



Date: 17 October 2012

Panel Secretariat
Joint Regional Planning Panel
Sydney Region East
23-33 Bridge Street
SYDNEY NSW 2000

For the Attention of:
Mr John Roseth, Chair of Sydney East Joint Regional Planning Panel

Dear Sir

**RE: 2012 SYE033, DEVELOPMENT APPLICATION DA 12/39
316-322 BURNS BAY ROAD, LANE COVE**

Reference is made to the Agenda for the Sydney East Joint Regional Planning Panel meeting of 17 October and specifically the item relating to 2012 SYE033.

This letter has been prepared on behalf of the owner and project proponent Tuta Properties Pty Ltd (Tuta) and will comprise two parts, firstly a response to the assessment report and draft conditions of approval prepared by Lane Cove Council (the Council) and secondly a response to the Council's correspondence dated 16 October 2012 and the Council meeting report relevant to that correspondence. While there is an overlap between the two responses we seek to limit the repetition of our arguments.

PART A – REPORT TO JRPP PANEL MEETING OF 17 OCTOBER 2012

This submission does not seek to critique the Council's report. Set out below are a series of comments and observations that require clarification or emphasis. This will also provide background to the objections raised below in relation to the draft conditions recommended by Council.

1. General Comment on the report

a) The land to which the development relates

The development application relates to the land known as 316 to 322 Burns Bay Road. The site is comprised of six allotments of land, four of which have been owned by Tuta for more than 40 years and have been developed for industrial purposes during that time. They remain occupied today.

To avoid the creation of isolated parcels of land Tuta has acquired and is negotiating the acquisition of the properties known as 316 and 316A Burns Bay Road containing a dwelling house and electricity substation. This land has been incorporated into the site for the purpose of this development application and a new substation will be provided.

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The development application as presented to the JRPP incorporates a parcel of land owned by the Council, located between the site and Carisbrook House located to the south of the site. This remnant parcel does not have a street address and is part of residue land following the widening of Burns Bay Road some 20 plus years ago. This remnant parcel is to be developed under the proposal as car parking for Carisbrook House. Council has granted owners consent for the incorporation of this remnant piece of land as part of the proposal.

The land the subject of the development application does not include adjacent land owned by Council known as 304 to 314 Burns Bay Road and the development application as submitted does not propose any works on the adjacent land.

b) The development application does not include a Voluntary Planning Agreement

The development application as submitted and presented to the JRPP for determination does not incorporate reference or rely upon a voluntary planning agreement under section 93F of the *Environmental Planning and Assessment Act 1979*.

Confidential and “without prejudice” discussions have occurred between Council and representatives of Tuta in relation to opportunities for Tuta to provide a monetary contribution towards (part of) the future construction of a road within the adjacent Council park to the north east of the site. Such discussions were preliminary in nature. The assertion in the Council’s assessment report (page 17) that

The owner has subsequently indicated willingness to financially contribute to the Council’s proposed access road across 304-314 Burns Bay Road that would link 316-322 Burns Bay Road. This access road would address the road safety issues at View Street by providing an alternative route that residents and visitors can take to and from the north.

can only be described as misleading and incomplete in the context of those without prejudice discussions.

c) RMS has granted concurrence to the development application as submitted

The development application as submitted has been assessed by Roads and Maritime Services for the purpose of determination of the grant of concurrence and the imposition of conditions. The original development application as submitted to Council which proposed the erection of 249 units was also granted the concurrence of RMS.

That proposal and the current proposal before the JRPP for determination proposed left hand turn access to the site via a deceleration lane at the site frontage and a left hand turn lane to exit the site onto Burns Bay Road. Vehicles wishing to travel north would travel from the site south to the G-turn under the Lane Cove Bridge, traverse under Burns Bay Road and then re-enter the traffic travelling north. This arrangement is identified in the RMS letter dated 21 September 2012 (Attachment 4 to the Council’s Assessment Report) as Part 2: Without the construction of the Link Road.

Part 2 of the RMS letter facilitates the development of the site in the absence of the Link Road across the adjoining Council reserve and other privately owned land. The construction of the Link Road is dealt with in detail in the response to Council’s correspondence dated 16 October 2012 below.

d) DCP Controls concerning Access to the Site

Part C of the Lane Cove Development Control Plan (DCP) sets out objectives and controls for development of identified residential precincts. The site is located within Block 2.

The draft DCP when exhibited in 2009 and when subsequently adopted on 22 February 2010 nominated access into the site known as 318-322 Burns Bay Road via a deceleration Lane and specifically required (page 38) that *"The future development in Block 2 shall allow for the deceleration lane along Burns Bay Road to comply with RTA guidelines and requirements."*

This provision was retained following incorporation of design amendments in May 2011. The Block 2 controls were amended on 9 December 2011 to delete reference to the deceleration lane and to incorporate the following statement *"If required by the RTA, the future development of 316-322 Burns Bay Road shall allow for a deceleration lane along Burns Bay Road to comply with RTA guidelines and requirements."*

The RMS has granted concurrence to the proposal which incorporates the deceleration lane and the conditions and requirements of the RMS relating to the construction of the deceleration lane as presented in the RMS correspondence are accepted and will be complied with.

2. Objection to conditions

The following discussion will identify conditions that are considered are unreasonable, unnecessary, beyond the scope permitted under section 80A of the EP&A Act or do not reasonably relate to the proposed development.

Set out below are the specific conditions in italics flowed by a discussion/comment.

Deferred Commencement Conditions

Preamble: We have sought legal advice from Mr Noel Hemming QC in relation to the imposition of the deferred commencement conditions 1 to 5. In his opinion the terms of the conditions are unreasonable, in the circumstances of the grant of concurrence by the RMS to the development application as submitted. He considers that there is no nexus between the objective of the deferred commencement conditions (the delivery of an access road across adjoining land) and the development as proposed and the effect of the proposed condition would be unreasonable as it would sterilise the future development of the site until the proposed Link Road is complete. This is discussed in further detail in Part B below.

Further, Mr Hemmings QC is of the opinion that the conditions are ambiguous in their terms, they are expressed in part in wide and uncertain language and as such are invalid.

It is noted that the Council in its letter to RMS dated 18 September 2012 (Attachment 4 to the Council's Report) purports to *"...provide owner's consent for assessment purposes for the construction of the link road over 304-314 Burns Bay Road."* This assertion is misleading as it suggests that the access road referred to in that letter and in this condition forms part of the development application. The access road is not proposed under the submitted development application. The design does however enable the development to be accessed from Burns Bay Road and facilitates the connection with a future road across Council land.

It is submitted that the deferred commencement conditions should be deleted in their entirety. The reasons are further detailed below.

1. The applicant has entered into a an appropriate legal arrangement ("the agreement") with the Council (as landowner of 304-314 Burns Bay Road) for the design and construction of an access road

through the adjoining site at 304-314 Burns Bay Road, Lane Cove and for access to and from the development by means thereof.

- a. *The agreement must include the following:*
- i. *The redesign of the proposed development to include an access road to and from the development through the adjoining site at 304-314 Burns Bay Road, Lane Cove, to the satisfaction of the Council.*
 - ii. *Details as to the monetary contribution to the capital works.*
 - iii. *Details as to the payment of any security, liabilities, risk and indemnities involved in the proposed works.*
 - iv. *As the proposed access road is to join onto a classified road, the redesign must be to the satisfaction of the Roads and Maritime Service.*

Comment: The condition should be deleted. The application is not supported by nor has the project proponent offered to enter into a Voluntary Planning Agreement for the design and construction of a road across adjoining Council owned land.

The Traffic Report prepared by Colston Budd Hunt and Kafes (CBHK) submitted with the development application, supplementary submissions prepared by CBHK and the letter dated 11 September 2012, **Attachment 1** to this submission demonstrate that the site and the proposal do not rely on or require access via 304-314 Burns Bay Road.

Section 80A of the EP&A Act details the circumstances in which the consent authority may impose conditions of development consent. A consent authority may impose a condition in relation to *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F,*

As noted above no offer has been made to enter into a planning agreement under section 93F. Further it is noted that section 93I provides that:

- (2) *A consent authority cannot refuse to grant development consent on the ground that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.*
- (3) *However, a consent authority can require a planning agreement to be entered into as a condition of a development consent, **but only if it requires a planning agreement that is in the terms of an offer made by the developer** in connection with:*
 - (a) *the development application, or*
 - (b) *a change to an environmental planning instrument sought by the developer for the purposes of making the development application, or that is in the terms of a commitment made by the proponent in a statement of commitments made under Part 3A.*

The terms of the condition are ambiguous and uncertain and beyond the scope of section 80A of the EP&A Act. Sub paragraph (a) calls for the **non**-voluntary agreement to include a provision that requires the proposed development to be expanded to relate to land not the subject of the development application and to design and construct those works to the satisfaction of Council. There is no boundary or limitation set as to what would constitute:

- “an appropriate legal agreement”,
- nor is there a definition of the extent of works that would constitute the “access road”. It could be as simple as a 7 metre wide carriage way of single coat flush seal or a 13 metre wide elevated carriage way constructed to a heavy vehicle standard,

- there is no identification of the level of design to be undertaken, and
- there are no standards against which to measure the Council's satisfaction of the redesign of the proposed development or the design of the road works themselves.

The condition calls for the appropriate agreement to provide details of the monetary contribution to the capital works of the road, however the proposed road referred to by Council is yet to be designed or costed. There is no boundary or ceiling to the quantum of contribution that may be considered to be to the satisfaction of Council.

The condition calls for payment of an indeterminate amount towards security, liabilities, risk and indemnity involved in the construction of the proposed road. This is beyond the scope of section 80A and the terms are too wide in their application.

The condition requires the redesign of the proposal to be also to the satisfaction of the RMS as the access road is required by Council to join onto a classified road. The road as proposed in the condition passes across Council owned land nominated as 304-314 Burns Bay Road, however the location of the road is not nominated within the condition. Reference to the Block Controls in the DCP would indicate the anticipated Link Road crosses the adjacent Council reserve and not the residentially zoned land at 304-314 Burns Bay Road. There is uncertainty as to what land the access road the subject of the condition is to cross.

If the access road is to cross the adjacent reserve then it cannot connect to Burns Bay Road as required by the condition without crossing 296 Burns Bay Road as identified in Attachment A to this submission. The property identified as 296 Burns Bay Road is not under the ownership of either Council or Tuta Property Group. It is not possible for the access road called for under the condition to join Burns Bay Road.

2. The applicant has redesigned the subject development, to the satisfaction of the consent authority, providing internal vehicular access to and from the development site's car park up to the proposed access road over the adjoining site at 304-314 Burns Bay Road, Lane Cove under condition 1.

Comment: The development the subject of the development application has been designed to enable connection to any future road connected within the adjoining Council land. The incorporation of the properties known as 316 and 316A Burns Bay Road into this proposal has facilitated the linking of the development of the Tuta site with the future Link Road. In this regard the proposal has sought to facilitate the future development of that Link Road, consistent with the DCP objectives for Block 2.

This condition is unnecessary and has no work to do. It should be deleted.

3. Evidence that will sufficiently enable the consent authority to be satisfied as to those matters identified in the deferred commencement conditions 1(a) and 2, as indicated above, must be submitted to the consent authority within 12 months of the date of determination.

Comment: Condition 1 is ambiguous and too wide in its terms as to be uncertain and void. On this basis the condition should be deleted. Condition 2 has no work to do as the intent of the condition has been satisfied in the design of the development before the JRPP. Consequently with the deletion of condition 1 and 2 this condition has no operative purpose and should be deleted.

4. The consent will not operate until such time that the consent authority notifies the Applicant in writing that deferred commencement consent condition, as indicated above, has been satisfied.

Comment: With the deletion of conditions 1, 2 and 3 this condition has no work to do and should be deleted. Notwithstanding this it is also relevant to note that the terms of the condition are wide and grant to Council unfettered discretion as to the determination of what will constitute a satisfactory level of design and construction for the access road, what will constitute an appropriate level of monetary contribution towards the construction of the road and what is considered a reasonable payment towards matters of security, liability, risk and indemnities.

Some guidance is provided in Council's letter to the RMS dated 18 July 2012 (Attachment 2 to the Council's report) where the author states on page 3 that *"The RMS should note that the Council **will not be funding at its cost** a road which we insist is required by this applicant for their major development."*

5. Upon the consent authority giving written notification to the Applicant that the deferred commencement conditions have been satisfied, the consent will become operative from the date of that written notification, subject to the following conditions of consent.

Comment: With the deletion of Conditions 1, 2, 3 and 4 this condition has no work to do and should be deleted.

General Conditions

Preamble: This discussion is limited to those conditions for which we seek deletion or amendment. Where practical the condition will not be reproduced in full.

Condition 1: requires the ***development be strictly in accordance with*** the nominated architectural drawings. We request that the condition be amended so that ***development be strictly generally in accordance with*** the nominated architectural drawings so as to remove the necessity for section 96 applications for insignificant design refinements during the construction certification development phase.

Condition 3: calls for the provision of footpaths 1.5m wide on the internal access road. This condition cannot be complied with as there is not enough space available within the private access corridor within the site to widen the footpaths to 1.5 metres. The footpaths are presently proposed at 1.3 metres and it is requested that the condition be amended to read

The minimum width of the footpath on the internal road is to be ~~4.5m~~ 1.3 wide.

Condition 10: relates to the payment of section 94 contributions. No comment is made in this submission about the reasonableness of the contributions sought to be imposed. It is interesting to note that the contribution relates to the provision of road works and that in the circumstances of the adopted section 94 contributions it could be argued that the component of the contribution levied towards road works would address the monetary contribution called for in Deferred Commencement Condition 1 and that no monetary contribution is required towards the construction of that road.

Condition 15: Requires the lodgement of a separate development application for the use of the proposed shop. The development application as submitted seeks development consent for the neighbourhood shop. A neighbourhood shop is the only type of shop permitted and car parking has been provided for the shop and condition 10 requires the payment of a contribution towards floor space of the neighbourhood shop. It is unreasonable to require the lodgement of a further development application for the use of the shop which is the subject of the current application. It is requested that the condition be deleted.

Condition 17: It should be noted that the development application proposes the provision of 377 car parking spaces. If the intent of this condition is to limit the minimum number of car parking spaces on site to 360 on-site car parking spaces then no objection is raised. If the condition seeks to maximise parking provision to 360 spaces, then we would request the condition be amended to replace 360 with 377 on-site car parking spaces.

Condition 49: We request that the condition be deleted. As noted by CBHK the fencing of the physical barrier as proposed would adversely affect circulation in the car park. Also if the intention is to fence the spaces when Carisbrook is closed and there is no demand for parking to Carisbrook then it is not necessary to secure the spaces and preclude their use.

Condition 51: This condition relates to the Carisbrook car park on the land adjoining to the south. The land is not part of the site nor included in the land the subject of the application. No works are proposed under the development application within the Carisbrook house site. The condition should be deleted.

Condition 74: The condition requires the payment of a monetary contribution towards the Accelerated Depreciation to Council's Road Infrastructure arising from the development. The condition does not nominate the basis on which this contribution can be sought and it is noted that it is not identified in Council's Schedule of Fees and Charges. The condition should be deleted.

Conditions 113, 114 and 115: The conditions go to the same subject as the Deferred Commencement Conditions and should be deleted for the reasons stated above. The proposal the subject of the development application does not rely on the construction of a public road across the adjoining 304-314 Burns Bay Road and as such should not be required to provide an undisclosed financial contribution towards the construction of the public road.

Condition 113 requires the payment of the contribution to be controlled by the applicant entering into a Works Authorisation Deed. The condition does not define the terms of such a Deed or what other purposes it may seek to deliver.

Condition 122: This is not written as a condition. The intent of the condition is addressed in Part B of the RMS conditions. This condition should be deleted.

Conditions 124, 124, 125, 126 and 127: These conditions should be deleted as the intent of the conditions is addressed in the RMS Part B conditions.

Conditions numbered 128 to 151 inclusive: These conditions are a reproduction of the RMS conditions Part 1 in the letter dated 21 September 2012. They should be deleted in total and replaced with the conditions in Part 2 of the letter which relate to the concurrence granted to the submitted development application with the slip lane from Burns Bay Road.

PART B RESPONSE TO COUNCIL'S LETTER DATED 16 OCTOBER 2012

Council's letter states that:

Council is the adjacent land owner of 304-314 Burns Bay Road to the north of 316-322 Burns Bay Road. It has included an access road across 304-314 Burns Bay Road as part of its road network planning to cater for increased traffic generation from residential redevelopment of the Burns Bay Road precinct.

Council staff have recently completed the concept design for an access road across 304 - 314 Burns Bay Road and an intersection upgrade at Burns Bay Road between Burns Bay Road and incorporating a roundabout intersection linking the access road and private road access to 300 and 300 A, B and C Burns Bay Road.

Annexed to the letter is a 3D concept or computer generated perspective of the proposed road which includes a significant roundabout, and an elevated road way, underneath which it is proposed to construct community facilities. The drawing is not a concept design for a road in a strict sense. Also annexed to the letter is a plan which identifies land in both colour and nomination as "A", "B", "C" and "D".

The letter goes on to advise of a resolution of Council passed at its meeting of 15 October which includes actions such as:

- (1) the commencement of the compulsory acquisition of the land marked "A" and "B" (300A, 300B and 300C Burns Bay Road) for public road purposes;
- (2) the presentation of a report to Council on the progress of the negotiation and acquisition process;
- (3) the commencement of necessary action for the closure of the public road marked "D";
- (4) Noting that the Council had commissioned a detailed design of the intersection with Burns Bay Road internal intersections and the access road across 304-314 Burns Bay Road
- (5) Authorise the Mayor and General Manger to execute various road closure plans and contracts for sale including a contract relating to the compulsory acquisition of the land marked "C" being 296 Burns Bay Road. **NOTE:** The reported resolution does not include a resolution to compulsorily acquire this land.

The purpose of the letter is stated as being to confirm *"...the Council's intention to increase the capacity of the signalized intersection leading to 300 Burns Bay Road and an appropriate intersection to and constructing the access road across 304 – 314 Burns Bay Road."*

The letter goes on further to state that *"This access road eliminates the need for access into 316-322 Burns Bay Road from Burns Bay Road and can be constructed in a timely manner."*

As discussed previously, and as demonstrated in the submissions of CBHK the provision of an access road across 296-314 Burns Bay Road does not eliminate the need for access into 316-322 Burns Bay Road from Burns Bay Road, rather it complements the proposed left hand turn in and left hand turn out of the development at 316-332 Burns Bay Road. The two access arrangements can co-exist in the event that the Council's link road is constructed.

The proposed road works as shown on the drawings supplied by the Council and annexed to the Council's report of 15 October 2012 indicate the construction of a significant piece of infrastructure including a public road with elevated sections above new community facilities, as well as a significant roundabout and signalised traffic controls.

This new infrastructure will:

1. service the existing residential development located to the east of the site,
2. provide access to enable the future development of the Council owned residentially zoned land at 304-314 Burns Bay Road,

3. provide access to the Council reserve across which the proposed road will traverse and;
4. link up to the internal private access road proposed in the subject development application at 316-332 Burns Bay Road.

The Council's letter and report of 15 October 2012 raises many unanswered questions and casts into greater uncertainty the terms of the draft deferred commencement consent conditions. These issues are identified as follows:

(a) Funding

The deferred commencement consent conditions call for the applicant to provide the details of the monetary contribution towards the capital works. However, the report to Council states that

"Funding for the acquisition of the properties and associated works is available and will include Section 94 contributions, moneys held in reserve from the sale of Neild Avenue for such a purpose and developer contributions."

This is in contrast to the advice of Council to RMS that *"...Council **will not be funding at its cost** a road which we insist is required by this applicant for their major development."*

Rather than providing certainty and clarity in relation to the delivery of the proposed road infrastructure the Council letter, which has arrived at the 11th hour, casts greater uncertainty as to the intent and financial implications of the deferred commencement conditions.

(b) Acquisition of Land

The Council's letter identifies the need to compulsorily acquire land for the construction of the road infrastructure works over 296-314 Burns Bay Road. It is unclear what the status is of the land nominated as 300A, 300B and 300C and whether there will be any difficulty in the acquisition of that land and the construction of the infrastructure.

It is likely however that the acquisition of 296 Burns Bay Road, if this is to be pursued by Council, will prove to be problematic. The site contains an existing industrial/commercial building which is tenanted and is an ongoing concern. Construction of the infrastructure will require demolition of the building.

The council report correctly notes that it is necessary for the Council as an acquisition authority to give minimum 90 day's notice after which the process either by compulsion or agreement is to be completed as soon as practical. If however the acquisition is not achieved by negotiation, there is no certainty, given the commercial nature of the site's occupation, as to when the acquisition by compulsion would be completed and at what cost.

(c) Design

The draft deferred commencement consent conditions call for the applicant to enter into an agreement to design the access road across 304-314 Burns Bay Road. The conditions do not mention that the road must link into a roundabout, that the road will cross land at 296 and 300 Burns Bay Road and that the public road to be designed must in part be elevated to enable the development of community facilities within the road structure. The conditions also do not indicate that the public road and infrastructure will also service future residential development on the Council owned land and residential development on other land.

The Council report of 15 October 2012 and letter of 16 October 2012 provide some clarity as to Council's ultimate vision for development of its land but cast greater uncertainty over the terms of the draft deferred commencement conditions. The draft deferred commencement conditions refer to a potential set of circumstances and are expressed in extremely wide language are uncertain in their terms which enable them to relate to a

seven metre wide link road or an 18 metre wide elevated public road with ground level community facilities, significant round about and road widening on two other intersections. The deferred commencement conditions should be deleted.

The report to Council indicates that *"...on Monday, 8 October 2012 Council engaged Craig & Rhodes Pty Ltd to provide civil and structural engineering drawings for the access road,..."*. This action makes redundant the draft deferred commencement consent conditions that require the applicant to enter into an agreement to prepare the design of a road across 304-314 Burns Bay Road.

(d) Permissibility

The draft deferred commencement conditions indicated that the access road that Council seeks the applicant to design is to traverse adjacent land at 304-314 Burns Bay Road; land that is zoned R4 High Density Residential. A comparison of the plans provided by Council against the land use zoning plan under Lane Cove Local Environmental Plan 2009 would indicate that the proposed public road, to be designed to provide access to high density residential development, is to be constructed in the Council reserve which is zoned RE1 Public Recreation.

There is no discussion within Council's report and letter as to the permissibility of the provision of a road across land zoned for public recreation purposes to provide access to high density residential development which is prohibited in the RE1 zone. Further, as the land within the RE1 zone would be classified under the Local Government Act 1993 as Community Land it would be necessary to rezone the land to change the classification of the land to Operational Land.

The change in classification can only be achieved through the preparation of a planning proposal and making of a local environmental plan. If it is found that the access for residential purposes across the RE1 zoned land is prohibited then it would also be necessary to amend the zoning of the proposed road corridor by way of a planning proposal and the making of a local environmental plan to make the proposed public road a permissible land use.

The Council report is silent on the terms of any Plan of Management adopted by Council for the use and management of the Reserve that may require amendments to accommodate the proposed public road.

(e) Timing of construction of the public road

The Council's letter also states that:

"...on Monday, 8 October 2012 Council engaged Craig & Rhodes Pty Ltd to provide civil and structural engineering drawings for the access road, and also to provide the Contract Documentation for the tender process. It is expected that the plans and contract documentation will be completed by Wednesday, 31 October 2012 with a view to placing the tender advertisement for the access road in early November and seeking Council's consideration at its meeting on Monday, 3 December 2012 to determine the successful tenderer."

This timetable would facilitate construction commencing in the first quarter of 2013."

This timetable fails to consider the following essential steps in the development process:

- (i) Preparation of a planning proposal to reclassify the RE1 zoned land across which the proposed public road is to traverse from operational to community land. Preparation of a planning proposal to address any underlying permissibility issues.

- (ii) Making of the local environmental plan to address the issues identified in (i) above.
- (iii) Preparation and approval of an application for construction of the public road and associated spaces for community facilities. Roads are permissible in the RE1 zone.

Applications for development are considered against the zone objectives which in this case are

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To make provision for rights of public access to more foreshore land and to link existing open space areas.

The zone objectives do not anticipate the construction of a public road through the site to provide access to high density residential development. Arguably the provision of a public road through the reserve will **not** enable the land to be used for public open and recreational purposes nor would the construction of a public road protect and enhance the natural environment for recreation purposes.

- (iv) If the road is to be considered and progressed as development without consent under clause 94 of State Environmental Planning Policy (Infrastructure) 2007, it must be the subject of an assessment under Part V of the EP&A Act. This assessment needs to consider the environmental impacts of the works and proposed mitigation measures. Conditions of any approval should be available to any party seeking to tender for the construction of the infrastructure and may influence/impact upon the final design of the public road.

If part of the road works are to be assess by RMS as development without consent then an appropriate application under Part V of the EP&A Act needs to be prepared and the approved by RMS.

CONCLUSION

We support the Council's recommendation to grant development consent to the development application 2012SYE033 presented to the JRPP meeting of 17 October. This support however is qualified as the terms of the development consent are based on invalid deferred commencement consent conditions which should be deleted. We further believe that some General conditions require modification or should be deleted for the reasons set out in this submission

Yours sincerely

APP CORPORATION PTY LIMITED



CLARE BROWN
NSW PRINCIPAL PLANNER

