

State Environmental Planning Policy 1 (**SEPP 1**) - Objection to maximum residential FSR control outlined in Schedule 1, Part 3, Clauses 4 (c) and (e) in Leichhardt LEP 2000

1 – Executive Summary

This State Environmental Planning Policy No.1 - Development Standards (**SEPP 1**) Objection has been prepared by Mecone on behalf of Grand Rozelle Pty Ltd. It is submitted to Inner West Council (**Council**) in support of a development application on the following land:

- (a) 138–152 Victoria Road, Rozelle (being Lot 1, DP 528045);
- (b) 154–156 Victoria Road, Rozelle (being Lot 1, DP 109047);
- (c) 697 Darling Street, Rozelle (being Lot 104, DP 733658); and
- (d) 1–7 Waterloo Street, Rozelle (being Lots 101 and 102, DP 629133, Lots 37 and 38, DP 421 and Lot 36, DP 190866),

(**Site**).

This SEPP 1 Objection should be read in conjunction with the Statement of Environmental Effects (**SEE**) prepared by Mecone dated 17 April 2018 and resubmission package dated 12 August 2019.

The subject application seeks to vary from the numerical development standards contained in Clause 4(c) and (e) of the LLEP 2000 relating to the proposed mix of FSR land uses. The proposed development is consistent with the overall FSR maximum permitted under Clause 4(a) of 3.9:1.

This SEPP 1 Objection applies the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46 (6 April 2001) as reiterated in *Wehbe v Pittwater Council* (2007) NSW LEC 827.

In particular, the SEPP 1 Variation Request demonstrates that the proposed variation to the land use FSR mix meets the following key tests:

- *Wehbe* Test 1 - the objectives of the standard are achieved notwithstanding non-compliance with the standard;
- *Wehbe* Test 3 - the objective would be thwarted if compliance was required.

Detailed analysis of the proposal's consistency with *Wehbe* Tests 1 and 3 is provided below in Sections 8 (*Wehbe* Test 1) and 9 (*Wehbe* Test 3).

Critically, the Variation Request demonstrates that strict compliance with the standard would likely hinder the ability to obtain a development consent, as the current mix of uses identified in Clause 4 (b) – (e) would result in a development contrary to overall Development Objectives (2) (a), (b) and (d) of the LLEP2000 for the reasons stated below and in previous DA refusals in 2009 and 2016.

We acknowledge that the FSR control and mix is a maximum control and cannot be achieved in all circumstances. However, as the Government did not support Council's 2015 request to reduce the maximum FSR for the Site, we consider that this indicates support at a state planning level to retain the existing FSR of 3.9:1. Importantly, it recognises that an approximate 3.9:1 FSR is likely required for the site to be capable of meeting Object 1.3(c) of the Act "to promote the orderly and economic use and development of land".

Therefore, compliance with the mix of uses is 'unnecessary and unreasonable' as it would not enable a development that achieved the maximum FSR of 3.9:1 that is also consistent with the LEP Development Objectives.

The non-compliance with the FSR mix in Clauses 4(c) & (e) is considered unlikely to have any significant adverse effects on adjoining or surrounding properties. In contrast, the proposed scheme will have an improved outcome for the Site and surrounding development as:

- The Site will no longer remain as a derelict and vacant site; and
- The proposed mix of uses better meets the overall Development Objectives (Clause 2) as it will:
 - Reduce traffic impacts (Objective (b)) compared to a strictly compliant scheme; and
 - Contribute to, rather than detract from, the surrounding Rozelle Commercial Centre (Objective (d)).

Therefore, strict compliance with the standard would unnecessarily complicate orderly and economic development of the Site in accordance with the intentions of the zoning and the objectives of the EPA Act.

2 – Why SEPP 1 Applies, not Clause 4.6

The applicable planning instrument is the *Leichhardt Local Environmental Plan 2000 (LLEP 2000)*. The LLEP2000 is deferred from the Standard Instrument Leichhardt Local Environmental Plan 2013, therefore SEPP 1 applies, not Clause 4.6

3 - Framework of SEPP 1

The Land and Environment Court has established questions to be addressed in variations to developments standards lodged under *State Environmental Planning Policy 1 – Development Standards (SEPP 1)* through the judgment of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (**Wehbe**).

These questions (the five-part test) are as follows, although it is noted that other reasons may be put forward to demonstrate that the variation to the development standard has merit:

1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;
2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

4. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and
5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

4 - The number of the relevant Clauses to be varied and whether they are a development standard

The numbers of the relevant clauses to be varied in the LLEP 2000 are Clauses 4(c) and (e) in Part 3 of Schedule 1 (**Clause 4**).

Clauses 4(c) and (e) in Part 3 of Schedule 1 to LLEP 2000 provides as follows:

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

...

(c) the floor space ratio for all commercial premises on the site exceeds 0.2:1,

...

(e) the floor space ratio for all residential development on the site exceeds 1.9:1,

..."

The Clauses meet the definition of a development standard in accordance with the EP&A Act 1979 as "it is a provision of an environmental planning instrument...in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—...

(b) the proportion or percentage of the area of a site which a building or work may occupy..."

5 - Specify the nature of the Development Standard sought to be varied and details of variation:

The development application (**DA**) is for the Site and seeks a variation to the mix of land uses permitted by Clause 4 of LLEP 2000, specifically to provide additional residential and commercial floor space above the maximums permitted. Refer to the 'Development Comparison' table below:

Development Comparison – Key provisions	
Control	Proposed
Total floor space not to exceed 3.9:1 (28,587sqm) Site area: 7330sqm	Complies 3.88:1 28,415sqm
The floor space ratio for all shops on site not to exceed 1.3:1 (9,529sqm)	Complies 0.71:1 5,204sqm
Total floor space for commercial premises not to exceed 0.2:1 (1,466sqm) (Clause 4(c) in Part 3 of Schedule 1)	Non-compliant (7% variation) 0.21:1 1,565sqm

Development Comparison – Key provisions	
Control	Proposed
Floor space ratio for all clubs on the site does not exceed 0.5:1 (3,665sqm)	Complies 0.42:1 3,066sqm
Floor space ratio for all residential development on the site does not exceed 1.9:1 (13,927sqm) (Clause 4(e) in Part 3 of Schedule 1)	Non-compliant (33% variation) 2.54:1 18,618sqm

6 - Objective of the standard to be varied as it relates specifically to the site and proposal

There are no specific objectives related to the floor space ratio (**FSR**) development standards in Clause 4, as LLEP 2000 pre-dates the Standard Instrument LEP.

However, the overall objectives that guide development of the Site are outlined in Clause 2 of Part 3 of Schedule 1 in the LLEP 2000, and are as follows:

- (a) *The development integrates suitable business, office, residential, retail and other uses so as to maximise public transport patronage and encourage walking and cycling (**Objective (a)**);*
- (b) *The development contributes to the vibrancy and prosperity of the Rozelle Commercial Centre with an active street life while maintaining residential amenity (**Objective (b)**);*
- (c) *The development is well designed with articulated height and massing providing a high quality transition to the existing streetscape (**Objective (c)**);*
- (d) *The traffic generated by the development does not have an unacceptable impact on pedestrian or motor vehicle traffic on Darling Street, Waterloo Street and Victoria Road, Rozelle (**Objective (d)**); and*
- (e) *Any residential development at street level has a frontage to Waterloo Street, Rozelle and, when viewed from the street, has the appearance of no more than three storeys (**Objective (e)**),*

together, the “**LEP Development Objectives**”.

In particular, Objectives (b) and (d) are relevant to the standards sought to be varied through this DA.

7 – Is the Objection to the variation of development standards 4(c) and 4(e) of the LLEP2000 well founded?

This SEPP 1 Objection is well founded as it provides justification that strict compliance with the land use mix development standards in Clauses 4(c) and (e) is unreasonable and unnecessary in the circumstances of the case. Granting consent to the development proposed in the DA would ensure the development on the Site is consistent with the LEP Development Objectives (2)(b) and (d), where a development strictly compliant with the numerical controls in Clause 4(c) and (e) would result in a development not capable of being approved. In particular, granting of development consent to the proposal would clearly meet the Wehbe Tests of #1 and #3.

8 - Explain how the proposal, notwithstanding the non-compliance with the development standard, will achieve the objective of the development standard (Wehbe Test 1).

Planning History

The Site has an extensive planning history, with two prior development applications that have been refused (being, D/2009/352 and D/2015/438) under the existing controls, the latter of which was unsuccessfully appealed to the Land and Environment Court of NSW (**Court**) in 2016.

In addition, in 2014/2015, Council lodged an ultimately unsuccessful planning proposal which attempted to 'undefer' the Site from the existing LEP 2013, which governs the remainder of the Leichhardt LGA, with a reduced scale of development.

A brief overview of the most recent development application and Court Case in 2015 (DA2015/428) is particularly relevant, as it complied with the numerical FSR standards in Clause 4, yet was rejected by the LEC for not meeting the Objectives of the development standard.

The application was refused by the Court on the following grounds:

- Non-compliances with the objectives of the LEP 2000 as follows:
 - non-compliance with Objective (b) due to lack of connections with Darling Street;
 - non-compliance with Objective (c) due to the limited interface between the proposed development and Waterloo Street; and
 - non-compliance with Objective (d) due to unacceptable traffic impacts.
- There were issues with the provision of floor space for the Club, which was not sufficient to ensure the long-term viability of the Club.

In particular, Commissioner Tuor considered that:

- The proposed development was contrary to Objective (b) as:
"The design of the development is focused on facilitating access for both pedestrians and cars to the supermarket and is likely to function as a stand-alone centre that can operate independently of the existing centre. The main entries to the development are on Victoria Street and Waterloo Street where the western courtyard, through site link and Victoria Road entry provide direct and easy access to the supermarket that bypasses the Plaza. This is contrary to the intent of the DCP, where the Plaza is a connecting element between the development and the existing streets".
- The proposed development was also contrary to Objective (d), despite the fact that the proposal complied with the maximum FSR both in respect of overall and mix of uses. Commissioner Tuor stated that:

"The development application includes these uses and states that it complies with the maximum FSR for each use permitted under the site specific control in LEP 2000. However, this does not of itself mean, as submitted by the applicant, that the "level of traffic generation for the site is consistent with the inevitable consequence and reasonable expectations arising from compliance with the applicable planning controls". As the achievement of these limits is dependent upon the satisfaction of the objectives for the site in Schedule 1, Part 3 of LEP 2000. This is of relevance, given the matters discussed below in relation to the maximum FSR of the club use on the site."

Reasoning - how the proposal, notwithstanding the non-compliance with the development standard, will achieve the objective of the development standard.

The refusal of the 2015 DA, which proposed development consistent with both the maximum permitted numerical FSR control and the land use mix, indicates that the mix of uses permitted in the existing controls is inherently in conflict with Objectives (a), (b) and (d).

As indicated by the refusal of the 2009 and 2015 DAs, the age of the Site's development controls means that a viable development on the Site that meets the LEP Development Objectives and aligns with the anticipated development intensity (overall FSR) and mix of uses, as envisaged by the development standards in Clause 4, is difficult.

By providing both an overall maximum FSR, as well as a breakdown of its proposed uses, the controls in Clause 4 seek to impose both an acceptable built form outcome (the overall 3.9:1 FSR) and appropriate land use outcome (the mix of FSRs permitted). The DA is consistent with the maximum FSR of 3.9:1 and the LEP Development Objectives and is therefore, an appropriate built form outcome for the Site.

When developed in 2006-2009, the proposed FSR mix contained in the LLEP 2000 was in response to a different economic, environmental and social focus within Rozelle and the wider region. At the time, few people involved would have thought that the Site would still be sitting derelict over 10 years later. The proposed mix of uses in Clause 4 was a suitable reflection of an appropriate land use mix at the time that could best meet the LEP Development Objectives.

However, in the intervening years, a number of major strategic economic and planning changes have occurred within the Inner West and throughout wider Sydney. These strategic changes require that the proposed land use mix on the Site be modified to best meet the local and wider regional context for the area, and the objectives of the LLEP2000 controls, including:

- The general reduction in viability for clubs in NSW, resulting in a need for different club designs that are more flexible and smaller in size to ensure ongoing club feasibility;
- A significant increase in traffic congestion, resulting in a retail approach that focuses on local patrons who are less likely to drive to the supermarket and more likely to walk or cycle. This requires smaller supermarkets without adjoining specialty retail;
- An independent Council retail assessment that has identified there is a strong demand for local commercial spaces to enhance day time trading of existing and proposed retail uses. Inner West Council has also expressed a strong desire for a commercial precinct as a result of the White Bay proposal being delayed;
- The finalisation of 'A Metropolis of Three Cities' Sydney Regional Plan and the Sydney Eastern City District Plan, which advocates providing increased space for local creative, cultural and technological enterprises within the 'Harbour City', particularly around the Inner West; and
- the need for the Inner West to increase its delivery of high-quality residential accommodation in suitable locations close to jobs and infrastructure, in order to meet its mandated dwelling targets and the dwelling capacity requirements of its draft Inner West Housing Strategy.

As noted earlier, the development standard does not have any Objectives. Accordingly, a detailed assessment of how the proposed mix of uses is considered to better meet the overall LEP Development Objectives is provided below:

Objective (a).

- (a) *the development integrates suitable business, office, residential, retail and other uses so as to maximise public transport patronage and encourage walking and cycling,*

As demonstrated in detail below and throughout the application, the proposed mix of land uses will **better** (our emphasis) maximise public transport patronage and encourage walking and cycling in the following ways:

- The reduced supermarket size with no ancillary retail at the lower-ground level will encourage local shoppers who are walking or cycling from the surrounding Darling Street precinct, rather than regional shoppers who are more likely to drive;
- The increased proportion of residential land uses within the development is a direct offset from the reduced retail and club floor space. This has been a deliberate change in order to significantly reduce the car traffic associated with the development in favour of walking, cycling and public transport patronage, which is more favoured by residential populations than retail and club populations. This is demonstrated in detail further in this SEPP 1 report below (Objective (d)) and within the accompanying Retail and Traffic Reports for the DA;
- The parking proposed as part of the DA is significantly reduced from the parking rates used in other areas within the Inner West Council in recognition and support of increased walking and cycling and public transport use;
- The proposed development includes significant facilities for cycling, as well as car share and electric vehicle charging stations, in accordance with the new DCP recently approved for the site. These facilities will encourage walking and cycling, as well as public transport; and
- The application is accompanied by a green travel plan to further support walking, cycling and public transport use within the development.

Accordingly, Objective (a) is met by the DA, notwithstanding the variation to the land use mix proposed to Clause 4.

Objective (b).

- (b) *The development contributes to the vibrancy and prosperity of the Rozelle Commercial Centre with an active street life while maintaining residential amenity,*

Club

The DA proposes a slight reduction in the overall FSR used for the Club – from 0.5:1 to 0.42:1.

The Club's future feasibility has played a role in the currently proposed amount of floorspace to be allocated for Club use. A larger floor plate would incur significant fit-out costs. Financial constraints will also limit ongoing maintenance of facilities that may not be as well utilised as they have been historically (e.g. gymnasiums and swimming pools). The reduced FSR allocated for the Club use will help to ensure that the Club can continue to operate into the future, and continues to contribute to the vibrancy and prosperity of the Rozelle Commercial Centre.

Further, the Club use and design has changed significantly in the last 10 years, particularly with respect to club size and approach to food and beverage. As shown in Figure 1 below, the DA proposes that the Club be located at grade with the Town Square, which is bounded by a number of food and drink premises. These food and drink premises will not be within the specific club gross floor area (**GFA**), but will be largely relied upon by the Club as a supplementary dining experience for patrons. The surrounding food and beverage retail

[illegible]

This approach of utilising external providers for delivery of food and beverage services is being utilised by a number of clubs in Sydney, including the Balmain Tigers current club house in Five Dock and the Wests Ashfield site. A similar approach has been adopted for other clubs undergoing redevelopment in recent years, including 'The Greens' in North Sydney, the Mosman RSL and the Harbour Diggers currently under construction at Mosman.

Most importantly, the Club's location at grade adjacent the Town Square will ensure a vibrant and commercially viable Club that has strong connectivity and identity within the wider Rozelle Commercial Centre.

The land use mix proposed also includes a significant reduction in shop uses – with only 5,204sqm of retail proposed, in contrast to the maximum permitted of 9,500sqm, of which 3,046sqm is a supermarket.



The location and size of the retail component of the DA has been deliberately designed to satisfy existing and future retail demand within the growing main trade area, creating increased range, convenience and price competition for local residents. Impacted retail centres will continue to trade at viable levels, benefiting from sales growth over time. The report concludes that the subject development will not impact on the hierarchy of centres or the role of other centres within the area.

To ensure the DA contributes to the local Rozelle centre and does not compete with existing retail along Darling Street, the supermarket's size has been significantly reduced from previous schemes and the specialty retail (comprising approximately 950sqm, of which 687sqm is food and beverage retail) is all located at grade around the Town Square and the Club, with no specialty retail adjoining the supermarket at the lower levels.

The DA would also create additional employment during the construction and operation period. It is estimated that approximately 417 jobs are likely to be provided both directly and indirectly as a result of the proposed development. This includes a number of youth employment opportunities with retail developments generally employing a large number of younger staff.

Commercial Uses

The DA proposes additional commercial GFA beyond the existing controls in Clause 4 – that is, a FSR 0.21:1 is proposed, while the controls anticipate an FSR of no more than 0.2:1. The commercial GFA in the DA is comprised of a mixture of office co-sharing space at Level 1 of the development and four live/work units along Waterloo Street.

Council's Retail Study has identified there is a strong demand for local commercial spaces to enhance day time trading of existing and proposed retail uses. Inner West Council has also expressed a strong desire for a commercial precinct, as the White Bay proposal has been delayed.

The Eastern Sydney District Plan also strongly advocates providing increased space for local creative, cultural and technological enterprises within the 'Harbour City', particularly around the Inner West. Given that these strategic documents have been finalised since the FSR controls were developed, the proposed exceedance of the Commercial FSR controls in Clause 4 is considered to better meet both the strategic and local planning objectives that apply to the Site with respect to commercial viability.

Residential

The DA proposes additional residential GFA beyond the existing controls in Clause 4 – that is, a FSR 2.54:1 is proposed, while the controls anticipate an FSR of no more than 1.9:1. The residential GFA is comprised of 164 residential dwellings with 7xstudios, 65x1-bedroom dwellings, 53x2-bedroom dwellings and 39x3-bedroom dwellings.

The residential component of the development has been carefully designed to deliver appropriate residential amenity and directly reflects the changes to the envelopes and built form delivered in Council's recent amendment to the site-specific DCP governing the site.

In particular, the proposed amended mix of uses, including an increased residential component is able to maintain residential amenity in the following ways:

- The proposed development will be better able to assist Council in delivering housing in accordance with its draft Housing Strategy, which identifies the subject site as a key opportunity for high-density dwellings that means surrounding heritage conservation areas won't be needed for additional capacity;
- The proposed mix of dwellings, including a substantial proportion of 3xbedroom dwellings and smaller-scale residential dwellings along Waterloo Street, will contribute

to the principles of housing mix and diversity outlined in Council's draft Housing Strategy;

- The proposed mix and design of the residential uses meets the key amenity planning controls outlined within SEPP 65 and the Apartment Design Guide, as well as Council's recently adopted site-specific DCP for the subject site; and
- The proposed retail and club uses, as well as careful siting of these uses within the site, will enable a genuine mixed use precinct that does not detract from residential amenity unnecessarily through inappropriately sized or designed non-residential uses.

Accordingly, Objective (b) is met by the DA, notwithstanding the variation to the land use mix proposed to Clause 4.

In conclusion, we consider that the DA, through its amended mix of uses and careful design, is **better** (our emphasis) able to deliver a development that complies with the Objective (b) and “*contributes to the vibrancy and prosperity of the Rozelle Commercial Centre with an active street life while maintaining residential amenity*” despite not strictly complying with the permissible land use mix contained in Clauses 4(c) and (e).

Objective (c)

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

The proposed development has been carefully designed to meet this Objective and to be consistent with the recently adopted site-specific DCP relating to the site, that includes detailed built form and detailing controls.

The development complies with the overall maximum FSR control of 3.9:1 and is consistent with this Objective, despite the proposed change to the mix of uses on the site.

Accordingly, compliance with Objective (c) has been achieved, notwithstanding the variation to the permissible land use mix in Clause 4.

Objective (d)

- (d) *The traffic generated by the development does not have an unacceptable impact on pedestrian or motor vehicle traffic on Darling Street, Waterloo Street and Victoria Road, Rozelle,*

A key driver of the proposed mix of land uses, with reduced Club and Retail floor space and increased Residential and Commercial floor space, has been to ensure that the DA meets Objective (d).

The applicant has had detailed discussions with Council and RMS regarding a development proposal for the Site that can meet the traffic controls, including compliance with the traffic budget for the Site. The traffic controls and budget information underpinning this statement is outlined in detail in the Transport, Traffic and Parking Assessment Report prepared by Ason dated April 2018 and updated in 2020.

The detailed Ason and JMT Consulting reports that accompany the DA demonstrates that, compared to previous schemes, the DA meets the following traffic objectives:

- “*Assess the Site's accessibility to public transport and demonstrate that the Site is strategically well located to achieve the public transport goals of the Greater Sydney Region Plan, in particular the 30-minute City principles.*
- *Assess the forecast traffic generation of the current Proposal and demonstrate that it does not exceed previously established 'permissible' peak hour traffic generation volumes or 'budgets' for development of the Site.*

- Undertake network performance testing to demonstrate that the net traffic impacts of the Proposal are moderate; this work recognises that it is accepted that traffic congestion in the local area is a fundamental issue of existing conditions and therefore should not be considered a major obstacle to development of this brownfields Site.
- Demonstrate that the Proposal delivers key requirements for development of the Site, based on the site-specific controls for the Site.
- Demonstrate that the proposed site access, internal design, car parking and loading facilities generally comply with relevant Australian standards and DCP controls and are therefore would provide safe and efficient access to, from and within the proposed development".

The proposed mix of land uses in the DA is a critical element in achieving these objectives as:

- Reducing retail uses below the maximum permitted in Clause 4 is associated with lower trip generation rates for the Site;
- Residential land uses inherently have a lower trip generation rate than non-residential land uses. The transfer of a portion of the retail land uses to residential land uses has been a deliberate attempt to ensure the DA can meet the required traffic budget; and
- Maximum parking rates as a result of the amended land use mix are much lower than what could be achieved with a strictly compliant mix. While we note that the parking proposed as part of the development is less than the maximum permitted under the site specific DCP controls that apply to the site (LDGP2000) the traffic analysis has been based on the theoretical maximum that could be achieved based on the current mix. This analysis demonstrates that the proposed mix is less than the traffic budget for the Site, which was not achieved in previous schemes that complied with the mix (DA/2015/428).

Accordingly, compliance with Objective (d) has been achieved, notwithstanding the variation to the permissible land use mix in Clause 4.

Objective (e)

- (e) Any residential development at street level has a frontage to Waterloo Street Rozelle and, when viewed from the street, has the appearance of no more than three storeys.

This Objective is not relevant to the subject SEPP 1 application and has been achieved, notwithstanding the variation to the permissible land use mix in Clause 4.

Accordingly, it has been demonstrated that the objectives of the FSR development standard have been achieved notwithstanding the numerical non-compliance for Clauses 4(c) and (e). Further, in our view, the objectives are better met through the adjusted mix of uses proposed.

9 - Explain how strict compliance with the development standard would thwart the objective of the standard (Wehbe Test 3).

As discussed earlier in this SEPP 1 Objection, the Site has been subject to a number of development applications that have been refused due to their inconsistency with Objectives (a), (b), and (d) of the LEP 2000. The two relevant applications in 2009 and 2015 were both refused due to inconsistencies with the development objectives, despite complying with the proposed land use mix outlined in Clause 4 of the LEP.

The refused development applications demonstrate that, strict compliance with the development standard would thwart the following Development Objectives under the LLEP2000:

- Objective (a): Increasing the proposed floorspace for 'shops' and 'club' up to the maximum permissible would be inconsistent with the objective to '*as to maximise public transport patronage and encourage walking and cycling*'. As demonstrated in the previous refusals for developments at the site, along with the traffic and transport reports prepared by Ason and JMT Consulting, increasing retail and club uses would discourage public transport and walking and cycling. In contrast, these reports demonstrate that the proposed mix, with reduced club and retail, and increased residential and commercial uses will better encourage public transport use, walking and cycling;
- Objective (b): Both Council and the proponent's retail studies have demonstrated that any increase in 'shops' beyond what is currently proposed would cause the site to become a 'destinational' retail centre, rather than a local retail centre. This change would negatively impact on the surrounding Rozelle Darling Street Centre and therefore would be inconsistent with Objective (b). In contrast, an increase to the residential and commercial mix of uses will further contribute positively to the local centre, by providing additional residents and workers to utilise these shops; and
- Objective (d): As clearly demonstrated in Ason and JMT's traffic reports, which were supported by Council's independent traffic consultant, any increase to the retail or club land use mix would be inconsistent with Objective (d) of the LEP as the traffic generated would have an unacceptable impact on the surrounding street network.

In conclusion, strict compliance with the land use mix proposed in Clause 4 of the LEP would thwart the overall Development Objectives (a), (b) and (d), which would result in a development unable to obtain development consent. Therefore, as strict compliance with the standard would thwart the overall development objectives, compliance with the standard is considered 'unreasonable or unnecessary' in this instance.

10 - Will non-compliance with the development standard be inconsistent with any planning objectives for the locality? State why.

No. The proposed scheme will be more consistent with relevant local planning objectives than a compliant scheme. The proposal is consistent with the following strategic planning documents:

- Greater Sydney Regional Plan, "A Metropolis of three Cities";
- The East District Plan;
- Balmain and Rozelle Retail Study prepared by Inner West Council; and
- The draft Inner West Housing Strategy.

11 - In the circumstances of the proposal, would strict compliance with the development standard:

(i) be unnecessary and unreasonable?

Yes. Critically, strict compliance with the numerical development standards contained in Clause 4(b)-(e) would likely hinder the ability to obtain a development consent as the current mix of uses identified in Clause 4 (b) – (e) would result in a development contrary to Objectives (b) and (d) for the reasons stated above and in previous DA refusals in 2009 and 2016.

We acknowledge that the FSR control and mix is a maximum control and cannot be achieved in all circumstances. However, as the Government did not support Council's 2015 request to reduce the maximum FSR for the Site, we consider that this indicates support at a state planning level to retain the existing FSR of 3.9:1. Importantly, it recognises that an approximate 3.9:1 FSR is likely required for the site to be capable of meeting Object 1.3(c) of the Act *"to promote the orderly and economic use and development of land"*.

Therefore, compliance with the mix of uses is 'unnecessary and unreasonable' as it would not enable a development that achieved the maximum FSR of 3.9:1 that is also consistent with the LEP Development Objectives.

(ii) tend to hinder the attainment of the objectives under Section 5(a)(i) and (ii) of the EPA Act?

Yes. Strict compliance with the standard would unnecessarily complicate orderly and economic development of the Site in accordance with the intentions of the zoning and the objectives of the EPA Act:

- The proper management of the Site;
- The orderly and economic use of the Site; as well as
- The development of the Site, as it would create additional adverse amenity and economic impacts through:
 - Unacceptable traffic impacts on the surrounding locality; and
 - A mix of uses that would detract, in an economic impact sense, from the surrounding local Rozelle Commercial Precinct.

Due to these adverse impacts, it is unlikely that development consent for a FSR compliant development would be granted on the Site; as a compliant development would be incapable of meeting the LEP Development Objectives outlined in Clause 2, Part 3, Schedule 1 of the LLEP2000, and in particular, Objectives (a), (b) and (d).

In contrast, the non-compliance with the FSR mix in Clauses 4(c) & (e) is considered unlikely to have any significant adverse effect on adjoining or surrounding properties and will have an improved outcome for the Site and surrounding development as:

- The Site will no longer remain as a derelict and vacant site; and
- The proposed mix of uses will reduce traffic impacts (Objective (b)) compared to a strictly compliant scheme and will contribute to, rather than detract from, the surrounding Rozelle Commercial Centre (Objective (d)).

The proposed land use mix is consistent with the LEP Development Objectives and, in particular, Objectives (a), (b) and (d). It is therefore capable of being approved where a strictly compliant development couldn't; which would hinder the attainment of the relevant parts of Section 5(a) in the Act. In contrast, the current proposal is capable of meeting the Objectives and in being able to be approved, would not hinder the attainments of the relevant parts of Section 5(a) in the Act.