



Planning | Development | Management

4 November 2022

Ref: P100221

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Dear Madam,

## Response to Additional Information – PPSSEC-214/DA-2022-16 at 47A Wentworth Road, Strathfield

Reference is made to your email dated 1 November 2022 in which you provided copies of additional information submitted by the applicant in relation to DA-2022-16 at 47A Wentworth Road, Strathfield.

### Response to Legal Advice

It is noted that the legal advice prepared by Mills Oakley includes the following comment in relation to the valuation of the two adjoining properties and offers made for their acquisition.

*Nonetheless, a valuation of the adjoining sites was commissioned and offers above market value for the adjoining sites have been made and rejected by the adjoining property owners which would satisfy the planning principle even the sites were to become isolated – which they will not.*

To date, **no evidence has been provided by the applicant of offers made above market value for acquisition of the adjoining properties.** We are advised that such claims are incorrect and do not align with records retained by the owner-occupiers of adjoining properties. The **enclosed** records show all offers were made after being initially approached by Ramsay Health Care and were **below** market value.

It is noted that the Colliers Valuation provided by the applicant is dated 2022 and that no valuation of the properties at the time the offers were made has been provided by the applicant to date. As such, the proposal is inconsistent with the planning principle relating to site isolation and is broadly inconsistent with the requirements of the *Burwood Development Control Plan*, specifically control P2 of Section 3.2.6 which reads as follows.

*Where a development may result in the creation of an isolated site or sites, the applicant is required to demonstrate that negotiations between the owners of the properties commenced at an early stage that was prior to the lodgement of the Development Application. Where no satisfactory result is achieved, the Development Application must include evidence of negotiations with the owners of the properties. These details must include offers to such owners. Such offers are to be reasonable and are to be based on at least one recent independent valuation and include other reasonable expenses likely to be incurred in the sale of the process.*

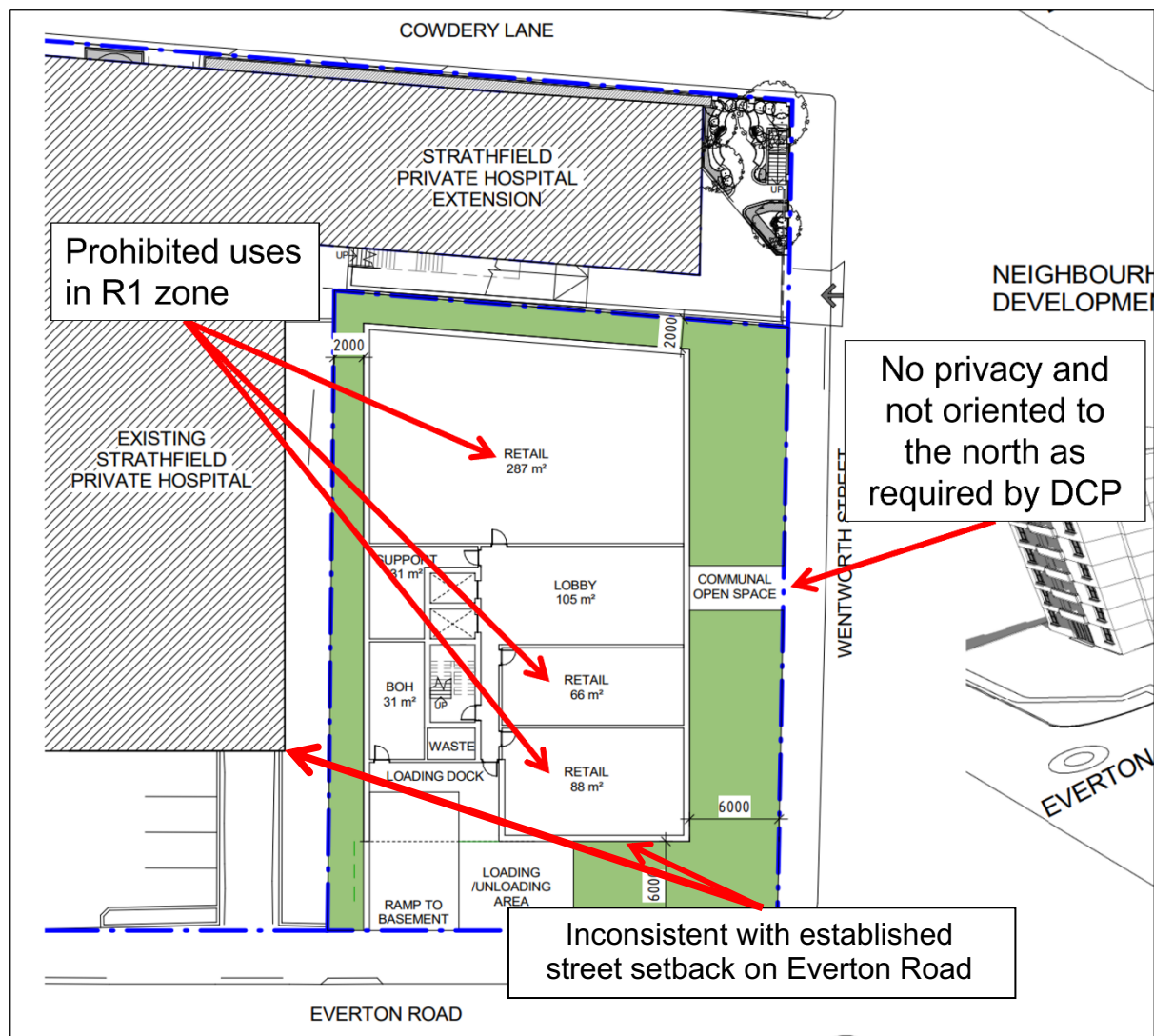
The **enclosed** documentation notes that the proponent attempted to acquire 1A Everton Road sometime last year, in an attempt to further isolate one or more of the property owners.

It is our client's position that the narrative proffered by the applicant is factually incorrect and has misled both Council and the Sydney Eastern Planning Panel into believing that appropriate steps were undertaken to minimise the potential for site isolation. Had Council undertaken appropriate due diligence in corroborating these claims when they were initially made by the applicant, it is likely that this proposal would not have progressed with a recommendation for approval.

It is requested that careful consideration be given to the **enclosed** documentation by both Council and the Sydney Eastern Planning Panel.

## Response to Concept Development Plan

It is acknowledged that the applicant has prepared concept development plans as requested by the Sydney Eastern Planning Panel. However, there are a number of discrepancies with the plan prepared by the applicant (summarised in the following figure), which have been addressed under separate headings below.



**Figure 1** Summary of Major Discrepancies

Proposed Shop-Top Housing Development

The concept development plans illustrate a building with ground floor retail and commercial uses with residential accommodation above (shop-top housing). This is inconsistent with the permissible uses within the R1 zone and broader market expectations for development in the area. Both **commercial premises** (a group term) and **retail premises** (a 'type' of commercial premises) are prohibited in the R1 zone and it is unlikely that the ground floor of any residential flat building at 1 and 1A Everton Road would be utilised for anything other than residential accommodation.

It is noted that the only form of commercial development permissible in the R1 zone is **neighbourhood shops** – however, Clause 5.4(7) of the *Burwood Local Environmental Plan 2012* limits neighbourhood shop developments to no more than 80sqm. **The proposed ground floor commercial use is therefore not permissible under the requirements of the *Burwood Local Environmental Plan 2012*. The proponent has produced inaccurate plans, proposing uses that are prohibited by, and inconsistent with, the requirements of the LEP, incapable of being approved.**

Other residential flat buildings within immediate proximity to the site (such as 2 Everton Road) do not include a commercial ground floor component. The site and surrounding area is dominated by residential development, with most commercial uses concentrated further to the west. It is therefore unreasonable and unrealistic to assume that such a component would be introduced to 1 and 1A Everton Road notwithstanding the prohibition of commercial uses in the R1 zone.

Based on the above, the accompanying concept development plans **do not accurately reflect the likely development outcomes of 1 and 1A Everton Road**. It is considered that the applicant has illustrated the ground floor component as commercial/retail, rather than residential, **as the use of the ground floor for residential purposes would not receive sufficient solar access to meet the requirements of the DCP**.

The loss of up to 30% solar access to both sites resulting from the proposed development would likely mean that all ground floor residential accommodation **would not receive sufficient solar access to meet the requirements of relevant Planning Principles and Burwood Council's Development Control Plan**. This lack of amenity would represent a very poor planning outcome for these sites.

#### Ground Floor Communal Open Space & Solar Access

The location of 'communal open space' as identified on the concept development plan is unrealistic and would not provide appropriate privacy and amenity for future residents. The communal open space is located directly between the proposed active street frontage and would be visible from both the streetscape and the retail components of the development. The communal open space is also oriented to the east and is inconsistent with the following controls under Section 4.1 of the *Burwood Development Control Plan*.

*P6 Communal open space is to present as a private area for residents only, including passive surveillance from the adjacent living areas of dwellings and provide for active and passive recreation needs.*

The location of the communal open space between the active ground floor use and streetscape will provide no visual privacy for residents. The concept plans are inconsistent with the above control.

*P7 Communal open space may be in the form of roof areas and ground level and elevated gardens, but does not include indoor recreation areas. It should have a northerly aspect where practicable.*

The proposed communal open space is oriented to the east. It is considered that the orientation of the communal open space to the east was chosen as a northern orientation would not receive sufficient solar access.

*P8 Communal open space **must achieve visual** and acoustic **privacy**, safety and security.*

As noted above, the communal open space would be visible from the streetscape and public domains of Everton Road and Wentworth Road. The space does not achieve visual privacy.

*P9 Communal open space must achieve good amenity in terms of natural airflow, outlook and solar access. At least 30% of the communal open space area is to achieve 2 hours of direct sunlight between 9am and 3pm on June 21.*

It is unclear whether the eastern communal open space would receive sufficient solar access. Should the communal open space be re-oriented to the north (as is required under the DCP), the space would not receive sufficient solar access.

*P16 At least 70% of the living rooms and private open spaces of the proposed apartments and neighbouring developments are to receive a minimum of 3 hours direct sunlight between 9am and 3pm on June 21.*

In the **likely** event that the ground floor of any future residential flat building at 1 and 1A Everton Road were to be used for residential purposes, it is evident that the ground floor dwellings would not receive sufficient solar access. This is reflective of the current conditions of the site, in which the existing dwellings receive insufficient solar access due to the existing hospital development to the west.

It is likely that the future redevelopment of 1 and 1A Everton Road would retain the existing location of private open space (the principal outdoor areas adjacent to the dwelling houses), as this affords the highest level of privacy and amenity for future residents. As evidenced by the proposal's accompanying shadow diagrams, **the private open space would not receive sufficient solar access as a result of the proposed development.**

Based on the above, it is considered that the concept development plan demonstrates the proposed development's incompatibility with surrounding development and the overall inappropriate nature of the proposal at 47A Wentworth Road, Strathfield. The obvious and demonstrable impacts on 1 and 1A Everton Road, which will arise if the current proposal at 47A Wentworth Road proceeds, are unsatisfactory and unacceptable. The current proposal accrues maximum benefit to 47A Wentworth Road by transferring its negative and adverse impacts to the owners of 1 and 1A Everton Road. This would be an extremely poor and unjust planning outcome.

#### Omission of Basement Level

It is noted that no basement level plans have been prepared as part of the concept development plans supplied by the applicant. The original public submission(s) provided by our firm raised concerns over the potential impact the proposed basement level would have on similar subterranean development on the adjoining sites. It is unclear from the provided documentation whether subterranean structures on adjoining properties would require a setback that exceeds the DCP requirements due to the boundary basement structure proposed at 47A Wentworth Road.

Any potential requirement of anchors by the applicant would inhibit the development potential of 1 and 1A Everton Road, further exacerbating site isolation concerns.

### Building Separation and Increased Setbacks

Part 2F of the *Apartment Design Guide* includes provisions relating to building separation that are of particular relevance.

*Building separation may need to be increased to achieve adequate sunlight access and enough open space on the site, for example on slopes.*

*Required setbacks may be greater than required building separations to achieve better amenity outcomes.*

Given the constraints imposed on 1 and 1A Everton Road as a result of the proposed development, should it be approved in its current form, it is likely that any future redevelopment of the site would need to incorporate greater setbacks and building separation to achieve sufficient amenity.

### Corner Site and Dual Street Frontage

No consideration has been given to the context of 1 and 1A Everton Road as a 'corner' site with dual street frontage. Such sites will typically require accentuated building elements to address street intersections and often include increased street setbacks to allow appropriate sight lines for vehicles and pedestrians around corners.

Furthermore, it is noted that the applicant has proposed a street setback that is inconsistent with existing established street setback on Everton Road. The incorporation of a consistent street setback, reduced corner setback, and provision of a rear communal space would significantly limit the building envelope potential of 1 and 1A Everton Road.

## Conclusion

It is considered that the additional documentation supplied by the applicant **demonstrates that the proposed development at 47A Wentworth Road is incompatible with the surrounding area and would unreasonably and significantly inhibit and isolate the redevelopment of 1 and 1A Everton Road.**

The legal advice provided by the proponent relies on the assumption that above market offers were made for the acquisition of neighbouring land which the accompanying documentation proves to be incorrect. The concept development plan includes a prohibited ground floor commercial use and does not incorporate the appropriate requirements for residential flat buildings under the DCP or *Apartment Design Guide*.

The commentary provided in section 4 of the legal advice obtained by the applicant, including the quotes in paragraph 4.2 from the decision in *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189, are relevant and meaningful only where an applicant's assessment task for adjoining land is sufficiently rigorous to i) model potential uses that are actually permissible, and ii) satisfy the consent authority that a satisfactory level of amenity may be achieved. The concept development plan fails both these tests.

Based on the above, the proposal would result in a poor planning outcome and **the Sydney Eastern Planning Panel should determine the application for refusal.**

Should you have any questions or wish to discuss any of the above matters, please contact the author.

Precise Planning

47A Wentworth Road, Strathfield

Yours Sincerely,

PRECISE PLANNING

A handwritten signature in black ink, appearing to be 'DB' or similar initials, written in a stylized, cursive manner.

Douglas Bennett  
Senior Planner