

1<sup>st</sup> July 2020

Ms Harjeet Atwal  
C/o Brian Kirk  
Senior Manager Planning  
Inner West Council  
GPO Box 14  
PETERSHAM NSW 2049

By email: [brian.kirk@innerwest.nsw.gov.au](mailto:brian.kirk@innerwest.nsw.gov.au)

## RE: RESPONSE TO REQUEST FOR FURTHER INFORMATION – DEVELOPMENT APPLICATION

This letter has been prepared by Mecone on behalf of Heworth Pty Ltd in response to the Panel's concerns about potential site isolation issues to the adjoining owner north-west of the site.

The response relates to the Development Application (DA) D/2018/219 for the site at 138-152, 154-156 Victoria Road, 697 Darling Street and 1 Waterloo Street. The application seeks consent for a mixed-use development comprising three buildings ranging of 11-12 storeys in height with a mix of uses including speciality retail, commercial, food and beverage, a supermarket, residential accommodation and the reinstatement of the Balmain Leagues Club.

It is understood that the Panel is concerned that the proposed development will result in site isolation of the immediately adjoining neighbour, particular to north-west developments at 17-19 Waterloo Street, 168-172 Victoria Road, Rozelle (the '**neighbouring site**', refer to figure below). This response has been provided for the purposes of determining the full development potential of the neighbouring site against the isolated site principles. The neighbouring site comprises an area of approximately 888m<sup>2</sup> and appears to be made up of 2 storey buildings on Victoria Road and Waterloo Street, and is accompanied by a concept scheme prepared by Scott Carver (Refer to **Appendix 1**) that shows both the basement connection and floor plan, as well as future development potential for the adjoining site, even when the subject DA site is re-developed.



**Figure 1** Site Aerial showing the subject site highlighted in dark blue and the neighbour site highlighted in green

Source: Scott Carver

## Site Amalgamation

As a matter of abundant precaution and in order to consider site isolation adequately, we refer to the relevant planning principle, espoused in *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 at 17-19.

Commissioner Tuor referenced two relevant cases in consideration of the matter; *Melissa Grech v Auburn Council* [2004] NSWLEC 40 and *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189.

The two questions set out by Tuor C to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:

- Firstly, is amalgamation of the sites feasible?
- Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

The principles to be applied in determining the answer to the first question are set out by Brown C in *Melissa Grech v Auburn Council* [2004] NSWLEC 40. The Commissioner said:

- *"Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application."*
- *Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property."*
- *Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s79C of the Environmental Planning and Assessment Act 1979."*

In the circumstances of the subject site, it can be addressed through consideration of both the Leichhardt LEP 2000 and the Leichhardt LEP 2013, in which no minimum lot size is identified for the subject site and the neighbouring site. As such, the applicant is not required to acquire the neighbouring site, as there are no site conditions which would preclude it from being independently developed at a later time (refer to further discussion below). Additionally, it is considered, given the significant history of the two neighbours, that there are no future opportunities for the neighbouring site to be amalgamated, which would facilitate the delivery of a denser built form outcome, nor has this issue been a concern of any applications in the past.

In order to consider the second question relating to the planning principle, we refer to the decision in *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189, where Brown C addressed the second question and stated that:

*"The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non-compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity."*

*To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will*

have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.

The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments."

As such, the applicant has engaged Scott Carver to prepare a preliminary concept scheme for the neighbouring site (Refer to **Appendix 1**), based on a predominantly residential scheme. The site has the capacity to be redeveloped on its own within the parameters of the Leichhardt LEP and DCP. The Leichhardt LEP 2013 prescribes a base FSR of 1:1 under Clause 4.4 for 17-19 Waterloo Street, Rozelle. Where mix of uses and an active frontage are proposed, Clause 4.4A(3) of the Leichhardt LEP 2013 nominates a maximum FSR of 1.5:1. Leichhardt LEP 2000 applies to the site at 168-172 Victoria Road, Rozelle, where Clause 23 permits a maximum FSR of 1.5:1 in Business Zone if the development is for non-residential purposes at ground/street level and residential component above. Therefore, the maximum FSR for the adjoining site is 1.5:1 for a mixed-use development with ground floor retail and residential uses above.



LLEP 2000 Zoning Map showing 168-172 Victoria Road is zoned Business  
Source: LLEP 2000



LLEP 2013 showing 17-19 Waterloo Street has a base FSR of 1:1  
Source: LLEP 2013

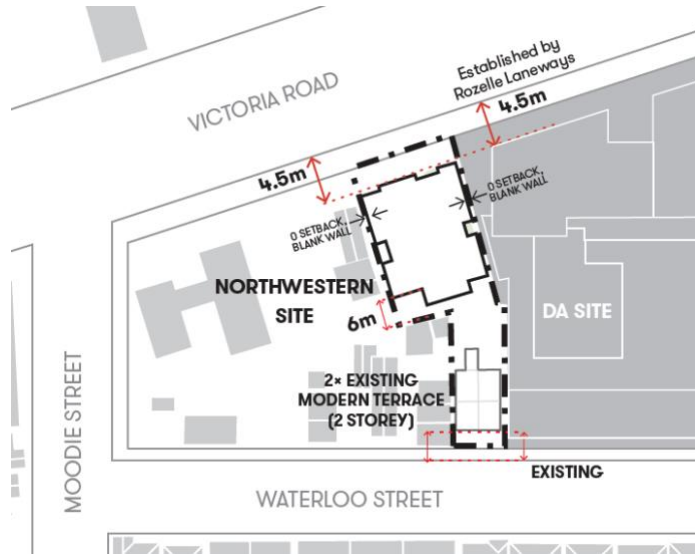
An indicative scheme has been prepared to illustrate that the neighbouring site has the potential to be redeveloped in manner that would allow it to accommodate a built form that is economically viable and capable of providing adequate building separation. The indicative scheme includes a total of 15 residential units with ground floor retail and basement parking, with a 4.5m setback provided to Victoria Road.

It is noted that as a result of the site area and narrow shape at 17-19 Waterloo Street, Rozelle, a reasonable building envelope would be hard to achieve for this site. The indicative scheme includes a 4-storey mixed use development along Victoria Road. The scheme includes a GFA of 1,320m<sup>2</sup> and complies with the FSR control. A high standard of residential amenity capable of achieving consistency with the ADG is also attainable as demonstrated by:

- Sufficient building separation: Blank walls on both side boundaries providing no setbacks, but allow for future articulation treatments to prevent visual privacy impacts. A 6m rear setback in accordance with the design guideline and to protect the existing tree;
- A mix of ADG compliant apartments;
- Their orientation of the street frontages which will increase exposure to solar and views, resulting in 80% solar compliance and 73% cross ventilation in accordance with the ADG guideline;
- The provision of a compliant number of lift cores off a single circulation corridor;
- The inclusion of 195m<sup>2</sup> of retail usage along Victoria Road at ground level that is suitably sized to allow for future flexibility;
- The provision of a communal open space area and a rooftop terrace; and

- Two levels of basement parking accommodating a total of 19 car spaces in accordance with the Leichhardt DCP rate.

The indicative scheme is illustrated in figures below:



**Figure 2** Indicative building setbacks.  
Source: Scott Carver

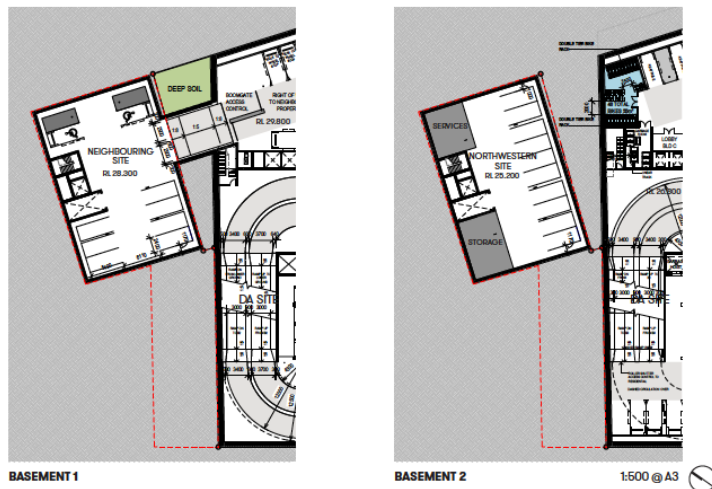


**Figure 3** Indicative floor plan of the neighbouring site.  
Source: Scott Carver

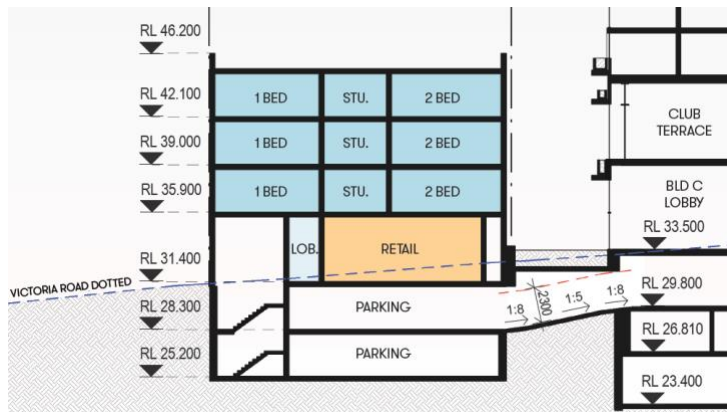
The existing building at 17-19 Waterloo Street, Rozelle will remain on site, ostensibly in its current form. This will prevent access from Waterloo Street, which otherwise could be utilised for vehicle entry and waste collection. As we understand further vehicular access points on Victoria Road will create additional traffic impacts, the indicative scheme anticipates vehicle access from basement level 1 of the subject site to the basement of the adjoining site (Refer to Figure 5 below), with both sites sharing a common access from Victoria Road. Waste management could utilise the residential waste room of the proposed DA with a travel path from the



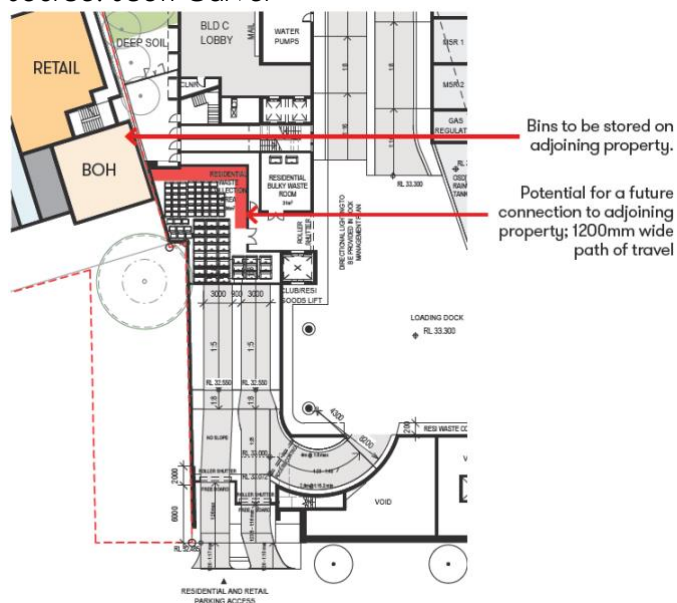
neighbouring site to the loading dock. A block out will be provided to the boundary wall of nominal 1200mm wide to enable a future connection (Refer to Figure 6).



**Figure 4** Indicative basement layout  
Source: Scott Carver



**Figure 5** Indicative vehicle access from the proposal to the neighbouring site.  
Source: Scott Carver



**Figure 6** Indicative waste arrangement.  
Source: Scott Carver

In addition to the above, the proposed development does not generate any overshadowing impacts on the neighbouring site, as it is located further to the north-west of the subject site. This is evidenced by the overshadowing diagrams in **Attachment 1**, showing the building will continue to receive adequate solar access. The scheme demonstrates that 80% of apartments will receive a minimum of 2 hours direct sunlight between 9am and 3pm in mid-winter and 73% of the apartments are naturally cross ventilated. Refer to the solar access view diagram below.



**Figure 7** Solar access views for the neighbouring site. Massing form only.

Source: Scott Carver

Critically, the scheme shows a functional basement access from the subject DA site to the neighbouring site, and:

- That the connection occurs at a level favourable for a basement level on the adjoining property;
- A plan that demonstrates a functional basement car parking layout on the adjoining property; and
- Evidence of how loading/unloading will occur via the subject land for the benefit of the adjoining property.

In consideration of the above, it is found that the neighbouring site is capable of supporting an independent development in the future and providing an acceptable level of amenity. The proposal has been designed carefully to achieve a development of appropriate urban form with the acceptable level of amenity. In addition, a courtyard along Victoria Road has been provided with a minimum of 6m width deep soil area between Building C and 168 Victoria Road, Rozelle. The scheme also demonstrates that the neighbouring site can achieve an orderly and economic use and can be developed independently when amalgamation is not feasible.

We trust the above information enables Council to continue its assessment of the application. We would be happy to discuss the matter in further detail as required.

Yours sincerely,

Kate Bartlett

**Director**