

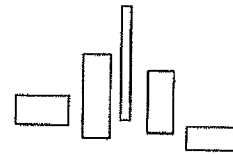
ATTACHMENT K

LEGAL ADVICES FROM PIKES VEREKERS LAWYERS  
REGARDING COUNCIL CONSENT AS LANDOWNER OF PUBLIC ROAD LAND

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LAWYERS

28 September 2012

The Director General  
Department of Planning and Infrastructure  
GPO Box 39  
SYDNEY NSW 2001

caroline.owen@planning.nsw.gov.au

Dear Sirs

**LAND OWNERS CONSENT OF STRATHFIELD COUNCIL TO MAKING OF PART 3A APPLICATION**  
**2-20 PARRAMATTA ROAD & 11-13 COLUMBIA LANE, HOMEBUSH**  
Our ref JRP:SS:121145  
Your ref MP10\_0143/Caroline Owen

We are instructed by the proponents of Part 3A Concept Application MP10\_0143, for mixed use development at 2-20 Parramatta Road and 11-13 Columbia Lane, Homebush, referred to as 'Columbia Precinct'.

The proposal as currently formulated proposes works on or over certain roads or laneways owned by Strathfield Municipal Council. Railway Lane runs east-west through much of the middle of the development site and Columbia Lane north-south. The proposal would see minor public improvement works to Railway Lane and so much of Columbia Lane as lies to the north of Railway Lane. The proposal seeks to close so much of Columbia Lane as lies south of Railway Lane to vehicular traffic and to instead provide a through-site link in the form of an extension to George Street to maintain and improve access to Rail Corp and Ausgrid land to the south of Columbia Precinct. The southern portion of Columbia Lane, proposed to be closed to vehicular traffic, lies across the location of a proposed public plaza.

We are instructed that the Department has written to our client asking that all Council owned land be removed from the development proposal unless Council's consent to the making of the Part 3A Application, required pursuant to saved clause 8F of the Environmental Planning and Assessment Regulation 2000, is forthcoming.

Our client remains in discussion with Council about this and other issues related to the proposal, including applicable section 94 contributions and is hopeful of obtaining Council's landowner's consent to the application being made.

We are nevertheless instructed to write to the Department and outline the legal framework for moving the proposal forward should Council's consent not be forthcoming within the Department's recent time limits, as anticipated, and the works to the laneways be required to be deleted from the Part 3A proposal.

We have advised our clients to prepare some amended drawings removing Council owned land from the Part 3A concept proposal. These drawings will be provided to the Department in due course, to show how the Part 3A proposal can move forward

if the Council's consent is not forthcoming within the time limits, without any implication for the Part 3A works on private lands. Should Council's consent not be obtained the proposal will be formally amended for PPR.

It is appreciated that neither the Department nor our clients have any power to compel the Council to give its consent to the making of the application in so far as it relates to Council owned land, in the circumstances of a Part 3A application, nor is there any such power in the Land and Environment Court. If our clients are forced to remove the Council-owned land from the Development Application it will seek to obtain a consent for those works directly from Council by way of Development Application made under Part 4 of the Environmental Planning and Assessment Act 1979.

We foresee the process, broadly speaking, as follows:

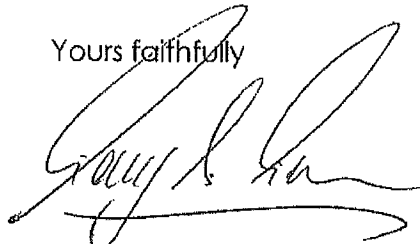
- 1 If no owner's consent is forthcoming from Council our clients will, in preparing their preferred project report under section 75H(6) of the Act amend the proposal to remove any works on Council land from the part 3A Application.
- 2 Assuming that the Minister is otherwise satisfied with the merits of the proposal and grants a Concept Approval, the carrying out of the development to which the approval applies will no longer require approval under the saved Part 3A but rather works will require assessment and development consent under Part 4 of the Act (see clauses 3A and 3B of Schedule 6A to the Act).
- 3 Development Applications will be lodged with Strathfield Council pursuant to Part 4 of the Act for the carrying out of the Concept Approval Development, and those Development Applications will be assessed in accordance with clause 3B of Schedule 6A to the Act (whereby the provisions of the Concept Approval take precedence over the provisions of any environmental planning instruments).
- 4 Concurrent with or as a part of these applications our client will lodge a Part 4 Development Application or Applications for road works and other works on Council owned land. The scope of this further application will be determined in due course, however at this stage we envisage that it would at least include the upgrade of public amenity works for existing roads (planting, street furniture and the like), new kerb and road surfaces, the reinstatement of the public plaza where the southern portion of Columbia Lane currently lies and potentially the opening of the George Street extension south of Railway Lane.
- 5 If Council is not prepared to consent, either as owner or consent authority, to this Development Application our client will have an appeal right to the Land Environment Court and the Court will, where Council is both consent authority and owner, have power to grant owner's consent on behalf of Council.

- 6 It is appreciated that it will be incumbent upon our client to ensure that the concept application, as amended, warrants approval in its own right. Our client would also be content to accept any conditions on the concept approval which gave the Minister and the Department some comfort in that regard.

We note that the purpose of this letter is not at this stage to amend the proposal but rather to inform the Department that there is ultimately, a way through which will enable the Minister to approve the Concept Application and to allow for the development to go ahead as presently conceptualised.

If there are any queries regarding any of the above please do not hesitate to contact the undersigned.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Gary Green', with a long horizontal flourish extending to the right.

Gary Green  
Partner

## Lindsay Hunt

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**From:** Joshua Palmer [JPalmer@pvlaw.com.au]  
**Sent:** Friday, 28 September 2012 4:35 PM  
**To:** Lindsay Hunt  
**Cc:** Stan Kafes; Joshua Hollis  
**Subject:** RE: Columbia - letter to department

Lindsay,

I presume that the widening of Parra Rd is something you are offering to do because you think it will be required, rather than because it is something you want to do.

You could remove that from your application (in which case it's not work you are applying for, so not land to which you're application relates so no owner's consent is required) but the Department, if it is something they will want, can impose it by way of condition - there is no owner's consent requirement for land to which a condition relates.

At this stage it's probably a matter of nutting things out with the department.

Joshua Palmer

Solicitor

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-----Original Message-----

**From:** Lindsay Hunt [mailto:lhunt@cbhk.com.au]  
**Sent:** Friday, 28 September 2012 11:31 AM  
**To:** Joshua Palmer  
**Cc:** Stan Kafes; Joshua Hollis  
**Subject:** RE: Columbia - letter to department

Thanks Josh, for both - just remember though that the George Street extension involves widening of Parramatta Rd, the real estate of which is owned by Council - does that change your comments below?

Regards,

Lindsay Hunt

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Thank you.

-----Original Message-----

From: Joshua Palmer [mailto:JPalmer@pvlaw.com.au]  
Sent: Friday, 28 September 2012 11:25 AM  
To: Lindsay Hunt  
Subject: RE: Columbia - letter to department

Hi Lindsay,

Haven't seen it, but will get on to it now.

Spoke to Gary about the Roads Act question. The view is that there is nothing that stops them from approving the George Street extension (at least the northern part) as it lies within Columbia's land - for now think of it as an internal driveway with connection to Parra Rd and Columbia Lane. The development (George St extension) you are seeking Pt3 A approval for is not on Council owned land, so you don't need owner's consent. To the extent that connection would be required to Parra Road and Columbia Lane, that is a matter that could be conditioned with reference to obtaining necessary Roads Act approval, probably as a pre-CC matter (matter for discussion with the Dept when discussing conditions). You are not in strict terms seeking to do work to Parra Rd or Columbia Lane, so your application doesn't "relate" to that land in the necessary sense. Rather the Dept may choose to require, by way of condition, certain works and connections to the Council owned land and if those works are not approved by Roads Act approval, you can't go ahead.

Joshua Palmer

Solicitor

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