GFA was prepared at a time and for circumstances whereby the only anticipated ancillary uses below ground level would be car parking – hence the exclusion from GFA.

The Leichhardt planning controls contained within LLEP 2000 and LDCP 2000, deal almost exclusively with residential development. There is very limited control in relation to mixed use and non-residential development, as these forms of development are much less common. The response to such development has been to prepare site specific controls, as occurred in this case. When preparing the controls, including the site specific provisions, the Council clearly only took into account the acceptability of the envisaged floor space and built form above ground level. It was this above ground floor space calculation that lead to the floor space ratio controls for the site.

This is acknowledged on page 81 of the assessment report:

Comment: The applicant is correct in suggesting that the proposed FSR is generally in accordance with the scale of development considered during the course of developing the amendment to LEP 2000 – which facilitates the current application. A review of Council documents indicates that the FSR was miscalculated during the lead up to Council's August 2007 decision. This miscalculation was carried over into subsequent Council decisions.

As is clear from the above statement from the Council, the quantum and form of floor space, and the resultant form of development contained in this DA *is generally in accordance with the scale of development considered during the course of developing the amendment to LEP 2000.*

The "additional" floor space, over and above that considered acceptable by the Council at the time of agreeing to the FSR controls for the site, is contained wholly below ground and is associated only with ancillary space to the permissible land uses. It has no bearing on the scale of development above ground, about which the assessment officer has acknowledged is consistent with that envisaged at the time of drafting the controls.

As acknowledged on page 75 of the assessment report, the ancillary space is made up of below ground areas including plant rooms, pedestrian circulation space within basements, stairwells, passageways, lift shafts, on site detention tanks, garbage rooms, loading dock area, substation etc.

The basement inclusions were known about by the Council at time that the FSR controls were set for the site and the Council (wrongly) assumed that these areas were not gross floor area.

In the event that the Council requires some design amendments to the built form above ground, such as amendments to the “infill” component along Darling Street, these are matters that are capable of being dealt with by appropriate conditions of development consent and are not a reasonable argument to reject the SEPP 1 objection.

In commenting on and rejecting the SEPP 1 objection the assessment report, at page 76 states:

Comment: Assuming an amended design which satisfies floor space ratio whilst accommodating all of the gross floor area requirements of a mixed development (inclusive of ancillary floor area), it is likely that such a design would result in reduced massing as a portion of this gross floor area would inevitably be contained within basement floor levels, which then can translate into improved outcomes for the amenity of adjoining properties.

In particular, impacts on neighbouring properties in Waterloo Street and shoptop flats along the northern side of Darling Street, could be further ameliorated.

It is difficult to accept the suggestion above that a reduction in the gross floor area within the basement can in any way translate into improved outcomes for the amenity of adjoining properties. This comment is demonstrably incorrect.

With regard to ameliorating impacts to shoptop flats along the northern side of Darling Street and properties in Waterloo Street, the assessment report makes no claim that these properties are adversely affected by the proposed development. There is no reference to shoptop housing in Darling Street suffering any amenity impact. On the contrary, the report states the opposite. At page 101 of the report makes it clear that there is no unacceptable overshadowing to adjoining properties. At page 100 the assessment report states:

Part D1.5 - Layout and Massing

The objective of this control is to enable the redevelopment of the site whilst minimising impacts on the surrounding area.

Design or Planning Principles

- *Scale and Form: where the height and scale of development departs from the scale and form of the surrounding area, transitional elements, such as setbacks and variable heights are to be used to reduce impacts, particularly along Waterloo Street and to the rear of the Darling Street properties.*

Comment: The application complies.

Item 5

The application has not satisfied the aims of State Environmental Planning Policy No. 64 – Advertising and Signage in that insufficient detail and provision has been made for the likely signage demands of end-users of the site, and no informed assessment can be made of the urban design implications of those signage requirements.

The application does include details of proposed signage “zones” within the site. The applicant agrees that it is appropriate to integrate the design of future signage into the overall development and had attempted to achieve this by way of the documentation submitted with the application.

If considered appropriate and necessary a more detailed signage strategy for the site could be prepared for the Council’s approval, acknowledging that future occupants of the site will be required to comply with the signage strategy.

This is a matter that is capable of being dealt with by way of an appropriate condition of development consent is not a reasonable ground for refusal.

Item 6

The proposal does not satisfy, or has not demonstrated compliance with, all of the design quality principles of State Environmental Planning Policy 65 – Residential Flat Design on the basis that it does not comply with the following provisions of the Residential Flat Design Code:

- a) Part 01 – Local Context with regard to whether the development is in keeping with optimum capacity of the site and local area;*
- b) Part 02 – Site Design with regard to matters including:*
 - i) Visual Privacy – particularly with regard to adverse visual privacy conflicts between proposed dwellings; and*
 - ii) Parking – the proposal exceeds the parking requirements of the site specific controls of the Leichhardt Development Control Plan 2000.*
- c) Part 03 – Building Design with regard to matters including:*
 - i) Daylight Access – an insufficient number of dwellings will obtain the requisite three hours solar access between 9.00am and 3.00pm midwinter;*
 - ii) Apartment Layout / Circulation – the spatial arrangement and circulation of various apartments will be inadequate or poor,*
 - iii) Storage – it has not been demonstrated that adequate and convenient storage is provided to all units;*

- iv) *Acoustic privacy – with regard to bedrooms of various units abutting noise sources;*
- v) *Ceiling heights – according to supporting documentation submitted, the dwellings fronting Victoria Road will have 2.4m floor-to-ceiling heights to habitable spaces; and*
- vi) *Facades and energy efficiency – with regard to the environmental performance of the residential component.*

Item 6 b) i)

We note that council officers have a series of concerns of potential overlooking between units as outlined on Pages 56 and 57 of the report. There are 4 or 5 instances where some form of treatment is required to the glazing.

As has been previously outlined this particular item is easily conditioned by way of providing obscured glazing material or screening. This item is not a legitimate reason for refusal.

Item 6 b) ii)

Council officers state that there is an oversupply of carparking on site. Email correspondence from Council dated the 2nd of June 2010 (ATTACHMENT 3) identifies the total number of carpaces at 474 spaces. We comply with this figure.

Proposed Use	FSR	Area		DCP requirement				Total Spaces
Shops FSR	1.3	9524	m2					162.93
Internal Plaza - General Mall cafes		203		5/100m2	3.05	spaces		
Specialty Retail (Restaurant Usage)		671		5/100m2	33.55	spaces		
Specialty Retail		2404		1.5/100m2	36.06	spaces		
Freshfood		1157		1.5/100m2	17.36			
Min Mart		306		1.5/100m2	4.59			
Supermarket		3722		1.5/100m2	55.83	spaces		
Alfresco Seating (Plaza)		500	m2	2.5/100m2	12.50	spaces		
Commercial FSR	0.2	1369	m2					23.56
Commercial FSR		765		1.5/100m2	11.48	spaces		
Professional Consulting rooms (Darling Street)		604		2 / 100m2	12.08	spaces		
Club FSR	0.5	3038	m2					122.66
Dining Area		1346	m2	4/100m2	53.85	spaces		

Lounge Area		1346	m2	5/100m2	67.31	spaces		
Office		75	m2	1.5/100m2	1.50	spaces		
Kitchen		318	m2	0				
Amenities		25	m2	0				
Staff Parking								
Residential FSR (ex. Balc's)	1.9	13935	m2					125.00
1 Bedroom units		37		0.5	18.50	spaces		
2 Bedroom units		80		0.8	64.00	spaces		
3 Bedroom units		11		1	11.00	spaces		
Adaptable		17		1	17.00	spaces		
Visitor (0.1 / unit)		145		0.1	14.50	spaces		
TOTAL Site FSR (by LMC Definition)	3.9	28603	m2					
Displaced Parking								21.00
Carshare spaces								6.00
Taxi Parking								5.00
TOTAL CARSPACES						spaces		466.14

Council officers reconciliation of required and proposed carparking spaces outlined on page 127 of the report identifies a discrepancy in the club component with council officers maintaining that the maximum parking provision is 76 spaces while the development includes 123 spaces. We maintain that the allocation of 123 spaces for the total club floorspace of 3130m² is consistent with council's parking code provisions contained in the Site Specific Development Control Plan.

Resolution: The proposed parking provisions are consistent with Council's code Site Specific Development Control Plan.

Item 6 c) i)

We have provided solar access analysis demonstrating compliance with the intent of SEPP 65. Under SEPP 65 and the Development Control plan we are required to provide 70% of living rooms and private open spaces with solar access on June 21. We have provided technical documentation demonstrating that 69% of the units comply with this requirement.

Similarly council officers state in their report that only 55% of the apartments achieve solar access for the total of 3 hours required by SEPP 65. They have incorrectly interpreted the information provided and we confirm that the development complies with the requirements of SEPP 65 in this regard.

No action required.

Item 6 c ii)

We note that council officers believe that there are apartments which they believe do not meet the minimum standards for apartment design. It is important to note that council's own Design Review Panel have not raised these aspects of the apartment design as a key issue nor have they raised it in any correspondence with the applicant. This is merely council officer's subjective assessment of the units in question and outside their field of expertise.

No action required.

Item 6 c iii)

The development complies with the requirements of SEPP 65 in relation to the provision of storage. The storage is located both within the units and in the space identified on the drawings in basements 5 and 6.

Council officers have identified in their report that 50% of the storage requirement is to be contained within the apartment. This is not a requirement of SEPP 65, which allows for "options" for locating storage, one of which is to provide 50% within the apartment. We do not consider it is reasonable to impose such a requirement and in particular that there has been no such suggestion from Council during the assessment period.

No action required.

Item 6 c iv)

Council officers believe that the acoustic privacy is comprised due to the fact that we have living areas adjoining sleeping areas and the fact that this is non-compliant with SEPP 65. SEPP 65 places no performance requirements in the form of achievable acoustic separation between apartments. It does provide some conceptual diagrams illustrating separation of sleeping areas and living areas.

The BCA provides guidelines and standards relating to adequate acoustic separation between units that are consistent with SEPP 65. The construction of the units will achieve compliance with the requirements of the BCA and objectives of SEPP 65.

We note that this concern has not been raised by council's own independent acoustic engineer as an issue and also that the matter has been thoroughly addressed in the acoustic report provided with the DA documentation.

No action required other than to condition to BCA compliance.

Item 6 c v)

Council have contended that some of the apartments, particularly those fronting Victoria Road do not comply with the minimum ceiling height standards set out in Section 3 of the Residential Flat Design Code. We note that that SEPP 65 requires ceiling heights in habitable spaces to achieve a minimum ceiling height of 2.7m. We also note that the "rules of thumb" also state that:

Developments which seek to vary the recommended ceiling heights must demonstrate that apartments will receive satisfactory daylight (e.g. shallow apartments with large amount of window area).

The apartments in question are those which face Victoria Road in Building's A and C. These particular apartments have a particular design constraint in that we are seeking to provide some form of natural ventilation within the apartment whilst providing acoustic amelioration from Victoria Road. This system draws air over the balcony ceiling, acoustically treating it and subsequently drawing it through a series of ceiling plenums within the apartment with the result that some minor areas of living space ceilings are less than 2.7m in height. On average approximately 5% of the apartment area is impacted with resultant ceiling heights of 2.4-2.5m in this 5%.

The apartments in question exceed solar access requirements and benefit from excellent views while still retaining the ability to naturally ventilate and maintain acceptable acoustic amelioration within the apartments.

No action required.

Item 6 c vi)

Energy efficiency and facade design is dealt within in a number of ways within SEPP 65. There are provisions relating to single aspect apartments, solar access to apartments, and adequate sun shading of facades. As we have previously outlined we have provided all manner of documentation which clearly demonstrates that the environmental aspects of the design have been thoroughly considered.

We have provided an integrated approach, which as the report points out limits the number of single aspects apartments, provides for natural ventilation, provides adequate levels of solar access and provides solar shading to glazed portions of the design.

In addition the applicant has provided 1:20 wall sections to illustrate the solar shading of the facades, together with BASIX certificates which provides an overall assessment of the Energy Efficiency provisions of the development.

Item 7

The proposed design of the Darling Street infill and the pedestrian bridge will have intrusive and detrimental impacts on the streetscape, Conservation Area and heritage items within the visual catchment, and the bridge will compromise the setting and integrity of the heritage item known as Rozelle Public School. Therefore, the proposal will not comply with the heritage conservation objectives of the

Leichhardt Local Environmental Plan 2000 and Development Control Plan 2000, including Clauses 16(2), 16(6), 16(7) and 16(8) of the Leichhardt Local Environmental Plan 2000, and the site specific controls of Part 3 of the Leichhardt Local Environmental Plan 2000 and Part D of the Leichhardt Development Control Plan 2000.

As previous sections of this letter describe, under the Voluntary Planning agreement the applicant is required to provide a pedestrian bridge over Victoria Road. It is fair to point out that during the drafting of the Voluntary Planning agreement the overall form and design of the bridge was not contemplated. The applicant has sought to provide a solution which satisfies all of the RTA's design criteria, including form, clearance heights and materials. The final solution of the bridge meets all of the technical design aspects of the RTA's code which is outlined in the RTA's concurrence. Contrary to the comments provided by the Panel contained on page 47 and 48 of the report, the bridge meets all requirements provided by the RTA including site distances, overhead clearance etc.

All of the design items which impact on the visual amenity of the Heritage Item, and in particular the Rozelle Public School are essentially determined by the RTA and we have sought to minimise these based on the constraints outlined above. It is important to acknowledge that the provision of any pedestrian overpass will create some form of visual impact within the conservation area, and to the relative Heritage Items. The bridge provided satisfies the relative controls and is the best possible solution given the design circumstances.

The Darling Street infill buildings have been the subject of various discussions with the Design Review Panel. The panel has requested a series of additional drawings which the applicant has in turn provided. The culmination of these discussions was a positive recommendation by the panel at the final DRP meeting held on the 4th of June. The applicant is perplexed as to the comments contained in the report which seem to illustrate a lack of support for this aspect of the design. We feel that the resultant design of these buildings is appropriate to their placements in the street and does create a contemporary insertion into the streetscape.

Item 8

The concerns relating to the Darling Street infill and bridge to Victoria Road, combined with various concerns raised by the Design Review Panel regarding lack of detail with, and consistency between, plans and documentation, means that the proposal has not achieved the iconic design status for the proposed buildings which is an underlying objective of the site specific planning controls of the Leichhardt Local Environmental Plan 2000.

The design has been the subject of an intense amount of scrutiny by the Design Review Panel and in turn by council officers. We believe the level of documentation provided illustrates the lengths to which the applicant has sought to address every concern of what could only be considered a complex development. We have provided a total of 170 drawings for the council officers and design review panel to assess, some of which we believe is outside the scope of any traditional Development Application process.

Whilst we respectfully disagree with the Design Review Panel we believe that the design is of iconic status. The report completely fails to outline any of the positive attributes of the development. More disappointing is that during meetings with the Design review Panel there seems to have been a positive collaborative approach to all design decision making. This has completely failed to be acknowledged in the final report.

Item 9

The proposal will breach the building envelope and setback controls to Victoria Road and Darling Street, and the plaza and Darling Street pedestrian link overhead clearance controls, all prescribed in the site specific controls of the Leichhardt Development Control Plan 2000, and where these breaches raise urban design concerns such as to the Darling Street infill and in the location of the pedestrian bridge to Victoria Road, these breaches are not supported.

The site specific DCP includes provision for building envelope and height. The provisions contained in the DCP are based upon concept design scenarios put forward some 4 years ago during the Masterplan phases of the project. During the detailed design phase of the project it has become clear that some of these setbacks do not work within the detailed design constraints.

The setback along Victoria road was put forward simply to maximise solar access, provide architectural articulation and to provide some form of acoustic barrier to busy Victoria Road. We believe that the design scenario provides a far greater solution than was ever envisaged during the Masterplan (when the setbacks were established). As has been mentioned in council's own report the design solution provides greater solar access in March than the DCP envelope ever envisaged. The break in the facade is far wider than the DCP envelope provides and additionally is two storeys in height. And finally we have ameliorated any acoustic concerns by partially blocking some of the road noise by the bridge on Level 1, above the articulated insertion. We believe the design solution is the correct approach.

The setback contained in the DCP envelope again provided a 2m setback to the Southern portion of the Darling Street infill. We believe that this constraint never envisaged providing a consistent streetscape line, which the proposal provides. The proposal provides a continuous streetscape line which we believe is a far better solution given the consistency of the streetscape in the local area. We believe there is no real objective of this setback line given that any new contemporary insertion into the streetscape will automatically signify the entrance to the development, and in effect there is no need for the setback.

Finally, we have sought to provide a continuous pergola structure throughout the plaza area to ensure there is a further barrier between the public plaza and residential apartments over. The height of this pergola is set between 5.5-6m above the plaza. The site specific DCP provides some discussion on overhead clearance within the plaza. Whilst it is difficult to understand the objectives of such a control we believe that a breach such as this, and given the overall magnitude of the development is easily conditioned. This condition could simply provide for no overhead structure within the plaza within 6m of the finished plaza level.

Item 10

The application has not incorporated a 3m dedication to Council at all levels along the Victoria Road frontage, as required by the Design Review Panel.

The Design Review Panel raised this issue in April contending that this strip of land should be dedicated to Council to ensure that there is adequate soil depth for the proposed street trees along Victoria Road and citing potential problems with future maintenance of membranes under the footpath. .

We have demonstrated that there is sufficient soil depth available to support the trees and consider the loss of 3m along this frontage across all basement levels to be unreasonable. In particular we note that the matter was raised by the Design Review Panel very late in discussions and has only recently been supported by council officers despite 7 months of previous review and discussion.

No action required.

Item 11

The bulk and scale of the development resulting from the floor space ratio non-compliances is excessive and will have unnecessary adverse amenity impacts on neighbouring properties.

This matter has largely been addressed in the response to reason for refusal No 4.

In summary the relevant points are:

- The floor space and resultant scale of the development is consistent with that envisaged at the time of drafting the site specific planning controls. At page 81 of the assessment report the statement is made by the assessment officer:

Comment: The applicant is correct in suggesting that the proposed FSR is generally in accordance with the scale of development considered during the course of developing the amendment to LEP 2000 – which facilitates the current application.

- At pages 100-101 the assessment officer states that the scale of the development does not have an unacceptable impact on adjoining properties:

Part D1.5 - Layout and Massing

The objective of this control is to enable the redevelopment of the site whilst minimising impacts on the surrounding area.

Design or Planning Principles

-
- *Scale and Form: where the height and scale of development departs from the scale and form of the surrounding area, transitional elements, such as setbacks and variable heights are to be used to reduce impacts, particularly along Waterloo Street and to the rear of the Darling Street properties.*

Comment: The application complies.

Solar Access: Larger scale buildings are to be orientated to maximise solar access to areas of open space, whilst minimising the impacts of overshadowing on adjoining properties.

Comment: The proposal does not overshadow adjoining properties contrary to the site specific controls of the Leichhardt Development Control Plan 2000.

The assessment report does provide some commentary on potential amenity impacts on proposed residential units associated with overlooking and direct lines of sight between some apartments. These are design matters that are capable of being addressed by way of appropriate screening or other design measures that may be detailed in an appropriate condition of development consent. These possible privacy impacts are not related to the floor space of the development.

Item 12

The application has not demonstrated that the visual and acoustic impacts of the development would result in satisfactory levels of amenity for residents within, and near, the site, and complies with the visual and acoustic privacy provisions of the Leichhardt Local Environmental Plan 2000 and Development Control Plan 2000.

The acoustic report provided with the DA documentation detailed criteria to ensure that the development would comply with all relevant requirements applicable to environmental noise emission, environmental noise intrusion and building acoustics as required by the Department of Environment, Climate Change and Water's (DECCW) NSW Industrial Noise Policy (INP), State Environmental Planning Policy (Infrastructure) 2007 and the Building Code of Australia respectively.

If a development is designed in accordance with the above requirements then it will fulfil the objectives of SEPP 65, Leichhardt Local Environmental Plan 2000 and Development Control Plan 2000. It is noted that specific acoustic criteria are not detailed in the aforementioned documents.

Item 13

The proposed hours of operation of the supermarket and mini major are excessive and will have adverse implications for the amenity of surrounding residents and the proposal has not demonstrated compliance with the relevant provisions of the Leichhardt Development Control Plan 2000, including with regard to working hours.

The Council report nominates appropriate hours of operation. In the event that the Council and JRPP consider that the hours of operation should be restricted then the matter may be dealt with by way of conditions of consent.

If council have specific problems with the hours of trading they can deal with those during the assessment of the Occupation of supermarket or condition? No reason to refuse

Item 14

The proposed amendments to the public plaza, to include pergolas to each façade, would result in the added enclosure and semi-privatisation of this space, contrary to the intent of the site specific controls of the of the Leichhardt Development Control Plan 2000.

The pergola structures were introduced to create more human scaled space in the plaza in response to Design Review Panel concerns raised over its scale. In the final meeting on the 4th of June 2010 a series of drawings were presented to the design review panel outlining the proposed pergola structure. It was agreed at this meeting that this was a positive element in the square and that it achieved the reduction in scale they were seeking. The notion of the pergolas resulting in "privatisation" was not raised.

The plaza is a public space open, accessible to the public 24 hours a day. A condition restricting attachments to the pergola by future tenants could resolve Council's concerns in relation to this matter.

Council to condition.

Item 15

The application does not include the reinstatement of the Balmain Leagues Club on the site, and therefore has not demonstrated that the proposal has satisfactorily addressed this requirement, which is an objective of the site specific controls of the Leichhardt Development Control Plan 2000.

Section D1.4 of the site specific provisions of LDCP 2000 includes the following objective:

- *To promote the long term viability of the Balmain Leagues Club on the site, for the benefit of the local community.*

The site specific LLEP 2000 and LDCP 2000 provisions were seen by the Council as the best way to achieve this objective – to craft site specific planning controls that would allow for the redevelopment of the club's land.

The development application under consideration does include the Balmain Leagues Club as a land use. The DA also includes the location and general built form of the club, including the relationship of the club site to the public plaza and the adjoining land uses on the site.

The description of the development contained within the assessment report makes it clear that the club is included in the DA. This is stated in the report on page 1 and is repeated within the report. The recommendation on page 155, in describing D/2009/352, makes specific reference to "a new leagues club".

The Chief Executive Officer of the Balmain Leagues Club wrote to the Council on 19 May 2010 reaffirming the Club's return to the site. A copy of that letter is attached. (ATTACHMENT 4)

The future fit-out and occupation of the club is a matter that is being handled separately by the Leagues Club and will be subject to a future development application. Indicative layout drawings prepared by the Club's architect have been provided to the Council.

In addition to the above, schedule 2 of the Voluntary Planning Agreement between the Council and the Balmain Leagues Club includes the Leagues Club as being within the proposed redevelopment of the site – that redevelopment being the subject of the VPA.

The inclusion of the club within the proposed redevelopment forms part of the development application and it is not reasonable or appropriate to include a reason of refusal that suggests otherwise.

Item 16

The application has not demonstrated that the proposal meets the energy efficiency provisions contained in the Leichhardt Local Environmental Plan 2000 and Leichhardt Development Control Plan 2000, including the site specific controls of these Plans.

The development has demonstrated compliance with all the relevant energy efficiency controls. The only specific control in the site specific control is a requirement to achieve an ABGR rating of 4 stars. ABGR (now NABERS) can only be applied to the commercial office component of the development; the submitted ESD Report confirms that this will be achieved for that component.

The dwellings meet the requirements of BASIX which replaces the residential energy efficiency requirements in the Leichhardt DCP. However, the dwellings have been designed using the guidelines in section B2.0 of the DCP to balance thermal mass, shading, insulation, orientation and cross ventilation to achieve the thermal comfort requirements of BASIX. The building services include a gas boosted solar hot water system, energy efficient lighting, high efficiency pumps and fans, energy efficient lighting in common areas and dwellings and a photovoltaic system to provide renewable energy. The development achieve the energy target in BASIX.

The design is consistent with the ecologically sustainable design principles in the Leichhardt LEP; there are no specific design controls in the LEP.

Item 17

The proposal is unsatisfactory on car parking and traffic grounds as:

a) It has not demonstrated how the traffic generation and access outcomes of the development will satisfy the objectives of the Leichhardt Local Environmental

Plan 2000 and the planning principles of the Leichhardt Development Control Plan 2000;

b) Proposed access and egress arrangements abutting Waterloo Street and Victoria Road, and traffic generation on secondary residential streets, are not consistent with the underlying objectives and the site specific planning controls of the Leichhardt Local Environmental Plan 2000 and Leichhardt Development Control Plan 2000.

c) The application proposes carparking in excess of the maximum provision permitted by the site specific planning controls, with undesirable consequences for traffic movements into surrounding residential streets; and

d) The proposed loading/unloading, access and parking provisions for residential and non-residential have not been separated as required by the site specific planning controls of the Leichhardt Development Control Plan 2000,

and therefore, it has not been demonstrated that the proposal complies with the car parking and traffic controls of the Leichhardt Local Environmental Plan 2000 and Development Control Plan 2000, including the site specific controls of these Plans.

Item 17a)

The traffic analysis provided outlines explicitly that the proposed development will curtail its traffic generation to the traffic generation budget for the site that was the basis of the LEP and DCP controls on the site. It further outlines how the spread of traffic between the two vehicular access points would result in acceptable impacts on adjoining streets. In the three and a half months since the traffic information was provided to Council officers there has been no request for further traffic analysis to the applicant nor any discussion in meetings that such may be needed.

The application has been considered by the RTA and Sydney Regional Development Advisory Committee and those bodies have indicated that they are satisfied with traffic aspects of the application.

Item 17b)

The proposed access arrangements are exactly the same as those specified in the site specific DCP. The traffic generation of the proposal is in accordance with the traffic analysis that underpinned the DCP and it is difficult to see how the DCP could possibly have lead to any other outcome for the abutting streets than that which is outlined in the update traffic report.

Item 17c)

There is a difference of opinion on how parking for the club should be calculated. The calculation as previously discussed with the Council officers indicated that up to 464 parking spaces would be permitted including 121 spaces for the club and 5 taxi spaces. The council officers calculation suggests a limit of 412 spaces including only 76 club spaces and no taxi spaces.

In relation to the club it is noted that the existing club has about 210 parking spaces. Including outdoor areas, the proposed club will be about 55% of the size of the existing club. On a simple pro rata basis it would need about 116 spaces to provide the same quality of access as the existing club. This is comparable with the application calculation of an allowance of 121 spaces for the club based on the expected layout of bars lounges and dining areas within the club premises. The basis of the council officer's calculation of only 76 spaces for the club is not revealed. However that amount of parking does suggest an expectation that the trading of the new club will be heavily curtailed.

Notwithstanding this, the exact number of spaces to be provided for the club could be determined when an application for the fit out of the club premises was lodged. This could be the subject of a consent condition with the development not being able to proceed until the specific number was resolved. If this was to mean that some parking was to be omitted from the basement, this would not be hard to do as it would just mean that the size of the lowest basement plate would be reduced.

Item 17d)

With respect, we do not agree with what appears to be the council officers', interpretation of this requirement. We believe that what is sought is that the residential and non residential parking be separated into separate compartments and that the loading area or areas be then totally separate from the parking areas. Separation of residential parking from other parking is desirable for security reasons and because there is a home connotation to residential parking that requires a different level of respect and different operation from non residential parking. The need for separation of loading areas from parking areas is obviously related to safety and to security of merchandise.

We do not believe that it is necessary to separate residential loading from non residential loading as there would be no good purpose in doing so, but on the other hand to do so would be highly inefficient. A loading area management regime would ensure that all users of the loading area would be able to satisfactorily co-exist.

All traffic would necessarily need to share the entry driveway in from Victoria Road as the circumstances are such that it would not be possible to provide two separate driveways on that frontage of the site.

To do so would be unsafe, inefficient and considerably more confusing to drivers than the use of a common driveway. Notwithstanding this it is submitted that the shared use of the driveway by cars and delivery vehicles would not be very different from the experience that those same vehicles would have sharing the public road. Finally in relation to this aspect it is noted that the RTA became satisfied with the proposed shared arrangements once considerable improvements were made to the design of the Victoria Road entry.

Item 18

The Social Impact Assessment lodged with the application is inadequate and does not allow an informed understanding of the social implications of the proposal and whether the development complies with Council's Social Impact Assessment Policy and guidelines, and there is a lack of detailed information and assessment on the operation and proposed functioning of various uses of the project and the potential

environmental, amenity and economic impacts of these uses on the locality and whether compliance with the site specific controls of the Leichhardt Local Environmental Plan 2000 and Leichhardt Development Control Plan 2000 are achieved.

The social impact assessment has been provided in accordance with council's own DCP and confirmed by council officer on a number of occasions. We are again perplexed that the applicant has responded to council officers requests on every occasion and have had no feedback as to the adequacy of the report for the past 2 months and subsequently receive criticism relating to the report.

We believe the report is adequate and provides an overview of the development. We acknowledge that there are portions of the scheme which are the subject of future development applications and hence are not fully detailed in the report. We would expect that these portions of the development will be subject to a series of development applications and in turn additional social impact assessments.

Item 19

Due to matters including streetscape and urban design, form, bulk and scale, solar access, privacy, traffic, parking and access related issues and environmental performance, it has not been demonstrated that the proposal complies with the following controls of the Leichhardt Local Environmental Plan 2000:

- a) The site specific planning controls contained in Part 3(2);*
- b) Clause 12 – Vision of Plan;*
- c) Clause 13(1), 2(a)–(e), 2(g), 3(a)–(b) and 3(d)–(e) – General Objectives;*
- d) Clause 15(a)–(c) – Heritage Conservation; and*
- e) Clause 29 – General Provisions for the Development of Land.*

The site specific planning controls are generally addressed in responding to the other reasons for refusal. The assessment report acknowledges that the DA represents the scale and form of development envisaged in the planning controls.

The streetscapes nominated in the report as being impacted are Darling Street and Victoria Road. The infill component along Darling Street is capable of resolution with further design refinement, as nominated by the Council's independent Design Review Panel. The applicant is willing and wanting to continue working with the Design Review Panel to finalise this component.

The Victoria Road streetscape is similarly capable of design resolution and has already been the subject of a considerable amount of analysis by the Design Review Panel in concert with the applicant's architect. The minor breaches of the building envelope on Victoria Road have resulted from a conscious desire to improve the development outcome on the site, and in particular the solar access to the central plaza and to accommodate the pedestrian bridge design imposed on the applicant by the RTA. The original bridge design, as lodged with the DA, would have resulted in a

different and superior outcome but this issue is being dictated solely by the one-size-fits-all bridge design being imposed against the wishes or desire of the Design Review Panel, the Council or the applicant.

The resolution of the Darling Street infill design and the pedestrian bridge design will also address the heritage issues raised by the Council.

Specific concerns relating to visual privacy, as they relate to a small number of units, is capable of being addressed by condition(s) of consent.

The traffic matters have been addressed elsewhere in this response. Car parking numbers can simply be confirmed by way of an appropriate condition of consent.

The Council, in preparing site specific provisions for the site has acknowledged the appropriateness of the future redevelopment. This application, if further refined by necessary design amendments and conditions of consent, will realise the intended vision for the site.

Item 20

The proposal has not demonstrated compliance with the Building Code of Australia and Leichhardt Development Control Plan No. 32 – Design for Equity of Access with regard to fire egress and provision of adequate access and facilities.

The applicant has provided a report on Building Code of Australia compliance together with a Fire Engineering Concept Design Report addressing the issues raised in council memo.

Council's own BCA consultant, engaged some 9 months after the initial submission, has provided a detailed report agreeing with the outcomes of our assessment:

Based upon experience with similar compliance issues associated with developments of comparable scale and complexity, it is the authors' opinion that from a design point of view, it is possible to fire engineer alternative solutions that would enable the relevant BCA Performance Requirements to be satisfied. Such approach is unlikely to result or require wholesale design changes that would significantly alter or impact upon the configuration of the building.

It is further pointed out that the processes and statutory requirements' established by the Environmental Planning & Assessment Act (Part 4a approvals regime) regarding the carrying out of building works, places particular emphasis and obligations upon the certifying authority to ensure that the building will achieve compliance with the provisions of the BCA.

Having regard to the obligations imposed upon a Certifying Authority regarding referral, consultation and inclusion of NSW Fire Brigade (Commissioner) conditions / recommendations regarding any alternative solutions proposed within the context of the subject development, it is unlikely that a construction certificate would be able to be issued

with out adequately demonstrating that all of the relevant Performance requirements' of the BCA have been adequately and comprehensively satisfied.

Council's consultant suggests that the design approach is satisfactory and will not require redesign to achieve full compliance.

Item 21

The proposal is considered to be an overdevelopment of the site.

As addressed above under reason for refusal No 4, page 81 of the assessment report states:

Comment: The applicant is correct in suggesting that the proposed FSR is generally in accordance with the scale of development considered during the course of developing the amendment to LEP 2000 – which facilitates the current application. A review of Council documents indicates that the FSR was miscalculated during the lead up to Council's August 2007 decision. This miscalculation was carried over into subsequent Council decisions.

As also stated in the same section of this response letter, the "additional" floor space, over and above that considered acceptable by the Council at the time of agreeing to the FSR controls for the site, is contained wholly below ground and is associated only with ancillary space to the permissible land uses. It has no bearing on the scale of development above ground, about which the assessment officer has acknowledged is consistent with that envisaged at the time of drafting the controls.

As acknowledged on page 75 of the assessment report, the ancillary space is made up of below ground areas including plant rooms, pedestrian circulation space within basements, stairwells, passageways, lift shafts, on site detention tanks, garbage rooms, loading dock area, substation etc. The basement inclusions were known about by the Council at time that the FSR controls were set for the site and the Council (wrongly) assumed that these areas were not gross floor area.

This "additional" space does not contribute to any amenity impacts external to the site and does not, in itself, generate additional car parking or traffic generation, again demonstrating no direct impacts external to the site. Given that the assessment report acknowledges that the form and scale of development above ground is consistent with that envisaged when the site specific controls were prepared, and also that the proposed floor space does not result in any amenity impacts external to the site, it is difficult to accept that the proposal represents an overdevelopment.

The maximum building height complies with the maximum RL in the site specific height controls. In short, the bulk, form, height and scale is generally consistent with the site specific planning controls. Where further design refinement is required, this may be dealt with by way of conditions of consent. Alternatively, if the JRPP considered it necessary, the resolution of the design issues could also continue to involve the Council's Design Review Panel.

The applicant has worked in an open and cooperative manner with the Council officers and the Council's independent Design Review Panel in order to try and resolve all outstanding design issues. While very considerable progress had been made, as demonstrated by the applicant's willingness to make amendments as requested, it is clear that the Council officers and the Design Review Panel feel further work is needed. The applicant is willing to continue the good work to date. The refusal of the

application is premature, unnecessary and avoidable given the applicant's willingness to try and resolve outstanding design issues.

Item 22

The site is not suitable for the proposal as submitted due to its numerous inconsistencies with relevant Council statutory and policy controls.

The site has been the subject of site specific planning controls prepared by Leichhardt Council. The Council's own assessment report for this DA acknowledges two significant things. Firstly, that the scale and form of development proposed is generally consistent with that envisaged at the time of preparing these site specific controls (page 81), and secondly, that the layout and massing of development complies with the planning controls (page 100). As stated on numerous occasions above, what is required is some further refinement of the application, largely associated with architectural design and addressing some internal amenity impacts – all matters capable of being dealt by way of conditions of consent and not warranting the outright refusal of the application.

Item 23

The approval of this application would be contrary to the public interest.

Leichhardt Council prepared the site specific planning controls that envisage the form, height, scale and mix of development presented by this development application. The controls also envisaged considerably more car parking and traffic generation than is proposed in this application.

The public interest will be served by the Council acknowledging this past and working cooperatively with the applicant to resolve a satisfactory development outcome on the site.

The applicant has used their best endeavours to meet all reasonable requests by the Council officers and the Council's Design Review Panel to refine the proposal. This has led to a series of amendments and reductions to the scale of development, including the building bulk of the club building adjacent to Waterloo Street being significantly amended, a 50% reduction in restaurant space and a significant reduction in car parking.

Notwithstanding the numerous and detailed discussions with Council planners that have occurred while the application has been assessed, where there remained any outstanding design or technical issues such as the Darling Street infill design, the 3 metre dedication along Victoria Road and compliance with the performance objectives of the BCA (among other matters), the Council officers' advice to the applicant was that these matters were capable of being conditioned. Unfortunately this advice, which the applicant took in good faith and on which the applicant has relied, has not transferred to the final assessment report.

