

**From:** [President FWPA](#)  
**To:** [IPCN Enquiries Mailbox](#)  
**Subject:** Channel 9-IPC Submission  
**Date:** Wednesday, 28 November 2018 9:41:47 PM

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Dear Commissioners,

I am the President of the Federation of Willoughby Progress Associations (FWPA) and provide the following submission to assist your determination of the application to modify the approved Channel 9 development plan.

**The existing development plan determination is a good example of the strengths of NSW's planning system and institutions.** The determination involved the community engagement and support for the site's redevelopment. It came after it was independently assessed by the Planning Assessment Commission who scaled down to 350 apartments the 450 apartment scheme that had been recommended by the Department of Planning. It followed an appeal to the Land & Environment Court. And it was finally determined with Land & Environment Court facilitated agreement between PAC, Willoughby City Council (WCC) and the (then) Applicant.

The approved scheme came from: community engagement, independent assessment, local council alignment, legal appeal and key stakeholder agreement.

The determination involved the Planning Assessment Commission, Land & Environment Court, Willoughby City Council and Applicant resolving differences and reaching agreement.

**By contrast, the proposed modification is an example of the weaknesses of the NSW planning regime. In seeking to enlarge the development's scale the Applicant has abandoned the agreement which it had accepted when it acquired the site. The Applicant has exploited the planning process through applying (successfully) for major changes to the approved scheme as a "modification" of the scheme rather than as a new scheme application. The Applicant has exploited the submission process by running multiple different modification schemes concurrently. They timed their Modification 2 submission for the public exhibition period to coincide with the 2017 Christmas end of year in an apparent attempt to avoid scrutiny. The Applicant failed to consult or engage.**

The Applicant's attitude to the planning process was evident from the comments made by David Hynes (for LEPC9) at the public meeting held by the Independent Planning Commission on 27<sup>th</sup> November 2018. During his presentation David Hynes made an "off the cuff" comment on the approved scheme, saying that the approved scheme was never meant to be final but just a way for the site's previous owner to obtain a "bankable development" in order that they could sell the site. Unfortunately the community, and presumably WCC and PAC, believed that the site's previous owner was serious about their development.

The modification proposal has been assessed by the Department of Planning and Environment. Their Assessment Report appears to contain numerous misleading implications, statements and omissions. It is debatable whether this reflects a lack of rigour or a lack of objectivity. A few examples:

- In the Assessment Report the Department implies that the proposed modification is consistent with the objectives of the Greater Sydney Commission, North District and Willoughby City Council, they cite broad housing objectives but misleadingly omit their objectives for co-ordinated precinct wide planning and the end of site specific exceptions.
- The report misleadingly implies that the proposed modification is needed for WCC to achieve its housing target.

- The report implies that the proposed modification is consistent with WCC's strategy, this is an astonishingly misleading statement given WCC's objections to it.
- The Department's Assessment Report implies that there has been effective engagement on the proposed modification but omits to state that the Applicant failed to consult with the public on Modification 2;
- The report concludes that the modification includes "additional public benefits" and details two items of tied Voluntary Planning Agreement Expenditure but fails to identify that these two items are either primarily for the benefit of the development's residents (the Walter Street reserve) or to deal with issues generated by the development (the Artarmon Rd intersection upgrade). The report fails to identify that expenditure on these items are not new but existing obligations under the approval conditions of the existing scheme, and are therefore not additional benefits resulting from modifications at all.
- The report fails to mention the loss of public benefit caused by the removal of Scott Street from the modification which will cost the public the value of the Scott Street land (estimated between \$3M and \$5M);
- The report misleadingly implies that the building heights have not increase where in fact most buildings have increased by at least 1 storey in height.

We note that the Department has released a Statement in which it states that the Assessment Report "may be misleading". This is an extraordinary admission. "May be misleading" means it is misleading.

**In their Assessment Report the Department does not provide any objective compelling reasons to justify changing PAC's existing determination and in recommending the increase in the development's apartment numbers.**

In previous submissions the FWPA and others have detailed that the Channel 9 site is too isolated to support any increase in apartment numbers to that already approved.

Whereas the approved development determination shows the strengths of NSW's planning regime and the benefits of co-operative agreement, the modification application and assessment process to date shows its weakness and how it can be exploited to the potential detriment of the community.

**FWPA requests the Commission confirms PAC's determination and upholds the Land & Environment agreement by rejecting the proposed increase in storey and apartment numbers.**

Thank you for your consideration of this matter.

Yours faithfully,

Stephanie Croft  
President  
Federation of Willoughby Progress Associations  
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