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***Wilshire Webb Staunton Beattie***  
***Lawyers***

**Our Ref: AH:GKS:552045**

2 May 2012

Morgan Lewis Solicitors  
Level 16  
9 Castlereagh Street  
Sydney NSW 2000

**Attention: Rebecca Breen**

Dear Sirs

**45-45 HILL ROAD WENTWORTH POINT (Lot 9 DP 776611)  
DRAFT COVENANT AND DEED**

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We act for Auburn Council in relation to your letter of 12 October 2011 (and we apologise for the delay).

We advise that Council has now re considered its position and formed the opinion that there is little utility in requiring compliance with the registration of covenants part of condition B8 of the Concept Approval dated 21 January 2008 for Lot 9 DP 776611.

The reasons for forming this opinion are as follows:-

- a) Condition B8 appears to be drafted on the basis that Precinct C would be developed before Precinct F. In fact the opposite has occurred with development occurring first within Precinct F.
- b) Most of the development in Precinct F has taken place and the allotments that you refer to as undeveloped have development consents for residential development and in the case of Lots 24 and 25 DP 270113 the approved development is almost complete.
- c) Council has relied upon the survey information provided by you from Lockley Land Title Solutions dated 22 September 2011 and 27 April 2010. This survey information indicates that the total floor space that has been approved and developed totals 23,0279m<sup>2</sup> (residential 226,558m<sup>2</sup> and commercial 3,721m<sup>2</sup>). While there is a 1.3% increase in floor space, the purpose of condition B8 has, in effect, been achieved.

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- d) The Council acknowledges the time and cost issues that would be encountered in trying to comply with condition B8 given the numerous allotments of land now involved. Further, in our view, registration of the covenant on the proposed lots should be restricted to the floor space areas that have been approved which is then only part of the total amount of floor space 227,848m<sup>2</sup> as referred to in condition B8.

In the circumstances the Council proposes that the requirement for the registration of covenants in condition B8 now be waived on the basis that s96 modification applications are lodged for the existing consent for Lot 9 (DA 308/2010 and DA309 / 2010) to remove the deferred commencement conditions DC4 and DC3.

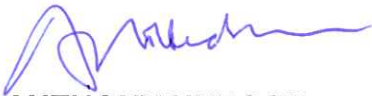
We advise that any future development applications in Precinct F or C would be assessed having regard to the relevant planning controls and condition B8 (even though compliance with the registration of the covenants part of condition B8 has been waived).

Please advise whether your client agrees with this proposal and that the appropriate s96 applications will be lodged.

We advise that the Council will give priority to the determination of these applications.

Yours faithfully

**WILSHIRE WEBB STAUNTON BEATTIE**



**ANTHONY HUDSON**

***Partner***

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