



**EXTRAORDINARY MEETING**

**8 MAY 2007**

**LEICHHARDT MUNICIPAL COUNCIL**

**EXTRAORDINARY MEETING OF COUNCIL**

NOTICE IS HEREBY GIVEN OF AN **EXTRAORDINARY MEETING** OF THE LEICHHARDT MUNICIPAL COUNCIL TO BE HELD IN THE COUNCIL CHAMBERS, LEICHHARDT TOWN HALL, 107 NORTON STREET, LEICHHARDT, ON **TUESDAY, 8 MAY 2007** AT 7.00PM.

Peter Head  
GENERAL MANAGER

**1 MAY 2007**

**BUSINESS :**

- |               |  |                |
|---------------|--|----------------|
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**LEICHHARDT MUNICIPAL COUNCIL**

**SUPPLEMENTARY REPORT**

**DIVISION:** ENVIRONMENTAL AND COMMUNITY MANAGEMENT

**SUBJECT:** **ITEM 1 - BALMAIN TIGERS – DRAFT LEICHHARDT LEP AND DRAFT LEICHHARDT DCP**

**AUTHOR:** SCOTT PEDDER – MANAGER ENVIRONMENT AND URBAN PLANNING

**FILE REF:** F07/00041

**DATE:** 1 MAY 2007

**WORD PROCESSING REF:** G:\BP\EXTRAORDINARYMEETING080507.DOC

**DIRECTOR'S SUMMARY - ORGANISATIONAL IMPLICATIONS**

**Financial Implications:** Nil

**Policy Implications:** Potential Amendments to Town Plan

**Strategic Plan Objective:** 4.2 Land Use

**Staffing Implications:** Continued Resources if advertised and exhibited

**Notifications:** Surrounding Land Owners/Precinct Committee

**Other Implications:** Nil

## **1. Purpose of Report**

On 27 March 2007, Council deferred consideration of a report to amend the draft Leichhardt LEP and draft Leichhardt DCP for the area bound by Victoria Road, Moody Street, Waterloo Street and Darling Street Rozelle. The amendments were prepared as a result of a request by the Balmain Tigers Leagues Club.

This report supercedes aspects of the previous report as presented to Council at its meeting of 27 March 2007 on this matter. That report is attached together with the March 2007 versions of the draft LEP and draft DCP (**Annexure A**). The recommendations of that report are now superceded.

The purpose of this report is to provide additional information for considering the request; to provide an update of the process since the report was deferred; and to present a revised draft LEP and revised draft DCP for the area for consideration.

## **2. Recommendations**

It is recommended that:

- 2.1 The attached draft Local Environmental Plan 2000 (Amendment No.16) (refer **Annexure B**) and the draft Development Control Plan 2000 (refer **Annexure C**) Amendment be placed on public exhibition for a period of 40 days, provided there are no unresolved objections from public authorities (or that any public authority does not require substantial amendments to the plan).
- 2.2 Council undertake extensive public consultation during the exhibition period which includes the distribution of flyers or leaflets to Balmain and Rozelle residents advising of the proposal and exhibition details; newspaper advertisements (Inner West Courier); information sessions; and exhibitions at Councils Citizens Service Centre, Balmain Library, Leichhardt Library, Balmain Leagues Club and Council's web site.
- 2.3 A report be prepared subsequent to the public exhibition period advising Council on the matters raised during the exhibition period, responses to each matter raised and modifications made to the draft LEP and DCP.
- 2.4 Prior to Council receiving a report on the outcomes of any exhibition, the outcomes of the current traffic modelling for Balmain/Rozelle be finalised to assist in determining the preferred land use mix and density for the area and any traffic management proposals for Victoria Road and adjoining residential streets.
- 2.5 Balmain Leagues Club be requested to develop a physical scale model of the proposal, based on the draft DCP diagrams, which is to be exhibited at Councils' Citizens Services Centre concurrently with the draft LEP and draft DCP.

- 2.6 Council enter into negotiations with the Balmain Leagues Club with the aim of formalising a Planning Agreement under section 93F of the Environmental Planning and Assessment Act 1979 to secure a component of affordable housing, public domain improvements and other community benefits, and the ongoing provision of community facilities on the site for the space proposed to be occupied by the Balmain Leagues Club.

### **3. Background**

At its March 2007 meeting, Council resolved in relation to item 17: Proposed Rezoning Request for the Balmain Tigers:

1. *That Council defer the matter to a briefing for Councillors.*
2. *An Extraordinary Meeting of Council to then be held with the community invited in order to clarify the proposals, the differences between the LEP/DCP and amended plans proposed by Tigers and to review all consultants reports. That the Extraordinary Meeting of Council be held as soon as possible to enable a decision on exhibition at the Extraordinary Meeting of Council.*
3. *That a letterbox drop be conducted, advising local residents of the Extraordinary Meeting of Council.*

### **4. Report**

In relation to part 1 of the resolution of 27 March 2007, Councillors and Council Officers met with representatives of the Balmain Tigers on Monday 23 April 2007 to discuss a number of issues relating to the rezoning request including overshadowing impacts of the proposal, the status of the Balmain Rozelle traffic study, and the incorporation within the draft planning documents the proposed laneway between the Darling Street properties and the Balmain Leagues Club site. A further meeting is to be held on Wednesday 2 May 2007 (after the writing of this report).

As a result of those discussions, Council Officers have undertaken an additional assessment of overshadowing impacts on Waterloo Street, and the Darling Street properties.

Council Officers have also undertaken a review of the March 2007 versions of the draft LEP and draft DCP following consideration of a submission provided by the proponents; advice received as a result of consultations undertaken with public authorities; and as a result of an internal review.

An outline of the overshadowing review, the consultation with public authorities and the details of alterations to the draft LEP and draft DCP are outlined below.

#### 4.1 Section 62 Consultation

In preparing a draft LEP, Council is required under Section 62 of the *Environmental Planning and Assessment Act 1979*, to consult with public authorities that, in Council's opinion, may be affected by the draft LEP.

Following receipt of the s65 letter from the Director-General, Council undertook consultation with the Roads and Traffic Authority; Sydney Water; the State Transit Authority; NSW Department of Housing; and the Department of Education.

To date, Council has received formal correspondence from the Department of Housing, Department of Education and the Roads and Traffic Authority. These responses are attached and summarised below:

NSW Department of Housing – correspondence received on 10 April 2007 (refer **Annexure D**) noted the following concerns:

- The traffic generating potential of the development negatively impacting on traffic movements.

*Comment:* Council has undertaken traffic studies to assess the impact of the development and will investigate traffic management options, upon the finalisation of the latest traffic modelling, to mitigate these impacts.

- Potential overshadowing impacts on the Department's assets.

*Comment:* According to Council records, it is noted that the closest Department asset is located a distance of approximately 300m from the development, therefore it is considered that the Department's assets will be unaffected by overshadowing.

- In addition, the Department suggests that the rezoning of the Balmain Leagues Club site to permit an expanded yield provides an opportunity for Council to require the developer to provide a small portion of residential development for affordable housing.

*Comment:* Council is investigating options for affordable housing such as developing a planning agreement with developers. A report is being prepared to discuss possible mechanisms for achieving affordable housing with respect to the Balmain Leagues Club redevelopment.

NSW Department of Education and Training – correspondence received on 19 April 2007 (refer **Annexure E**) noted concern regarding the placement of the landing, stairs and elevated ramp within the Rozelle Public School site. The Department indicated that the placement of this overhead bridge within School grounds would have a significant impact on the site in terms of school security, play space, noise, and distractions from persons using the elevated bridge.

*Comment:* The Department of Education's position may require substantial changes to the design of the pedestrian bridge (such as the removal of ramps and replacement with lifts and stairs). Should a redesign of the bridge not address the

concerns of the Department of Education, it may need to be removed from the proposal altogether.

Roads and Traffic Authority – correspondence received on 27 April 2007 (refer **Annexure F**) raised no objection to the proposed rezoning subject the following issues being addressed as part of any subsequent development application and associated development:

- The driveways to the loading dock and the car park on Victoria Road to be separated to ensure that ordinary vehicles do not enter the loading dock.
- The implementation of parking restrictions on the south eastern side of Darling Street between Victoria Road and Waterloo Street.
- Ensuring that the pedestrian bridge does not block sight lines to the existing traffic signals at the Victoria Road / Darling Street intersection.
- Ensuring that the proposed development does not prohibit bus priority works being considered by the RTA along Victoria Road.
- The bus stop on Victoria Road in front of the development site to be relocated to the beginning of the proposed deceleration lane. In addition, when the parking spaces on the south eastern site of Darling Street are removed, the existing bus stop is to be relocated south of Waterloo Street/Belmore Street.
- That noise attenuation measures be considered as part of the development due to its proximity to Victoria Road.

*Comment:* The above-mentioned issues raised by the RTA can be addressed as part of the development assessment process.

In addition, the RTA requested that a standard noise attenuation clause be included in the LEP.

*Comment:* Noise attenuation clauses are included in the draft LEP and draft DCP for the Balmain Leagues site.

While no formal correspondence has been received by the State Transit Authority, a verbal response was received on 27 April 2007 from David Gosling, Manager Environment, who raised no objection to the proposed rezoning.

At the time of writing this report, no response has been received from Sydney Water.

## **4.2 Overshadowing**

Following Council's decision to defer the consideration of the report on the draft LEP and DCP, an additional assessment of the potential overshadowing impacts of development permitted under the draft controls has been carried out. Specifically the additional assessment considers the potential impacts of the towers overshadowing

of residential dwellings on Waterloo Street and to the adjacent sites along Darling Street.

#### 4.2.1 *Waterloo and Cambridge Streets*

The report to the March 2007 meeting of Council on the draft LEP noted that while there had been some modifications to the potential overshadowing from the December 2006 submission by the Balmain Tigers, properties along Waterloo Street will continue to be subject to additional overshadowing between 9am and midday (when measured at the winter solstice). Cambridge Street properties would be overshadowed in the early morning period at the winter solstice.

The Balmain Tigers have subsequently advised Council that *“residential properties on Waterloo Street are unaffected by shadow from 11.15am until sunset...all of the houses receive a total of 5 1/2 hours of unaffected solar access, and some up to 7 hours. This is well in excess of Council’s RDCP, AMCORD and SEPP 65 guidelines, which all stipulate a minimum of 3 hours solar access in midwinter between 9am and 3pm.”*

Based on Council’s assessment the potential overshadowing of houses in Waterloo Street will change through the morning. At 9am the residences at 12, 14, 16, 18, 20, 22, 24, 26 and 28 Waterloo Street would be overshadowed; by 10am, overshadowing of the frontages at 16, 18, 20, 22 and 24 Waterloo Street and part of 12 and 14 Waterloo Street would occur; and at 11am, shadows would be cast over the facades at 12, 14, 16 and 18 Waterloo Street. At approximately 11:20am at winter solstice, the potential overshadowing of the tower would have passed the residential houses on Waterloo Street.

While the shadow diagrams show that the houses would receive sunlight from 11.20am onward at the winter solstice, the fact that the houses are on an approximate east west orientation and are built relatively close together at the side boundary is critical in determining the impact. These houses are likely to get their best sun egress in the morning hours and the late afternoon. From 1pm until 3pm, sunlight is likely to enter only where side windows are provided and, due to the narrow side setbacks, this is problematic for the houses affected. The sun will most likely be striking the roof and some of the side walls. Therefore, the effect of the potential overshadowing of development as proposed in the draft LEP and draft DCP, will be the loss of some of the morning sunlight into the front rooms of the houses, which is most likely their best quality of sun egress at midwinter between the hours of 9am and 3pm.

When considering that against the existing applicable control in Leichhardt DCP 2000, where new developments are required to *maintain solar access to existing housing*, the proposed tower form means that this control could not be met for those 9 houses.

When considering the impacts of overshadowing on the Waterloo Street properties, the planning principles established by the Land and Environment Court can be used. A planning principle is defined by the court as follows:

*A planning principle is:*

- *statement of a desirable outcome from;*
- *a chain of reasoning aimed at reaching; or*
- *a list of appropriate matters to be considered in making*

*a planning decision.*

*While planning principles are stated in general terms, they may be applied to particular cases to promote consistency. Planning principles are not legally binding and they do not prevail over councils' plans and policies.*

*Planning principles assist when making a planning decision – including:*

- *where there is a void in policy; or*
- *where policies expressed in qualitative terms allow for more than one interpretation; or*
- *where policies lack clarity.*

The Court established a planning principle on the impact on solar access of neighbours in a decision in 2004 relating to *Parsonage v Ku-ring-gai* (<http://www.lawlink.nsw.gov.au/lecijudgments/2004nswlec.nsf/c45212a2bef99be4ca256736001f37bd/2e6bcb5e19eefebcca256ec3001c3d92?OpenDocument>).

The following extract from the decision is relevant to the consideration of the draft LEP and draft DCP.

*The Court must, of course, take into account whatever guidelines are relevant to an application. However, numerical guidelines should be applied with a great deal of judgment. Consider a dwelling that now receives sunlight all day. Taking away that sunlight from 9am till noon would satisfy most guidelines; and yet the occupants of such a dwelling are likely to perceive it as a devastating impact on their dwelling's amenity. The other side of the coin is that the impact on a neighbour's sunlight must be assessed in the context of the reasonable development expectations of the proposal and the constraints imposed by the topography and the subdivision pattern. Preserving 3 hours of sunlight on a neighbouring site may require an unreasonable reduction in the development potential of the proposal.*

#### *4.2.2 Darling Street*

As discussed in the report to the March 2007 meeting of Council, the shadow diagrams demonstrate that the Darling Street properties are subject to extensive overshadowing. In summary, at the winter solstice:

- Solar access to the rear of properties at the eastern end of the laneway is largely unaffected until approximately 2pm.
- Properties around the middle section of the laneway will lose all solar access after approximately 11am.

- The worst effected properties are located at the south-western section near the corner of Waterloo Street. Some of which will receive less than one hour of solar access during the winter solstice.
- Two residential units at the rear of No. 701-703 Darling Street will receive less than two hours of solar access at the winter solstice between 9am and 3pm as required by Section B3.1 of the DCP.

In addition to the above it should be noted that although the majority of the Darling Street properties are predominantly used for commercial purposes, residential dwellings are permitted within the zone and the rear/upper floors of a number of these properties could be used for residential purposes. Indeed, the current LEP provides a floor space bonus to encourage residential development. The extent of overshadowing on properties to the western end will inhibit the ability to develop residential dwellings as they are unlikely to meet the solar access requirements of Leichhardt DCP 2000 for new dwellings.

### **4.3 Amendments to the March 2007 versions of the draft LEP and draft DCP**

A number of alterations have been made to the draft LEP and draft DCP following deferral of consideration at the March 2007 Council meeting. These relate to matters raised by the proponents, the Department of Planning, legal drafting and additional changes as a result of an internal review. The significant amendments have been outlined below.

#### *4.3.1 Draft LEP alterations to the March 2007 version*

Council has incorporated an additional clause prohibiting the application of *State Environment Planning Policy no.1 – Development Standards (SEPP1)*. As described by the Department of Planning, this SEPP “makes development standards more flexible. It allows councils to approve a development proposal that does not comply with a set standard where this can be shown to be unreasonable or unnecessary”. In this case, given the detailed preparation level of controls and the level to which the proposed LEP development standards exceed the existing standards, no flexibility is required, or should be permitted.

Council has amended the maximum floor space ratio applying to retail space to enable incorporation of the mall and circulation space of a retail development (which is counted as gross floor area under Leichhardt LEP). A decrease in the maximum floor space ratio for residential was applied as previously the maximum figure incorporated balconies, however they are not counted as gross floor area. No net change in the overall maximum FSR applying to the Balmain Tigers properties has been made.

A new clause has been added to link the draft LEP controls to the draft DCP controls to ensure that they are considered in concert.

The clause requiring that the Balmain Leagues Club be retained has been deleted.

A new clause has been added to the draft LEP in regard to noise attenuation as per direction from the RTA.

#### 4.3.2 Draft DCP alteration to the March 2007 version

A number of amendments have been made to the draft DCP relating to the provision of a laneway, primarily provided between the Balmain Tigers site and the Darling Street properties. This includes the provision of an objective, a rationale, planning principles and controls; and amendments to the building envelopes to enable a 6 metre wide lane to continue from Victoria Road through to Waterloo Street. A revision to the controls requiring all development be contained within the building envelope has also been made.

### 5. **Summary/Conclusions**

Following a briefing with Councillors, Council Officers and the proponents, a number of amendments have been made to the March versions of the draft LEP and draft DCP for the Balmain Leagues Club Site and surrounds. The conclusions made in the previous report (Attachment A) however are still relevant and are provided below:

*This [March 2007] report outlines the progress and outcomes of discussions held between Council Officers, representatives of the Balmain Leagues Club and other parties. Negotiations between Council officers and the representatives of Balmain Leagues Club are ongoing. It is anticipated that some form of resolution in regard to traffic matters could be reached in April 2007. Matters relating to urban design remain unresolved and it is unlikely that a consensus on design related issues such as overshadowing and visual impact could be reached without a significant reduction in the amount of floor space proposed on the site under the ownership of Balmain Leagues Club.*

*Whilst a number of the issues raised within Council resolution cannot or are yet to be resolved, a number of items have progressed to the point where Council Officers have been able to draft planning instruments for public exhibition. Council has been delegated the authority under section 66 of the Environmental Planning and Assessment Act 1979 to proceed with the exhibition of the draft LEP.*

*The proposed Tigers Masterplan and subsequent amended designs represent a major departure from Council's existing planning instruments. Balmain Leagues Club and their representees have stated that there is significant the local community support the proposed development. However the degrees of departure from Council's planning instruments and their associated impacts are likely to be a matter of public concern. The exhibition of the draft LEP and Draft DCP amendments will provide Council with greater clarity in regard to the community's position on a number of issues relating to the proposal.*

*The FSR proposed (4.4:1) is significantly higher than is currently permitted (1.5:1) across the site. In addition, the advice of Council's land economist indicates that the developer will be in a position to fund the redevelopment of a new (fitted out) club based on the proposed floor space. It is therefore not unreasonable for Council to require that the space for such a club remain for community use should the club decide to leave the site at some stage in the future. It is also not unreasonable to pursue the provision of affordable housing and public domain improvements.*

**6. List of Annexures**

Annexure A - Compiled Tigers Report (March 2007) – Including Attachments A - H

Annexure B - Revised Draft LEP

Annexure C - Revised Draft DCP

Annexure D - Correspondence from Department of Housing

Annexure E - Correspondence from Department of Education

Annexure F - Correspondence from RTA

**LEICHHARDT MUNICIPAL COUNCIL**

**REPORT**

**DIVISION:** ENVIRONMENTAL AND COMMUNITY MANAGEMENT

**SUBJECT:** **ITEM 2**  
**TIGERS PRECINCT - DRAFT LEP/DCP AMENDMENTS -**  
**RESPONSE TO SUBMISSION FROM TIGERS**

**AUTHOR:** LETA WEBB, DIRECTOR ENVIRONMENTAL AND  
COMMUNITY MANAGEMENT

**FILE REF:** F07/00041

**DATE:** 30 APRIL 2007

**WORD PROCESSING REF:** G:\BP\EXTRAORDINARYMEETING080507.DOC

**DIRECTOR'S SUMMARY - ORGANISATIONAL IMPLICATIONS**

**Financial Implications:** Nil

**Policy Implications:** Possible amendments to LEP and DCP (Town  
Plan)

**Strategic Plan Objective:** 4.2 Land Use

**Staffing Implications:** Continued staff resources required if exhibited and  
advertised.

**Notifications:** Surrounding residents/landowners; businesses  
that are likely to be affected; Police

**Other Implications:** Nil

## Executive Summary

Tigers have made a submission to Council dated 10 April 2007 which comments on aspects of the officer report to Council as included in the agenda for the meeting of 27 April 2007.

In broad terms, the Tigers submission and their proposed alternative recommendations propose that what should be exhibited is controls that give effect to the masterplan that they have submitted and claim that Council officers have not provided evidence for the controls that the officers have proposed which are different in some aspects from the Tigers masterplan.

What Council officers have proposed is largely based on the Tigers masterplan. The key differences are as follows:

- The draft DCP provides for formation and activation of a rear lane by widening the existing right of way, setting back development on the Tigers site and extending the rear lane from Victoria Road through to Waterloo Street;
- Small reduction to and minor reconfiguration of the residential towers, including a reduction of the western “dog leg” to reduce bulk but more importantly to provide for additional solar access to Waterloo Street;
- Some reduction to the retail area;
- Setting parking limits at the low level of Council is current requirements.
- An FSR for Tigers held land of 4.4:1 whereas Tigers propose 4.8:1.
- An increase in the FSR to the rear of properties that face Darling Street from 1.5:1 to 2:1 to encourage redevelopment facing the rear lane.

This report responds to what are listed as Tigers’ key concerns in the executive summary and provides broad comments on Tigers recommendations as included in their submission. It proposes that Council not adopt the Tigers recommendations at this stage as many of these recommendations require council to come to conclusion about aspects of the development that would more appropriately be considered following exhibition when all submissions, not just those from Tigers, can be considered by Council together with further assessment by Council officers.

The report does not respond to all details in the Tigers’ submission (time does not permit) and proposes that some comments more appropriately be considered submissions to the draft LEP /DCP and thus be further considered during / following exhibition.

**1. Purpose of Report**

To respond to key issues raised in folder presented to Council by Balmain Tigers dated 19 April, 2007.

**2. Recommendations**

1. That Council receive and note the comments from Tigers.
2. That matters of detail raised in Tigers submission be further considered when submissions to the draft LEP and DCP are considered.
3. That Council not adopt the recommendations as proposed by Tigers in their submission.

**3. Background**

Item 17 on the agenda of the Ordinary Meeting of Council 27 March, 2007 contained a report that recommended that draft LEP and DCP amendments for the Tigers Precinct as presented be exhibited. Council deferred this item to this Extraordinary Meeting.

Council resolved:

1. *That Council defer the matter to a briefing for Councillors.*
2. *An Extraordinary meeting of Council to then be held with the community invited in order to clarify the proposals, the differences between the LEP/DCP and amended plans proposed by Tigers and to review all consultants reports. That the Extraordinary Meeting of Council be held as soon as possible to enable a decision on exhibition at the Extraordinary Meeting of Council.*
3. *That a letterbox drop be conducted, advising local residents of the Extraordinary meeting of Council.*

Council staff and Tigers separately provided a briefing to Councillors. In preparation for their briefing, Tigers provided a folder outlining what they considered to be issues. That folder includes a number of recommendations for consideration by Council, presumably as alternatives to the recommendations made by the Council officers.

The report that follows provides a preliminary response to the issues raised. Some matters raised would more appropriately be considered as submissions to the draft LEP / DCP and thus would more appropriately be further considered in detail as a submission if and when the draft LEP / DCP amendments are exhibited and submissions in response to the exhibition are considered. Time does not permit full comment on these submissions at this stage.

#### 4. **Report**

In broad terms, the Tigers submission and their proposed alternative recommendations propose that what should be exhibited is controls that give effect to the masterplan that they have submitted and claim that Council officers have not provided evidence for the controls that the officers have proposed where there controls are different to the masterplan. Further, the recommendations seek to have council take a specific position in relation to aspects of the Tigers proposal.

What Council officers have proposed is largely based on the Tigers masterplan. The key differences are as follows:

- The draft DCP provides for formation and activation of a rear lane by widening the existing right of way, setting back development on the Tigers site and extending the rear lane from Victoria Road through to Waterloo Street;
- Small reduction to and minor reconfiguration of the residential towers, including a reduction of the western “dog leg” to reduce bulk but more importantly to provide for additional solar access to Waterloo Street;
- Some reduction to the retail area;
- Setting parking limits at the low level of Council current requirements.
- An FSR for Tigers held land of 4.4:1 whereas Tigers propose 4.8:1.
- An increase in the FSR to the rear of properties that face Darling Street from 1.5:1 to 2:1 to encourage redevelopment facing the rear lane.

#### **Response to the Concerns with Officer Report**

Assertions made in the Tigers executive summary as concerns with the report presented to Council for consideration at its meeting of 27 March 2007 and Council officer responses:

<i>Tigers:</i>	<i>The officers report is deficient in a range of areas and is in parts contradictory and consistent.</i>
<i>Council Officer:</i>	<p>The executive summary does not supply any examples to support that view. However from comments made in the remainder of the document it could be assumed that what is being referred to is Tigers view that the report should contain a full assessment of the Tigers proposal. Comments in section of the remainder of the submission present the view that various matters and reports should be considered. It is officers’ view that these matters and reports were previously canvassed in the assessment reports that were considered by Council in August and September 2006 and do not need to be repeated again in the current report.</p> <p>Following consideration of the reports in August, and September Council resolved to prepare a draft LEP / DCP. The purpose of the current report is to enable Council to consider the draft LEP / DCP in order to decide what should be exhibited. There is no need to repeat matters that have previously been reported.</p>

<i>Tigers:</i>	<i>Does not provide a balanced assessment of the Tigers Masterplan and makes no comment on the positive features of the development.</i>
<i>Council Officer:</i>	As indicated above, the masterplan has been the subject of previous reports considered by Council in August and September, 2006 which included reference to the social impact and value of the Club. The report of 27 March was for Council to decide what should be exhibited. It did not need to contain or reproduce a full assessment of the masterplan as Council had previously considered such assessments and as a consequence has already resolved to prepare a draft LEP.
<i>Tigers:</i>	<i>Makes recommendations to Council not supported by evidence.</i>
<i>Council Officer:</i>	It is not clear what recommendations are being referred to.
<i>Tigers:</i>	<i>Raises matters for the very first time (planning agreement and affordable housing contributions, physical model, retention of Club for community use).</i>
<i>Council Officer:</i>	Affordable housing and retention of the Club for community benefit were included in the report in response to Council resolutions being cc556/05 and PC 06/56 respectively. A planning agreement provides a mechanism by which affordable housing can be achieved. In relation to the model, this relates to exhibition of the draft plans and it is appropriate to raise this at the time when exhibition strategy is being considered.
<i>Tigers:</i>	<i>Seeks to rely on a secret and untested report to seek reductions in the area of the masterplan based on the feasibility of the project.</i>
<i>Council Officer:</i>	<p>This statement distorts the officer position in respect to the controls. Council officers independently considered what would be an appropriate level of development on the site taking into account likely impacts and the character of the area. Their advice to Council has been and remains that the built form for the redevelopment be perimeter block typology, this being the form that is supported by the current DCP, is dominant in the area and that can be replicated as Victoria Road is redeveloped in the future.</p> <p>Based on an officer assessment and on an estimate of what an acceptable level of development would be using the perimeter block typology Council officers developed building envelopes that allow for an appropriate FSR of 2.9:1. Council officers understand from Councillor comments at previous Council meetings that Councillors would like to see the Club remaining on site and consider tower over podium building typology is acceptable on the Tigers' site.</p> <p>In view of that, Council officers have taken the built form as proposed in the Tigers masterplan and considered how that typology can be applied in a way which can improve the neighbourhood and have also considered how to ameliorate the excesses of the impact of the scale of development as proposed by Tigers. Council resolutions from August 2006 contemplated a reduction of the retail and residential floorspace. It should be noted that</p>

	<p>Council officers have discussed with Tigers (as required by Council resolution from August 2006) reducing the retail and residential component of their proposal. The revised proposal submitted by Tigers reduced the floor area by 27m<sup>2</sup> only.</p> <p>When reviewing the Tigers updated proposal Council officers considered:</p> <ul style="list-style-type: none"> <li>• how to improve the precinct and propose the creation of an activated rear lane between the rear of the properties on Darling Street and the Tigers site and</li> <li>• how to ameliorate the impact and reduce the bulk of the towers and propose that this could be done by streamlining the towers and removing part of the “dog leg” from the western tower to permit additional sunlight to the residences behind in Waterloo Street and the rear yards of properties to Cambridge Street so that some of the properties would have more intermittent rather than continuous overshadowing.</li> </ul> <p>Council officers sought, in accordance with Council resolution from 24 September, 2006, advice on economic viability and increased the FSR from that which currently applies under the LEP, being 1.5:1 to 4.4:1, being in excess of the level at which the land economics advice indicated would enable the Club to have a new Club and continue trading on site.</p> <p>The letter from the Director General of Planning dated 26 February, 2007 requires that the scale of the development and the impact on residential development be considered by Council.</p>
<i>Tigers:</i>	<i>Redesigns the masterplan without reference to the Club or its consultants.</i>
<i>Council Officer:</i>	<p>The <i>Environmental Planning and Assessment Act</i> does not recognise “masterplans”. The purpose of the “masterplan” is illustrative only. The subject of a statutory exhibition is draft LEP and DCP amendments containing controls and provisions that will guide future development of the site. What the officers are proposing is largely based on what the Tigers have proposed in their masterplan.</p> <p>The matter of the impact of the “dog leg” on the tower of the Tigers proposal has been raised by Council officers and consultant (Peter Smith from Habitation) since the first meeting with Tigers representatives on 3 April 2006. Activation and widening of the lane has been discussed since October 2006. Officers are making their recommendation to Council. Council decides what is exhibited and ultimately what, if anything, is adopted.</p>
<i>Tigers:</i>	<i>Provides no date or timeframe for exhibition.</i>
<i>Council Officer:</i>	The date depends on if and when Council decides to exhibit. The exhibition will commence as soon as practicable, taking account of the need to place advertising in local press.
<i>Tigers:</i>	<i>Provides no date or estimated timeframe for the latest round of traffic</i>

	<i>modelling.</i>
<b>Council Officer:</b>	Council officers recommended expansion of the original ARUP model. At the request of both Tigers consultants and MWT (consultants for Multiplex) the “model” being used for traffic modelling has been completely rebuilt. In order to get agreement on the parameters for a new model from both Tigers and Multiplex consultants, Council and the RTA, there have been a series of meetings, each of which has been attended by Tigers consultants. The model now proposed is extremely complex. Rebuilding the model has significantly delayed the modelling as well as added considerably to the cost. Tigers consultants are aware of this, have requested this and have been party to all discussions. In view of this it is reasonable that Tigers contribute to the cost of the modelling. Council officers believe that the new model and the scenario which models the extent of impact on the highest and best use under current zoning for both the Tigers precinct and the Multiplex precinct will be ready in time for exhibition together with the draft LEP / DCP.
<b>Tigers:</b>	<i>Continues to invite Multiplex to propose schemes for inclusion in the latest round of traffic modelling despite the application receiving no support from Council in August 2006.</i>
<b>Council Officer:</b>	The Minister requires Council to consider proposals from Multiplex. The letter from the Director-General of Planning dated 26 February 2007 which gives authority to exhibit the draft LEP for the Tigers precinct requires Council to consider the cumulative impact of other major proposals in the vicinity, particularly in relation to traffic. Clearly this includes the future redevelopment of the land that is subject of the Multiplex application.
<b>Tigers:</b>	<i>Incorrectly states gross floor area figures and seeks reductions based on these incorrect figures.</i>  <i>Incorrectly states the proposed uses on the site and requests reductions based on these incorrect figures.</i>
<b>Council Officer:</b>	Council officers have relied on figures and uses as supplied to them in the Tigers application. Council officers did omit the floor area for the “mall” when calculating the area of retail and this area has been included in the current draft.
<b>Tigers:</b>	Makes no reference to the reports of Council’s independent retail consultants which confirms that the level of retail proposed in the masterplan is acceptable.
<b>Council Officer:</b>	The current report deals with the draft LEP / DCP. It is not an assessment. Council considered the assessment of the proposal at its meeting of 22 August, 2006. That report included details on the retail consultants work.  It should be noted that the retail consultant’s reports indicated that there is sufficient retail demand to support retail expansion on both the Tigers and

	<p>the Multiplex site but that in relation to impact on existing retail areas concludes:</p> <p>“retail components of the proposals for the Balmain Tigers Leagues Club site and particularly that for the Carrier site are of considerable significance as either separately or combined they will constitute a major addition to the stock of retail floor space in the area”.</p> <p>The report documents that the combined negative impact on existing retail in the LGA of the two proposals will be in the vicinity of 8.6%-17% for various existing retail areas and thus recommends that Council adopt a “policy approach” to moderate the detrimental impact such as stagger when the retail is permitted so that the impact can better be absorbed. The report further indicates that Council will need to review the status of existing centres in Balmain, Rozelle and Leichhardt and take action to improve parking and overall amenity of these centres to ensure that they remain attractive.</p>
<i>Tigers:</i>	<i>Makes no reference to the exceptional environmental sustainability outcomes generated by the proposal.</i>
<i>Council Officer:</i>	<p>The purpose of the report is to present draft LEP / DCP amendments for consideration for exhibition. Since the adoption of BASIX, Council has no role in setting requirements for environmental performance in relation to energy and water efficiency. The proposal will need to meet BASIX requirements and any features that improve performance beyond that required by BASIX will no doubt be features that can promoted when marketing the development. However Council will have no role in assessing these.</p>

### Assessment of Key Issues

The Tigers submission includes a lengthy section entitled “Assessment of Key Issues”. In relation to each Key Issue, the submission contains recommendations (attached). There is insufficient time for each of these matters to be fully assessed. However the following general observations are provided particularly in relation to recommendations made:

1. The submission is written as if Tigers is the planning authority and evaluations have been made from the position of what is acceptable to

Tigers. Council has the responsibility to consider all matters in relation to the proposal and the public interest and has to satisfy itself as to what it considers is acceptable development for the precinct. The exhibition process will provide an opportunity for Council to consider all submissions from the community and other interests that may be impacted by the proposal. Council officers would recommend that Councillors not adopt the recommendations as set out by Tigers, particularly as the wording of many of the recommendations proposes that Council adopt positions in relation aspects of the development that it does not need to adopt at this stage and should not adopt until all submissions are considered and further assessment has been undertaken by Council officers.

2. *Director General's Letter following LEP review panel.* The Director General's letter provides authority for Council to exhibit and sets requirements for exhibition and for issues that are to be considered by Council before finalising the Plan for the site. These are requirements that Council needs to satisfy, not Tigers. The Tigers submission contains recommendations, for example recommendations in relation to this letter, that seek to tell Council what and how it is to discharge its responsibility and to restrict the scope of what Council needs to consider. Council has an obligation to consider submissions from anyone who makes a submission and not just Tigers before it comes to any conclusions and needs to satisfy the requirements of the Director General letter, not Tigers.
3. *Traffic and modelling.* The letter from the Director General clearly indicates that "any existing studies and supporting material prepared in addressing the above (ie cumulative impact) should be exhibited with the draft LEP". Tigers recommendation seeks to restrict what is exhibited which is contrary to the direction from the Director General. In relation to the current study, the recommendation from Tigers is not consistent with what Tigers consultants have agreed should be modelled. Tigers consultants have agreed that "highest and best use" be modelled whereas the recommendation proposes that "reasonable use" be modelled. The modelling may well be completed by the time this report is considered by Council. In relation to costs, as indicated previously, the traffic model has been rebuilt at the request of Tigers consultants and thus Tigers should contribute to the costs. Tigers have not presented any evidence to Council officers that supports their position that traffic generation from their masterplan will be identical to traffic generation under existing controls.
4. *Urban Design Issues.* While there have been discussions between Council officers and consultants and Tigers consultants over a period of time, there has not been agreement on a number of matters including the "dog legs" to the towers, the rear lane, overshadowing of other properties, overshadowing of the plaza etc.
5. *Visual impact (height and scale).* The officers proposal does not seek to reduce the height. The letter from the Director General requires Council to consider the "scale of the development" however this is not limited to

height or visual impact but is assumed to have the plain English use of the term.

6. *Overshadowing and solar access.* The overshadowing of properties in Waterloo and Cambridge Street is discussed in a separate report. Council officers do not consider the overshadowing of the plaza or the overshadowing of the rear of properties in Darling Street is desirable however support the draft LEP / DCP going on exhibition.
7. *Activation of the public lane.* Council staff and Tigers design consultants support the public lane. The matters raised in the Tigers submission are matters for Council to deal with in relation to ownership. The purported subjective intentions of various landowners are not planning considerations as land economics (and incentives to redevelop) and ownership patterns motivation and intentions change over time. The proposal for an increase in the FSR at the rear of the properties does not set any precedent as there are site specific controls. Council officers will also seek comment from the local police in relation to the safety aspects of the rear lane while the draft plans are on exhibition.
8. *Conservation area.* Council will need to consider any submissions received on this matter before it reaches any conclusions. The issue will also need to be further considered in response to the Director General's letter. Specialist heritage input will be sought.
9. *Perimeter block development.* The draft LEP and DCP do not propose perimeter block development.
10. *Main Street retail.* The retail study commissioned by Council identifies likely adverse impact on mainstreet retail in Rozelle and other local centres (notably Balmain) and also other retail centres in the area (eg Norton Plaza, Marketplace etc) as well as centres outside the area (eg Birkenhead Point). Refer also to comments earlier in this report. As these areas are to be impacted, Council will need to consider all submissions received in relation to retail impact before it makes any final decision.
11. *Floorspace.* Documentation supplied by Tigers has not been consistent in relation to floorspace figures provided. The figures in the draft LEP have been revised to take account of an omission of the "mall" area from the retail in the draft LEP/DCP that accompanied the report that went to Council on 27 April. FSR does not equate to the building envelopes. Building envelopes set the area in which a building is permitted. FSR limits the floor area within that space. However there is a relationship between the two and this is clearly set out in the Department of Planning Publication *Residential Flat Design Code*. Council is required to consider that publication when preparing a DCP which applies to residential development. Because Tigers proposal includes residential towers, the Residential Flat Design Code applies.

12. *Economic viability.* The Tigers assert that they have feasibility information that shows that they require an FSR of 4.8:1. However this has never been supplied to Council officers. The comments from Tigers refers to a number of matters which are purely business decisions for the Club, ie taking on the developer risk, its level of borrowing etc. It is because Council officers understand that the Council would like to see the Club continue to operate on the site that Council officers have recommended development controls beyond which they would otherwise recommend for the area. Council officers consider an FSR of 2.9:1 as an appropriate level of development for the site, however they are recommending an FSR of 4.4:1 in recognition of the value of the Club continuing on the site.
13. *Draft LEP / DCP.* The drafts before Council have been developed following many meetings with the Tigers and following assessment of their masterplan. What is proposed is largely based on Tigers masterplan. The draft plans take account of previous Council resolutions in relation to the amount of retail, the amount of residential and parking. The draft plans attempt to improve what Tigers have proposed by introducing a laneway and attempt to improve the proposal by streamlining the towers and reducing the size of the “dog leg” to reduce the bulk and to provide some relief from overshadowing for some residences in Waterloo Street. While the Club has undertaken its own consultation, Council is required to undertake consultation while the plans are on exhibition and cannot rely on the Club’s exhibition. Council can amend the draft plans following exhibition once it has the benefit of all submissions and further assessment.
14. *Affordable Housing and Planning Agreement.* Council officers propose that there be a briefing and further discussion with Councillors on these matters and that a report be brought to an ordinary meeting of Council for consideration by Council.

## 5. **Summary/Conclusions**

Council officers have proposed draft LEP and DCP for the purpose of public exhibition. These have been refined from the versions that accompanied the report to Council on 27 April, 2007.

The development controls as proposed largely give effect to the masterplan from Tigers. The key differences are as follows:

- The draft DCP provides for formation and activation of a rear lane by widening the existing right of way, setting back development on the Tigers site and extending the rear lane from Victoria Road through to Waterloo Street;
- Small reduction to and minor reconfiguration of the residential towers, including a reduction of the western “dog leg” to reduce bulk but more importantly to provide for additional solar access to Waterloo Street;
- Some reduction to the retail area;
- Setting parking limits at the low level of Council’s current requirements.

- An FSR for Tigers held land of 4.4:1 whereas Tigers propose 4.8:1.
- An increase in the FSR to the rear of properties that face Darling Street from 1.5:1 to 2:1 to encourage redevelopment facing the rear lane.

The submission from Tigers largely argues that the draft LEP / DCP should mirror Tigers' proposal. Their submission makes a number of recommendations that seek to have Council adopt positions about aspects of the development. Council officers do not recommend that Council adopt such recommendations as Council should consider all other submissions before making definitive statements about any aspect of the proposal. Council merely needs to decide what it wishes to place on exhibition at this stage.

Exhibition of the draft as proposed by Council officers and including in that exhibition any studies as required by the Director General's letter would allow all materials to be considered by the public prior to preparing any submissions and then further consideration