

29 November 2018

15709

Professor Mary O'Kane  
Chair, Independent Planning Commission  
201 Elizabeth Street  
Sydney NSW 2000

Attention: Ms Dianne Leeson (Panel Chair)

Dear Ms Leeson,

**Secton 75W Modification to Concept Approval MP 10\_0198 MOD 2  
Channel Nine Site, 6-30 Artarmon Road, Willoughby**

We write on behalf of LEPC9 Pty Ltd, the Proponent for the abovementioned Modification Application. Thank you for the opportunity to brief the Commission on 13 November 2018 regarding the proposed amendments and the Department of Planning and Environment's assessment report and draft conditions, and for the opportunity to present the scheme at the public meeting on 27 November 2018.

We have now had the opportunity to review information provided to the Commission by Willoughby City Council, and to listen to matters raised by the community at the public meeting. The following letter sets out our response in relation to these matters in order to assist the Commission.

## 1.0 Issues Raised by Council

### 1.1 Planning Process

As noted in the S75W Modification Application and Response to Submissions, the EP&A Act and Transitional Regulations provide for the modification of the Concept Approval. The Modification Application continues to provide for a residential master-planned development which represents a fresh approach to the urban design and planning of the site, and this has extended to the capacity of the urban design framework to accommodate additional housing.

The amended master plan for the site, despite including additional dwellings, offers a number of significant improvements for both future residents and the broader public, including increased and improved public open space, reduced overshadowing, a more legible and public street network and better pedestrian connectivity. The additional dwellings provided are also consistent with subsequent strategic planning policies, including the Greater Sydney Region Plan and the North District Plan which emphasise the need for additional and more diverse housing in established areas and better-connected green spaces.

The proposed modification should in fact strengthen community confidence in the planning system. By voluntarily convening an architectural design competition, the Proponent has achieved an amended master plan that significantly improves upon an existing Concept Approval to deliver a better urban development outcome for the community which is accompanied by additional public benefits for the broader community.

At the public meeting, a number of speakers raised concerns regarding the fact the Modifications No.1 and 3 to the Concept Approval remain 'on foot'. It is important to note the reasons for this relate directly to the actions taken by Willoughby City Council in relation to the sale of Scott Street, which are elaborated upon in Section 1.2 below. For clarity, it is the intention of the Proponent that both Modification Applications be withdrawn should the current Modification Application be approved by the IPC.

## 1.2 Scott Street

The original Concept Approval included a condition requiring that the Proponent negotiate the closure and purchase of Scott Street from Council. This condition was imposed based upon Council's position at that time that the roadway should be included in the master plan.

At its meeting on 22 July 2013 – prior to any approval of the Concept Plan Application, and whilst the application sought consent for 600 apartments – Willoughby City Council resolved to:

- *"Commence the process of closing Scott Street;*
- *Sell the closed road to Nine Network Australia, with "the Deed of Agreement for Sale specifically enabling the deed to novate to a new owner/developer of the redevelopment site";*
- *Establish a process for the valuation of the land at the time of sale; and*
- *Allocate any money received from the sale toward Naremburn and Artarmon Ovals".*

This resolution was made before the Concept Approval was issued by the PAC and whilst the application sought consent for 600 dwellings.

Willoughby City Council subsequently entered into a Deed of Agreement with TCN Channel Nine Pty Ltd that committed Council to use its best endeavours to close the road and sell Scott Street. The Deed of Agreement was executed by the parties on 2 June 2015, and included clear provisions for the novation of the Deed from Nine to the future developer of the site.

This Deed of Agreement for the inclusion of Scott Street in the master plan formed the basis for the Proponent's purchase of the Channel 9 Site and the basis of the Architectural Design Competition which resulted in the master plan prepared by CHROFI that was submitted with Modification No.1.

Despite the resolution of Willoughby City Council on 22 July 2013 to commence the process of closing the public road, and the fact that Council had entered into a Deed of Agreement with TCN Channel Nine Pty Ltd whereby it agreed to enact this road closure and sell the land to Nine (or any subsequent landowner) for inclusion in the site's redevelopment, Council subsequently advised during the assessment of MOD 1 that this road closure had and would not be progressed. Council confirmed this in writing by letter on 15 November 2016 (**Attachment A**).

Accordingly, the Proponent and CHROFI worked to amend the master plan to retain Scott Street in its current position based on Council's advice that this will remain a public road. These amendments have added significant time (nearly 18 months) and financial cost to the planning process, including a requirement to commence proceedings in the NSW Land and Environment Court. Accordingly, it is not proposed or necessary to acquire the public road.

In direct response to the actions taken by Council in relation to Scott Street, it has been necessary for the Proponent to take a number of actions in order to progress planning for the site:

- Modification No.1 has been placed on indefinite hold due to the decision by Council to not sell Scott Street and to withhold land owner's consent for the inclusion of this street. This application has been left on hold in the hope that Council may reconsider this position. If Modification No.2 is approved then this application will be immediately withdrawn.
- Modification No.2 was required to be re-documented and re-submitted to avoid any legal uncertainty regarding the requirement for landowners' consent in relation to Scott Street.
- Modification No.3 was submitted to amend the existing approved master plan, such that if Modification No.2 is refused consent than the original master plan can be amended to remove Scott Street from the Concept Approval to reflect Council's position that land owner's consent will not be provided for the redevelopment of the site. Modification No.3 will also be immediately withdrawn should Modification No.2 be approved.

The proposed setback to Scott Street is appropriate based on the existing street alignment and urban context of this location. There is no prevailing setback in Scott Street established by other development, as this road serves the subject site only. The setback provided to the carriageway is consistent with the setback proposed to be provided to the proposed future portions of Scott Street located within the site, and will deliver an appropriate urban design outcome by providing sufficient areas for footpaths, parking and landscaping.

### **1.3 Building Heights and Transition**

CHROFI have prepared a series of urban design studies (**Attachment B**) which provide a comparative analysis of the interface to surrounding residential areas under the approved and proposed master plans. These studies demonstrate that at each interface to the surrounding neighbourhood, the amended master plan provides for a more sensitive and appropriate transition in scale.

At Artarmon Road, the reorientation of the park allows the Edward Street viewline to open up to broader district views, rather than terminating at a long 6-storey residential apartment building with 8-storey buildings behind. This is a significant public benefit and allows the scheme to better integrate with the broader streetscape. Whilst the separation from existing buildings along Artarmon Road to the west of Edward Street is reduced, this allows for a completion of the street and a more sensitive transition in scale from the single-storey existing dwellings to the new buildings. These buildings would present as 2-3 storey buildings in the streetscape through the use of the proposed courtyard apartments (subject to Future Environmental Assessment Requirement 3) and setback upper levels. The benefits for the safety and amenity of the re-oriented park have been outlined extensively in previous submissions.

Along Richmond Avenue, the proposed Building C will have a lower street wall height than the approved three storey terraces. The introduction of articulation and separation between these buildings will also create a far more open and permeable edge to the site, rather than the relentless series of terraces under the existing Concept Approval. Building H will have an increased setback to allow for additional landscaping, with only a marginal increase in the street wall height such that the overall relationship in scale to the street is unchanged from the existing Concept Approval.

As outlined in the Urban Design Report by CHROFI, the existing Concept Approval presented a poor relationship in building heights from the low-rise surrounds to eight-storey buildings with a separation zone but no transition in scale. Along Artarmon Road, single-storey dwellings faced toward 6-8 storey residential apartment buildings with long unbroken facades under the Concept Approval. The low-rise street edge buildings (particularly Buildings A, B and C) provide a more sensitive and transitional scale, shielding views of the taller buildings located within the central portion of the site.

At Scott Street, a 2-metre setback to the property boundary will be provided to allow for landscaping and edge treatments to occur within the site, with a much greater distance to the street kerb for landscaping and footpath, providing for a consistent street treatment and setback throughout the existing and proposed portions of Scott Street. Furthermore, the proposed Building F provides for a lower street wall and overall height in comparison to the existing Concept Approval, providing for an improved interface to the Castle Vale development to the east.

Having regard to the above, it is considered that the urban design outcome represents a much-improved response to the surrounding context that will result in a scheme that is more integrated with the surrounding community. It is noted that the master plan provides for maximum heights (expressed as an RL) and building envelopes which must be adhered to as part of future Development Applications, which will ensure that the urban design outcome will be delivered upon.

### **1.4 Floor Space and Dwelling Numbers**

The original Concept Approval and the Modification Application provide for a maximum Gross Floor Area (GFA), not a Floor Space Ratio (FSR). The matters raised by Council in relation to the calculation of site area and the distribution of GFA in the context of determining an FSR are not relevant to this application, as this is not a metric which is provided for in the Concept Approval. The Concept Approval contains a clear, prescriptive limit on the quantum of GFA which, in conjunction with the maximum building envelopes, will ensure that future development delivers a built form outcome that is consistent with the assessed master plan.

## 1.5 Affordable Housing

The Modification Application seeks consent for a maximum GFA, and does not seek to rely on the FSR provisions of the Willoughby LEP in relation to affordable housing. The affordable housing provision is accordingly included in the maximum GFA and dwelling limit contained within the Concept Approval as proposed to be modified.

## 1.6 Open Space

As outlined in the Urban Design Report prepared by CHROFI, the alignment of the Village Green to the Edward Street alignment and the orientation of the Village Lawn to the proposed Scott Street, along with landscaping and pedestrian infrastructure within these spaces, will ensure that the new open space provided within the site is readily perceived as a public space. The currently approved open space to Scott Street and Richmond Avenue has a long, direct interface to Artarmon Road, which is a collector road for the local area with higher traffic volumes, and a relatively narrow depth, reducing the amenity and safety of this area. Re-aligning the space, whilst maintaining a clear visual link from Artarmon Road and substantial frontage to the new Scott Street, which will be publicly accessible, increases the safety and amenity of this space.

Greater Sydney Region Plan and the North District Plan seek to improve connectivity of open spaces and community access, through the establishment of a Green Grid. As outlined in CHROFI's Urban Design Report, the site sits at the junction of a significant east-west regional open space network, however, accessibility to this area from the north is poor due to the existing Channel Nine campus and the poor quality of Walter Street Reserve. The open space proposed within the site and upgrades to the Walter Street Reserve directly address this issue, and will benefit the whole community. The open space will be readily be perceived as public space because of this improved connectivity. It is noted that there are other significant open spaces in close proximity to the site, such as Artarmon Reserve, which do not have any substantive street presence but are nonetheless recognised as important public community spaces.

**Attachment B** provides additional information regarding the dimensions and design treatment of this open space that demonstrate how the public open space will be public, accessible and connected. It is noted that there will be further opportunities at the detailed design and Development Application stage to incorporate additional measures, such as appropriate signage, to make clear to the community that these spaces are publicly accessible.

## 1.7 Public Benefit Offer

As confirmed in the Council's meeting with the Commission, Council does not have any adopted or draft policy that would justify the extent of additional contributions sought. The Proponent has sought to engage with Council on a number of occasions over a period of several years with the aim of ascertaining Council's views in relation to potential public benefits, however, Council has refused to meet or enter into a dialogue on this issue.

Most recently, the Proponent wrote to Council's Director of Planning and Infrastructure once again seeking Council engagement in relation to the Public Benefit Offer. Council's response was as follows:

*"Increased population associated with the development of the site will place added pressure on Council infrastructure and services including roads, open space and community facilities. In the order of 45-50% of value uplift of the site is estimated to be needed to provide for the needs of the future residents. The offer currently made is significantly below this amount.*

*Other than highlighting this significant gap, it is my preference to refrain from further discussion on VPA matters until such time as the Department provides an indication of their intended decision".*

The infrastructure identified by Council is non-specific and are matters that are funded through Section 7.12 Contributions (formerly S94A Contributions) which will be levied upon all new development at the subject site. Furthermore, there is no public draft or adopted Council policy supporting the 45-50% value uplift figure cited. A copy of this correspondence is provided at **Attachment C**.

In the absence of Council input, the Proponent has relied on aspects identified during the Proponent's community engagement activities (local traffic and open space connectivity) and through the previous planning process for the Concept Approval. This input has formed the basis of the public benefit offer.

In relation to the other points made in Council's submission:

- Modification No.1 sought a significantly greater increase in development yield than Modification No.2, and it is therefore appropriate that the public benefit offer is reduced.
- The \$1.5 million value of the Public Benefit Offer (which does not include the additional affordable housing contribution above Council requirements) equates to \$25,000 per dwelling – this is significantly higher than the Special Infrastructure Contribution proposed by the NSW Department of Planning and Environment for the nearby St Leonards and Crows Nest area of \$15,100 per dwelling.
- The public benefits delivered by the project should provide a direct improvement to the welfare of the surrounding community. Council's suggestion that the contribution intended for the Walter Street Reserve be utilised for unspecified active open space 'where demand/need is highest' would break any nexus between the project and the local community benefits. It is noted that Council already collects S7.11 and S7.12 local development contributions for active open space to support new development within the broader LGA, and will receive significant local infrastructure contributions from this development which can be directed to these works.

Multiple traffic studies have confirmed that the redevelopment of the subject site would not give rise to the need to upgrade the Willoughby Road intersection. The Concept Approval already requires the payment of S94A Development Contributions for all dwellings to be delivered on the subject site, which will include contributions that Council is able to direct to local road network infrastructure improvements. Neither Transport for NSW nor RMS (who are responsible for Willoughby Road) have objected to the proposed development or raised issues regarding the performance of this intersection. However, the existing performance of this intersection has been identified by the community as an area of concern, and hence the opportunity to contribute towards resolving this issue has been identified as an area to contribute toward a broader public benefit.

## **1.8 24-hour access to open space**

There is no objection to a requirement that the proposed roadways and publicly accessible open space areas are to be accessible at all times. This has always been the clearly-stated intention for these spaces throughout the urban design and planning process.

## **1.9 Council's proposed conditions of consent**

We support the draft conditions provided to the Commission by DPE, subject to the single proposed amendment outlined in our previous letter dated 8 November 2018. We do not support the conditions proposed by Willoughby City Council.

# **2.0 Issues Raised by Community**

## **2.1 Planning approach and Modifications No.1 and 3**

As outlined in Sections 1.1 and 1.2, the planning approach has reflected the decisions by Willoughby City Council to withdraw from the commitments in the Deed of Agreement in relation to the sale of Scott Street for inclusion in the master plan. The two remaining Modification Applications will be withdrawn immediately if the current Modification Application is approved.

## **2.2 Public transport**

A number of speakers at the public meeting stated that the site is not located close to any major public transport node. The bus stops immediately to the north of the Willoughby Road are within 400m walking distance of the Artarmon Road/ Richmond Avenue intersection, with Scott Street being closer at approximately 150 metres walking distance. Four bus routes service these stops:

- Route 257 – Chatswood to Balmoral via Crows Nest
- Route 272 – North Willoughby to Wynyard
- Route 343 – Chatswood to Kingsford (via Sydney CBD)
- Route M40 – Chatswood to Bondi Junction (via Sydney CBD)

There are more than 400 bus daily bus services (both directions) to these stops every weekday. For city-bound buses arriving at Wynyard between 8am and 9am (i.e. the morning peak), the travel time ranges between 14 and 18 minutes. In light of the above, we consider the site to have a very high level of public transport accessibility.

### **2.3 Need for additional housing**

A number of speakers at the public meeting stated that because Willoughby City Council is already meeting its 5-year dwelling target outlined in the North District Plan, the additional housing proposed as part of the revised master plan should not be supported. In response to this:

- The District Plan states that “*The five-year targets are generally consistent with known housing approvals and construction activity. These are minimum targets and largely reflect delivery potential under current planning controls*” (our emphasis added). The District Plan makes clear that meeting the 5-year minimum target, which is based upon known and planned-for capacity, is not a reason to prevent further housing supply.
- The District Plan also identified the need for Councils to identify housing supply to contribute toward the North District’s 20-year housing supply target. It is not sufficient to plan for the 5-year target only.
- Providing additional housing on the subject site will assist Willoughby City Council and the community in the future by contributing toward this future capacity, thereby alleviating potential pressure on other areas to deliver additional housing.
- In addition to housing supply, the proposed development offers an opportunity to promote housing diversity within the local community, presenting new opportunities for first-home buyers and down-sizers to remain within the local area in suitable housing typologies.
- The site is unique as a single, consolidated site which presents a unique opportunity to deliver additional housing along with significant public benefits such as the new public open space proposed.

The Modification Application provides for an additional 60 apartments, including additional affordable housing, with a net improvement in environmental impacts compared to the existing Concept Approval.

### **2.4 Richmond Avenue and Scott Street Roundabout**

Several speakers at the public meeting spoke in relation to the proposed site access points at Richmond Avenue and Scott Street. We note that the Department of Planning and Environment have recommended that the Scott Street roundabout be removed, and that the Richmond Avenue roundabout (as per the existing Concept Approval) continue to be provided. We believe that the traffic arrangements proposed in the Modification Application (i.e. a roundabout to Scott Street and no new traffic control at Richmond Avenue) continues to be the best outcome for both future residents and the local community, noting that:

- As confirmed by Mc Craig McLaren (a Level 3 Accredited Road Safety Auditor) in his letter of 12 April 2018, a safe roundabout design with adequate sight lines is achievable;
- As confirmed by Samsa Consulting (and others), queuing back from Willoughby Road would not extend to the Scott Street such as to interfere with the roundabout performance; and
- The Scott Street roundabout has the benefit of allowing traffic from the site to proceed more directly in an east-bound direction toward Willoughby Road, rather than needing to travel via the Richmond Avenue roundabout. This would benefit existing residents of Richmond Avenue by reducing the amount of traffic exiting the site via the proposed Richmond Avenue access point.

Further detailed engineering design will need to occur prior to the delivery of this roundabout, including approval from Willoughby Council as the relevant local roads authority. Accordingly we recommend that recommended

Condition 13 of Schedule 3 be amended to require that future Development Application for Stage 1 incorporate the provision of the roundabout at either the intersection of Scott Street and Artarmon Road, or the intersection of Richmond Avenue and Artarmon Road.

It is also noted that there are a number of detailed traffic design options which can be implemented in Richmond Avenue to reduce any potential impacts from headlight glare on existing dwellings. If deemed appropriate a condition to the following effect could be included in the determination:

*The Proponent is to investigate potential design options, such as landscaping, to reduce potential for headlight glare to existing dwellings in Richmond Avenue. Details of these investigations are to be included with the Development Application for the internal road connection to Richmond Avenue.*

### 3.0 Response to DPE Statement Regarding Premier's Priorities

One of the speakers at the community meeting made reference to a statement issued by the Department of Planning and Environment on 26 or 27 November 2018 that in summary says that “*section 3.1 of the Department’s Assessment Report discussing the relationship between the Premier’s and State Priorities and the proposed modification may be misleading*”. The statement also states that there “*is no suggestion that either the Premier or the Department of Premier and Cabinet has endorsed this proposed modification, or this report, as being consistent with the Premier’s or State Priorities*”.

We note that the statement issued by the Department of Planning and Environment does not specifically relate to the Modification Application for this site and appears to have been issued in relation to all other projects where the Department has made a recommendation for determination to the Commission.

Notwithstanding this, the proposed Modification Application does support the Premier’s Priorities, which include a priority to achieve “*61,000 housing completions on average per year to 2021*”. The proposed modification will contribute towards the delivery of additional housing supply. Relevantly, the Premier’s Priority states that the rationale for this objective is to improve housing affordability, ensure enough homes are built to meet the needs of a growing population, whilst considering the unique character of local neighbourhoods. The proposed Modification Application has demonstrated that:

- Additional affordable rental housing will be provided by the Modification Application in excess of the requirements of Willoughby Council’s affordable housing policy;
- Additional housing will be provided on the site with high amenity to meet the needs of a growing population; and
- The amended master plan will be consistent with the unique character of the site and local neighbourhood by delivering an amended master plan that results in an improvement in amenity outcomes for the existing community compared to the existing Concept Approval.

Accordingly, the proposed Modification Application is consistent with the Premier’s Priorities.

### 4.0 Recommended Condition 34A

Further to our letter to the Commission of 8 November 2018, we request that the Commission make one further amendment to the recommended conditions proposed by the Department of Planning and Environment. This change related to proposed Condition 34A in Schedule 3, which relates to the timing of actions in relation to the acceptance of the Public Benefit Offer and subsequent Planning Agreement. The proposed changes to this condition are shown in **bold**:

*“If accepted by Willoughby City Council in writing within 6 months of the determination of MP 10\_0198 MOD 2, the public benefit offer contained within modification request MP 10\_0198 MOD 2 (submitted with the response to submissions dated 28 March 2018) shall form a*

*Voluntary Planning Agreement (VPA) between Euro Properties and Lotus Property Fund No.8 (or its nominated entity) and Willoughby City Council. Within 3 months of the written acceptance of the public benefit offer by Council (or as otherwise agreed with Council), the VPA shall be prepared, publicly exhibited, and executed prior to the approval of the first residential development application for Stage 1 or as otherwise agreed with Willoughby City Council. A copy of the executed VPA shall be submitted to the Secretary".*

The purpose of this amendment is to ensure that the execution of the Planning Agreement does not unduly delay the determination of future Development Applications.

It is also recommended that Condition 34A is more appropriately located within Schedule 4, being the Statement of Commitments by the Proponent.

## 5.0 Conclusion

We trust that the above information is of assistance to the Commission in finalising its consideration of this Modification Application. We are available to meet or provide further additional information should this be considered necessary by the Commission. Please do not hesitate to contact the undersigned should you have any further queries.

Yours sincerely,



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