

**Submission to Leichhardt Municipal Council
re: D/2009/352 (Balmain Tigers Leagues Club site)**

from: Verity Firth MP, Member for Balmain

To Whom It May Concern:

As Member for Balmain I have received emails, calls and letters from dozens of local residents, detailing generally uniform concerns regarding the Development Application (DA) lodged for the Balmain Tigers Leagues Club site (Tigers).

The intention of this submission is to formally represent those shared concerns to Leichhardt Municipal Council and ensure that they are considered in the formation of Council's planning assessment.

The Balmain Tigers have a long and cherished history with the community and they continue to be a vital part of our local area. I know from personal experience, and from talking to residents, that the Tigers play an invaluable role in supporting community groups, engaging young people in sport and fostering relationships between local residents.

Personally, I believe that the Club must continue to have a viable presence in Balmain/Rozelle if we are to retain the traditional spirit and character of the area. To lose such a strong pillar of our community would leave an indelible scar on the character Inner West.

However, as the local representative it is my duty to advocate on behalf on the residents of my electorate and as such I have some deep concerns about the current proposal for the Rozelle Village development.

At the heart of the matter is what local residents believe to be a significant threat to the village-like feel of Rozelle.

For a suburb defined by its high street shopping and leafy streets lined with quiet terrace houses, the prospect of a 13-storey development is understandably concerning. Residents are deeply attached to their suburb for good reason - one has only to visit Rozelle to understand its urban beauty and charm.

Residents have a number of concerns regarding the proposed Rozelle Village development, which I have outlined below.

1. Scale

Residents have expressed to me their alarm at the scale of the proposed development for its impact on the surrounding area, the character of the buildings, and the impact on existing infrastructure.

Many residents noted the height and floor space ratio of the proposed building as of particular concern. They feel that a development of such a scale is out of keeping with the surrounding heritage-style buildings in terms of aesthetic character, height and density.

There is a strong community desire for any development on this site to be more in keeping with the surrounding area and, at a minimum, comply with the amended LEP.

The proposed Floor Space Ratio (FSR) is also of great concern, as it would result in a significant increase in density in the local area. Given that a large portion of the development is residential in nature, this could put significant strain on surrounding infrastructure – particularly roads and public transport during peak hour.

Of concern for many residents was the potential for the development of a shopping mall, which would provide competition to the local high street shops.

High street shopping is one of the pleasures of living in the Inner West and there was concern that the creation of a mall-style retail complex could provide unfair competition to existing retailers.

I urge the applicant to reconsider the height, FSR and commercial density of the proposal in light of these concerns and reduce the scale of the project to be more in keeping with the surrounding area.

2. Traffic

Concerns about increases in traffic and congestion were almost uniform across the correspondence that I received. While this issue is a result of the scale of the proposal, I wish to address it separately given the level of concern expressed to me.

At peak hours, Victoria Road and Darling Street already suffer from severe congestion issues. The increase in cars accessing the site could exacerbate this problem as well as placing further strain on residential side streets.

As with any increase in vehicles, this also poses a safety threat to local pedestrians and motorists. This is of particular concern given the site's proximity to residences and Rozelle Public School. In particular, the points of ingress and egress from the development were felt to be inadequate in addressing concerns regarding congestion and safety.

I also note that the revised DA calls for the removal of on-street parking on both sides of Darling Street south of Victoria Road to Belmore Street. This would remove valuable parking for the high street retailers who, as already outlined, could suffer as a result of this development.

I urge the applicant to further consider the traffic impacts of such a development and look for ways to minimise congestion and safety risks to pedestrians and motorists.

3. Environmental Impacts

Residents were greatly concerned about the environmental impacts of demolition, excavation and construction required for a development of such scale.

In particular, they were concerned that the demolition, excavation and construction process will produce very high levels of noise, traffic, dust and vibration. As noted previously, the site is in close proximity to both residences and Rozelle Public School, which are clearly sensitive receivers to such disruption.

I urge the applicant to consider what further noise, dust, traffic and vibration amelioration methods could be employed to reduce the impact of construction on surrounding properties to an absolute minimum.

4. Rozelle Public School

Each of the concerns outlined above applies doubly to the nearby Primary School. The impacts of the proposed Rozelle Village development concern me both as local Member and in my role as Minister for Education and Training.

Ensuring the health and safety of students is of the utmost importance. Strict traffic management controls must be put in place to ensure that students are not put in harm's way during the construction period.

There is also concern about the disruption to classes and the health impacts of the construction process. Parents are concerned that the noise and vibration caused by construction will disrupt the learning environment of the school. As outlined above, under Environmental Impacts, there will need to be strict environmental safeguards during the construction period.

With respect to the proposal for a pedestrian ramp, I will be guided by the views of the Parents and Citizens Association and the Executive of the school. Anecdotally, some parents support the idea of the ramp as it would provide safe passage across Victoria Road; other parents do not support the ramp as it may take part of the school's land.

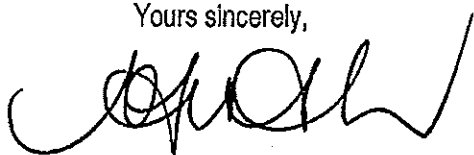
I would urge stringent safeguards to be examined and put in place to protect the school's children, teaching staff and learning environment. In addition, meaningful consultation should be undertaken with the parent body with respect to the issue of the ramp.

I appreciate the opportunity to make this submission on behalf of local residents as the Member for Balmain.

I believe that local residents are in favour of retaining the presence and operation of the Tigers in our local area. However, there are widely and deeply felt concerns about the scale of the current proposal which cannot be ignored.

I urge Council and the applicant to work together to find a solution amenable to local residents - one that is appropriate in scale and character, and adequately addresses concerns regarding the impact of construction and operation on the surrounding area.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Verity Firth', written in a cursive style.

Verity Firth MP
Member for Balmain

Mr Tim Camiller
Balmain Tigers Leagues Club
PO Box 1777
ROZELLE NSW 2039

28 June 2010

Dear Mr Camiller

Victoria Road Footbridge and Rozelle Public School

I write regarding the issue of the Balmain Tigers Leagues' development and the footbridge over Victoria Road, Rozelle. As you know, the current plans suggest 'landing' the footbridge in the grounds of Rozelle Public School.

I believe that a footbridge over Victoria Road presents an excellent safety initiative for the local community, and would allow children – and adults – to cross this busy road safely.

However, the proposed bridge would need to acquire and/or use a portion of land from Rozelle Public School. Last year I publicly guaranteed as Minister for Education and Training that no operational school in NSW would be forced to sell or alienate any of their land. Despite the merit of a footbridge over the road, I am unable to change policy for individual circumstances.

The Government's policy is that the Department can only sell land that is surplus and no longer needed for educational purposes. For existing schools, land is only sold or alienated after community consultation. This includes the school's P and C.

When I learnt of the footbridge plans I asked the P and C to inform me of their views in relation to this matter. They did so and expressed concerns. I understand that *Property and Land Consultants* (acting for the Club) has been in contact with the P and C, addressing their concerns. Should an agreement be reached with the P and C then the DET would be happy to support the Club using the land.

I have asked the P and C to confirm to me their view regarding the use, following their receipt of the letter from *Property and Land Consultants*.

I note, however, that no formal offer of compensation for the land has been offered to the Department of Education and Training at this point.

Unless an agreement can be reached with the Rozelle Public School community I am unable to support the footbridge plans as currently detailed in the Development Application.

As you may be aware, my office has been assisting with investigations with the Roads and Traffic Authority (RTA) to look at options for an alternative site. I understand that the RTA has been in contact with Mr Moss Akbarian and communicated to him that they have no objection to the use of the toilet block site close to the corner of Victoria Road and Darling Street.

I understand that the RTA has given consent to the use of this site, but that there would need to be further negotiations with Leichhardt Council, who also have title over this piece of land.

I am happy to assist you further in such efforts if you desire, as I believe a footbridge to be of benefit to the wider community.

Please do not hesitate to get in touch with any further questions or issues of concern.

Yours sincerely

A handwritten signature in black ink, appearing to read 'V. Firth', with a large, stylized initial 'V'.

Verity Firth MP
Minister for Education and Training



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



Moss Akbarian
Managing Director
Property and Land Consultants

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DEVELOPMENT AND BUILDING APPROVALS PROJECT AND CONSTRUCTION MANAGEMENT

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 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.

From: "Property & Land Consultants" <makbaria@bigpond.net.au>
To: "'Maeve Ryan'" <maeve.ryan@propertyandland.com.au>
Date: 1/07/2010 12:48 pm
Subject: FW: Balmain Village

From: Property & Land Consultants [mailto:makbaria@bigpond.net.au]
Sent: Wednesday, 14 April 2010 5:30 PM
To: 'Jones, Karen'
Cc: 'Conroy, Peter'; 'Ian Wright'; 'ben@elias.com.au';
'Nicholas.Byrne@dko.com.au'
Subject: FW: Balmain Village

Hi Karen,

Further to our telephone conversation this afternoon please find below the timing of various items tomorrow. The Revised Social Impact Assessment is expected by 4pm tomorrow afternoon. Tomorrow's SIA report will address key issues but will not be the final one which will be forwarded early next week. As discussed while we have high regards for Judith Stubb's expertise, majority of her concerns relate to issues that have been dealt with at LEP stage. The fact that a club of that size is going to be there amongst retail and residential areas is already approved under LEP and should not really be a matter for her consideration at this stage. Other matters will be addressed but they don't appear to have any impact on notification. There will obviously be future applications regarding the fit out and operations of Club and retails at which time most other issues will be dealt with once more details on those become available. That will include number of machines at the club etc which will no doubt be assessed by the relevant authorities. Judith Stubb's speculations on the number of machines based on future population will no doubt be more easily verified then. I look forward to confirmation of the notification tomorrow. Kindly advise if I could be of further assistance.

Cheers

Moss

From: Nicholas Byrne [mailto:Nicholas.Byrne@dko.com.au]
Sent: Wednesday, 14 April 2010 3:56 PM
To: Property & Land Consultants
Cc: David Randerson; Koos de Keijzer
Subject: Balmain Village

Moss,

As discussed in yesterday's meeting we have reviewed the information provided to us and we will be submitting the following to council tomorrow morning (15th April):

Documentation

1. Revised plans, sections and elevations in accordance with LMC's email of the 8th of April. Council to advise on the

Social Impact Assessment

1. Revised Social Impact Assessment. We do note that Judith Stubbs has solely commented on the Social Impact Assessment with little to no reference made to the Security Management Plan. This has meant that the Social Impact Assessment has to be reformatted to include items contained within the Security Management Plan.

Geotechnical reporting

1. As discussed this will be provided on Friday.

Capital Investment Value

1. Our QS will provide a outline of the interpretation of CIV together with a list of all documentation utilized to prepare the DA submission report.

Description of notification

1. A revised description together with a revised notification plan will be provided tomorrow morning. We do note that there have been no statistical amendments to the documentation compared to the documents which council have already received (and commented upon)

Land Owners Consent

1. This is forthcoming from the Department of Education and Training.

Thanks,

Nick Byrne

Associate

Registered Architect (NSW 7806), B.Arch Hons, B.Arts Arch
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MEETING MINUTES

DATE: 16th March 2010

PROJECT: Rozelle Village
 MINUTES TAKEN BY: Nick Byrne
 LOCATION: Leichhardt Municipal Council (LMC)
 TIME: 3.00pm
 ATTENDING:

NAME	INITIAL	COMPANY
Moss Akbarian	MA	PLC
Jenny Watt	JW	PLC
Nick Byrne	NB	dKO
Karen Jones	KJ	LMC
Koos deKeijzer	KdK	dKO
Ben Elias	BE	RV
Ian Wright	IW	RV
Adele Cowie	AC	LMC

CIRCULATION: All above

	Item	Action
	Drawing amendments-	
KdK	KdK expressed concern at the level of documentation required for a Development Application and expressed that there was enough information in the current set of documentation to assess the proposal.	
JW	JW concurred with this and outlined that the level of documentation provided was sufficient for assessment purposes. The amendments are minor and have resulted	
KJ	KdK outlined that dKO had answered all of council's concerns with the exception of: <ol style="list-style-type: none"> 1. Carpark Allocation 2. Storage Allocation <p>dKO had adjusted the basement to include a total capped number of carparking spaces but will not allocate the spaces / use.</p>	
KdK	KdK outlined that he understood council were concerned at the number of drawings required for this application but had requested another 10 drawings to be prepared, which included additional elevations and sections.	
KdK	Apart from the additional detail KdK outlined that the design changes were very minor and of reduced environmental impact. Apart from the additional detail the only design changes were: <ul style="list-style-type: none"> • Pedestrian Bridge Design which was largely driven by RTA design constraints. • Waterloo Street terraces – reduction of 1 storey in height. 	

	<ul style="list-style-type: none"> Minor amendments to the vehicular ingress from Victoria Road. 	
	SEPP 55	
NB	NB outlined that the report had been updated and issued to council in January. KJ / AC to confirm this.	LMC
	Acoustic Report	
NB	NB outlined AECOM had provided a memo to council outlining the location of the acoustic monitoring and had heard nothing back at this stage. LMC advised that the previous advice (to monitor properties on Waterloo Street) had been prepared in house and that there was no longer the expertise to deal with this issue. Council had engaged an external consultant to review both the report and memo and will attempt to get back to us by Mid next week.	
JW	JW questioned why council had requested this information if they didn't have the internal expertise to deal with the acoustic report. (is this correct?)	
	Geotech	
KdK	KdK again expressed concern at the level of Geotech testing required by Council. KdK questioned why we were being requested to provide a full geotech report 6 months into the process.	
KdK	KdK outlined that dKO's understanding was that council's concern related to the support of the adjoining properties and the effects of construction on the adjoining properties. In dKO's opinion these are items which are always dealt with by way of Condition during the preparation of the Construction Certificate.	
JW	JW outlined that there are a number of ways to deal with effects on adjoining properties including dilapidation reports, vibration monitoring, acoustic monitoring and dust mitigation measures. All items which are standard conditions in to be dealt with at CC stage.	
NB	NB also outlined that private certifier had also been consulted and it was there opinion that these items were normally dealt with at CC stage.	
KdK	KdK outlined the difficulty in preparing a full Geotech report given the existing building and associated parking structures.	
KJ	KdK outlined that it was not a question of not preparing any geotech report, it was a matter of timing and that council had requested this information prior to notification. KdK asserted that this is something which could be prepared as part of a condition of consent.	
KJ	KJ outlined that council would normally request this level of information as part of a DA and that PC had consulted with Graham Jahn Head of planning (Sydney City Council) to understand if LMC was particularly onerous in relation to Geotech reporting.	
KdK	KdK outlined that we had previously provided a level of information which dKO considered appropriate to the task. i.e. understanding the structural implications and edge conditions to the site and adjoining properties. This constituted 2 bore holes and a statement from the structural engineer with dealt with council's concerns.	
	KJ outlined that further examining of the implications of the geotech reporting would be examined and that a meeting to understand geotechnical issues needs to be organized.	
	Waste Issues	
NB	NB outlined that waste issued raised in council's memo had been addressed in revised drawings and amended report. This would be forward to council on Friday the 19 th March, 2010.	

	Voluntary Planning Agreement	
NB	NB outlined that these queries had been specifically addressed in both the traffic management plan together with the amended documents. This would be provided to council on Friday the 19 th March, 2010.	
	Traffic and Parking	
NB	NB outlined that a revised traffic report had been prepared together with a direct response to council's concerns raised in their letter of the 11 th of February. NB to forward this response to council on Tuesday the 16 th March.	
NB	NB outlined that a review of carparking numbers had taken place and that there was a slight reduction in carparking spaces in the amended documentation. NB outlined that the assigned uses had been allocated on the plans together with the assigning internal uses within the club.	
NB	NB outlined that amended documentation also included additional ramp sections illustrating the longitudinal slope in the roadway.	
NB	NB outlined that Halcrow MWT had prepared a letter to STA addressing their concerns. There had been no response as yet.	
NB	NB outlined that amended bridge documentation had been forwarded to RTA for review and had no response as yet.	
NB	NB outlined that a full construction traffic management plan had been drafted and will be forwarded to council on Friday.	
NB	NB queried LMC as to the progress of the 65% traffic model. Council had requested that ARUP look at this and are awaiting a response.	
NB	NB queried LMC as to the progress on addressing the Saturday morning traffic concerns (raised in submissions). LMC awaiting feedback from John Hanlon. NB pointed out that Peter Conroy had previously outlined that the Thursday PM peak was the accepted traffic modelling scenario and this has been the basis for modelling to date.	
	Stormwater	
NB	NB outlined that AECOM had obtained pipe information from Council pipe survey. Council had subsequently requested that the applicant verify the location of council's trunk drainage. NB outlined the logistics involved in preparing this survey including closing a portion of Victoria Road.	
NB	dKO would organize a meeting with Council's engineers to ascertain the extent of works required.	
	Social Impact Assessment	
NB	NB outlined that an updated report had been prepared and will be submitted to council on Friday.	
	BCA	
NB	NB outlined that it was dKO's understanding that the fire brigade had not been fully briefed and did not have both the BCA report together with the Fire engineering concept report. dKO to arrange a meeting with the Fire Brigade in the next week.	
	Floor Space Calculations	
NB	NB outlined that the calculations had been amended in line with council's previous correspondence.	
	Bridge	
NB	NB outlined that the revised bridge design had been amended in accordance with RTA requirements and resubmitted to RTA for approval.	
NB	NB outlined that the current bridge design had been amended to only land on	

	Rozelle Public School land and not on the Rozelle Neighbourhood Centre Land.	
NB	NB awaiting feedback from the RTA.	
KdK	KdK outlined that there was obvious design implications which had constrained the design of the bridge and the Design Panel needed to be aware of these during briefing sessions.	
	Design Review Panel	
KJ	KJ / AC outlined that the design review panel had been scheduled to meet next week and review the design.	
KdK	KdK outlined that a total of 9 meetings had been held with the design review panel and that all issues had been resolved. KdK outlined that we had a previous meeting where the design review panel had signed off the scheme and verified that it was OK to proceed to notification.	
NB	NB raised concern that council planning officers had raised a number of concerns which were strictly architectural. Some of these items were significant and should not be required 6 months into the exhibition process. Items such as facade articulation have been present on the scheme since June 2009 and not commented upon to date.	
JW	JW queried why the applicants had been requested to address item prior to consultation with the design review panel.	
KJ	KJ outlined that planning officers had organized a meeting to run through particular concerns relating to the scheme.	
	Indicative Floorplan of Club	
NB	dKO advised that a floorplan had been produced to understand the carpark generating implications.	
	Timing	
MA	KdK/MA queried the timing implications and LMC estimate that by mid next week they will a fair indication on the likely timing.	
	Notification	
MA	MA queried the need to return to notification again given discussions with DoP and outlined the need for both parties to obtain legal advice relating to the requirement for renotification. Both parties to obtain legal advice relating to this aspect of the scheme.	
JW	JW outlined that the revised scheme is of lesser environmental impact and would not pose the same concerns if the scheme were larger.	
KJ	<p>KJ outlined that the reasons for notification were:</p> <ol style="list-style-type: none"> 1. The incorrect description of the previous notification. 2. Changes to the bridge <p>The implications relating to the incorrect description could potentially place a consent in jeopardy.</p>	

Next meeting to be held on the 23rd March, 2010, 3.00 pm. Invitees will be contacted by dKO.

Nicholas Byrne

From: Cowie, Adele [AdeleC@lmc.nsw.gov.au]
Sent: Wednesday, June 02, 2010 8:31 AM
To: Nicholas Byrne
Subject: RE: Balmain Village

Hello Nick,

I have calculated parking as follows:

Residential

One bedroom units = 16 spaces
Two bedroom units = 64 spaces
Three bedroom units = 11 spaces
Adaptable units = 23 spaces
Disabled Visitors = 3 spaces
Visitors = 12 spaces

Total = 129 spaces

Club (based on subtracting the nominated kitchen and office area and dividing the remainder of the gross floor area at plaza level and above 50/50 between "lounge & bar" and "dining & auditorium") = 121 spaces

Restaurant gross floor area = $2237\text{sqm}/100 = 22.37 \times 5 = 112$ spaces

Plaza seating = 500sqm at 2.5 spaces per $100\text{sqm} = 13$ spaces

Retail gross floor area = $6488\text{sqm}/100 = 64.88 \times 1.5 = 98$ spaces

Commercial = 12 spaces ($766\text{sqm}/100 = 7.66 \times 1.5 = 12$)

Consulting rooms = 12 spaces ($604\text{sqm}/100 = 6.04 \times 2 = 12$ spaces)

Replacement for 21 lost street spaces

Taxi = 5 spaces

Carshare = 6 spaces

total parking required = 529 (assuming the over-supply of restaurant provisions is allowed for)

In the event that restaurant provision is reduced to a level consistent with other similar shopping centres (say 30% of the nominated restaurant floor area at an absolute maximum - I recall Peter Conroy mentioned 25% - and the remainder returned to retail the figures are adjusted as follows:

Restaurant gross floor area = $671\text{sqm}/100 = 6.71 \times 5 = 34$ spaces
Retail gross floor area = $8054\text{sqm}/100 = 80.54 \times 1.5 = 121$ spaces

Adjusted total = 474 spaces

-----Original Message-----

From: Nicholas Byrne [mailto:Nicholas.Byrne@dco.com.au]
Sent: Monday, 31 May 2010 10:04 AM
To: Cowie, Adele
Cc: Property & Land Consultants; Masson, Bruce; Koos de Keijzer
Subject: Balmain Village

Hi Adele,

Could you provide us with your carparking calcs. So we can do a complete reconciliation.

Regards,

Nick Byrne

Associate

Registered Architect (NSW 7806), B.Arch Hons, B.Arts Arch
nicholasb@dco.com.au



Masterplanning
Urban Design
Architecture
Interiors

Sydney
/Melbourne

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19 May 2010

The General Manager
Leichhardt Council
7-15 Wetherill St
Leichhardt NSW 2040

Dear Sir

Tigers Redevelopment

We have been asked by Balmain Development to provide Council further re-assurance of TIGERS return to the Victoria Rd site.

As we have said in all forums throughout the entire redevelopment process, TIGERS primary purpose for redeveloping the site is to build a new club, operated by TIGERS on the site, to service TIGERS Members and the greater Leichhardt Community for many years to come. The TIGERS Board remains unwaveringly committed to a new club on the site. Any speculation otherwise is completely unfounded.

I trust this serves to satisfy the Council of our commitment to the community we have been an integral part of for over 100 years.

Regards



Tim Camiller
Chief Executive Officer

Experience more

1 March, 2010



Mr David Trodden
Chairman
Balmain Tigers Rugby League Football Club
PO Box 1777
ROZELLE NSW 2039

ABN: 92 379 942 845
7-15 Wetherill Street, Leichhardt NSW 2040
PO Box 45, Leichhardt NSW 2040
Phone: (02) 9367 9222 Fax: (02) 9367 9111
TTY: 9568 6758
Email: leichhardt@lmc.nsw.gov.au
www.leichhardt.nsw.gov.au

Dear Mr Trodden,

I refer to your faxed letter of 3 February 2010 to the Mayor, Cr Jamie Parker. The Mayor has requested that I respond to your letter on his behalf. I apologise for the delay in providing the response.

At the outset, I should advise that if you wish to lodge a formal complaint that Cr McKenzie has (allegedly) breached Council's Code of Conduct then, in accordance with section 11.6 of that Code, the complaint must be made in writing to the General Manager.

However, as your letter was addressed to the Mayor, we have assumed that your letter merely seeks our response to your concerns about our role as members of the JRPP. Having spoken at length with the Mayor, I can assure you that both the Mayor & myself take our responsibilities as members of the JRPP very seriously and have no intention of prejudging any development application that may come before the Panel for determination.

As you would be aware, the JRPP, in determining an application will need to be satisfied that it has all relevant information before the Panel to enable the merits of the Application to be fully assessed. We understand that at this stage, the DA for the redevelopment of land owned by the Club is still in the assessment and consultation phase and therefore all relevant information to determination is not yet finalised.

In regard to the comments made by Cr McKenzie in the Inner West Courier, can I confirm that Cr McKenzie was not authorised to speak on the Mayor's or my behalf. Further her reported opinion, in so far as it relates to the merits of the Application for the redevelopment of the land owned by the Club does not reflect the views of the Mayor or myself. I should further note that, as I understand it, the Greens do not caucus on the merits of development applications so there can never be a Greens' position on an application until such time as a vote has been taken at a Council meeting.

On a personal note, can I confirm that I have not nor will I be subject to any direction by the General Manager or the Council, as to my exercise of planning powers as a member of the JRPP.

Legal Services

Manager: Margaret Lyons
Exec Planner: Jennifer Lillie
Assistant: Denise Vrontas

9367 9101 Fax: 9367 9243
9367-9286
9367 9094

margarotti@lmc.nsw.gov.au
jenniferl@lmc.nsw.gov.au
denisev@lmc.nsw.gov.au

i trust the above reassures you that as members of the JRPP we will be assessing the Application on its merits. Thank you for raising your concerns with the Mayor and allowing us this opportunity to clarify the matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M Lyons', with a long horizontal stroke extending to the right.

Margaret Lyons
Manager Legal Services

Office of General Manager

24 March 2010



Mr David Trodden
Chairman
Balmain Tigers Rugby League Football Club
PO Box 1777
ROZELLE NSW 2039

Administrative Centre
7-15 Wetherill Street, Leichhardt NSW 2040
PO Box 45, Leichhardt NSW 2040
Phone: (02) 9367 9285 Fax: (02) 9367 9103
Email: leichhardt@lmc.nsw.gov.au
www.leichhardt.nsw.gov.au

Dear Mr Trodden,

ALLEGATIONS OF BREACHES OF COUNCIL'S CODE OF CONDUCT

I refer to your letter of 3 February 2010 to the Mayor which complains of breaches of Council's Code of Conduct ("the Code") by Councillor Michele McKenzie by virtue of a letter she wrote to the Editor of the Inner Western Courier published in the 28 January 2010 edition of that paper.

I also note that in response to Council's reply dated 1 March 2010 by the Manager Legal Services, Margaret Lyons, you require your 3 February letter to be treated as a Formal Complaint.

Under clause 12 of the Code, I am responsible for making enquiries into and determining the action to be taken in respect of such complaints. I have done this and determined to take no further action in the matter. My reasons are set out below.

It will facilitate understanding my reasons if I set out in full Councillor McKenzie's letter:

"I would like the residents of Lilyfield and Rozelle to know that the Greens did not vote for the Tigers rezoning and do not support the scale of this development and have fought this overdevelopment with the community since 2004.

The huge community campaign against the rezoning should have worked but the Labor, Independent and Liberal councillors at the time were determined that it be approved.

Unfortunately now the council has no say in the development application approval process as this has been taken out of our hands by the State Government.

The approval will be assessed by an independent planning panel set up by the government.

The council has two positions on the panel but is outnumbered by State Government appointees 3:2 so you can probably work out for yourself how things will go.

Please send in your objections and let your local member know what you think."

You set out in your letter a number of statements and inferences you allege the Councillor's letter contains and I comment on these later in this letter.

By way of preliminary comment, subsection 232(2) of the Local Government Act provides:

"232(2) The role of a councillor is, as an elected person:

- to represent the interests of the residents and rate payers
- to provide leadership and guidance to the community
- to facilitate communication between the community and the Council."

Council's lawyers have referred me to the following statement by Zeeman J in *RV West Coast Council; Ex parte Strahan Motor Inn* (1995).⁸⁷ LGERA 383:

"Expressions of opinion on the part of a member of a municipal council of a nature which would be sufficient to disqualify a member of a judicial tribunal from sitting on a particular matter may not be sufficient to disqualify a member of a municipal council. Councillors may be assumed to hold and to express views on a variety of matters relevant to the exercise of the functions of the council. Expressing such views is part of the electoral process. Provided that expressions of opinion do not go so far as to evince an intention to exercise a discretion conferred by statute without regard to the terms in which it is conferred or without being prepared to listen to contrary argument, it ought not be taken to disqualify the councillor from participating in a relevant decision making process."

Subsection 232(2) of the Local Government Act and the above quotation give support to my decision.

Councillor McKenzie's letter is essentially providing readers of the newspaper with information of past events relating to the rezoning of your Club's property. There are parts of the letter which deal with other matters, namely:

- ".....the Greens.....do not support the scale of this development..."

I doubt that Councillor McKenzie is able to speak on behalf of the Greens and, in my view, nothing turns on the statement. It does infer an opinion of Councillor McKenzie as to the scale of the development, an opinion she is entitled to express: see the quotation of Zeeman J above.

- “.....the huge community campaign against the rezoning should have worked....”

Again, an opinion in relation to the community campaign which Councillor McKenzie supported and was entitled to support.

- “.....so you can probably work out for yourself how things will go.”

A personal opinion on the structure of the Joint Regional Planning Panel (“JRPP”) which the Councillor is entitled to have.

- “Please send in your objections and let your local member know what you think.”

This is a subjective statement in favour of Councillor McKenzie’s current position on the issue. It is addressed to supporters of her view, not members of the JRPP and, in my view, it cannot be taken as a direction to the JRPP.

Council is not the determining authority and Councillor McKenzie is entitled to take a position in relation to the development application and make a submission to the JRPP.

Going to the clauses of the Code you allege have been breached:

Clause 6.2 – You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (section 439)

There is no evidence of unlawfulness, dishonesty or failure to exercise a reasonable degree of care and diligence. The letter indicates Councillor McKenzie has taken a position but there is nothing in the letter which suggests an absence of care or diligence or of pre-judgement. The allegation of prejudgement implies the Councillor has a role in determination of the application which is not the case.

Clause 6.3 – You must treat others with respect at all times

In my view, the letter evincing support for Councillor McKenzie’s position does not amount to disrespect of supporters of the application. The letter is a statement of past events and the Councillor’s opinions. There is no requirement to mention or deal with the opposing view.

Clause 6.6 – You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

From her letter, Councillor McKenzie has had regard to the scale of the development, a relevant matter or circumstance. Otherwise, from the Councillor’s letter, it cannot be said what are the relevant facts, Councillor’s McKenzie’s knowledge of them or what merits she has had regard to.

Moreover, Councillor McKenzie is not making a decision in respect of the application.

In my view, there is nothing raised to indicate a breach of the clause or which warrants taking further action.

Clause 6.8 – You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process.

The relevant decision in this process will be the determination of the JRPP and the Councillor's letter does not impinge on that decision.

You allege the letter is an instruction to the Council appointees of the JRPP to vote against the application but the letter is addressed to the Editor of the newspaper and by implication, readers of the newspaper. There is nothing to suggest the appointees are readers of the paper. The encouragement to readers to lodge objections and inform the local member is the only part of the letter which could be said to be instructive in nature and it is unrealistic to expect any member of the JRPP to lodge such an objection or so inform a local member.

Contrary to your assertion, there is nothing in the letter that indicates the position of the Council appointees in relation to the application, let alone that their positions are predetermined.

The Council appointees are the Mayor and Council's Manager Legal Services .There is nothing to suggest the letter constitutes an instruction to either of them.

I have determined there is nothing in the letter which could occasion suspicion of improper conduct in a development assessment process or that warrants further action.

Clause 6.9 – In determining development applications, you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment.

Councillor McKenzie is not determining the application. The clause is of no relevance to the issues.

Clause 9.2(a) – Councillors or administrators must not direct Council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (section 352).

See my earlier comments in respect of clause 6.8.

The letter is not addressed to Council staff and apart from the encouragement to lodge objections and inform the local member, is not directory in nature.

I believe there is no breach of this paragraph of the Code or any need for further action in respect of the allegation.

Clause 9.2(b) – Councillors or administrators must not in any public or private forum, direct or influence or attempt to direct or influence any other member of the staff of the Council or a delegate of the Council in the exercise of the functions of the member or delegate (Schedule 6A of the Act).

My analysis of the Councillor's letter earlier in this letter causes me to determine there is no single part of the letter which could be categorised as an attempt to influence the Mayor or Council's Legal Services Manager in their determination of the application.

It remains to assess the effect of the letter as whole. You describe the letter as a "...fairly blatant attempt to direct the Council delegates to the planning committee to exercise their functions by voting against the Development Application."

For this to be so:

- the letter must be related to the Mayor and Legal Services Manager;
- there must be established a belief or view of Councillor McKenzie that the Mayor and/or Legal Services Manager would be influenced by her opinion on the issue.

Whilst it may occur that the Mayor or Legal Services Manager would become aware of the letter, I do not consider that Councillor McKenzie was attempting to influence either of them – nor did she believe the letter would influence them.

Moreover, I do not consider that Councillor McKenzie would believe she could influence the Legal Services Manager by means of a letter specifically addressed to her, let alone by a letter to the Editor of a local newspaper.

I believe the above deals with all of the statements and inferences you attribute to the Councillor's letter but in summary and following the numbering of the statements/inferences in your letter, I comment:

1 The Acting Mayor has already pre-judged our development application and is opposed to it.

The evidence is that Councillor McKenzie has taken a position on the issue but nothing more. Also she has no determination to make which could be pre-judged.

2 The majority of Leichhardt Councillors are opposed to the application.

The letter states, “.....the Greens did not vote for the Tigers rezoning and do not support the scale of this development....”

The first part of the statement is correct – the Greens didn't vote for the rezoning. I do not know if Councillor McKenzie has authority to speak for the Greens. I suspect not. However, she is a member of the party and a fellow councillor and it is logical that she has a reasonably based belief that the second part of the statement is correct. In such circumstances I am not prepared to impugn the statement.

The councillors are entitled to form a view on and make submissions in respect of the applications.

- 3 The two Leichhardt Council appointees to the panel which will decide the application have been instructed to vote against the application.**

There is no basis for such a statement or inference. This is clear from my earlier comments.

- 4 The instruction to vote against the application arises not because of a consideration of the merits of the application, but because of the fact that certain Councillors did not support the making of the planning controls which are now the planning law for the site.**

There was no such instruction in the letter.

- 5 The representatives of Leichhardt Council on the decision making panel would not be reaching their decision based on an application of the planning laws which apply to the site, but rather upon the basis of a predetermined position of opposition to the existence of those planning laws.**

The letter does not state or infer that the representatives of Council have a predetermined position.

According to the letter, the Mayor opposed the making of the existing planning laws. This opposition does not constitute a predetermination of the development application and there is no evidence of what is the Mayor's position in relation to it. There is no evidence of any position of the Legal Services Manager.

Accordingly, for the reasons set out above, I have determined to take no further action in relation to your allegations of breach.



Peter Head
GENERAL MANAGER

2 February 2010

Mayor Jamie Parker
Leichhardt Council
7/15 Wetherill Street
LEICHHARDT NSW 2040

Dear Mayor Parker,

I write to raise our serious concerns regarding the content of a letter which appeared in the Inner West Courier on 28 January, 2010 from your colleague, Councillor McKenzie, acting in her capacity as Mayor of Leichhardt Council. I have enclosed a copy of the letter for you in the event that it did not come to your attention.

The letter from the Acting Mayor either states or infers the following matters:-

1. The Acting Mayor has already pre-judged our Development Application and is opposed to it.
2. The majority of Leichhardt Councillors are opposed to the application.
3. The two Leichhardt Council appointees to the panel which will decide the application, have been instructed to vote against the application.
4. The instruction to vote against the application arises not because of a consideration of the merits of the application, but because of the fact that certain Councillors did not support the making of the planning controls which are now the planning law for the site.
5. The representatives of Leichhardt Council on the decision making panel would not be reaching their decision based on an application of the planning laws which apply to the site, but rather upon the basis is a predetermined position of opposition to the existence of those planning control laws.

We note that your Code of Conduct obliges Councillors, amongst other things, to comply with the following:-

- 6.2 *You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act.
(section 439)*
- 6.3 *You must treat others with respect at all times.*

- 6.6 *You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.*

Development decisions

- 6.8 *You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process.*
- 6.9 *In determining development applications, you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment.*
- 9.2 *Councillors or administrators must not:*
- a) *direct council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (section 352)*
 - b) *in any public or private forum, direct or influence or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate*

On any fair reading with the letter which was published in the Inner West Courier on 28 January, 2010, the Acting Mayor was in breach of every one of these clauses of the Code of Conduct referred to above. If nothing else, it seems clear that the letter which I have referred to is a fairly blatant attempt to direct the Council delegates to the planning committee to exercise their functions by voting against the Development Application. The purpose of this letter is to make complaint regarding those breaches of the Code of Conduct and to request that Council investigate the breaches in accordance with the Code of Conduct.

Our Club is, by a long way, the largest community organisation and sporting organisation in your Municipality. The Club is, without question, one of the oldest sporting or community organisations in the area. The Club is the largest private employer in the Municipality. As a consequence of each of these things, the Club is entitled to expect that it is treated respectfully by your Council. The Club does not, nor has it ever, sought special favour or consideration by virtue of its position in the community. It asks nothing more than to be treated in the same way than everybody else can expect to be treated in dealing with a Development Application. It seeks only to have its application dealt with in accordance with the law, rather than in accordance with personal prejudice and on the basis of petty political grandstanding.

Our Club has nothing but the greatest respect for you as Mayor. You have always treated us properly and you have been fair minded and co-operative in relation to dealing with our Development Application. We hope, and we expect, that both you and the other representative on the planning panel will discharge your obligations on accordance with the law. We ask nothing more. It is regrettable that your colleague Councillor McKenzie does not adopted a similar attitude and has, potentially, caused us significant damage by ignoring her legal obligations in favour of her personal prejudices.

In the circumstances, we must reserve our rights in all respects.

Yours faithfully,

David Trodden

Chairman

From: "Property & Land Consultants" <makbaria@bigpond.net.au>
To: <maeve.ryan@propertyandland.com.au>
Date: 2/06/2010 12:43 pm
Subject: FW: Leichardt Council

-----Original Message-----

From: Ben Elias [mailto:ben@elias.net.au]
Sent: Monday, 9 February 2009 12:30 PM
To: 'Anthony Karam '; 'Property & Land Consultants'
Subject: FW: Leichardt Council

Ben Elias - Managing Director
BMax Property Group
Mobile: 0419 980 980
Email: ben@bmaxproperty.com.au

-----Original Message-----

From: Parker, Jamie (Mayor) [mailto:jparker@lmc.nsw.gov.au]
Sent: Monday, 9 February 2009 12:27 PM
To: Ben Elias
Subject: RE: Leichardt Council

Dear Ben,

Thank you for your email. As you know Council is looking forward to a positive resolution to the DA and will work closely with you and your team over the coming months. I trust the fact that we organised a meeting with one days notice illustrates our commitment to working in unison with the Club and your team.

The time line you have indicated below is in line with the timeline we discussed and it is important that we work to meet these dates. Council staff have already started putting together the design review panel. Feel free to contact me any time and I look forward to a DA that will satisfy the Council, community and Club.

Best Wishes

Clr Jamie Parker
Mayor
Leichhardt Council
P: 02 9367 9191
E: jparker@lmc.nsw.gov.au<mailto:jparker@lmc.nsw.gov.au>

From: Ben Elias [ben@elias.net.au]
Sent: Thursday, 5 February 2009 9:49 AM

To: Parker, Jamie (Mayor)
Cc: Jones, Karen; Conroy, Peter; 'Anthony Karam '
Subject: Leichardt Council

Dear Jamie,

On behalf of my team I would like to thank you, Peter and Karen for your time and constructive guidance in our meeting on Tuesday.

We will be seeking to work intimately with your council in order to collectively achieve the most feasible, well considered and timely outcome possible with respect to the Tigers DA.

>From our perspective we will be looking to the following series of actions to progress the matter (all references to dates are indicative estimates):

- * prepare a set of informal pre-DA documents (incl. pre-lim architectural sketches) for council feedback [Feb '09]
- * the council feedback (which we would anticipate may take a couple of weeks) will guide the next stage in so far as progressing the documentation [mid to late March 2009]
- * factoring in the feedback we will then prepare the DA submissions including all relevant reports to support the application [June 2009]
- * following the requisite administrative requirements the notification period will commence [mid August 2009]
- * we will then receive the assessment and comments and/or issues that will need to be addressed [end August/early Sept 2009]
- * we will seek to address those issues in the four weeks after we have been advised of the issues [end October/Nov 2009]
- * once adequately addressed the report will go to council for DA approval [Nov/Dec 2009]

It is clear to us that the relationship between the applicant (Tigers) and your council will be one of clear and on-going consultation and communication.

We will be in contact with your offices soon to get the momentum back on track for this extremely exciting project for the tigers and our local community.

Yours sincerely

Ben Elias

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Any views expressed in this communication are those of the individual sender, except where the sender specifically states them to be the views of Leichhardt Council.

#####

HOWARD PACKER

Barrister

**13th Floor St James Hall
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Sydney NSW 2000**

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DX 266 Sydney

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4 June 2010

Peter Johnson

Electorate Advisor

Office of VERITY FIRTH MP

Member for BALMAIN

112A Glebe Point Road, Glebe NSW 2037

BY EMAIL

Dear Peter

Tigers Development- Victoria Road Pedestrian Bridge

Peter, further to your request this morning for the Rozelle public school P & C's position on the Tigers Development- Victoria Road Pedestrian Bridge, I provide the following information. I apologise for using my professional letter- head but have no available P & C letterhead at the moment.

The P & C has a number of concerns about the proposed bridge all of which are to do with child safety issues. They are summarised below. All of these concerns have been the subject of a number of written responses to the various iterations of the development over the course of the last few years. It should be remembered that it was not until the re-exhibition of the Tigers DA that bridge plans have actually been provided.

1. The proposed pedestrian bridge across Victoria Rd, is currently dependent on the purchase of Education Dept land [RTA Imposed condition] to an extent exceeding 1.5 metres from the Victoria Rd boundary and a length exceeding 50 metres. The proximity of the bridge structure to school buildings is unacceptably close and with a height in excess of 9.5metres above Victoria Rd, issues of privacy, solar access and bulk will impact the school buildings and playing area adjacent the bridge structure. It is of concern that the bridge directs users of the redevelopment straight towards school grounds and apparently very near to classrooms. The height of the bridge may give users of the bridge direct lines of sight into class rooms at all times of the day.

2. The current proposal does not detail the privacy screening separating the bridge from school property. The bridge requires the construction of retaining walls to support school land and buildings, also relying on the relocation of at least one sizeable rainwater harvesting tank. If the Education Dept intends to sell or lease any of Rozelle Public School land. This process must be evaluated in a rigorous and transparent manner. All costs must be borne by the proponent with Rozelle Public School being the sole beneficiary in this process.
3. Other issues raised were the entrance of the club that operates 24hours is adjacent the ramp to the bridge, also children using the bridge have to walk through the retail and restaurant plaza to access the bridge. The bridge will funnel children into an area for ingress to and access from licenced facilities. The bridge gives students using the bridge direct access into the redevelopment. The redevelopment includes BLC which sells alcohol and has gaming facilities. It is not appropriate for children coming to or returning from school to be directed into a plaza where such activities are conducted.
4. At the moment the school is set next to and opposite a thriving range of shops and businesses. Pedestrian traffic is high and child safety is consequentially higher. It is likely that the redevelopment will have adverse impacts on local businesses and the vibrancy of the area around the school. Less pedestrian traffic means greater opportunity for loitering and increased child safety concerns.

Please contact me about anything further that concerns you. My mobile number is 0412 449 187.

Yours sincerely

A handwritten signature in black ink, appearing to read 'H. Packer', with a stylized, flowing script.

Howard Packer



9 June 2010

The Hon. Verity Firth M.P.
Minister for Education and Training
Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Sent via email: office@firth.minister.nsw.gov.au

Dear Verity

Re: Balmain Leagues Club Redevelopment

Thank you for the opportunity to meet with you on Monday, 31 May 2010.

Since then, we have seen a copy of your submission to the Leichhardt Council regarding the above Development and I just thought that it would be appropriate to take this opportunity to address some of the concerns included in your submission.

1. Scale

The current Development Application has stayed within the envelope set under the site specific Local Environmental Plan ('LEP') gazetted in August 2008, after nearly 4 years of studies, researches, community consultation and reports commissioned by Leichhardt Council. With specific Height and FSR limits for the Club, Retail, Commercial and Residential buildings, our application fully complies with those limits.

2. Traffic

Traffic has always been a major issue for the Council prior to approval of the LEP. As such, the Club ended up spending substantial amounts of money on the traffic study undertaken by Ove Arup and commissioned by Leichhardt Council. The applicant did not choose the criteria for the traffic studies including peak hours, the Council did. The applicant paid for the study and we have since complied with the latest available traffic requirements. Our application is well within the traffic budget set for in the Ove Arup report. There is no alternative as it is impossible for anyone to respond to or comply with unproven demands made by a number of individuals in the absence of any study to back them up.

3. Environmental Impact

The applicant has and will continue to be under the most intense scrutiny when it comes to noise, vibration and matters relating to construction of the site. We have continuously made changes to our design in order to ensure that we comply with and improve on the acoustic requirements on this project. To this date our acoustic engineers are working with the Council's own acoustic consultants in order to achieve a satisfactory result for all concerned.

4. Rozelle Public School

The bridge was a demand made by the Council under a Voluntary Planning Agreement made without obtaining a formal agreement with the School. It is a community required facility that the applicant is providing at substantial costs. It will therefore be extremely ironic if the same community is objecting to the very ramp that is required to get up to this bridge. Should the members of your electorate wish for the bridge not to proceed, they should address their concern to Leichhardt Council.

In the meantime we have engaged in full consultation with the School Principal, Lyn Doppler, two senior Officers from the Department of Education and Training ('DET'), Darrell Binskin and Rob Sanders, DET Area Manager, Louise Ferguson and the Acting School Principal, Mike Pace on a number of occasions from June 2009. During this process we have presented the School and the Department's officials with the latest plans of the Bridge; I have personally taken charge of those meetings as we are extremely concerned about any impact whatsoever on the School especially the areas adjacent to the ramp. The School Principals had specific demands in relation to any visual intrusion into the School and we have complied with those demands.

I like to emphasise that our meetings have without exception been highly professional and extremely productive and cooperative. While the School Principal, Lyn Doppler and the acting Principal, Mike Pace have raised their concerns about the Development in general they have agreed with the use of the School land for the ramp to the pedestrian footbridge based on the conditions that have been set by the School and the Department

Our team of consultants have worked intensively with Council Officers, consultants and a Council appointed Design Review Panel and have made every effort to comply with practically every demand that has been put to us.

This application has gone on public notification to 20,000 people on three occasions but has received submissions from approximately 300 people out of which a fraction are genuine objections. We have also attended three public meetings organised by the Council at which approximately 50 people on average turned up. Only objections have come from long term objectors to the LEP with special interest mainly from some residents of Waterloo Street. As you may appreciate, the development has also received support and submissions from a substantial number of your electorate who reside in that Municipality.

We therefore believe that we have addressed the concerns raised in your submission subject to the LEP approved for this Development.

Kind Regards
Property and Land Consultants

A handwritten signature in black ink, appearing to read 'M. Akbarian', followed by a horizontal line.

Moss Akbarian
Managing Director

CC: Ian Wright and Ben Elias

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DESIGN AND DOCUMENTATION DEVELOPMENT AND BUILDING APPROVALS PROJECT AND CONSTRUCTION MANAGEMENT

Rozelle Village Pty Ltd

9 June 2010

Mr. Darrell Binskin
Department of Education and Training
35 Bridge Street
Sydney NSW 2000

Sent via email: Darrell.Binskin1@det.nsw.edu.au

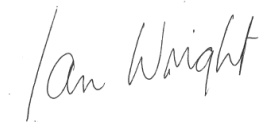
Dear Darrell

Re: Pedestrian Bridge across Victoria Road

Further to the meeting between the representatives of the Department of Education and Training and Rozelle Public School, we are writing to make the following offer for the use of the School land for the Pedestrian Bridge Ramp across Victoria Road.

- 1) The Pedestrian Bridge will occupy approximately 95.5m² of School land along Victoria Road, through a combination of land and airspace allocation in accordance with the attached plans included in our Development Application with Leichhardt Council.
- 2) There will be no visual access from the ramp into the adjacent Schoolyard.
- 3) There will be extension of the existing retaining wall to the underside of the ramp in accordance with plans submitted.
- 4) Final plans for the ramp will be submitted to the School for consideration.
- 5) We will make a total contribution of \$220,000.00 to the School consisting of 10 equal annual contributions of \$22,000.00.

Yours faithfully



Ian Wright
Managing Director
Rozelle Village Pty Ltd



15 June 2010

The Hon. Verity Firth M.P.
Minister for Education and Training
Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Sent via email: office@firth.minister.nsw.gov.au

Dear Verity

Re: Balmain Leagues Club Redevelopment

Thank you for the opportunity to meet with you and the P&C representatives on Friday.

As discussed please find our response to the letter from Mr. Howard Packer using his numerical order as follows:

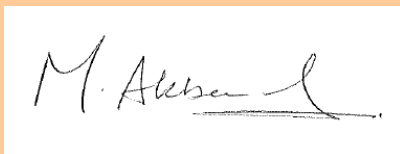
1. Rozelle Village does not intend to purchase the land from the School, Rozelle Village is only seeking the rights over the land (most of which is air space). We have undertaken to ensure that there is no visual intrusion into the adjacent School land. Maximum care will also be taken to minimise any solar impact, protect against fire hazard, and any other safety risks to the School. Matters relating to the bulk and proximity of the bridge structure to the School would be relatively unchanged should the ramp be built on the Council's footpath instead of the School land
2. We have provided architectural drawings for the bridge to the School Principal and the representative of the Department of Education in every meeting. Indeed, the School Principal, Ms. Lyn Doppler and Acting Principal, Mr. Mike Pace have been very particular about matters affecting the School. However, we note the P&C's concerns and agree to comply with them.
3. As a community required facility, the bridge is supposed to enhance the safety issues relating to the School children and indeed other members of the community when crossing Victoria Road. When it comes to passing licensed areas it will be the legal responsibility of the Club and the management of the Development to ensure maximum safety and protection for Children or indeed anyone passing the bridge.
4. Please note that this bridge is provided as a community facility and has no commercial benefit for Rozelle Village. Rozelle Village is providing the bridge at its cost pursuant to Council requirements during the LEP process and indeed it is the subject of the Voluntary Planning agreement signed with the Council. We do not agree with the concerns of the P&C and believe that the development will enhance the existing businesses in the area and indeed create more businesses and add to the vibrancy of the area around the School. We believe that there will inevitably be more pedestrian traffic in the area and hence using the P&C's own reasoning the child safety will improve. Indeed the development will provide additional security measures than what was in place around the existing Club. However, these matters will be addressed during the next series of community consultation relating to this development. Please note that matters relating to the existence of the Development and its impact on the area in general have been fully debated and scrutinised during the LEP stage, which is now approved.

Please note that at this stage we are only seeking the School/DET's consent to the processing of our Development Application and the final ramp design will be presented to the School/DET for their input. The pedestrian footbridge may not be built and/or the ramp may not be on the School land. It is important to note that the ramp is pushed into the School land due to a minimum 2 meter bike track demanded by the RTA. Should the ramp be on the Council footpath, similar concerns will remain but the School will not benefit from the commercial contribution by Rozelle Village. In any case, the existence of the ramp is controlled by Leichhardt Council through the Voluntary Planning Agreement and its conditions of the Development Application. Should there be community pressure on the Council to remove the bridge from this development and Council approves, then Rozelle Village will not proceed with it.

As you are aware, it is important that we obtain your consent to our Development Application as a matter of urgency. We have taken all necessary measures to consult with your Department and the School Principals over a long period of time. It is unfortunate that we are in this situation despite our efforts and through no fault of our own.

We look forward to your consent and will be in contact with your office tomorrow in order to finalise this matter.

Kind Regards
Property and Land Consultants

A handwritten signature in black ink, appearing to read 'M. Akbarian', with a horizontal line underneath.

Moss Akbarian
Managing Director

CC: Ian Wright and Ben Elias

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29 June 2010

The Hon. Verity Firth M.P.
Minister for Education and Training
Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Sent via email: office@firth.minister.nsw.gov.au

Dear Verity

Re: Balmain Leagues Club Redevelopment

I refer to the outstanding consent for the above Development Application. As you are aware I have already carried out the following tasks pursuant to your request at our meeting of Friday, 11 June 2010 in your electoral office.

1. Provided a response to the P&C Concerns relating to the ramp.
2. Provided legal advice from Freehills confirming that the consent does not oblige you or your Department to sell or transfer the land or the rights to it subject to a commercial agreement.
3. A draft consent letter from Freehills

I have been in communication with Ms. Tamsin Lloyd of your Department who has informed me that while you have concerns about providing the consent required, you were aware of the significance of this decision and the timing of it and that is why Tamsin was trying to organise alternative locations for the ramp. Tamsin has put us in touch with the management of the RTA regarding your preferred option of the public toilets but RTA advised us that the toilet block belongs to the Leichhardt Council who indicated that consent for that was unlikely. Furthermore RTA have consistently refused to compromise on the widths of the bicycle path hence denying us the opportunity to use the footpath.

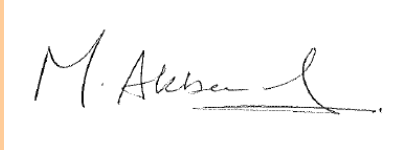
I have not had any feedback regarding our letter to P&C. I can therefore assume that P&C have not raised any concerns in relation to our letter or indeed objected to the provision of consent.

Tamsin informed me that your reluctances to provide a consent is based on a Departmental legal advice. I have offered to make Freehills available to meet with your legal advisers in an attempt to overcome any concerns they may have. Tamsin had kindly undertaken to see if she can organise such meeting and inform me on last Friday but unfortunately I have not heard from her since. I understand that she was very busy with parliamentary duties last week as she is very impressive and normally very prompt.

As you are aware, this is a very significant and urgent matter relating to a major project in Sydney. As a local member you are also aware that millions of dollars have been spent on various aspects of this project during the LEP and Development Application process on satisfying the council, the community and the relevant authorities. I am sure you agree that it will be a tragic mistake to hold such a significant project to ransom for a ramp to a community required footbridge. Such action will only respond to minority interest groups who are publically bent on sabotaging this DA for political and personal reasons and with little support from majority of the community, the school or P&C.

As you know this matter is going in front of JRPP on 8th July and we needed to obtain the concern last week. Kindly provide us with a consent as a matter of urgency. Our legal advisors and myself will be available to meet with your legal representatives on short notice in order to overcome their legal concerns.

Kind Regards
Property and Land Consultants

A handwritten signature in black ink, appearing to read 'M. Akbarian', with a horizontal line drawn underneath the signature.

Moss Akbarian
Managing Director

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30 June 2010

The Hon. Verity Firth M.P.
Minister for Education and Training
Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Sent via email: office@firth.minister.nsw.gov.au

Dear Verity

Re: Balmain Leagues Club Redevelopment

Thank you very much for your letter addressed to Tim Camiller.

Please note the following:

1. We will be pleased to deal with the P&C's concerns, if any, as a part of arriving at a final agreement.
2. There is a commercial offer with your Department currently being assessed by Mr. Rob Saunders, who is currently obtaining valuations and is due to respond to our offer by this Friday.

In that regard, please find attached the offer to Darrell Binskin dated Wednesday 9 June along with further correspondence with Darrell up until Tuesday 29 June. I have also included my email to you dated Wednesday 9 June that contains a copy of the offer sent to Darrell.

Please note that providing the consent to the Development Application is not obliging you to sell or do anything else with the land at this stage.

Kind Regards
Property and Land Consultants

Moss Akbarian
Managing Director

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TIGERS

2 July 2010

The General Manager
Leichhardt Council
7 - 15 Wetherill St
Leichhardt NSW 2040

Dear Sir

Tigers Redevelopment

We refer to Recommendation 15 and associated commentary on page 99 of the Council Assessment Report to the JRPP of 30 June 2010.

For ease of reference, Recommendation 15 says "The Application does not include the reinstatement of Balmain Leagues Club on the site..." and the commentary on page 99 includes this statement "...questions remain as to the Club's ongoing commitment to the site".

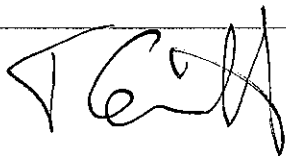
Balmain Tigers has been an outstanding servant and representative of this community for over 100 years. The large majority of the Club's 18,000 members live in the Leichhardt Municipality. To question the Club's commitment to the site after everything that has transpired regarding the Application in the last 6 years is at best incompetent and insensitive. The Board's of Balmain Leagues Club and Balmain Tigers Rugby League Football Club are appalled at the assertions made in this Report.

We are at a loss as to how the inclusion of a 3,600m² club space and the undoubted consideration of the Club in terms of traffic generation; car parking etc could possibly constitute "The Application does not include the reinstatement of Balmain Leagues Club on the site".

We are at a loss as to how the contents of our letter of 19 May 2010 (copy attached) which again confirmed the Club's unwavering commitment to a new club on the site could question the "Club's ongoing commitment to the site".

Peter, the seriousness of this matter can not be overstated. It would be easy to conclude from these statements that there is an inherent bias against the Club in the assessment of the Application.

Yours faithfully,
BALMAIN LEAGUES CLUB



Tim Camiller
Chief Executive Officer

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TIGERS

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