

6 February 2019

Diana Mitchell
Independent Planning Commission
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000

Dear Diana

Gateway Determination Review, Canterbury Road Belmore

As requested during the IPC's meeting on 23 January 2019, we **attach** to this letter the following documents:

1. A report prepared by James Matthews of Pacific Planning explaining the Planning Proposal's consistency with the various other strategic plans in existence.
2. A report from our client's traffic engineer, Erica Marshall, explaining how RMS *could* support the Planning Proposal.

Transcript of Council's interview with the IPC

In addition, our client has reviewed the transcript of the IPC's interview with Council. Our client has instructed us to make the following responses addressing some of the gaps identified, and in some case, errors:

1. The Council officers make no comment about the inconsistency of the Administrator's actions with the Guidance for Merged Councils, which our client had relied on in expending resources into this Planning Proposal.
 - (a) Mitchell Noble comments that: *"Straight off the bat, as soon as the review started, he [the Administrator] said, "Look, I will put nine planning proposals on hold and I don't want to proceed with these three planning proposals."* The Department's Policy document titled "Guidance for Merged Councils" states the following however:

<i>"Issue</i>	<i>Action</i>
<i>Progress planning proposals, gateway applications and planning agreements</i>	<i>Councils need to continue to progress planning proposals with strategic merit, planning agreements and gateway applications that are consistent with the established strategic and community vision of the former councils. It is important to maintain a pipeline of appropriately zoned for housing and employment opportunities." (Emphasis added)</i>

<i>"Issue"</i>	<i>Action</i>
Continue to receive and assess and obtain Gateway approvals for new planning proposals	<p>New councils are expected to receive and assess planning proposals that have strategic merit from the very first day of their establishment. New applications will be assessed consistent with the established strategic and community vision of the former councils. Issues that will need examination to ensure seamless service delivery in the assessment of new planning proposals include:</p> <ul style="list-style-type: none"> • The process chain for the assessment of planning proposals including a consistent approach to pre-lodgement meetings, lodgement requirements, application fees, and consultation and notification requirements, and • Access to data and information on land details, zoning, planning controls, and the ability to produce up to date mapping.

- (b) In stark contrast to this policy, the amalgamated Council under administration embarked on a divergent approach to the strategic and community vision of the former Council by having the Planning Proposal deferred, and then embarking on the Canterbury Road Corridor Review, which formed the basis for recommending that the Planning Proposal not proceed (and the alteration of the Gateway). Rather than continue to progress this advanced Planning Proposal that had got close to the end of the Part 3 process, the opposite occurred - it was deferred.
- (c) The deferral contradicted representations from various Council officers made to our client that it would abide by the policy, and the deferral of the Planning Proposal conveniently coincided with an ICAC investigation into the former Council - a matter which our client has not been implicated in.
- (d) Our client also wishes to point out that at the time of the amalgamation, it requested a meeting with the Administrator, which was granted and took place on 25 July 2016. The purpose of the meeting was to seek advice from the Administrator about the status of the Planning Proposal and the Development Application under the new administration. The meeting was attended by Mr Noble, and Acting Director Scott Pedder (with the Administrator's apologies). Mr Pedder advised representatives of our client that based on comments he had received directly from the Administrator, that the Planning Proposal would be progressed in accordance with the direction from the *Department's Guideline for Merged Council* to proceed with planning proposals that have a Gateway and that are advanced. Mr Pedder also advised that the item would be targeted to be exhibited in August 2016 with a report to Council in October 2016.
2. The reference to the creation of nodes and stretches of employment land lacks nuance.
- (a) Our client supports the creation of nodes and stretches of employment land in principle, but the boundaries appear to be arbitrary and not informed by detailed analysis.
- (b) The fact remains that B6 zones seek to achieve employment corridors (i.e. stretches of employment generating land), whereas the subject site is an isolated B6 site which increasingly will create land use conflicts, surrounded by mixed use development.
- (c) The *status quo* is antithetical to the objectives of such a zone.

3. We acknowledge the comments regarding Site Compatibility Certificates (**SCC**). There are a number of fundamental misunderstandings about the operation of an SCC, the SCC at 677 Canterbury Road, which have the ability to lead the IPC into error.

- (a) First, the SCC for 677 Canterbury Road is due to expire on 14 July 2019 (following the refusal of the Department to agree to Council's request last year to have it revoked). We are instructed that our client has met with the owner of 677 Canterbury Road, who has confirmed that it intends to lodge a concept development application imminently (within the next week). Our client has reviewed the draft design and lodgement documentation to support the application, and is satisfied that it specifically responds to the conditions of the SCC and the requirements of the SEPP. We are also instructed that the owner of 677 Canterbury Road has appointed a community housing provider.

We refer you to the decision of *Wirrabara Village Pty Limited v The Hills Shire Council* [2018] NSWLEC 1187 where that merit appeal was heard in the Land and Environment Court on an expedited basis so the development application (which similarly required a site compatibility certificate) could be determined prior to the expiration of the SCC relevant to that matter. It is premature to conclude that another SCC would not be granted, that it would not be amended to extend its life, or that a development application would not be determined before the expiration of the SCC.

- (b) Second, Mr Noble's comments infer that the Review should be elevated to a position of determinative weight in the assessment of any development application lodged for 677 Canterbury Road for affordable housing, despite the Review not having been endorsed by either the Minister or the delegate. Moreover, Council's resolution requires more detailed study and another report to Council, highlighting its uncertain status. In any case, the Review does not purport to be an environmental planning instrument, which comprise the strategic planning documents that in the NSW planning system have particular relevance under section 4.15 in the determination of development applications.
- (c) Thirdly, no rezoning of the site the subject of the SCC is required. Objective 3(b) of the Affordable Rental Housing SEPP is prescient:

*"to facilitate the effective delivery of new affordable rental housing by providing incentives by way of **expanded zoning permissibility**, floor space ratio bonuses and non-discretionary development standards."* [emphasis added]

The SCC certifies "that the development to which it relates is compatible with the surrounding land uses" - the development to which it relates being the SCC application which provided details of the heights, built form, massing and unit mix. When this is reviewed properly, it is clear that what is contemplated is not a 3 storey development, despite Mr Noble's comments to the contrary.

4. The comments of Council are misleading in respect of FSR. The FSR is only proposed to be removed from the R3 component.
5. The Development Application lodged for our client's site can accommodate more employment generating space.
- (a) As the matter falls within the Part 3 process, the time to explore such controls for the future development application is now - there are mechanisms that can be introduced to ensure this occurs. As this has been raised in the Gateway determination, the proponent has not had the opportunity during the Part 3 process until now to demonstrate this. However, the design of the development application (as Mr Stanisic demonstrated) provides sufficient space to provide a

proportionate amount of commercial floor space as Site B, and it is incorrect to state that the proponent would be relying on Site B for the introduction of more commercial floor space.

- (b) The Planning Proposal has the potential to (through the concept plans generated) enable up to 2,650sqm. This is on the following basis:
- (i) There are 2 sites subject to the Planning Proposal: Site A (the larger site) and Site B (the smaller site). **The DA relates to Site A, and includes 804m² of net commercial space.** This is achieved by a 381m² area on the ground level at RL 45.64 (Canterbury Road) and a 421m² area at the ground level of Platts Avenue (lower ground).
 - (ii) Concept plans for a future DA at Site B show 732m² of commercial floor space - which when added with the floorspace for Site A - totals **1536m²**.
 - (iii) The Canterbury Road frontage has 6.4m ceilings. Therefore, there is the capability for the second story of the Canterbury Road frontage to be converted into an additional level of space. This would result in an additional commercial floor space of 642m² for site A and 732m² for Site B (totalling 1113m² of additional commercial floor space).
 - (iv) Thus, the total site (subject to the Planning Proposal) has the ability to accommodate up to approximately **2650m²** of commercial space, which is an increase on the status quo.
- (c) Additionally, the future option exists to change the residential floorplates on levels 1-6 of the Canterbury Road facing part of the building in the DA to accommodate employment space. The table below shows the employment space potential for the building envelope in the DA based on the Planning Proposal. The shaded cells indicate the employment space that is already in the DA. Thus, the table indicates that if a conversion of residential floor space occurred, approximately 6,000 m² of employment space could be achieved.

Site A	Employment space m ² (GFA)	Running Total m ²	Site B	Employment space m ² (GFA)	Running Total m ²	Combined running totals (Site A and Site B) m ²
Lower ground	421	421	Lower ground	0	0	421
Ground floor	381	802	Ground floor	720	720	1522
First floor	381	1183	First floor	720	1440	2623
Second floor	381	1564	Second floor	720	2160	3724
Third floor	381	1945	Third floor	370	2530	4475
Fourth floor	260	2205	Fourth floor	370	2900	5105
Fifth floor	260	2465	Fifth floor	175	3075	5540
Sixth floor	260	2725	Sixth floor	175	3250	5975

- (d) In light of the employment area potential shown in the above table, it is clear that the Gateway could simply provide for a minimum amount of employment floor-space, if that is a critical issue.

6. The number of submissions should be analysed properly rather than using crude numbers. Many of them were form submissions.
7. There is a lack of sensitivity and compliance with the objectives of Part 3 of the *Environmental Planning and Assessment Act 1979* shown by Mr Noble, which disrespects the role of a proponent in the Planning Proposal process.
 - (a) He comments that:

"the applicant would often say, you know, "It's substantially progressed, you know. You can't bail out now," sort of thing. Well, you know, our response to that is, "Yes, we can. There's specific provisions in the Act that allow us to do that.""
 - (b) As the history of this matter shows, this is a Planning Proposal that was initially initiated and encouraged by the then Council. The proponent invested considerable money on preparing a development application from a respected architect, as well as a site specific DCP, both at Council's request.
 - (c) After the Council went into administration, commitments were made by then Administrator and staff that the Planning Proposal would proceed in accordance with the Department's *Guidance for Merged Councils* (see above at paragraph 1). Mr Noble himself stated to Mr Daniel of Pacific Planning that Council were seeking to have the Planning Proposal to be made in September 2016. Mr Noble's comments are, with respect, flippant and cavalier. They fail to appreciate the responsibility involved on the part of Planning Proposal authorities in the Part 3 process. It is perverse to bluntly rely on the discretion conferred on the authority in circumstances where the proponent has invested considerable time and resources in this project at Council's encouragement - that discretion needs to be exercised with temperance by carefully balancing this fact with the other interests said to be at stake.
 - (d) Given the reliance on Council's comments and policy positions, as well as the Department's policy position, there should be a proportionate level of care on the part of Council to explain the basis for it contradicting its earlier representations by relying on the discretion conferred under the Act to request that the Planning Proposal "not proceed" (section 3.35(4)). The use of the Review is a convenient development for Council, but it does not explain away the lack of strategic merit for the site's current zoning remaining, and nor does it explain away the strategic merit in the Planning Proposal proceeding (potentially with amendments) to ensure the zoning matches the site and its context.
8. The comments of Council show a misunderstanding of the development application that was lodged.
 - (a) Firstly, the comment of Mr Noble that there is a need for a clause 4.6 variation carries with it an imputation that the proponent is looking to push the heights above whatever height limit this Planning Proposal might generate. In other words, the applicant is looking to exceed even the height limits that it is contending for before they have even been gazetted. The comment of Mr Noble regarding a clause 4.6 is incorrect. Mr Noble directly requested the proponent adjust the height of the development application and that we work on a site specific DCP. The response resulted in a revised height plane for the building so the clause 4.6 was not required for exhibition.

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- (b) Secondly, Ms Porter comments that no s88B instrument had been provided. However, one was provided and is contained on page 7 of the statement of environmental effects, and the draft 88B that was provided with the application (as far back as 2015).

Yours faithfully



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