



16 January 2012

Joint Regional Planning Panel
23-33 Bridge Street
Sydney NSW 2000

Dear Panel Members,

JRPP REPORT No. 2012SYE084

DA 2012/311

52 Mowbray Place & 72, 74 & 76 Eastern Valley Way, Willoughby.

- 1.1 I refer to the JRPP report prepared by Willoughby Council for the JRPP meeting on 24th January 2013 in respect of the development application referenced above. This letter is prepared on behalf of the applicant PPK Willoughby Pty Limited.
- 1.2 On behalf of the applicant, we strongly support the recommendation of the planners report to approve the Development Application.
- 1.3 This letter deals with conditions of consent that we have reviewed in detail and request the panels consideration prior to determining the application.

Condition 2

2. *Submit the following to Willoughby City Council*

Prior to the lodgement of an application for a construction certificate, the applicant shall submit plans and specifications satisfying the following requirements to Willoughby City Council for approval. A letter confirming the documentation is approved by Willoughby City Council, shall then be submitted to the certifying authority for the application of a construction certificate which incorporates the changes outlined below.

The following issues shall be submitted to Council for approval:

- 1.4 The above component of condition 2 requires the applicant to submit amended plans to the Council for approval. The list of requirements under Condition 2 are specific requirements and therefore unreasonable that such matters could not be signed off by the PCA. The requirement to refer amended plans back to the Council may result in delays when this function can appropriately be undertaken by the PCA.

1.5 It is therefore requested that this part of Condition 2 be amended as follows:

*Prior to the lodgement of an application for a construction certificate, the applicant shall submit plans and specifications satisfying the following requirements to ~~Willoughby City Council~~ **the Principal Certifying Authority** for approval. ~~A letter confirming the documentation is approved by Willoughby City Council, shall then be submitted to the certifying authority for the application of a construction certificate which incorporates the changes outlined below.~~*

*The following issues shall be submitted to ~~Council~~ **the PCA** for approval:*

Condition 2a

a) The internal depth of the lower ground floor level of all dwellings is not to exceed 9.5 metres. Plans detailing these amendments are to be submitted to Council for approval.

1.6 The intent of this condition is to ensure the garage depth does not facilitate cars parked in tandem format, accordingly resulting in additional off street parking. The basement design facilitates the parking of two vehicles side by side and the alignment of the basement walls with the structure above to enable the support of walls and simplicity in excavation and construction.

1.7 The additional space behind the parking spaces serves a range of functions including access to the internal stairs/lift, storage and location of services such as water tanks. In most instances, a wall has been provided to separate the parking area from the 'access and service areas' therefore restricting the ability for tandem parking. To ensure the basement design does not facilitate additional tandem parking it is requested that Condition 2a be amended to read:

*a) The **portion of the lower ground floor used for parking vehicles should not** ~~internal depth of the lower ground floor level of all dwellings is not to exceed 9.5 metres.~~ Plans detailing these amendments are to be submitted to ~~Council~~ **the PCA** for approval.*

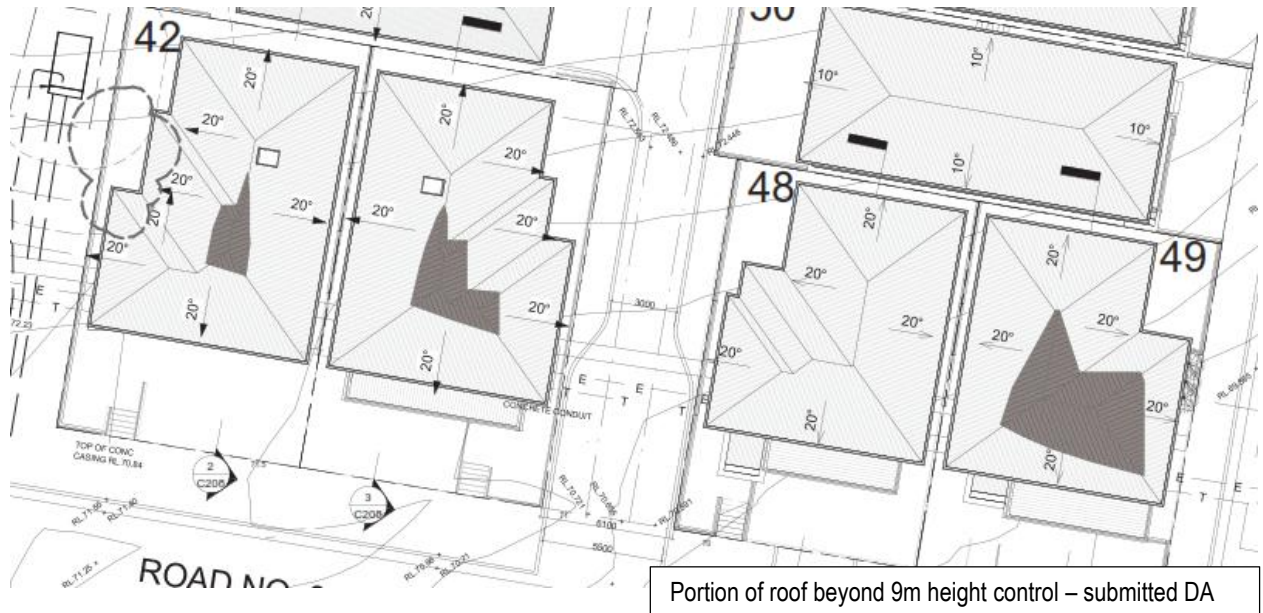
Condition 2b

b) The southern upper level building line (exclusive of balcony) of lots 42, 47, 48 and 49 are to be setback 2 metres from the building line (exclusive of balcony) of the level below. The eastern upper level building line of Lot 49 is to be setback 1.5 metres from the building line of the level below.

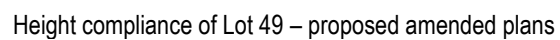
1.8 We would request that the panel delete the above condition as it relates to the southern setback of the upper levels to dwellings 42, 47 & 48 (Lot 49 will be addressed separately below).

1.9 The design of the southern facades to these houses includes the main façade setback a minimum of 3m from the front boundary. The balconies with their framed supporting elements and roofs create the main façade of these dwellings. This is consistent with the façade design established across the site at Kiah development. For these houses the third storey is setback approximately 2m from the main façade alignment, such that it is setback in excess of 5m from the street frontage. The design provides an upper level setback greater than the 1m required by the design guidelines, to achieve a greater stepped effect and a modulated and articulated building form and streetscape.

- 1.10 These lots are significantly constrained by the existing fibre optic cable that runs along the frontage of the sites. However, these areas are within the maximum height limit.
- 1.11 As shown in the following extract from Drawing C107A Lots 42 & 47 result in a marginal variation to the height control required by Draft Willoughby Local Environmental Plan of 9 metres. The non-compliance is toward the apex of the roof and will have a marginal impact on the bulk and scale of the dwellings.



- 1.12 It is therefore considered that the proposed form and design of the dwellings on lots 42, 47 & 48 is appropriate and it is requested that this part of the condition be deleted.
- 1.13 In regards to Lot 49, in response to Condition 2b and the concerns raised in the JRPP report regarding the bulk and scale of this dwelling, we would ask that the panel consider an alternate design option for this lot.
- 1.14 The proposed amended design for lot 49 is within the 9m height limit as shown below and responds to the topography with an appropriate stepping in building height down from Lot 48, (the ridge of Lot 49 is approximately 650mm lower than that of Lot 48). The eastern elevation has a two storey scale and therefore the upper level is not required to have any additional setback. The garage door width is 3.8m, which is the maximum permitted for a single garage door. The design of the upper level is consistent with that on Lots 42, 47 and 48, in that it is setback beyond the main façade in excess of the design guideline requirement.



- Amended plans shall be submitted to the PCA prior to the issue of the Construction Certificate that incorporate the amended design for Lot 49 as shown on Drawings SK01_170113, SK02_170113, SK03_170113, SK04_170113, SK05_170113, SK06_170113, SK07_170113 dated 17/1/13 prepared by Giles Tribe Architects.**

e) *Front fences can only be used on sites where required by the Building Code of Australia i.e. where the fall is greater than 1 metre. Where required, the fences are to be setback a minimum of 1 metre from the front boundary and the 1 metre setback is to be landscaped with shrubs with a minimum height of 1 metre. Plans are to be modified to address the above.*

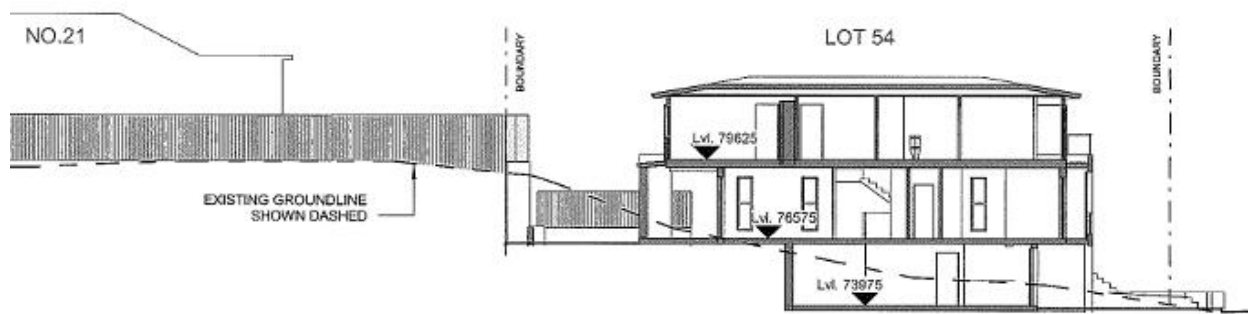
- 1.19 It is requested that this Condition be deleted as the proposed plans provide for front fencing in areas where the private open space is adjacent to the street or reserve. In some instances, lots have dual frontage and private open space has been provided on the street frontage (ie Lots 31-35, 40-41, 43-46, 66-74) where this affords increased solar access and amenity. To maintain privacy and security to the private open space it is requested that Condition 2e be deleted.

~~e) Front fences can only be used on sites where required by the Building Code of Australia i.e. where the fall is greater than 1 metre. Where required, the fences are to be setback a minimum of 1 metre from the front boundary and the 1 metre setback is to be landscaped with shrubs with a minimum height of 1 metre.~~

Condition 2f

~~f) The rear setback of the upper level of the dwelling on Lot 54 should be no less than 6 metres.~~

- 1.20 As submitted, the plans propose a rear setback that varies between 5.6 – 6.6 metres. The adjacent dwelling at 21 Windsor Road is setback an additional 9 metres from the common boundary. The position of the dwelling is considered highly appropriate and providing an additional 400mm setback at the northern end will not result in a tangible impact. The windows to Lot 54 will be restricted from overlooking due to the relationship in levels and the 1.8 metre high boundary fence.
- 1.21 It is considered that the combination of the relationships in levels, setback between the dwellings (min 14.6 metres) and the position of the boundary fence provide appropriate privacy between the dwellings as shown in the following section.



- 1.22 It is therefore requested that Condition 2f be deleted.

~~f) The rear setback of the upper level of the dwelling on Lot 54 should be no less than 6 metres.~~

Condition 2g

~~g) The stepping stone pavers on Lots 50, 51, 52 and 58 along the northern boundaries between the front entry stairway and the mid-point of the front entry landing are to be deleted and replaced~~

with soft landscaping. This may require the relocation or deletion of the external stairs within the side setback area. Landscaped retained areas can be used, where necessary, in this area to address the level changes as has been proposed on Lots 59 and 60.

1.23 We raise no objection to the deletion of the stepping stones, however we would not agree to the relocation of the external stairs as this would necessitate access to the side passage for maintenance and rear lawn mowing through the main entry lobby. Access with lawn mowers and garden equipment may damage the tiled step treads and is not an ideal situation. This arrangement was proposed for lots 59 & 60 to overcome other issues and accordingly is not considered necessary for these dwellings.

1.24 It is therefore requested that condition 2g be amended to read:

g) The stepping stone pavers on Lots 50, 51, 52 and 58 along the northern boundaries between the front entry stairway and the mid-point of the front entry landing are to be deleted and replaced with soft landscaping. This may require the relocation or deletion of the external stairs within the side setback area. Landscaped retained areas can be used, where necessary, in this area to address the level changes as has been proposed on Lots 59 and 60.

Condition 2h

h) The setback of the eastern-most wall (shown as the wall of bedroom 3 on approved architectural plans) on the upper levels of the dwellings on Lots 67 to 70 is to be increased by 1 metre so that it aligns with the eastern wall of the ground level below.

1.25 The Design Guidelines for the site require a 7 metre setback to the upper level from the eastern boundary. The upper levels of the dwellings are setback in excess of this requirement between 8.7 to 10 metres from the boundary with Eastern Valley Way.

1.26 Compliance with this condition would have a significant impact on the layout of the bedroom 3 resulting that a room size that is well below the high standard provided across the site. The design guidelines require a minimum setback of 1 metre to the level below. The design facilitates an alfresco area on the ground level, the upper level bedrooms are setback between 1 to 3 metres from the eastern edge of the alfresco area. The stepping of the upper level achieves the requirements and the intent of the design guidelines resulting in an appropriate building bulk.

1.27 The visibility of these dwellings will be minimal from Eastern Valley Way due to the landscaped interface between.

1.28 It is therefore requested that the panel delete condition 2h.

~~*h) The setback of the eastern-most wall (shown as the wall of bedroom 3 on approved architectural plans) on the upper levels of the dwellings on Lots 67 to 70 is to be increased by 1 metre so that it aligns with the eastern wall of the ground level below.*~~

Condition 3a

(a) The dwellings and associated works on Lots 31, 74 and 75 are to be deleted from plans. In this regard no approval is given for works on these lots.

- 1.29 Since the JRPP report was published, Council notified the JRPP that the gazettal of Draft Willoughby Local Environmental Plan was to occur on 31st January 2013. On this basis, following gazettal the Draft LEP, the proposed dwellings on lots 31, 75 and 76 (note the condition refers to lot 74, this should be lot 75) would be permissible and could be approved as part of this development application.
- 1.30 Consistent with the advice provided to the JRPP by Council's Kate Drinan, it is requested that the matter be considered at the meeting on 24th January 2013, and if the JRPP is minded to approve the development application, it should reconvene after the 31st January 2013 to make its decision.
- 1.31 On this basis of this, it is requested that Condition 3a be deleted.

~~(a) The dwellings and associated works on Lots 31, 74 and 75 are to be deleted from plans. In this regard no approval is given for works on these lots.~~

Condition 3b

- (b) *The architectural plans are to be amended to accurately depict the dimensions of the rainwater tanks on the lower ground floor levels, consistent with that of the BlueScope Waterpoint Slimline 3000 litre rainwater tanks as shown on the drainage plans.*
- 1.32 It is requested that the condition be amended to allow more flexibility with the provision of services. In some instances, to achieve BCA compliance and achieve sufficient head height, serviceability and access for maintenance an alternate rainwater tank may be required. It is therefore requested that condition 3b be amended to read:

(b) *The architectural plans are to be amended to accurately depict the dimensions of the rainwater tanks on the lower ground floor levels, **generally** consistent with that of the BlueScope Waterpoint Slimline 3000 litre rainwater tanks **or other tanks that are appropriate for the purpose and can be accommodated within the allocated space** as shown on the drainage plans.*

Condition 3d

- (d) *Plans are to be amended which shows/notates that any fence which adjoins the public reserves are to be open metal palisade fencing to a maximum height of 1.2 metres above finished ground level.*
- 1.33 The fencing referred to in the condition is fencing to private open space. In order to achieve safety and security of the open space, it is requested that the condition be amended to enable compliance with the design guidelines which state:

2.2 Fences – to Park frontages & Rear yards facing streets

Fences are to be metal palisade, charcoal in colour to a height of 1.2m. Hedge style planting and a level change to adjacent public areas may be used to achieve privacy. Masonry walls below the palisade as necessary for retaining and create a plinth to the fence.

- 1.34 The design guidelines permit a masonry wall to the base of the fence and a 1.2m high palisade fence above. The design guidelines allow for improved visual interest and security. In this regard, it is requested that condition 3d be amended to read:

(d) *Plans are to be amended which shows/notates that any fence which adjoins the public reserves are to be ~~open metal palisade fencing to a maximum height of 1.2 metres above finished ground level.~~ provided in accordance with the Design Guidelines approved for the site.*

Condition 3e

(e) *The rainwater tanks proposed on Lots 40 and 41 are to be relocated to the side setback area between the southern elevation and the southern boundary or be located within the building footprint.*

- 1.35 The location of the rainwater tanks is consistent with those approved in both Stages 1 & 2 of the development site. The rainwater tanks are over 700mm wide and therefore is it not practical to relocate the tanks to a 900mm wide passage as this would restrict egress.

- 1.36 As an alternative, it is requested that the condition be amended to ensure the height of the water tank is a maximum of 1.8 metres to ensure it is not visible from the neighbouring property. In addition, a trellis can be provided above the fence with climbing plants to create landscape screening to the neighbouring property.

- 1.37 It is therefore requested that Condition 3e be amended to read:

(e) *The rainwater tanks proposed on Lots 40 and 41 are to be **a maximum of 1.8 metres in height to ensure they are not visible above the boundary fence.** ~~relocated to the side setback area between the southern elevation and the southern boundary or be located within the building footprint.~~ **The landscape plan shall be amended to incorporate a trellis with climbing plants on the western boundary fence adjacent to the rainwater tanks.***

Condition 3f

(f) *The clothes drying area on Lot 40 is to be relocated to the southern boundary fence in the rear yard and setback at least 1 metre from the western boundary to ensure the provision of sufficient landscape screening for No. 54 Mowbray Place.*

- 1.38 It is requested that this condition be deleted and the clothes drying area remain in its proposed position as the functionality of the drying area would be compromised by locating it adjacent to a large Crepe Myrtle which is required in the south western corner by Condition 3g. With the relocation of the water tank, there will be sufficient opportunity for landscape screening along the common boundary with 54 Mowbray Place.

- 1.39 It is therefore requested that condition 3f be deleted.

~~(f) *The clothes drying area on Lot 40 is to be relocated to the southern boundary fence in the rear yard and setback at least 1 metre from the western boundary to ensure the provision of sufficient landscape screening for No. 54 Mowbray Place.*~~

Condition 3j

- (j) *The private pathways of Lots 43 to 46 located within the Windsor Road public reserve are to be deleted.*

- 1.40 The design of the lots enables activation and passive surveillance of the adjacent public open space. The deletion of the pedestrian paths which access the individual dwellings will reduce the activation of the space. The deletion of the paths will lead to informal access to the dwellings which is likely to disturb the landscaping of the reserve.
- 1.41 As access is provided via front gates to the dwellings, it is considered highly appropriate that some form of access to the gates be provided to restrict the creating of informal dirt tracks.
- 1.42 In our opinion the access is important to activate the park and the provision of pedestrian access to the rear of the dwellings is important. On this basis it is requested that the condition be amended to enable the provision of stepping stones which will have minimal impact on the landscaping of the reserve, however will provide access to the front gates. In addition, it is noted that this area if the site currently forms part of the development site and has not been dedicated to Council.
- 1.43 Condition 3j should be amended to read:

- (j) *The private pathways of Lots 43 to 46 located within the Windsor Road public reserve are to be deleted **and replaced with stepping stones.***

Condition 3k

- (k) *The eastern boundary of Accessway No. 53 between the dwellings on Lots 66 to 74 and Eastern Valley Way is to be fenced with an open palisade style fencing to a maximum height of 1.2 metres to provide delineation between public and private land and promote safety.*

- 1.44 Consistent with Condition 3d it is requested that the condition be amended to enable fencing that will maintain safety and security to the private open space.
- 1.45 It is therefore requested that Condition 3k be amended to read:

- (k) *The eastern boundary of Accessway No. 53 between the dwellings on Lots 66 to 74 and Eastern Valley Way is to be fenced with an open palisade style fencing to a maximum height of ~~1.2~~ **1.6** metres to provide delineation between public and private land and promote safety.*

Condition 5 – Services – Energy Australia

The applicant should consult with Energy Australia to determine the need and location of any electrical enclosure for the development. Should such an electrical enclosure be required, the location and dimensions of the structure are to be detailed on all the plans issued with the Construction Certificate. In the event of Energy Australia requiring such a structure eg. a substation, the applicant is required to dedicate the land for the substation as public roadway. The Plan of Dedication shall be lodged to Council prior to issue of the Construction Certificate and registered at the Department of Lands prior to issue of the Occupation Certificate.

(Reason: Compliance)

- 1.46 To enable the development to proceed in a timely manner, it is requested that the condition be amended to require the Plan of Dedication prior to issue of the Occupation Certificate. Condition 5 should be amended to read:

*The applicant should consult with Energy Australia to determine the need and location of any electrical enclosure for the development. Should such an electrical enclosure be required, the location and dimensions of the structure are to be detailed on all the plans issued with the Construction Certificate. In the event of Energy Australia requiring such a structure eg. a substation, the applicant is required to dedicate the land for the substation as public roadway. The Plan of Dedication shall be lodged to Council prior to issue of the ~~Construction Certificate~~ **Occupation Certificate** and registered at the Department of Lands prior to issue of the Occupation Certificate.*

(Reason: Compliance)

Condition 16 – Damage Deposit

The applicant shall lodge a Damage Deposit of \$285,000 (GST Exempt) as cash, cheque or an unconditional bank guarantee, to Council against possible damage to Council's asset during the course of the building works. The deposit will be refundable subject to inspection by Council after the issue of a final Occupation Certificate for all dwellings and the completion of all civil works relating to the proposed development. For the purpose of inspections carried out by Council Engineers, an inspection fee of \$980 (GST inclusive) is payable to Council. Any damages identified by Council shall be restored by the applicant prior to release of the Damage Deposit.

(Reason: Protection of public asset)

- 1.47 Condition 16 requires a substantial damage deposit which we consider to be excessive. The method of calculating the figure is unclear and at the time of preparing this submission advice in this regard was being sought from Council. The Council are already holding damage deposits for the entire Willoughby Market Gardens site of over \$260,000.
- 1.48 Furthermore, Condition 119 requires the applicant to restore all damage to Council's assets prior to issue of the Subdivision Certificate.
- 1.49 If deemed appropriate that an additional damage deposit be required, we would ask that a more reasonable figure in the order of \$50,000 be required. It is therefore requested that Condition 16 be amended generally as follows:

*The applicant shall lodge a Damage Deposit of ~~\$285,000~~ **\$50,000** (GST Exempt) as cash, cheque or an unconditional bank guarantee, to Council against possible damage to Council's asset during the course of the building works. The deposit will be refundable subject to inspection by Council after the issue of a final Occupation Certificate for all dwellings and the completion of all civil works relating to the proposed development. For the purpose of inspections carried out by Council Engineers, an inspection fee of \$980 (GST inclusive) is payable to Council. Any damages identified by Council shall be restored by the applicant prior to release of the Damage Deposit.*

(Reason: Protection of public asset)

Condition 26 – Certificate Issued by Willoughby Council

Prior to issue of any Construction Certificate, the applicant shall submit, for approval by the Accredited

Certifier, a letter issued by Willoughby City Council confirming that the documentation listed in Section 2 of this consent has been approved by Council. (Reason: Ensure compliance)

- 1.50 As requested above, the requirements of condition 2 are specific and can be approved by the PCA. It is therefore requested that Condition 26 be deleted.

~~*Prior to issue of any Construction Certificate, the applicant shall submit, for approval by the Accredited Certifier, a letter issued by Willoughby City Council confirming that the documentation listed in Section 2 of this consent has been approved by Council. (Reason: Ensure compliance)*~~

Condition 27 – Design of Works in Public Road in front of Lot 47 & 48

Prior to issue of any Construction Certificate, the Applicant shall submit, for approval by Council as a road authority, full design engineering plans and specifications prepared by a suitably qualified and experienced civil engineer for the following:-

a. An Autoturn simulation must be provided on the driveway layout for Lot43 to 46 demonstrating that there are sufficient turning areas for MR vehicles to ingress and egress from Road No.3 to the right –of-carriageway.

b. In light of point a above, the layout of the new kerb and gutter alignment with all required dimensions and radius in front of lot 47 and 48 shall be provided.

*The required plans shall be designed in accordance with Austroad, Council's specifications (AUS-SPEC) and AS2890.1. Approval must be obtained from Willoughby City Council as the road authority under the Roads Act 1993 prior to issue of any Construction Certificate.
(Reason: Ensure compliance)*

- 1.51 We are unclear as to why this condition has been included. The JRPP report notes on page 11 that this has been addressed by the sketch provided titled 'Proposed Drive/kerb modification'. It is therefore requested that Condition 27 be amended to refer to that sketch.

*Prior to issue of any Construction Certificate, the Applicant shall submit, for approval by Council as a road authority, full design engineering plans and specifications prepared by a suitably qualified and experienced civil engineer for the following **in accordance with amended sketch titled 'Proposed Drive/kerb modification'**.*

~~*a. An Autoturn simulation must be provided on the driveway layout for Lot43 to 46 demonstrating that there are sufficient turning areas for MR vehicles to ingress and egress from Road No.3 to the right –of-carriageway.*~~

~~*b. In light of point a above, the layout of the new kerb and gutter alignment with all required dimensions and radius in front of lot 47 and 48 shall be provided.*~~

*The required plans shall be designed in accordance with Austroad, Council's specifications (AUS-SPEC) and AS2890.1. Approval must be obtained from Willoughby City Council as the road authority under the Roads Act 1993 prior to issue of any Construction Certificate.
(Reason: Ensure compliance)*

Condition 31 – Soil and Water Management Plan

A Soil and Water Management Plan (SWMP) shall be prepared and submitted to the Principal Certifying Authority (PCA), for consideration. The PCA must approve the SWMP, prior to the issue of the Construction Certificate. The SWMP shall incorporate but not be limited to the following:

1) An Erosion and Sediment Control Plan (ESCP) with the following information presented on the drawing as a minimum;

- a) Site boundaries, adjoining roads and grades with an indication of fall direction,*
- b) Location of trees, and all vegetation showing items for removal or retention, c) Location of site access, proposed roads and other impervious areas,*
- d) Existing and proposed drainage patterns together with stormwater discharge points.*

2) The SWMP shall explain how the various soil conservation measures will be carried out and shall include as a minimum the following:

- a) Timing of works,*
- b) Locations of lands where a protective ground cover will be maintained, c) Access protection measures,*
- d) Stormwater discharge water quality targets (to include water treatment measures if necessary and water testing program), e) Nature and extent of earthworks,*
- f) Diversion of runoff from upslope land around the disturbed area (designed to carry the peak 10 year ARI catchment runoff),*
- g) Location of all soil and other material stockpiles,*
- h) Location and type of proposed erosion and sediment control measures,*
- i) Engineering details with supporting design calculations for sediment basins and other such controls (design storm event as the 10 year ARI time of concentration of storm event),*
- j) Frequency and nature of any maintenance/inspection program,*
- k) Outline the reporting and reviewing requirements (to include incident management procedure),*
- l) Site rehabilitation.*

The ESCP and SWMP shall meet the requirements of 'Managing Urban Stormwater – Soils and Construction Volume 1 published by Landcom 2004' commonly known as the 'Blue Book'.

Certification prepared by a qualified and practising engineer, experienced in soil and water management and registered with the National Engineering Registration Board, that the ESCP and SWMP meets these requirements shall be submitted to the Principal Certifying Authority, prior to issue of the Construction Certificate.

(Reason: Environmental Protection)

- 1.52 The requirements of Condition 31 are detailed and call up a range of requirements and compliance with 'Managing Urban Stormwater– Soils and Construction Volume 1 published by Landcom 2004' commonly known as the 'Blue Book'.
- 1.53 The 'Blue Book' is the industry standard for such requirements and accordingly, the condition not place additional onerous requirements and should only require compliance with the Blue Book.

- 1.54 To facilitate works on site in a clear manner consistent with industry standard, it is requested that Condition 31 be amended to read:

A Soil and Water Management Plan (SWMP) shall be prepared and submitted to the Principal Certifying Authority (PCA), for consideration. The PCA must approve the SWMP, prior to the issue of the Construction Certificate. ~~The SWMP shall incorporate but not be limited to the following:~~

~~1) An Erosion and Sediment Control Plan (ESCP) with the following information presented on the drawing as a minimum;~~

*~~a) Site boundaries, adjoining roads and grades with an indication of fall direction;
b) Location of trees, and all vegetation showing items for removal or retention, c) Location of site access, proposed roads and other impervious areas;
d) Existing and proposed drainage patterns together with stormwater discharge points.~~*

~~2) The SWMP shall explain how the various soil conservation measures will be carried out and shall include as a minimum the following:~~

*~~a) Timing of works;
b) Locations of lands where a protective ground cover will be maintained;
c) Access protection measures;
d) Stormwater discharge water quality targets (to include water treatment measures if necessary and water testing program); e) Nature and extent of earthworks;
f) Diversion of runoff from upslope land around the disturbed area (designed to carry the peak 10-year ARI catchment runoff);
g) Location of all soil and other material stockpiles;
h) Location and type of proposed erosion and sediment control measures;
i) Engineering details with supporting design calculations for sediment basins and other such controls (design storm event as the 10-year ARI time of concentration of storm event);
j) Frequency and nature of any maintenance/inspection program;
k) Outline the reporting and reviewing requirements (to include incident management procedure);
l) Site rehabilitation.~~*

The ESCP and SWMP shall meet the requirements of 'Managing Urban Stormwater – Soils and Construction Volume 1 published by Landcom 2004' commonly known as the 'Blue Book'.

Certification prepared by a qualified and practising engineer, experienced in soil and water management and registered with the National Engineering Registration Board, that the ESCP and SWMP meets these requirements shall be submitted to the Principal Certifying Authority, prior to issue of the Construction Certificate.

(Reason: Environmental Protection)

Condition 50 – Hours of Work

All construction/demolition work relating to this Development Consent within the City must be carried out only between the hours of 7 am to 5 pm Mondays to Fridays and 7 am to 12 noon on Saturdays. No work is permitted on Sundays or Public Holidays.

An application under Section 96 of the Environmental Planning and Assessment Act for a variation to

these approved hours must be lodged with Council at least 3 working days in advance of the proposed work. The application must include a statement regarding the reasons for the variation sought and must be accompanied by the required fee.

Note: This S96 application may require re-notification in some circumstances. (Reason: Ensure compliance and amenity)

- 1.55 Currently the condition restricts the construction hours during the week to 7am to 5pm and on a Saturday from 7am to 12noon. Consideration is requested to allowing an extension of these hours to permit construction activities:
- 7am to 6pm – Monday to Friday
 - 7am to 3pm – Saturdays.
- 1.56 This increase will have a number of potential benefits to the project and neighbouring properties.
- 1.57 By allowing an additional 4 hours of construction time will reduce the construction timetable, this is a direct benefit to the community, as it is appreciated that it can at times be noisy and disruptive living near a construction site. Allowing the flow of construction through the 6 days without having to change tasks on a Saturday due to the reduced hours will provide a more efficient construction timetable.
- 1.58 It is in the public's interest to have a reduced construction timetable by allowing additional construction hours outside of key 'quiet times' such as mornings and early evenings.
- 1.59 Furthermore, it is now widely accepted that people work on a Saturday, it is common practise in almost all trades and people are often engaged in other activities such as sport, shopping and socialising.
- 1.60 For comparison it is noted that Botany and Manly Council's allow Monday to Friday construction hours from 7am to 6pm, consistent with this request.
- 1.61 Allowing a minor increase in hours will allow the orderly and economic development of the site as considered by Section 79C of the Environmental Planning & Assessment Act 1979.
- 1.62 It is therefore requested that Condition 50 be amended to read:

*All construction/demolition work relating to this Development Consent within the City must be carried out only between the hours of 7 am to ~~5-6pm~~ Mondays to Fridays and 7 am to ~~12 noon~~ **3pm** on Saturdays. No work is permitted on Sundays or Public Holidays.*

An application under Section 96 of the Environmental Planning and Assessment Act for a variation to these approved hours must be lodged with Council at least 3 working days in advance of the proposed work. The application must include a statement regarding the reasons for the variation sought and must be accompanied by the required fee.

Note: This S96 application may require re-notification in some circumstances. (Reason: Ensure compliance and amenity)

Condition 64 – Stormwater Kerb outlet



New stormwater connection outlets at street kerb shall be made using 125x75x4 galvanised Rectangular Hollow Section (RHS). Where there are multiple outlets required, a minimum distance of 100mm shall separate these outlets. A grated drainage pit (min. 600mm x 600mm) shall be provided within and adjacent to the property boundary prior to discharging to the Council's drainage system. (Reason: Protection of Public Asset)

- 1.63 There are some circumstances where the drainage outlet pipe will be outside of the line of the property boundary. To allow for these special circumstances, it is requested that the condition be amended to read:

New stormwater connection outlets at street kerb shall be made using 125x75x4 galvanised Rectangular Hollow Section (RHS). Where there are multiple outlets required, a minimum distance of 100mm shall separate these outlets. A grated drainage pit (min. 600mm x 600mm) shall be provided within ~~and~~ or adjacent to the property boundary prior to discharging to the Council's drainage system. (Reason: Protection of Public Asset)

Condition 66 – Soil and Water Management Controls – Inspections

During site works, the person responsible for on site soil and water management shall undertake regular inspections and keep records regarding maintenance of measures detailed in the approved Soil and Water Management Plan (SWMP). The inspections and records shall meet the following:

- 1. Inspections undertaken after each rain event,*
- 2. Information recorded shall include:*
 - a. Weather measurements including rainfall, temperature and wind, b. Condition of controls as documented in the approved SWMP including,*
 - i. Condition of sedimentation control devices,*
 - ii. Condition of sedimentation basins including water level, water quality, any activities relating to water treatment, water quality sampling results and the release of water.*

Where site conditions have changed due to weather or need to change due to progression of site works, a new Erosion and Sediment Control Plan (ESCP) shall be prepared and submitted to the Principal Certifying Authority (PCA), for consideration. The ESCP shall be approved by the PCA and implemented prior to the carrying out of the new site works.

The recorded data shall be made available to Council upon request. (Reason: Environmental Protection)

- 1.64 As per condition 31 above, it is requested that this condition be amended to require compliance with the requirements of the 'Blue Book'. Condition 66 should be amended to read:

*During site works, the person responsible for on site soil and water management shall undertake regular inspections and keep records regarding maintenance of measures detailed in the approved Soil and Water Management Plan (SWMP). The inspections and records shall meet the ~~following requirements of~~ **Managing Urban Stormwater– Soils and Construction Volume 1 published by Landcom 2004' commonly known as the 'Blue Book'.***

- ~~*1. Inspections undertaken after each rain event,*~~
- ~~*2. Information recorded shall include:*~~

- ~~a. Weather measurements including rainfall, temperature and wind, b. Condition of controls as documented in the approved SWMP including,~~
- ~~i. Condition of sedimentation control devices,~~
 - ~~ii. Condition of sedimentation basins including water level, water quality, any activities relating to water treatment, water quality sampling results and the release of water.~~

Where site conditions have changed due to weather or need to change due to progression of site works, a new Erosion and Sediment Control Plan (ESCP) shall be prepared and submitted to the Principal Certifying Authority (PCA), for consideration. The ESCP shall be approved by the PCA and implemented prior to the carrying out of the new site works.

The recorded data shall be made available to Council upon request. (Reason: Environmental Protection)

Condition 67 – Soil and Water Management Controls – Certification

During site works, an inspection of the site shall be conducted every 60 days by a qualified and practising engineer, experienced in soil and water management and registered with the National Engineering Registration Board. As a result of this inspection, the engineer shall certify that all soil and Water Management Controls conform with the approved Soil and Water Management Plan (SWMP), Erosion and Sediment Control Plan (ESCP) and the requirements of 'Managing Urban Stormwater – Soils and Construction Volume 1 published by Landcom 2004' commonly known as the 'Blue Book'. (Reason: Environmental Protection)

- 1.65 As per condition 31 and 66, the condition should be amended to require compliance with the requirements of the 'Blue Book'. Condition 67 should be amended to read:

During site works, an inspection of the site shall be conducted **in accordance with the requirements of 'Managing Urban Stormwater – Soils and Construction Volume 1 published by Landcom 2004' commonly known as the 'Blue Book'**. ~~every 60 days by a qualified and practising engineer, experienced in soil and water management and registered with the National Engineering Registration Board.~~ As a result of this inspection, the engineer shall certify that all soil and Water Management Controls conform with the approved Soil and Water Management Plan (SWMP), Erosion and Sediment Control Plan (ESCP) and the requirements of 'Managing Urban Stormwater – Soils and Construction Volume 1 published by Landcom 2004' commonly known as the 'Blue Book'. (Reason: Environmental Protection)

Condition 68 – Cessation of Site works

During site works, if any works or rain events cause a water pollution incident as defined under the Protection of the Environment Operations Act 1997, all site works shall cease immediately and the person responsible for soil and water management shall immediately inform Council by phone 9777 7624 and in writing. The breach shall be addressed and the affected area rehabilitated, as directed by Council, prior to the continuation of any further site works. (Reason: Environmental Protection)

- 1.66 In principle we have no objection to this condition and compliance with the Protection of the Environment Operations Act 1997. However, there are a number of concerns with the wording of this

condition and is considered more appropriate that the wording of the condition reinforce the obligations under the Act.

1.67 It is therefore requested that the condition be amended to read:

*During site works, if any works or rain events cause a water pollution incident as defined under the Protection of the Environment Operations Act 1997, **the responsible person shall comply with their obligations under the Act.***

(Reason: Environmental Protection)

Condition 88 – S88B Instrument

Create Positive Covenant and Restriction on the Use of Land on the Title in favour of Council as the benefiting authority for the as-built rainwater retention and reuse system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council's Technical Standards.

The above instruments shall be created under Section 88B of the Conveyancing Act 1919 for newly created lots. The relative location of the rainwater retention and reuse system, in relation to the building footprint, must be shown on the final plan of subdivision/strata plan. The S88B instrument shall be lodged with Council's Standard S88B/S88E Lodgement Form with all supporting documentations listed in the Form. Council's Standard Form is available from Council upon requested.

Documentary evidence of registration of these instruments with the Land and Property Information shall be submitted to the Principal Certifying Authority and Council prior to issue of any Occupation Certificate.

(Reason: Maintenance requirement)

1.68 To allow for the issue of Interim Occupation Certificates it is requested that this condition be amended to reflect this. Condition 88 should be amended to read:

Create Positive Covenant and Restriction on the Use of Land on the Title in favour of Council as the benefiting authority for the as-built rainwater retention and reuse system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council's Technical Standards.

The above instruments shall be created under Section 88B of the Conveyancing Act 1919 for newly created lots. The relative location of the rainwater retention and reuse system, in relation to the building footprint, must be shown on the final plan of subdivision/strata plan. The S88B instrument shall be lodged with Council's Standard S88B/S88E Lodgement Form with all supporting documentations listed in the Form. Council's Standard Form is available from Council upon request.

*Documentary evidence of registration of these instruments with the Land and Property Information shall be submitted to the Principal Certifying Authority and Council prior to issue of **the any-final** Occupation Certificate.*

(Reason: Maintenance requirement)

Condition 101 – Subdivision – Substantial commencement of dwellings – Stage 3

*The linen plans/subdivision certificates for **Stage 3** are not to be released prior to the laying of the slabs and the erection of the framework and roofs of all the dwellings within Stage 3, being within Superlots 5*

and 6.
(Reason: Ensure compliance)

- 1.69 This condition relates to the creation of the allotments and therefore it is unreasonable to restrict the creation of these allotments prior to completion of the dwellings. The creation of the allotments provides clearer identification of the allotments within the superlots for contract administration. It is therefore requested that Condition 101 be deleted.

~~The linen plans/subdivision certificates for **Stage 3** are not to be released prior to the laying of the slabs and the erection of the framework and roofs of all the dwellings within Stage 3, being within Superlots 5 and 6.~~
(Reason: ~~Ensure compliance~~)

Condition 102 – Subdivision – Substantial commencement of dwellings – Stage 4

*The linen plans/subdivision certificates for **Stage 4** are not to be released prior to the laying of the slabs and the erection of the framework and roofs of all the dwellings within Stage 4, being within Superlots 7, 8 and 9.*
(Reason: Ensure compliance)

- 1.70 As per condition 101, this condition relates to the creation of the allotments and therefore it is unreasonable to restrict the creation of these allotments prior to completion of the dwellings. The creation of the allotments provides clearer identification of the allotments within the superlots for contract administration. It is therefore requested that Condition 102 be deleted.

~~The linen plans/subdivision certificates for **Stage 4** are not to be released prior to the laying of the slabs and the erection of the framework and roofs of all the dwellings within Stage 4, being within Superlots 7, 8 and 9.~~
(Reason: ~~Ensure compliance~~)

Condition 120 – Performance Bond

*Prior to issue of any Occupation Certificate or the issue of a Subdivision Certificate for **Stages 3 or 4**, the Applicant shall lodge with the Council a performance bond of \$140,000 against defective public civil works undertaken by the main Contractor for a period of twelve (12) months from the date of the issue of all occupation certificates for all dwellings. The bond shall be lodged in the form of a cash deposit, cheque or unconditional bank guarantee which will be refundable subject to the approval of Council's Engineers at the end of the maintenance period. In this period, the Applicant is liable for any part of the work which fails to achieve the design specifications. Council shall be given full authority to make use of the bond for such restoration works within the maintenance period as deemed necessary.*
(Reason: Ensure compliance and specification)

- 1.71 Condition 120 requires a substantial performance bond which we consider to be excessive. The method of calculating the figure is unclear and at the time of preparing this submission advice in this regard was being sought from Council. Under the previous consents, Stage 1 & Stage 2, the performance bond was \$10,000 and \$40,000 respectively.
- 1.72 Pending confirmation from Council, we would ask the JRPP require a more reasonable performance bond in the order of \$40,000. The bond is protecting the same assets and therefore should be

consistent with previous stages. It is therefore requested that Condition 120 be amended generally as follows:

*Prior to issue of any Occupation Certificate or the issue of a Subdivision Certificate for **Stages 3 or 4**, the Applicant shall lodge with the Council a performance bond of ~~\$140,000~~ **\$40,000** against defective public civil works undertaken by the main Contractor for a period of twelve (12) months from the date of the issue of all occupation certificates for all dwellings. The bond shall be lodged in the form of a cash deposit, cheque or unconditional bank guarantee which will be refundable subject to the approval of Council's Engineers at the end of the maintenance period. In this period, the Applicant is liable for any part of the work which fails to achieve the design specifications. Council shall be given full authority to make use of the bond for such restoration works within the maintenance period as deemed necessary.*

(Reason: Ensure compliance and specification)

Condition 121 – S88B Instrument for Council Pipe

*Prior to issue of the Subdivision Certificate for **Stage 4**, the applicant shall dedicate, at no cost to Council, a drainage easement of 2 metres wide over the proposed allotment No. 66, 67 and 68 in favour of Council for the as-built stormwater drainage pipe on Road No. 5. The standard wording of the terms of the Drainage Easement shall be in accordance with Part 3 of Schedule 4A of the Conveyancing Act 1919.*

Prior to issue of the Subdivision Certificate, a registered surveyor is to provide certification that the Council's drainage system pipe are wholly contained within the proposed drainage easement.

(Reason: Maintenance requirement)

- 1.73 The easement crossing lots 66, 67 & 68 is a continuation of an existing easement (DP 122711) that runs along the eastern boundary of the site adjacent to 82 Eastern Valley Way. The existing easement is 1.525 metres wide. The submitted drainage drawings provided a 1.525 metre wide continuation of the existing easement which is sufficient to cater for a drainage pipe with diameter 375mm.

- 1.74 It is therefore requested that Condition 121 be amended to read:

*Prior to issue of the Subdivision Certificate for **Stage 4**, the applicant shall dedicate, at no cost to Council, a drainage easement of ~~2~~ **1.525** metres wide **as an extension to the existing drainage easement DP122711** over the proposed allotment No. 66, 67 and 68 in favour of Council for the as-built stormwater drainage pipe on Road No. 5. The standard wording of the terms of the Drainage Easement shall be in accordance with Part 3 of Schedule 4A of the Conveyancing Act 1919.*

Prior to issue of the Subdivision Certificate, a registered surveyor is to provide certification that the Council's drainage system pipe are wholly contained within the proposed drainage easement.

(Reason: Maintenance requirement)

Condition 130 – Windsor Rd Public Reserve

The Windsor Road Public Reserve being identified as Superlot 11 on DA-2004/521 is to be developed in accordance with approved landscape plans as part of DA-2004/521. No consent is given to works on the Windsor Road Public Reserve as part of this Development Application. (Reason: Ensure Compliance)

- 1.75 As the Windsor Road Public Reserve currently forms part of the development site (has not been dedicated to Council), the second part of this condition is not applicable and should be deleted. As per our request to include stepping stones, the condition should be amended to reflect the amended landscape treatment approved under this DA.

*The Windsor Road Public Reserve being identified as Superlot 11 on DA-2004/521 is to be developed in accordance with approved landscape plans as part of DA-2004/521 **as amended by DA 2012/311**. ~~No consent is given to works on the Windsor Road Public Reserve as part of this Development Application.~~
(Reason: Ensure Compliance)*

Condition 136 – Road Reserve Planting

Replacement planting proposed within the road reserve may be undertaken subject to the following conditions:

- i) The cost of all works being borne by the applicant.*
- ii) All service location checks and liability being the responsibility of the applicant.*
- iii) The applicant is to maintain the planting in the road reserve for a period of 52 weeks following planting*

Plants are to be maintained in a healthy condition, weeds suppressed and any dead plant material replaced.

Following the 52 week maintenance period, the applicant is to contact Council's Open Space Section to arrange a site inspection prior to handover to Council.

- iv) Council retains the right to prune or remove the planting as may be required for road or service maintenance and safety.*

(Reason: Management of public assets)

- 1.76 This condition requires a 12 month maintenance period which is considered excessive. It is generally considered that plants and trees require up to 3 months for site establishment. An additional 3 months maintenance following this would be considered more reasonable. It is therefore requested that Condition 136 be amended to read:

Replacement planting proposed within the road reserve may be undertaken subject to the following conditions:

- i) The cost of all works being borne by the applicant.*
- ii) All service location checks and liability being the responsibility of the applicant.*
- iii) The applicant is to maintain the planting in the road reserve for a period of ~~52~~**26** weeks following planting*

Plants are to be maintained in a healthy condition, weeds suppressed and any dead plant material replaced.

*Following the ~~52~~**26** week maintenance period, the applicant is to contact Council's Open Space Section to arrange a site inspection prior to handover to Council.*

- iv) Council retains the right to prune or remove the planting as may be required for road or service maintenance and safety.*

(Reason: Management of public assets)

Condition 143 – Occupation Certificate

The buildings/structure or part thereof shall not be occupied or used until an interim occupation / final occupation certificate has been issued in respect of the buildings or part.

An occupation certificate shall not be issued in respect of the buildings or part until the proposed lots have been created and registration of the appropriate survey plan by Land Titles Office.

(Reason: Safety)

- 1.77 The above is noted on the consent as an advisory note. We are unclear as to why the second part of the note is being imposed and were such requirement is required under the EPAA Act and Regulations. Accordingly, it is requested that the second line of the advisory note be deleted as follows:

The buildings/structure or part thereof shall not be occupied or used until an interim occupation / final occupation certificate has been issued in respect of the buildings or part.

~~*An occupation certificate shall not be issued in respect of the buildings or part until the proposed lots have been created and registration of the appropriate survey plan by Land Titles Office.*~~

~~(Reason: Safety)~~

CONCLUSION

- 1.78 We look forward to the panels' consideration of this item on 24 January 2013.

- 1.79 Should you require any additional information, please contact Larissa Brennan at LJB Urban Planning Pty Ltd on 0414 730 842 or via email ljburbanplanning@bigpond.com.

Yours sincerely



Larissa Brennan

Director

LJB Urban Planning