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08 November 2016

Ms Karen Armstrong
Director, Sydney Region East
NSW Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Dear Karen,

REZONING REVIEW REQUEST - 31-37 HERBERT STREET, ST LEONARDS

We write on behalf of Aqualand Projects Pty Ltd (the proponent) to request a Rezoning Review of a planning proposal submitted to Willoughby City Council (Council) on 2 September 2016. This letter provides the proponent's justification for why a review is warranted, in accordance with the Department of Planning and Environment's (DPE) "A Guide to Preparing Local Environmental Plans" released August 2016.

The Rezoning Review is requested because Council, at its Ordinary Council Meeting on 24 October 2016, resolved not to support the planning proposal.

The Planning Proposal relates to the site at 31-37 Herbert Street, St Leonards; legally described as Lots 1 and 2 DP 744175, Lot 3 DP 772072 and Lot 1 in DP 115615 and has a site area of approximately 5,954.3m².

We believe that the considerable merits of the planning proposal have been ignored by Council, and their planning officers. Council has a clear agenda to block development on industrial land, irrespective of merit and the inappropriateness of the industrial zoning. This is inconsistent with the DPE's guiding principle to increase housing choice around strategic centres and transport nodes through urban renewal in established areas. Further, Council's consideration of the matter is inconsistent with their obligations to promote and coordinate the orderly and economic use and development of land. In the absence of proper consideration of the merit of this proposal by Council, the proponent has therefore sought a Rezoning Review.

We do not believe that Council has given adequate consideration to the merits of a genuine proposal to provide new housing stock and more appropriate non-residential land uses in this area of the Willoughby LGA. This proposal is exactly what the DPE is trying to achieve through its metropolitan planning. The proposal is consistent with *A Plan for Growing Sydney* as it will generate new employment and housing opportunities within walking distance of major employment, retail, health and education facilities with access to excellent public transport connectivity. The proposal will increase the density on the subject site to provide opportunities for additional dwellings, in accordance with housing targets set by the DPE and to accommodate new commercial office employment especially for technology based and health workers expected in the area with the expansion of the Royal North Shore Hospital..

1. SUMMARY OF THE PLANNING PROPOSAL

The purpose of the Planning Proposal is to amend *Willoughby Local Environmental Plan 2012* (WLEP 2012) to allow redevelopment of the site for the purposes of residential, retail, commercial and child care uses. The proposal seeks the following amendments to the *WLEP 2012* provisions:

- Zoning: A change in zoning from IN2 Light Industrial to B4 Mixed Use;
- Height of buildings: Three different maximum allowable building heights across the site of RL 180m (30 storey equivalent), RL 155m (23 storey equivalent) and RL 142m (18 storey equivalent); and
- FSR: An increase in FSR from 1:1 to 6.5:1.

The resolution (in full at **Appendix B**) identifies that Council does not support the planning proposal.

A Preliminary Concept Design prepared by FJMT identifies the redevelopment potential of the site. The concept proposes the following:

- 410 residential apartments comprising 32,800m² residential GFA including 6% affordable housing;
- Approximately 5,900m² of non-residential GFA for the purposes of retail, café, office and child care space; and
- Approximately 3,000m² of communal open space.

1.1. SUPPORTING DOCUMENTATION

The letter is accompanied by:

- A completed Rezoning Review application form and the relevant application fee of \$20,000.00 (**Attachment A**);
- A copy of Council's Meeting Agenda and Resolution from 24 October 2016 (**Attachment B**);
- A copy of the subject Planning Proposal prepared by Urbis, dated August 2016 (**Attachment C**)

Including the following supporting documentation:

- Preliminary Concept Design prepared by FJMT;
 - Traffic and Parking Assessment prepared by Traffix;
 - Stage 1 Preliminary Site Investigation – 31-35 Herbert Street prepared by SLR;
 - Stage 1 Preliminary Site Investigation – 37 Herbert Street prepared by SLR; and
 - Economic Assessment prepared by Location IQ.
- We note that Council did not issue any correspondence between the lodgement of the application on 2 September 2016 other than advising of the intention to have the matter brought to Council's meeting on 24 October 2016.

As required, this letter provides an outline of the proposal's justification to the Strategic and Site Specific Merit tests outlined in "A Guide to Preparing Local Environmental Plans" to confirm why this review is warranted.

The proponent has no political donations to disclose as per Section 147 of the *Environmental Planning and Assessment Act 1979*.

2. BACKGROUND

A previous planning proposal was lodged with Willoughby City Council in December 2015 with respect to a smaller site, 31-35 Herbert Street, St Leonards. This Planning Proposal sought to achieve a rezoning and redevelopment similar to the current scheme being:

- Change the zoning from IN2 Light Industrial to B4 Mixed Use;
- Include a height limit of 90m (23 storey equivalent); and
- Increase the Floor Space Ratio (FSR) from 1:1 to 6.5:1 (including 1:1 non-residential).

This proposal was considered at the Council Meeting of 14 March 2016, where it was resolved to not support the planning proposal on the grounds that it is premature to proceed prior to completion of state and local studies currently being prepared for the St Leonards/ Artarmon Area.

Subsequently, the adjoining site at 37 Herbert Street was acquired and enabled the planning proposal to evolve to create a much larger development site that provides a better urban design outcome and which responds to the site context more appropriately. The proposal is a genuine mixed use development that takes advantage of excellent transport connections as well as connection to the St Leonards health and education precinct.

3. JUSTIFICATION OF THE REZONING REVIEW

This request for a Rezoning Review is justified by the strategic merit of the proposal and our belief that Council's resolution to not support the proposal is unreasonable.

DPE's Planning Circular (PS 16-001) notes that a key factor in determining whether a proposal should proceed to Gateway determination should be its strategic merit and site specific merit. It is considered that the planning proposal for 31-37 Herbert Street meets these tests as outlined in the following sections.

3.1. STRATEGIC MERIT TEST

A Rezoning Review requires that a planning proposal demonstrates strategic merit against (at least one) of the following criteria:

Table 1 – Strategic Merit Test

Strategic Merit Criteria	Response
Is the planning proposal:	The planning proposal is consistent with <i>A Plan for Growing Sydney</i> , as justified in the planning proposal dated August 2016.

Strategic Merit Criteria	Response
Consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; <u>or</u>	Section 3.1 of the planning proposal is consistent with the directions and outcomes of this plan. Section 3 of our report justifies that: - The planning proposal will contribute to the increase of housing supply, diversity and affordability within the St Leonards area. The site is a suitable location for housing and employment growth given its proximity to infrastructure, train services, and the St Leonards health and education precinct. The proposal is consistent with Direction 1.7 of the strategy related to the growth of Strategic Centres and the provisions of jobs closer to home, - The planning proposal will assist in achieving Goal 2 of the strategy through the inclusion of planning controls to accelerate the supply and diversification of housing. - The planning proposal seeks to establish planning controls that will facilitate housing supply contributing to the revitalisation of the existing suburb of St Leonards, and facilitating a healthy built environment. The subject site's proximity to public transport, recreational facilities and green space promote healthy sustainable living. Overall the planning proposal contributes to achieving Goal 3 of the metropolitan strategy, ensuring a revitalised community that is strong, healthy and well connected. - A priority of the North District specifically related to St Leonards is for the provision of additional mixed-use developments in St Leonards including offices, health, retail, services and housing. The proposal will provide floor space for medical and high tech uses in support of the St Leonards medical and hospital precinct as well as child care and retail uses to support local residents and workers. - The site is within a Proposed Priority Precinct, which is being investigated by the Department of Planning. The Priority Precinct would be bound by the Gore Hill Freeway to the north, West Street in the North Sydney LGA to the east, the River Road to the south and Pacific Highway to the west. The Priority Precinct could incorporate an extension of the existing high density residential spine along Herbert Street/railway corridor and include mixed use commercial and residential development. The aim of the Priority Precinct is to consider how to revitalise the area, as well as maintain employment, provide new homes, shops, cafes and open

Strategic Merit Criteria	Response
	space and maximise access to public transport.
Is the planning proposal: <i>Consistent with a relevant local strategy that has been endorsed by the Department; <u>or</u></i>	There are currently no local strategies that have been endorsed by the Department. It is understood that a local strategy is currently being prepared, however the timing for drafting and finalisation of this is not known at the time of lodging this rezoning review application, and is likely to be some time away.
Is the planning proposal: <i>Responding to a change in circumstances in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.</i>	The planning proposal, as submitted to Council, supports the ongoing growth of St Leonards, identified as a Strategic Centre within <i>A Plan for Growing Sydney</i>. The sites proximity to existing public transport, as well as the future Rapid Transport Network (approximately 1km walking distance) ensures a greater population to support the viability of this new transport infrastructure. The continued redevelopment of the St Leonards health and education precinct will require additional retail, and commercial space to support this employment centre. Further the proposal will provide substantial accommodation options for workers in the immediate area as well as the broader precinct with excellent access to public transport and services. The proposal includes provision for affordable housing. A draft Voluntary Planning Agreement that accompanied the Planning Proposal has offered 6% of the residential floor area (25 apartments) for affordable housing. The provision of affordable housing will support the changing demographic character of the St Leonards/ Crows Nest area that is expected to occur with the new Rapid Transport Network Service.

Other considerations within a “A Guide for Preparing Local Environmental Plans” include:

- There will be a presumption against a Rezoning Review request that seeks to amend LEP controls that are less than 5 years old, unless the proposal can clearly justify that it meets the Strategic Merit Test*
- A draft regional plan outside of the Greater Sydney Region, draft district plan within the Greater Sydney Region or draft corridor/precinct plan that has been released for public comment by the*

Minister for Planning, Greater Sydney Commission or Department of Planning and Environment announces that there is to be another exhibition of, or it is not proposed to finalise, that draft regional, district or corridor/precinct plan.

With regard to the above considerations we note the following:

1. The LEP controls proposed to be amended are less than 5 years old. It is considered that the proposal meets the Strategic Merit Test above. Council have commenced the preparation of studies to inform the review of their strategic land use policies and *Willoughby Local Environmental Plan 2012*. We have prepared and submitted our own studies with the planning proposal to demonstrate strategic merit and to assist Council and the DPE's own studies in the St Leonards precinct.
2. The planning proposal has been prepared with consideration given to A Plan for Growing Sydney. With regard to the draft District Plan, exhibition has not commenced and therefore is not considered relevant at the present time.

3.2. SITE SPECIFIC MERIT TEST

In addition to meeting at least one of the strategic merit criteria, a Rezoning Review requires that a planning proposal demonstrates site specific merit against the following criteria:

Table 2 – Site Specific Merit Test

Site Specific Merit Criteria	Response
Does the planning proposal have site specific merit with regard to: • <i>The natural environment (including known significant environmental values, resources or hazards)?</i>	The planning proposal, as submitted to Council, identifies there are not likely to be any environmental impacts associated with the future development of the land that cannot be suitably mitigated through detailed design development. Preliminary Site Investigation reports prepared by SLR identify that the potential for site contamination is considered to be low. Further investigations were not recommended and the site is considered suitable for the proposed uses. The site is fully developed and comprises little vegetation. There are no known critical habitats, threatened species or ecological communities located on the site and therefore the likelihood of any negative impacts are minimal.
Does the planning proposal have site specific merit with regard to: • <i>The existing uses, approved uses and likely future uses of land in the vicinity of the land subject to a proposal?</i>	The existing uses in the immediate vicinity of the site include a mix of commercial and residential uses and are considered compatible with the proposed mixed use development. The existing uses to the north and west of the site are both commercial, office uses that also exist within the IN2 zone. The current and previous uses on the site have not been

Site Specific Merit Criteria	Response
	industrial uses since its occupation in 1989. The site is currently occupied by commercial and retail uses which are inappropriate in the current industrial zone. The site is not suited for industrial uses due to the size and depth of the site being insufficient for larger truck loading, on site manoeuvring and access to Herbert Street. An industrial use may also have a greater impact on the residential properties to the south. Proposed commercial office and retail uses will support the nearby medical precinct while the proposed child care use will support residents and workers in the local area.
Does the planning proposal have site specific merit with regard to: <i>The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangement for infrastructure provision?</i>	The proposal is considered to be directly aligned with both the existing and future transport infrastructure that supports the St Leonards Precinct and the broader area. The site will benefit from its proximity to the existing St Leonards transport hub as well as the continued redevelopment of the St Leonards health and education precinct. The provision of non-residential floor space provides opportunities for direct synergies with the hospital precinct to provide supporting services as well as residential accommodation. This is generally consistent the Willoughby Economic Development Study prepared SGS Economics and Planning. In addition to Section 94A Contributions towards local infrastructure, a Draft Voluntary Planning Agreement (VPA) was submitted with the planning proposal. The VPA has identified a need for infrastructure upgrades in the immediate vicinity of the site and additional affordable housing in the area. The VPA includes the following: - Proposed contributions toward upgrades to Naremburn Oval, - Contributions toward the implementation of the Naremburn Park Masterplan - An additional 2% of the residential gross floor area dedicated to Council for affordable housing on top of the 4% required in accordance with Council's Affordable Housing Policy. The Section 94 contribution and the VPA ensure that adequate services and infrastructure will be provided to support the proposal

Site Specific Merit Criteria	Response
	as well as meeting the needs of the local community. The Planning Proposal includes provision of a short queuing lane in Ella Street that will increase the capacity of the Ella Street/Herbert Street intersection and improve traffic flow in this area as well as traffic associated with the development contemplated by the Planning Proposal.

3.3. PLANNING PROPOSAL JUSTIFICATION THRESHOLD

DPE's "A Guide to Preparing Local Environmental Plans" outlines the following guidance for a planning proposal to consider when prepared;

Table 3 – Justification

Justification	Response
<i>It is important that the level of justification for each planning proposal is proportionate to the impact the planning proposal will have. This is particularly the case for planning proposals that may be inconsistent with the local and/or regional strategic planning framework.</i>	The planning proposal is considered proportionate to the requirements for a site specific rezoning. Furthermore, the planning proposal is consistent with local and regional strategic framework considerations as outlined above. Council did not request any additional information to justify the planning proposal.
<i>A response to each of the Secretary's criteria will not always be necessary depending on the nature and the scale of the planning proposal. If a matter is not considered relevant, the reasons why should be briefly explained.</i>	The planning proposal has addressed criteria considered necessary for the Gateway stage. Council has noted in their report dated 24 October 2016 that they have not undertaken a detailed analysis of the planning proposal and as such it is not deemed that they have fully considered the strategic merits of the proposal.
<i>It is appropriate in the early stages of preparing a planning proposal to identify issues that will require detailed investigation if the planning proposal is to succeed. These detailed investigations, studies or material will be prepared by the proponent or the RPA following the initial Gateway determination. The Gateway determination will confirm the expected level of information required to form part of the exhibition material.</i>	The planning proposal has clearly outlined matters for consideration relevant to the Gateway stage, and which are appropriate to the scale of the planning proposal. Following an initial Gateway determination, any identified further studies such as a Detailed Environmental Site Investigation and further traffic analysis can be undertaken if necessary prior to

Justification	Response
	the exhibition of the planning proposal.

4. RESPONSE TO COUNCIL'S RESOLUTION

Council considered the planning proposal at its Ordinary Meeting on 24 October 2016. At this meeting Council resolved to not support the planning proposal.

We provide the following comments in response to Council's resolution (outlined in full at Appendix B) to not support the planning proposal, in light of the conclusions provided in the Council Officer's report.

4.1. RETENTION OF INDUSTRIAL AREA

The site, while zoned IN2 Light Industrial, accommodates an existing commercial office building occupied by AMP (31-35 Herbert Street), as well as a Reece Plumbing Centre/showroom retail use (37 Herbert Street). The existing uses on the site are not industrial and the IN2 zoning is not appropriate. The proposal rectifies this.

The proposal will provide non-residential floor space equivalent to the 1:1 FSR that the current zoning permits. The provision of employment related land use opportunities would also likely provide a larger number of jobs than if the site were to remain as an industrial zone.

Given that the existing commercial development on 31-35 Herbert Street is a non-confirming use, redevelopment for a permissible industrial building would require demolition of the existing three storey building and construction of a two storey building to comply with the controls. A compliant 1:1 FSR would allow 3,650m² of useable floor space, less than the existing 6,065m². The site would remain undeveloped under the current LEP controls.

The site's proximity to transport (existing and future), infrastructure, employment and other services make it ideal to accommodate more intensive use and mixed use development than the current planning controls allow.

The site is not suited for industrial uses due to the size and depth being insufficient for larger truck loading, on site manoeuvring and access to Herbert Street. An industrial use may also have a greater negative impact on the residential properties to the south.

Further the affordability of industrial uses in this area is in doubt as the rents for properties on the north shore are significantly higher than other precincts within Sydney, particularly in outer areas of Sydney where there is significantly more industrial land available. The industrial property market is experiencing a push westward, into more affordable industrial lands in Western Sydney that are more readily able to accommodate these uses.

The proposal provides uses that are better suited to support the role of the St Leonards health and education precinct. The provision of non-residential floor space that could be utilised for health related offices, technology based uses, child care and retail will support the ongoing demands that the precinct derive. Further, the increased supply of residential dwellings will provide accommodation close to work and public transport.

In response to Council's concerns about maintaining employment potential, the proponent is willing to accede to a condition of the gateway determination that would require a minimum FSR of 1.5:1 non-residential. This would be achieved by providing an additional podium level across the 3 towers by deleting one level of apartments in each tower (total of 18 units) with the only increase in height being the change from a residential floor to ceiling height (2.7m) to a commercial floor level (3.1m or max. 500mm increase). The proponent is willing to include the 1.5:1 minimum non-residential FSR as a requirement under the VPA.

4.2. STATE AND LOCAL STRATEGIC PLANNING STUDIES

The timing of the preparation of the St Leonards and Crows Nest Station Priority Precinct Investigation being prepared by the DPE in collaboration with Council is unknown. The following studies have been prepared that indicate the strategic importance of the Artarmon Industrial Precinct:

- Willoughby Economic Development Study prepared by SGS Economics and Planning on behalf of Council; and
- Industrial Precinct Review prepared by Hill PDA on behalf of the DPE.

While these reports describe the importance of these areas and seek to support the retention of existing industrial zonings, they also describe issues such as site sizes, higher rents and land values, and a road network that is not conducive to ongoing industrial land uses in this location. The reports also acknowledge the proximity of the southern portion of the precinct to activity centres as well as synergies with the health and education precinct and the opportunities this may provide.

The planning proposal, as submitted to Council was supported by an Economic Assessment prepared by Location IQ, which provided strategic justification with regard to the proposed rezoning. The points raised above are reflected in our planning proposal and economic assessment in supporting the need for change in this location. The provision of mixed use development in this location supports the growth of the St Leonards Strategic Centre in line with *A Plan for Growing Sydney*.

It is considered that there is robust strategic merit afforded to the site and the justification provided within the Planning Proposal and the Economic Assessment sufficiently supports the proposed scheme. The location of the site, at the edge of the current industrial area and to the north of an existing multi-storey residential development, lends itself to a mixed use development that includes commercial, retail and child care uses to support the local and broader area.

5. CONCLUSION

Having regard to the above, we believe that Council have not provided adequate consideration of a genuine merit based planning proposal. The proposal provides additional residential and non-residential uses, in accordance with the State Government's strategic objectives and its own local strategic plans.

The planning proposal is consistent with the relevant strategic directions and goals of *A Plan for Growing Sydney* which supports a centres-based approach to managing growth. The site is a logical location to accommodate new housing opportunities in close proximity to extensive existing and future services and infrastructure consistent with this approach.

In light of the above, we request a Rezoning Review of the Planning Proposal.



If you have any questions please don't hesitate to contact me on 02 8233 9927.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Elaine Roff". The signature is fluid and cursive, with the first name "Elaine" written in a larger, more prominent script than the last name "Roff".

Elaine Roff
Associate Director

CC Greg Woodhams - Aqualand Projects
Enc Appendix A - Rezoning Review Application Form
 Appendix B - Council Meeting Agenda and Resolution of 24 October 2016
 Appendix C - Planning Proposal and supporting documentation