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NSW Planning and Infrastructure  
GPO Box 39  
SYDNEY NSW 2001

15 April 2014

Dear Mr Keary, *Don*

**MODIFICATION REQUEST APPLICATIONS FOR CONCEPT PLAN  
MP09\_0216 AND PROJECT APPLICATION MP09\_219 Shepherds Bay  
Redevelopment - Response to Submissions**

I refer to the NSW Planning and Infrastructures letter regarding the Response to Submissions for the above identified applications.

The City of Ryde Council has reviewed the documentation provided and has significant concerns regarding the proposal. Many of Council's previously identified concerns have not been addressed in the Response to Submissions.

The proposed modifications will result in a worsened amenity for the publicly accessible open space areas and the units within the developments. The proposal seeks to weaken controls that apply to the site and will facilitate a recapturing of the yields and dwelling numbers lost as a result of the Planning Assessment Commission (PAC) determination.

Council strongly urges the agency to recommend to the PAC the refusal of the application as it has little merit or justification. The 75W seeks to undermine the approval by the PAC which sought to address the concerns of the community and Council. Any support for the 75W Modification Application will further undermine any confidence that community may have in the planning system.

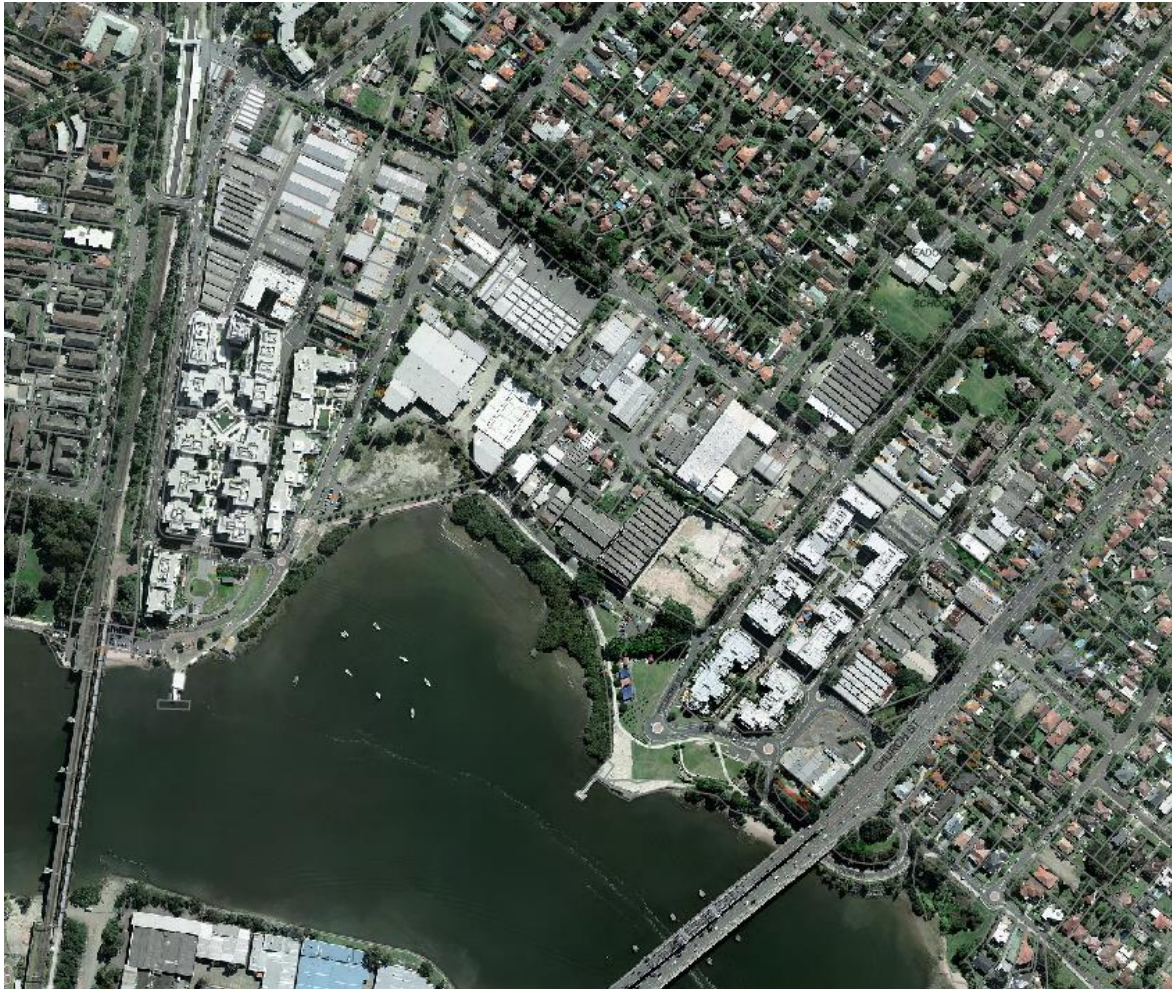
Council would welcome the opportunity to meet with NSW Planning and Infrastructure prior to the finalisation of the Assessment Report to discuss the proposed modifications in further detail.

Yours sincerely



Dominic Johnson  
Group Manager, Environment and Planning  
City of Ryde Council

# Shepherds Bay



Response to Submissions - modification request  
for Concept Plan MP 09\_216 and Project  
Application MP09\_219  
Submission from City of Ryde Council

The applicants Response to Submissions (RtS) has failed to adequately address the issues with the proposed 75W Modification applications identified in Council's previous submission. The quality and extent of the proposed amendments are such that it will significantly reduce the amenity for future residents beyond that already approved, with no offsetting provided for this loss in amenity. As such, Council urges NSW Planning and Infrastructure to recommend the refusal of the application.

It is noted that many of the critical matters are related to landscape and urban design matters. The proposal should be reviewed by an independent panel consisting of design professionals. Council's own UDRP reviewed the proposal and raised significant concerns but this has not been effectively considered or addressed by the applicants. Whilst it is noted that the application will be determined by the Planning Assessment Commission (PAC), the PAC is usually limited to either approval subject to conditions or outright refusal. Often it is too late in the process to allow for significant amendments or changes to occur.

It is noted that the applicants appear to have undertaken minor amendments to the scheme in response to the submissions received. It is unclear what amendments have occurred and what remains unchanged. In particular, reference is made to the proposed changes to Staging and the Statement of Commitments provided. This must be clarified and entirely clear prior to the determination of the application.

Council's continues to have significant concerns regarding the proposal and continues to object to the modification application.

## Proposed Built Form

### *Steeply Sloping Land*

As identified in Council's previous submission, this is a significant area of concern. Whilst the proponents have provided additional information, it simply seeks to justify the modification without providing further explanation or rationalisation of why this should be amended. Council maintains that the modification will result in an improved urban form for the sites. For a full detailed consideration of the ramifications of the modification, see Council's previous submission.

The applicants RtS has failed to provide any acceptable further justification for the variance of this condition. The applicants are of the opinion that that this condition should be varied to allow for increased flexibility. It has not been recognised or noted that the applicants do not have any limitations on excavation or fill and are responsible for the delivery of publicly accessible space between buildings. As such, the applicants have the ability to undertake significant earthworks to ensure that the best possible outcome for both open space areas and built form. The proposed amendments do not recognise this. As such, it can only be concluded that the proposed modifications are intended to provide a mechanism for the applicant to recapture the yield lost in the PAC approval. This yield was lost due to the exceedingly poor amenity resulting from the development and was imposed due to the concerns raised by Council and the community.

It is unclear from the submitted information whether the intent of the additional information is to limit the application of the storey variation to only those sites and stages shown on the map or whether it will continue to apply to all sites. This must be clarified.

As identified in Council's previous submissions, this modification has multiple ramifications. In brief, it will:

- Result in urban canyons between buildings. This is due to the increase in storey heights achieved through excavation with no commensurate increase in building separation. Whilst in the case of stage 1, this may be only a increase of 1 storey, it must still be counter balanced.
- Allow for increase in density that has not been considered or addressed through any other mechanisms.
- Create a worsened outlook for units fronting the open space areas.

The applicant has not recognised or acknowledged that the storey / RL height limit are a maximum (not a minimum) and that the buildings total RL can be reduced to step down the sites in response to the topography.

However, should NSW P&I seek to approve the application, it should be balanced by the imposition of further conditions to ensure the overall amenity is improved and not worsened. This should include:

- Increased building separation,
- Mandated improved activation of the pedestrian through site links by immediate access to adjoining apartments. It is noted that only 4 units (UB 14, UB 15, LG 24 and LG 25) are independently accessible from the through site link. Access to these bedrooms from the public open space is only achieved through the bedrooms, which is unlikely to encourage their use and the subsequent activation of the Foreshore Link.
- Clarification of where the storey height variation is applicable

### ***Road Design / Layout***

Insufficient information has been provided to adequately alleviate Council's concerns regarding the design of road connection between Hamilton and Nancarrow. It is of concern to Council, that no further details or response to the issues identified in the letter dated 4 October 2013 has been provided. In this respect, the basic letter submitted by the applicant stating that it can be achieved is not considered sufficient.

Further, the applicants consultants have identified that the road could be built to an acceptable standard 'in theory'. However, in Council's opinion insufficient information has been provided regarding the road design to form this opinion. In fact the plans submitted to Council to date have demonstrated that it cannot be adequately provided.

Ultimately, Council will be the responsible authority for the road and its approval as it will be dedicated to Council. It would be remiss of Council not bring to the agencies attention that the failure to provide adequate information during the assessment of the original application has been largely responsible for the modification application currently under assessment.

### ***Basement Car Parking***

The additional information provided by the proponents appear to show minimal amount of planting capable of achieving a significant depth throughout the publicly accessible areas. In the foreshore link. The only areas of significant planting (the central portion is entirely turfed with no significant planting or trees capable of achieving significant growth) are located against the buildings. These areas will be directly adjacent to balconies / windows for units and are likely to significantly affect the amenity of these spaces. Council continues to have concerns regarding the extent of deep soil planting and reduction of basement setbacks along the roads.

### ***Foreshore link***

Council's concerns regarding the overall design and function of the Foreshore link have not been resolved with the additional information submitted. Council's position regarding this matter is maintained. The timing of this link is likely to be problematic, with significant problems for public safety. Without sufficient detail of the total design of the through site link it is unknown whether the proposed staging will work. In this respect, a staging map showing the proposed Stage 1 and Stage 2 of the link and how it will with the surrounding public spaces must be provided. This would include the existing public open spaces for each stage and the finished public open spaces for each stage.

The timing and implementation of the link must be considered. Sufficient mechanisms to ensure the total construction of the link can be achieved must be captured should the agency approve the splitting of the link into two stages. These matters should be detailed in an implementation plan or similar.

Further, it is noted that the applicants have identified that the proposed amendments to the link have been undertaken in accordance with Condition B23. B23 states as follows:

*B23 The recommendations of the Access Review undertaken by Morris-Goding Accessibility Consulting (Reference Final v7) dated 6 August 2012 are to be incorporated into the relevant Construction Certificate drawings including:*

- (a) an accessible path of travel to lobby 2 from Rothesay Avenue;*
- (b) provision of a clear width of 850mm to garbage holding room doors;*
- (c) maximum ramp gradient of 1:14 for all access to garbage areas; and*
- (d) provision of a hardstand letterbox area adjacent to lift lobby areas with 1550mm circulation area.*

*Prior to the issue of the first Construction Certificate for a building in Stage 1, a report is to be provided from a suitably qualified access consultant to verify that the Construction Certificate drawings fully comply with Australian Standard AS1428 and Development Control Plan 2010 – Access for People with Disabilities. The report is to be provided to the Certifying Authority and Council.*

With regards to the above, it is assumed that the critical component that the proponent has sought to address is part (a) which would require the link to Rothesay to be provided at a grade of 2%. It is noted that this condition requires the preparation of a report prior to the issue of the first CC that must be provided to Council and the Certifying Authority. Council has not received this report and the CC provided to Council does not include this document.

However, it is unlikely that the intended outcome of this condition was for the redesign of the entire foreshore link. As such, this condition should be reviewed to ensure a positive outcome for the Foreshore Link, not the review of the foreshore link to suit this one condition.

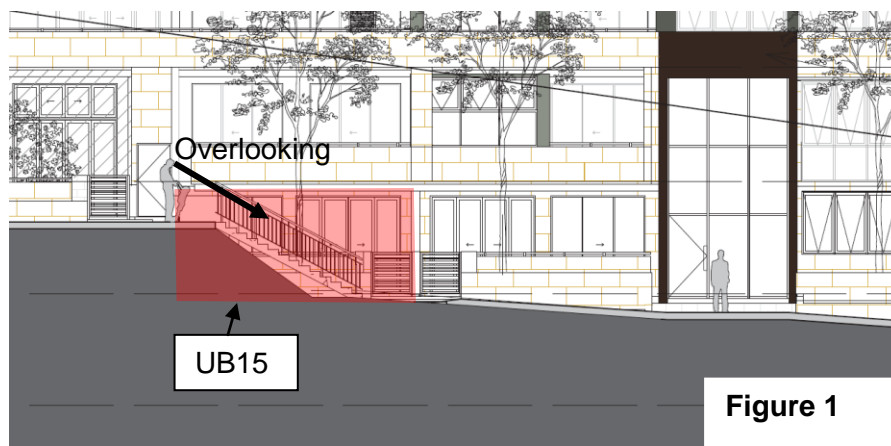
With regards to the proposed amendments to the foreshore link and the Stage 1 building, concerns are raised regarding the proposed planters directly against the buildings along both sides of the foreshore link. Details of these planters have been provided to ensure that a reasonable amount of substantial planting can be achieved. This is likely to be in contradiction or counterproductive to the location of ground floor units to activate the foreshore link. It is questionable whether this is appropriate or whether the entire design of the Foreshore Link and the adjoining residential units should be reviewed.

Despite the revised plans submitted, minimal attempts have been made to provide ground floor units that activate the foreshore link. In total, only 4 units along the foreshore link achieve independent access from the link. It is noted that this access is to be achieved through the bedrooms of the units and it is questionable whether this is suitable or will lead to the activation of the link.

Furthermore, these units have failed to provide adequate amenity for the units as identified in Council's previous submissions. The additional information provides sections through each of these units which fails to adequately respond to the foreshore link to ensure privacy and a sense of ownership of the space. The configuration of the units is such that residents are likely to 'turn their back' on this area which will result in a worsened outcome for the site.

It should be noted that the Residential Flat Design Code provides significant guidance on the design and treatment of ground floor apartments in Part 03 Building Design – Building Configuration – Ground Floor Apartments.

In particular, the RFDC recommends offsetting the floor level of the apartment to provide privacy for residents and to improve the outlook on the street. The proposed use of planting in this situation worsen the minimal solar access of these units creates issues with overlooking into the units from the foreshore link. This problem is significant for UB15 which will adjoin a stairway in the link. This is shown in **Figure 1**.



It is noted that the applicants have provided amended plans for the proposed stairs at the end of the Foreshore Link. In this respect, it is not considered that the amendments have adequately alleviated Council's concerns. The proposed design solution continues to result in exceedingly poor amenity.

The design itself does not adequately allow for sufficient respite or rest with no large platforms or seating. The stairs function simply as a means of access from the link to the new road connection. No opportunities for improved amenity and gradual level changes have been pursued that allow for veiweing platforms or genuine areas of rest and respite.

Furthermore it is noted that the proposed stairs will require the provision of an accessible path of travel along the central spine as per Condition 16 of the Concept Plan. Given that the applicants have raised significant concerns with the sloping nature of the site, further preliminary designs demonstrating the ability to achieve a accessible path of travel through this area must be provided. It should also be noted that the above condition requires a north-south cycle route between Constitution Road and the existing foreshore cycleway.

Council continues to have concerns regarding the overall relationship with the surrounding areas of public domain as identified in the previous submission.

### ***Additional Lower Level Units***

Whilst the RtS has provided further additional information regarding these units, Council's original commentary on these units and their lack of amenity is still maintained. However, all views provided have failed to show the adjoining future development at Stage 2. This fails to capture the canyon like nature of the foreshore link and the marginal amenity afforded to these units.

Below is a consideration of the additional information provided for each unit.

**UB-11 and UB-12** - For a ground floor unit, this unit is provided minimal open space areas with the planter box not a usable space. Furthermore, no individual access has been provided to the unit. The amenity of this unit is minimal and is not supported.

**UB-13** - For a ground floor unit, this unit is provided minimal open space areas with the planter box not a usable space. From the submitted section, it appears as through the floor level of this unit is below that of the road, which will result in privacy issues for this unit.

Furthermore, no individual access has been provided to the unit. The amenity of this unit is minimal and is not supported.

**UB-14** – For a ground floor unit, this unit is provided minimal open space areas with the planter box not a usable space. The access for the unit from the foreshore link is provided through the bedrooms, likely to experience minimal use and severely compromising the amenity of the bedrooms. It also has not been detailed how security or access to the balcony area from the foreshore link will be controlled. The amenity of this unit is minimal and is not supported.

**UB-15** – For a ground floor unit, this unit is provided minimal open space areas with the planter box not a usable space. The access for the unit from the foreshore link is provided through the bedrooms, likely to experience minimal use and severely compromising the amenity of the bedrooms. It also has not been detailed how security or access to the balcony area from the foreshore link will be controlled. Furthermore, as identified previously, the proximity of this unit to the staircase is of significant concern with regards to overlooking and privacy. The amenity of this unit is minimal and is not supported.

**LG-24** – From the submitted documentation it can be seen that the outlook from this unit is significantly compromised as a result of the stairs. It is also provided a minimal open space area given its ground floor location.

**GF-14** - The submitted section only provides for a separation of 10.7m to the staircase which is likely to receive high amount of use. This separation is considered minimal and is not supported by Council. A revised staircase and through site link design would potentially allow for an improved outlook for this unit.

**GF-15** – The limited amenity for this unit is clearly shown in the sections provided. Furthermore, it should be noted that solar access and the view point fail to take into account the deep soil planting that is shown on the street. Furthermore, this appears to be different to the section provided previously. This plan should be updated or revised.

**UB-16, UB-17, UB-18 and LG-25** – No additional information has been provided however, Council's issue with these units remain as detailed in the previous submissions.

Council's concerns regarding the additional units and the lack of amenity resulting from the proposed modifications are maintained.

### ***Deep Soil to Hamilton Crescent***

Council's concerns regarding the deep soil along Hamilton Crescent and the viability of the road reserve are maintained.

### ***Population Analysis Stage 1***

It can be seen from the submitted table provided on page 10 of the applicants RtS, that the modification application is seeking to recapture the total dwelling numbers removed by the PAC from the application. This may be in error given the reduction in dwelling numbers imposed by the PAC as detailed below.

Whilst the population has been reduced in total yield, this has come at the price of amenity for individual units and the publicly accessible open space areas. This is a clear indication of dwelling numbers driving design. Insufficient information has been provided to support the increase in amenity or to resolve Council's concerns captured in the previous submission.

## **Population Analysis Concept Plan**

The submitted table provided by the applicants at page 10 of the RtS seeks to identify that the only increase provided in dwelling numbers provided by the modification application is 4. This is based on the assumption that the approved concept plan is limited to 2,005 dwellings. The PAC approval does not nominate a reduction or maximum number of dwelling numbers but it does require significant reduction of potential yield. It should be noted that the applicants RtS identifies on page 12 that *'...this overall dwelling yield was reduced due to the approval also reducing the overall building heights....'*

The revised PPR which was considered by the PAC sought 203,500m<sup>2</sup> (2005 dwellings and includes 10,000m<sup>2</sup>). Based off the building envelopes approved in response to Condition B1 imposed by the PAC, Council has determined that the total amount of GFA achievable by the development is 167,631m<sup>2</sup>. This represents a total loss of 35,868m<sup>2</sup>. It should be noted that the above is based off a reduction of 20% in GFA from the building envelope to allow for building articulation as detailed within the RFDC. Given the design and articulation achieved in Stage 1, it may be the case that the total GFA is higher than the above simply due to less than 20% of building envelopes being lost to articulation and modulation. This would also be true of the original Concept Plan approval however and as such does not have any material weight in analysing total achievable floor space. These figures assume that a standard efficiency is achieved by both the PPR and the amended approved scheme.

Based off recent approvals within the Ryde LGA, the average size for a unit has been determined to be approximately 81m<sup>2</sup> common circulation areas and other shared spaces. This figure has also been used to determine the total number of dwellings achievable to provide a realistic figure based off current market demands.

The above figures have been collated in **Table 1** below.

	Revised PPR	Approved Scheme	75W Application
<b>Total GFA</b>	203,500m <sup>2</sup> *	167,631m <sup>2</sup> **	Unknown
<b>Dwellings (PPR figures assumed)</b>	2,005*	1,633**	Additional 186 for Stage 1-5 only. 6-10 unknown.
<b>Dwellings (based of avg. 81m<sup>2</sup> per unit)</b>	2388** (minus 10,000m <sup>2</sup> for commercial)	1946** (minus 10,000m <sup>2</sup> for commercial)	Unknown.

\*As defined in proponents EA submitted with the Revised PPR

\*\*Calculated by Council based off submitted Concept Plan (Condition B1) building Envelopes

No details regarding the total amount of floor space achieved or lost as part of the proposed modifications have been provided. The new information provided by the applicant as part of the RtS has not captured the additional units delivered across Stages 2-5 that was provided to Council previously. This clearly identified that a total of 186 new proposed dwellings across the first 5 stages, with 39 in Stage 1 alone. This is detailed at length in Council's previous submission.

Council maintains that the proposed modification is an attempt to recapture the loss in yield enforced by the Planning Assessment Commission. The additional units provided within Stage 1 has resulted in worsened amenity for new and existing units and are likely to reduce the quality of open spaces through increased usage and poorer relationship of buildings to public domain. This is likely to be replicated across all other stages of the site.

The relaxation of the height, basement levels, adherence to RFDC and other controls to be amended will weaken the framework against which future development applications will be assessed. It should be noted that the proposal continues to have no density or floor space maximums imposed. The removal or weakening of these controls will effectively be the removal of barriers that prevent the maximisation of development yield over design quality.

**Council strongly believes that the proponent should be required to adhere to the original conditions which are achievable on the subject sites. These conditions were imposed right reasons and are specifically designed to reduce / alleviate the poor amenity outcomes of the site that result from a poor design.**

In Council's opinion the 75W reflects an alarming trend in other former Part 3A Applications to circumvent the controls and limitations imposed by the PAC that often resulted in a reduced total yield for the site. This process is often viewed by the community with a high degree of cynicism as it often allows proponents to recapture yield and dwelling numbers previously lost. Council and the community deserve and require a high level of assurance with how the concept plan is to be applied to the site.

For this development it is requested that a dwelling, floor space or density limit be required as has been applied to the Ryde Royal Rehab Site and the Achieve Australia Site. This would ensure the removal of any development creep resulting in increased yield, dwellings or floor space through subsequent amendments and Development Applications. .

## ***Statement of Commitments***

### Stage 1

**Publicly Accessible Open Space** – Council's position regarding this matter is maintained. The timing of this link is likely to be problematic, with significant problems for public safety. Without sufficient detail of the total design of the through site link it is unknown whether the proposed staging will work. In this respect, a staging map showing the Stage 1 and Stage 2 of the link and how it will with the surrounding public spaces must be provided. This would include the existing public open spaces for each stage and the finished public open spaces for each stage.

This staging must be accompanied by an implementation plan that will ensure its total final completion. This may require the inclusions of bank guarantees or similar to ensure the delivery of the public domain.

**Waste Management Plan** - Council's position regarding this matter is maintained.

**Construction Management Plan** – This matter has been addressed.

### Concept Plan

Any requirement for work to be undertaken prior to issue of an occupation certificate must be amended to prior to issue of **ANY** Occupation Certificate.

**Housing Choice** – Council's position regarding this item is maintained. Whilst it is not being amended at this stage, it is a significant issue and should be resolved.

**Road Verge and footpaths** – Council is of the opinion that should the agency approve the modification application this should read as follows (modifications in red): *The proponent commits to providing and/or upgrading road verges, roadways and footpaths prior to the issue of **ANY** occupation certificate for the relevant Stage.* This will prevent the issue of interim occupation certificates with no upgrading of the public domain. Several incidences have occurred where an interim occupation certificate has been issued for a development with no final occupation certificate ever sought.

**Publicly Accessible Open Space** – Council's position regarding this matter is maintained.

**Road works** – It is noted that amendments have been made to this item addressing some of Council's concerns. However, in the event that the agency continues to seek the increase in density within this area, the amount of road facilities and infrastructure to be delivered must also be reviewed. It is unclear whether the proponents are continuing to seek the amendments to the staging for the delivery of road infrastructure as originally stated. It is noted that the SoC remains largely similar to that originally approved, but may be subject to significant amendments as result of staging changes. This must be clarified.

**Stormwater Management** – This SoC contains a reference to the VPA to be negotiated with Council. At this stage there is no VPA proposed and Council is of the opinion that the applicants must deliver all stormwater items stipulated within the approval at their expense with no offset against Section 94.

### **Outstanding Concerns**

The below are areas of particular concern that do not appear to have been addressed or considered in the RtS. The many issues within Council's initial submission still remain and must be considered by NSW P&I. These issues are detailed in length in Council's initial submission.

**Staging** – Council's initial submission raised concerns regarding the amending of Conditions 24 and 25. From the submitted documentation it is unclear whether this issue have been adequately addressed, or whether this amendment will be proceeding. In particular it is noted that the items 5, 7, and 10 relate to these conditions.

Furthermore it is noted that it now appears as though the Statement of Commitments will not be amended or revised to reflect the proposed staging. This must be clarified by the applicant.

Council continues to have concerns regarding the proposed new road link and the applicants failure to demonstrate or provide sufficient information that this road link can be provided within the proposed building footprints and with the proposed foreshore link.

**Building Height to Constitution Road** – It is noted that the applicant has maintained the argument that the building at the intersection of Belmore and Constitution Road must afforded additional height due to its corner location. In this respect, Council maintains that recognition of corner locations can be achieved through architectural treatment and articulation as identified previously. Alternatively, should the agency be of an opinion to support this modification it should be captured by way of an amended condition requiring design excellence to adequately address this corner. This could be left to the discretion of Council or to its Urban Design Review Panel.

**Basement Levels Above Ground Levels** – It is assumed that the proponents are still pursuing the amendments to Condition 4 as originally proposed. Council continues to maintain is previously stated position on this proposed modification.

**Compliance to Building Height Map** – Council maintains its position regarding the proposed amendments to storey heights and that a further revised / detailed storey heights map for the entire area must be provided. This revised storey height map would allow for detailed consideration of the

**ESD Targets** – Council's concerns regarding the proposed ESD target amendments have not been adequately addressed and are maintained.

**Residential Amenity** – It is unclear whether the proponents are continuing to seek this amendment, however Council's concerns regarding this amendment persist and Council's position is maintained.

**Community Facility** – Council's position regarding the community facility is maintained. Of critical importance with this is that the failure to allocate a stage within which the space must be delivered will result in either a poorly located space or fail to provide one entirely. The facility must be delivered early on in the process and must be located around the 3,000m<sup>2</sup> open space. Council's previous submission details the general principles that must be adhered to by the facility and includes a nominated size of 2,5000m<sup>2</sup>. Ideally, this figure would be captured in the condition to provide certainty for the community, Council and the proponent.

**Outcomes of Design Excellence Process** – Council's position regarding the design excellence process is maintained.

**Rewording Condition B27** – Council's concerns regarding the rewording of Condition B27 persist and have not been adequately addressed by the applicant. The applicant has advised that this is to ensure flexibility in terms of certification consistent with the EP&A Act

1979. The ramifications of this condition are significant for public domain areas and the presentation of Stage 1. Flexibility can still be achieved through appropriate oversight which will ensure that a high quality outcome is achieved, rather than the cheapest and most expedient one. It must be noted that this condition will apply to a range of utilities including electrical substations which have significant impacts upon the public domain.

### ***Response to community submissions***

Council does not support the proposed amendments and disagrees with the majority of the response to community submissions detailed in the RtS. Council has addressed the key areas on inaccuracy below:

**Page 15** – The applicant has stated that future DAs will provide retail / plaza areas that are open to the public. This contradicts discussions between Council and the applicant in regards to Stages 2-5. The applicant has repeatedly stated that they do not believe that retail / other active uses are appropriate within the sites. Council is of the opinion that these spaces must be provided around the open space area and other key locations in order to ensure that the development adequately caters to the demands of residents and allows for the enjoyment, use and passive surveillance of the open space.

**Page 15** – The applicant has stated that the Design Excellence Process is currently under Council's direction. This is not the case as Council has written to the JRPP regarding this matter as it is the Consent Authority for the future DAs.

**Page 15 / 16** – The applicant has stated that Council is currently considering the community facility. This is not the case as detailed within Council's previous submission.